

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

TRADEMARK PROPERTIES,)
INC., a South Carolina corporation;)
RICHARD C. DAVIS, an individual)

Civil Action No.2:06-CV-2195-CWH

)
Plaintiffs,)
)

vs.)
)

A&E TELEVISION NETWORKS,)
a joint venture of the Hearst)
Corporation, ABC INC. and NBC)
UNIVERSAL; DEPARTURE FILMS)
an entity of unknown origin; and)
DOES 1-20, inclusive)

PLAINTIFFS/COUNTERCLAIM DEFENDANTS'
MEMORANDUM IN OPPOSITION TO THE
DEFENDANT'S/COUNTERCLAIM
PLAINTIFF'S MOTION TO COMPEL

)
Defendants.)
)

A&E TELEVISION NETWORKS,)
)

Counterclaim Plaintiff,)
)

vs.)
)

TRADEMARK PROPERTIES, INC.)
and RICHARD C. DAVIS,)
)

Counterclaim Defendants.)
_____)

The Plaintiffs' respectfully submit this memorandum in opposition to the Defendants Motion to Compel pursuant to local Rule 7.06.

The Defendants contend that the Plaintiffs' responses to discovery were deficient relative to eight (8) items of the Defendants discovery as follows:

1. Interrogatory Response #5- The Plaintiffs have amended their Interrogatory Response #5 to include all agents, attorneys, agencies or firms that assisted the Plaintiffs relative to the Plaintiffs dealing with the Defendants to include Thomas Whaley, Esquire, Pierre Brogan, Bryan Geers and Robert Dodds, Esquire. (See Exhibit “A”)
2. Verification - The Plaintiffs have amended their discovery responses provide the signature of the Plaintiffs, Richard C. Davis and the President of Trademark Properties, Inc. (See Exhibit “A” & “B”)
3. Document Request #2- The Plaintiffs have amended their response to Document Request #2 to indicate that the digital “ video pilot” and the “demo tape” are one and the same. (See Exhibit “B”)
4. Document Request #5 - The Plaintiffs have advised the Defendants that the Plaintiffs are agreeable to providing the financial documents requested subject to the Court granting a Confidentiality Order.
5. Document Request #7- In Document Request #7 the Defendants requested “documents concerning any communications between the Plaintiffs and any other person or entity concerning the claims, counterclaims or defenses asserted in this lawsuit.” All documents were produced with the exception of documents that constitute communications between the Plaintiffs and Plaintiffs’ attorneys. The Plaintiffs position is that documents that constitute communication between the Plaintiffs and Plaintiffs’ attorneys are subject to being withheld pursuant to the attorney/client privilege.
6. Document Request #8- In Document Request #8 the Defendants seek all

documents concerning communications between Plaintiffs and television networks other than A&E Television Networks including The Learning Channel and any of its affiliates. The Plaintiffs object to this production request on the grounds that the information sought is not relevant to the subject matter of the pending action nor is it reasonably calculated to lead to discovery of admissible evidence. The Plaintiffs' Complaint and the Defendants Counterclaim concern only the relationship between the Plaintiffs and the Defendants. The Plaintiffs relationship with television networks other than A&E Television Networks is not relevant to the subject matter of the pending litigation.

7. Document Request #10- In Document Request #10 the Defendants seek all documents concerning all television shows that have a concept or format similar to the subject series. The Defendants argue that the documents requested will be used to test the Plaintiffs claim that Plaintiff, Richard Davis, " is the creator and owner of the unique concept, format and treatment of a reality based television program which features Richard Davis and certain staff members of Trademark Properties, Inc. going through the process of locating, acquiring, refurbishing and selling houses." In Response to the Defendants' argument, the Plaintiffs have amended their response to Document Request #10 to state that "The Plaintiffs are not aware of any documents concerning television shows that have a concept or format similar to the subject series which predate the Plaintiffs' video pilot of the series." (See Exhibit "B")
8. Document Request #26- In Document Request #26 the Defendants requested production of any executed final agreements between Plaintiffs and The Learning

Channel or any of its affiliates. The Plaintiffs object to Document Request #26 on the ground that the information sought is not relevant to the subject matter of this pending action nor is it reasonably calculated to lead to discovery of admissible evidence. The Plaintiffs' Complaint and the Defendants' Counterclaim only concern the relationship between the Plaintiffs and the Defendants and not the Plaintiffs relationship with other television shows or production companies.

Based on the foregoing the Plaintiffs request that the Defendant's Motion to Compel be denied. Attached as Exhibits "A" and "B" are the Plaintiffs Amended Responses the Defendant's/Counterclaim Plaintiff's Interrogatories and First Request for Production.

Respectfully submitted,

CISA & DODDS, LLP

s/Frank M. Cisa
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Mt. Pleasant, SC 29464
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Attorney for Plaintiffs

December 27, 2006
Mt. Pleasant, SC

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY, that on this 27th day of December, 2006 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such to the following:

Robert H. Jordan, Esquire
151 Meeting Street/ Sixth Floor
P.O. Box 1806 (29402)
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robert.jordan@nelsonmullins.com
Attorney for Defendants

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s/ Frank M. Cisa

December 27, 2006
Charleston, SC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

TRADEMARK PROPERTIES, INC., a) Civil Action No. 2:06-cv-2195-CWH
South Carolina corporation; RICHARD C.)
DAVIS, an individual,)
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Plaintiffs,)
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vs.)
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A&E TELEVISION NETWORKS, a joint)
venture of the Hearst Corporation, ABC,)
Inc. and NBC Universal; DEPARTURE)
FILMS, an entity of unknown origin; and)
DOES 1-20, Inclusive,) THE PLAINTIFFS AMENDED ANSWERS
) TO THE DEFENDANT/COUNTERCLAIM
) PLAINTIFF'S FIRST SET OF
Defendants.) INTERROGATORIES
)
_____)
)
A&E TELEVISION NETWORKS,)
)
Counterclaim Plaintiff,)
)
vs.)
)
TRADEMARK PROPERTIES, INC. and)
RICHARD C. DAVIS,)
)
Counterclaim Defendants.)

TO: ROBERT H. JORDAN, ESQUIRE AND THE DEFENDANTS/COUNTERCLAIM
PLAINTIFF

INTERROGATORIES



1. Identify all persons known to Plaintiffs or their counsel who have knowledge concerning the factual allegations set forth in the Complaint and any responsive pleading to the Complaint, including the general nature of each person's knowledge.

**Richard Davis
Trademark Properties, Inc.
1175 Folly Road
Charleston, SC 29412**

Richard Davis has general knowledge concerning the allegations of the Plaintiffs Complaint and can testify concerning same.

**Ginger Alexander
Trademark Properties, Inc.
1175 Folly Road
Charleston, SC 29412**

Ginger Alexander is employed by Trademark Investments, LLC and is generally familiar with the allegations in the Plaintiffs Complaint and can testify concerning same.

**Thomas Moody
A&E Television Networks
235 East 45 Street
New York, NY 10017**

Mr. Moody is aware of the agreement reached between the Plaintiffs and the Defendant, A&E Television Networks, and should testify concerning same.

**Michael Morrison
A&E Television Networks
235 East 45 Street
New York, NY 10017**

Mr. Morrison replaced Charles Norlander and was involved with negotiations with the Plaintiffs after the agreement was made with Charles Norlander, with A&E Television Networks and should testify concerning same.

**Nancy Dubuc
A&E Television Networks
235 East 45 Street**

New York, NY 10017

Ms. Dubuc is aware of the agreement entered into between the Plaintiffs and the Defendants, A&E Television Networks, and should testify concerning same.

**Max Weissman
Max Weissman Productions, Inc. d/b/a Departure Films
333 West 39 Street #1502
New York, NY 10018**

Mr. Weissman was in charge of the production company, Departure Films, which was hired by A&E Television Networks relative to the production of the series known as “Flip This House”. Mr. Weissman can also testify to his communications with the Plaintiff, Richard Davis, and also to the Plaintiffs’ duties and responsibilities and involvement relative to the subject series.

**Charles Norlander
Food Network
1180 6th Avenue
New York, NY 10036**

Mr. Norlander is aware of the agreement reached between the Plaintiffs and the Defendants, A&E Television Networks, and should testify concerning same.

**Thomas Whaley
St. Paul Saints Baseball Club, Inc.
1771 Energy Park Drive
St. Paul, Minnesota 55108**

Mr. Whaley is an attorney that was retained by the Plaintiffs to negotiate talent fees relative to the series known as “Flip This House”.

**Robert W. Bass, CPA
Williamson & Associates, Inc.
500 Taylor Street, Suite 402
Columbia, SC 29201**

Robert W. Bass is the Certified Public Accountant for the Plaintiffs and can testify to the Plaintiffs expenses relative to the production of the series. It is also anticipated that Robert W. Bass will be able to testify to the net proceeds and revenues generated from the subject series once information is obtained concerning same.

2. List all documents, drawings, photographs, plans, “digital video pilots,” videos, DVDs and demo tapes that relate to the claims, counterclaims or defenses in this case.

All documents are being produced pursuant to the Defendants/Counterclaim Plaintiffs' First Request for Production. The Plaintiffs also have eighty-seven (87) hours of tape that was used relative to the production of the initial pilot for the series; thirteen (13) episodes; and invoices and statements concerning the Plaintiffs claim for damages.

3. Itemize all damages Plaintiffs seek to recover in this lawsuit.

The Plaintiffs seek damages for the reimbursement of the Plaintiffs expenses for travel, food, lodging and related expenses incident to the filming and production of the episodes of the series as shown on the attached Exhibit "A". In addition, the Plaintiffs seeks ½ of all net revenues and proceeds generated from the television series "Flip This House". Information concerning the net revenues and proceeds generated relative to the television series "Flip This House" is not presently in the possession of the Plaintiffs.

4. Itemize all expenses or costs Plaintiffs allege to have incurred in connection with the Series for which compensation is claimed.

An itemization of expenses are attached as Exhibit "A".

5. Identify all agents, attorneys, agencies or firms that represented or assisted Plaintiffs in connection with the matters alleged in the Complaint or counterclaims.

**Brian G. Wolf, Esquire
Lavelly & Singer**

**Martin D. Singer, Esquire
Lavelly & Singer**

**Frank M. Cisa, Esquire
Cisa & Dodds, LLP**

Thomas Whaley, Esquire

Robert S. Dodds, Esquire

Pierre Brogan

Bryan Geer

6. Regarding the allegations set forth in paragraph 46 of Plaintiffs' Complaint, describe Trademark's "unique" "means and methods of locating, acquiring, refurbishing and selling real property," including but not limited to any means, methods or associated information that Plaintiffs claim to be confidential or trade secrets.

The means and methods of locating, acquiring, refurbishing and selling real property are depicted in the episodes of the series known as "Flip This House". The Plaintiffs delivered a copy of the Plaintiffs' Private Placement Memorandum to the Defendant, A&E Television Network, which is confidential and contains trade secrets.

7. State the precise relationship between Davis and Trademark.

Richard C. Davis is the President, sole shareholder and sole member of the Board of Directors of Trademark Properties, Inc.

8. Identify any affiliates of Trademark and the relationship between Trademark and each affiliate.

Trademark Properties, Inc. affiliated companies are as follows:

- a. **Trademark Towers, LLC**
- b. **Trademark Aviation, LLC**
- c. **Trademark Investments, LLC**
- d. **Trademark Productions, LLC**
- e. **Trademark Profit Sharing I, LLC**
- f. **Trademark Profit Sharing 2, LLC**

All of the affiliated companies are single member LLCs' solely owned by Trademark Properties, Inc.

9. Identify all persons who were present at any meetings, or who were on any telephone calls, between Plaintiffs and Defendants at or during which any alleged agreements or contracts were reached or discussed relating to the Series.

The agreement was reached and discussed between Charles Norlander with A&E Television Networks and Richard C. Davis. A conference call was then held between Charles Norlander, Thomas Moody, Nancy Dubuc and Richard C. Davis at which time it was agreed that the Plaintiffs and the Defendant, A&E Television Networks would be equal 50/50 partners of Richard C. Davis's concept and treatment "Worst to First" subsequently renamed "Flip this House" and would share equally in all net revenues and proceeds generated from the exploitation of the series. A&E Television Networks and the Plaintiffs would be reimbursed for their expenses relative to the production of the project and the net revenues and proceeds would be equally divided between the Plaintiffs and A&E. It was agreed that the Plaintiffs would be solely responsible for any and all expenses relative to the acquisition and refurbishment of any properties depicted in the series.

CISA & DODDS, LLP

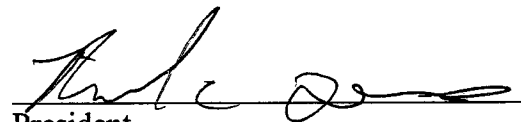


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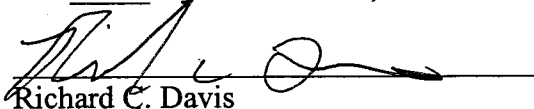
Mt. Pleasant, SC
This 22 day of December, 2006

TRADEMARK PROPERTIES, INC.

By:
Its:



President
This 22 day of December, 2006



Richard C. Davis
This 22 day of December, 2006

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

TRADEMARK PROPERTIES, INC., a)
South Carolina corporation; RICHARD C.)
DAVIS, an individual,)
)
Plaintiffs,)

vs.)

A&E TELEVISION NETWORKS, a joint)
venture of the Hearst Corporation, ABC,)
Inc. and NBC Universal; DEPARTURE)
FILMS, an entity of unknown origin; and)
DOES 1-20, Inclusive,)
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Defendants.)

A&E TELEVISION NETWORKS,)
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Counterclaim Plaintiff,)

vs.)

TRADEMARK PROPERTIES, INC. and)
RICHARD C. DAVIS,)
)
Counterclaim Defendants.)

Civil Action No. 2:06-cv-2195-CWH

PLAINTIFFS AMENDED RESPONSES TO
THE DEFENDANTS/COUNTERCLAIM
PLAINTIFF'S FIRST REQUEST FOR
PRODUCTION

**TO: ROBERT H. JORDAN, ESQUIRE AND THE DEFENDANTS/COUNTERCLAIM
PLAINTIFF**



DOCUMENTS REQUESTED

1. Documents sufficient to describe the corporate structure and organization of Trademark Properties.

A copy of Trademark Properties, Inc.'s bylaws will be produced for inspection and copying at a mutual agreeable time at the offices of the Plaintiffs counsel.

2. All "digital video pilots," videos, DVDs or demo tapes provided or shown to Defendants by Plaintiffs.

Only one (1) video pilot was produced, however, the Plaintiffs have in their possession approximately eighty-seven (87) hours of film that was used in producing the video pilot. It is believed that the Defendants have in their possession a copy of the video pilot. The eighty-seven (87) hours of film will be made available for inspection and copying to the Defendants. The video pilot and demo tape are one and the same.

3. All documents, materials, "digital video pilots," videos, DVDs or demo tapes submitted to or registered by Plaintiffs with the Writers Guild of America or any of its affiliates, together with any forms or correspondence exchanged between Plaintiffs and the Writers Guild.

A copy of the treatment filed with Writers Guild of America and Documentation of Registration will be made available for inspection and copying.

4. Copies of all reports, complaints, or claims filed by Plaintiffs or on their behalf in connection with this lawsuit, including, but not limited to, reports, complaints, or claims filed with any insurance company, agency or adjuster.

None other than the current Complaint.

5. Documents sufficient to show Plaintiffs' financial condition at year-end for every year from 2003 to the present, including revenues and profits or losses generated.

The year-end financial statements of the Plaintiffs for the years of 2003 to the present will be made available for inspection and copying so long as the Defendants will agree to a Confidentiality Order.

6. All documents concerning any communications between Plaintiffs and Defendants concerning the claims, counterclaims or defenses asserted in this lawsuit.

All documents concerning all communications between the Plaintiffs and the Defendants will be made available for inspection and copying.

7. All documents concerning any communications between Plaintiffs and any other person or entity concerning the claims, counterclaims or defenses asserted in this lawsuit, including but not limited to the St. Paul Saints, Tom Whaley, Creative Artists Agency (CAA), Bryan Geers and Pierre Brogan.

All documents will be made available for inspection and copying except for any documents that constitute communications between the Plaintiffs and Plaintiffs' attorneys.

8. All documents concerning communications between Plaintiffs and television networks other than A&E, including but not limited to The Learning Channel and any of its affiliates.

The Plaintiffs objects to Request for Production #8 on the grounds that the information sought is not relevant to the subject matter of the pending action nor is it reasonably calculated to lead to the discovery of admissible evidence.

9. All documents concerning Plaintiffs' claims in Paragraph 6 of the Complaint that Plaintiff Davis "is the creator and owner of the unique concept, format and treatment of a reality based television program which features Davis and certain staff members of Trademark going through the process of locating, acquiring, refurbishing and selling houses."

The Plaintiffs created the pilot for the subject series, the Plaintiff, Richard C. Davis, was listed as the creator for the subject series; the Plaintiff, Richard Davis, filed a

treatment with the Writers Guild of America and was issued a registration. The Plaintiff, Richard C. Davis, further contends that some or all the documents produced may support the Plaintiffs' claims as alleged in paragraph six (6) of the Complaint.

10. All documents concerning any television shows that have a concept or format similar to that of the Series.

The Plaintiffs object to Request for Production #10 on the grounds that the information sought is not relevant to the subject matter of the pending action nor is it reasonably calculated to lead to the discovery of admissible evidence. The Plaintiffs are not aware of any documents concerning television shows that have a concept or format similar to that of the series which predate the Plaintiffs' video pilot of the series.

11. All documents concerning Plaintiffs' claims in Paragraph 6 of the Complaint that "Flip This House" (the "Series") "is jointly owned and controlled" by Plaintiffs.

The Plaintiffs contend that all or some of the documents produced support the Plaintiffs' claims in paragraph six (6) of the Complaint.

12. All documents concerning Plaintiffs' claims in Paragraph 7 of the Complaint that, in or around May 2004, AETN "requested a meeting with Davis to discuss an agreement regarding the potential production and exploitation of a television series."

E-mails by and between Charles Norlander and Richard C. Davis which are included in the documents to be produced.

13. All documents concerning Plaintiffs' claims in Paragraph 8 of the Complaint that, in or around June 2004, "representatives of [AETN] met with Davis and expressed their interest in entering into an agreement with Plaintiffs to produce and televise a television series based on Plaintiffs' Project."

Some or all of the documents being produced by the Plaintiffs support or concern the Plaintiffs' claims in paragraph #8.

14. All documents concerning Plaintiffs' claims in Paragraph 8 of the Complaint that, in or around June 2004, "Davis made it clear to the representatives of [AETN] that he was only willing to consider an agreement to have Plaintiffs' Project produced and televised by [AETN] provided that Plaintiffs and [AETN] would be equal 50/50 owners of the project, and would share equally in all net revenues and proceeds generated from the exploitation of the project," and that "[AETN] explicitly agreed to those terms."

The Plaintiffs do not have a written agreement concerning the specific allegations in paragraph eight (8), however, the Plaintiffs contend that some of the documents produced support the Plaintiffs' claim concerning their relationship with the Defendant A&E Television Networks.

15. All documents concerning Plaintiffs' claims in Paragraph 9 of the Complaint that, in or around June 2004, AETN "repeatedly promised to prepare and submit a written agreement to Plaintiffs embodying the terms of the parties' agreement" and that Plaintiffs "repeated[ly] demand[ed]" that AETN provide such written agreement.

The Plaintiffs repeatedly requested that a written agreement be submitted to the Plaintiffs embodying the terms of the parties' agreement as shown by some of the documents which are being produced.

16. All documents concerning Plaintiffs' claims in Paragraph 11 of the Complaint that, in or about May 2004, "Charles Nordlander of [AETN] contacted Davis and advised him that [AETN] was interested in potentially producing and televising a television series based on Plaintiffs' Project."

E-mails between Charles Norlander and Richard Davis as well as e-mails between representatives from A&E Television Networks which are being produced.

17. All documents concerning any alleged agreement or contract that was reached in or about June 2004 between Plaintiffs and Defendants, including the terms of any such alleged

agreement, any alleged acceptance of such agreement by Defendants and any discussions about any alleged agreement.

The oral agreement entered into between the Plaintiffs and the Defendants was never reduced to a writing. The Plaintiffs contend that some of the documents produced herein will support the Plaintiffs claim that the Plaintiffs' entered into an agreement with the Defendant, A&E Television Network, as alleged in the Plaintiffs Complaint.

18. All documents concerning Plaintiffs' claims in Paragraph 11 of the Complaint that, in or about June 2004, Davis "made it clear" to Nordlander and Thomas Moody of AETN and Max Weissman of Departure Films "that he was only interested in considering a potential agreement regarding the production of Plaintiffs' Project provided that Plaintiffs and [AETN] be equal partners in the project, including that: (1) Plaintiffs retain an ownership interest in the project; (2) [AETN] pay for all production costs of any episodes produced based on the project; (3) Trademark Properties be responsible for locating, acquiring, refurbishing and selling all real estate featured in any episodes produced based on the Project; (4) Trademark Properties and its principals be prominently featured in the show, and no episode be produced which does not include them in a lead role; (5) Davis to have creative control over the production and receive a 'Created By' credit on any episodes produced; (6) Trademark be reimbursed for any direct expenditures regarding the development and production of any episodes produced, and (7) [AETN] and Trademark share equally on a 50/50 basis in all revenues and proceeds generated by the sale, distribution and/or exploitation of the show, including without limitation sponsorship revenues, product placement revenues, ad sales, syndication fees, and video sales."

The Plaintiffs cannot point to any one (1) document concerning the claims made in paragraph #11 of the Complaint, however, the Plaintiffs contend that some of the

documents produced support the Plaintiffs allegations contained in paragraph #11. In addition, the Plaintiff, Richard C. Davis, was credited as the creator of the series on each episode, filed a treatment with the Writers Guild and was issued a registration.

19. All documents concerning AETN's alleged agreement to any of the terms contained in the preceding paragraph.

None other than referred to in the Plaintiffs answer to #18 above.

20. All documents concerning any confidential proprietary business information, procedures or trade secrets allegedly provided to Defendants.

The Plaintiffs' Private Placement Memorandum given to the Defendant A&E Television Networks.

21. All documents concerning any policies, practices or procedures implemented by Plaintiffs in order to maintain the confidentiality or trade secret status of any of its alleged proprietary business information, procedures or trade secrets.

The Plaintiffs do not believe they have any documents responsive to the Defendants/ Counterclaim Plaintiff's request #21, other than the confidential provisions of the Plaintiffs' Private Placement Memorandum. It is the Plaintiffs policy to keep all proprietary business information, procedures and trade secrets confidential.

22. All documents concerning any expenses or costs incurred by Plaintiffs in connection with the Series.

All documents will be produced for inspection and copying.

23. All documents concerning Plaintiffs' claims in Paragraph 13 of the Complaint that they "have suffered significant damages to their business reputation and operations" in connection with the claims and defenses asserted in this lawsuit.

The Plaintiff, Richard C. Davis, has received a number of e-mails that were critical of the shows produced relative to the second season. The Plaintiff will produce any of the e-mails in Plaintiffs possession.

24. All documents concerning Plaintiffs' claims in Paragraph 42 of the Complaint that "Plaintiffs have repeatedly demanded that [AETN] account for and pay over to Plaintiffs a 50% share of all net revenues and proceeds generated from the distribution, licensing and/or other exploitation of the Series."

There are a number of e-mails between the Plaintiffs and representatives of A&E Television Networks concerning a written agreement, all of which are being produced.

25. All business plans, financial models, risk analyses, financial pro formas, financial projections, business growth projections, marketing studies, marketing plans and/or market potential projections relating to the Series.

None known as of this time.

26. All documents reflecting any executed or final agreements between Plaintiffs and The Learning Channel or any of its affiliates.

The Plaintiffs object to Request for Production #26 on the ground that the information sought is not relevant to the subject matter of the pending action nor is it reasonably calculated to lead to the discovery of admissible evidence.

27. All drafts of any agreements or contracts between Plaintiffs and Defendants.

The drafts of the Talent Fee Agreement are being produced.

28. All documents and things identified in Plaintiffs' answers to Defendants' First Set of Interrogatories.

The Plaintiffs will produce all documents referred to in the Plaintiffs Answers to the Defendants First Set of Interrogatories.

CISA & DODDS, LLP



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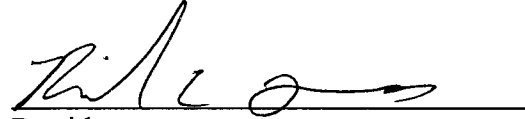
(843) 881-3700

Mt. Pleasant, SC

This 22nd day of December, 2006.

TRADEMARK PROPERTIES, INC.

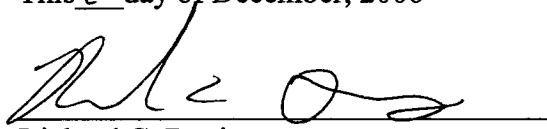
By:



Its:

President

This 22 day of December, 2006



Richard C. Davis

This 22 day of December, 2006