

1 BLECHER & COLLINS, P.C.  
MAXWELL M. BLECHER (State Bar No. 26202)  
2 COURTNEY A. PALKO (State Bar No. 233822)  
515 South Figueroa Street, 17<sup>th</sup> Floor  
3 Los Angeles, California 90071-3334  
Telephone: (213) 622-4222  
4 Facsimile: (213) 622-1656

5 Attorneys for Plaintiff

6

7

8

SUPERIOR COURT OF THE STATE OF CALIFORNIA

9

FOR THE COUNTY OF LOS ANGELES

10

11

SOURCE INTERLINK DISTRIBUTION,  
LLC.,

CASE NO.

12

Plaintiff,

COMPLAINT FOR:

13

vs.

1. BREACH OF CONTRACT;
2. DECLARATORY RELIEF;
3. VIOLATION OF BUSINESS &  
PROFESSIONS CODE § 17200;
- AND
4. TORTIOUS INTERFERENCE WITH  
CONTRACTUAL RELATIONS

14

TIME DISTRIBUTION SERVICES INC.,

15

Defendant.

**DEMAND FOR JURY TRIAL**

16

17

18

19

Plaintiff SOURCE INTERLINK DISTRIBUTION, LLC. ("Source"), files this

20

Complaint against the above-named defendant and, demanding trial by jury,

21

complains and alleges as follows:

22

**THE PARTIES**

23

24

1. Plaintiff SOURCE INTERLINK DISTRIBUTION, LLC. ("Source")

25

is the largest distributor of single copy magazines in the United States, selling

26

millions of magazine copies weekly to more than 20,000 retail locations,

27

including Barnes & Noble, Borders, Ralphs, Stater Bros., Albertsons, Safeway,

28

1 Walmart, Target, Kmart, Rite-Aid and CVS. Plaintiff is a limited liability company  
2 duly organized and existing under the laws of the State of Delaware which is  
3 authorized to and does transact business throughout California and in Los  
4 Angeles County. Source maintains a principal distribution center at 2590 E.  
5 Lindsay Blvd., Ontario, California 91761 and its principal executive offices at  
6 27500 Riverview Center Blvd, Bonita Springs, Florida 34134. Source is a  
7 subsidiary of Source Interlink Companies, Inc., an integrated media company  
8 and one of the largest providers of enthusiast print and digital content, including  
9 such publications as Motor Trend, Hot Rod, Power & MotorYacht, Sail and  
10 Stereophile.  
11  
12

13  
14 2. Defendant TIME DISTRIBUTION SERVICES INC. ("TDS") is a  
15 corporation duly organized and existing under the laws of the State of Delaware  
16 which is authorized to and does transact business throughout California and in  
17 Los Angeles County. TDS is a subsidiary of Time, Inc., one of the largest  
18 magazine publishers in the United States.  
19

20 3. The true names and capacities, whether individual, corporate or  
21 otherwise of defendants DOES 1-50 are unknown to plaintiff at this time, and  
22 plaintiff therefore designates those defendants by these fictitious names. Each  
23 of the defendants sued herein as a DOE is legally responsible in some manner  
24 for the events and acts referred to hereinafter and which proximately caused  
25 injury to the named plaintiff. When the true identities of fictitious defendants  
26  
27  
28

1 become known, plaintiff will ask leave of court to amend this complaint by adding  
2 their true names and capacities.

3  
4 **FACTUAL ALLEGATIONS**

5 4. Defendant has been engaged in a myriad of unfair, anticompetitive,  
6 and deliberately harmful activities intended to injure and interfere with Plaintiff's  
7 business and business relationships.

8  
9 **Defendant Has Been Selling Plaintiff's Proprietary Business Information in**

10 **Violation of the Parties' Agreement**

11 5. On May 10, 2005, Source Interlink Companies, Inc. acquired Plaintiff,  
12 which was then known as Chas. Levy Circulation Co., LLC., and subsequently  
13 changed its corporate name to Source Interlink Distribution, LLC.

14  
15 6. In connection with the operation of its business, Plaintiff creates and  
16 collects information relating to the delivery, sale and return of magazines at  
17 individual bookstores, groceries, drugstores, convenience stores and airports  
18 throughout the United States (the "Levy Data"). The Levy Data is unique and is  
19 valuable to magazine publishers and their agents in the operation of their  
20 respective businesses because it discloses details about purchase and return  
21 patterns of individual stores which magazine publishers covet.

22  
23  
24 7. Defendant acts as a sales agent and provides certain other services  
25 to magazines published by Time, Inc. (the "Time Titles") and to magazines  
26 published by other companies (the "Client Titles"), including Source Interlink  
27 Media, LLC, an affiliate of Plaintiff.  
28

1           8.     By letter dated December 3, 1999 (the "1999 Agreement"), Defendant  
2 and Plaintiff agreed to new terms of sale that establish Plaintiff's purchase price  
3 as a base percentage discount off the suggested cover price of the magazine  
4 and an additional percentage discount as an incentive for Plaintiff to perform  
5 certain enumerated activities.  
6

7           9.     By letter dated March 1, 2001, Defendant TDS entered into a written  
8 agreement (the "2001 Agreement") with Plaintiff whereby Plaintiff agreed to  
9 provide a specified portion of the Levy Data to TDS in consideration for  
10 Defendant's continued provision of the incentive discount specified in the 1999  
11 Agreement with respect to all Time Titles and Client Titles. The incentive  
12 discount was expressly intended to provide Plaintiff with an additional 1%  
13 discount in excess of the base percentage discount. If a Client Title would not  
14 provide the incentive discount, Defendant TDS agreed not to provide such client  
15 with access to the Levy Data. This is a material term and condition of the  
16 Agreement, and Defendant knows that this express condition is a material term  
17 and condition of the Agreement.  
18

19           10.    Plaintiff's agreement to provide Defendant with the Levy Data was  
20 made on the express condition that Defendant "not disclose any of the Levy  
21 Data to any third party." The 2001 Agreement is attached hereto as Exhibit A.  
22 This is a material term and condition of the Agreement, and Defendant knows  
23 that this express condition is a material term and condition of the Agreement.  
24  
25  
26  
27  
28

1           11. Based on the foregoing provision of the 2001 Agreement, Defendant  
2 TDS expressly agreed that it would not package and/or resell the Levy Data to  
3 any third party, without first obtaining Plaintiff's written permission in each such  
4 instance. This is a material term and condition of the Agreement, and  
5 Defendant knows that this express condition is a material term and condition of  
6 the Agreement.  
7

8  
9           12. The Agreement has been extended through the years by oral  
10 agreement and mutual performance. The Agreement currently remains in effect.

11           13. On or about January 2008, Plaintiff discovered that Defendant has  
12 been in material breach of the 2001 Agreement by engaging in the sale of the  
13 Levy Data, as an individual service or as an integral part of a package of  
14 services, in competition with Plaintiff's efforts to sell its own information products,  
15 including the Levy Data.  
16

17 **Defendant Has Implemented a Discriminatory and Retaliatory Return Policy**  
18 **that Applies Solely to Plaintiff in Violation of the Well-Established Course**  
19 **of Dealing of Several Years**  
20

21           14. In May 2008, Defendant notified Plaintiff by letter that  
22 Defendant was implementing a new return policy for Plaintiff's single largest  
23 customer Barnes & Noble, whereby Barnes & Noble locations are required to  
24 return to Defendant complete copies of all Time Titles not sold.  
25

26           15. A well-established course of dealing exists in the industry, and has  
27  
28

1 been implemented by Plaintiff's competitors and Time Inc.'s own distribution  
2 division for as long as 20 years, and before Plaintiff was in business. Over time,  
3 disparate methods of return have emerged for individual retailers, and have  
4 been agreed and acquiesced to by the parties, including Defendant, and actually  
5 practiced by Defendant's own direct distribution service. It has never been  
6 industry practice, policy or custom to require specialty retailers such as Barnes &  
7 Noble to return entire magazines to Defendant TDS. Such a policy is  
8 unjustifiably onerous and burdensome and will tremendously increase costs  
9 associated with returns for Plaintiff and retailers. Defendant has unilaterally and  
10 discriminatorily imposed a far more stringent standard on Plaintiff than on any  
11 other distributor of Time Titles or any other magazines as a means of acquiring  
12 bargaining leverage.

13  
14  
15  
16 **Defendant's Magazine Pricing Does Not Account For High Distribution**

17 **Costs in Los Angeles and Chicago as Compared to Other Markets**

18  
19 16. Defendant has set a nationwide pricing policy for Time Titles, with the  
20 exception of the New York metropolitan area. In January 2008, in response to  
21 repeated requests from Plaintiff, Defendant agreed to provide Plaintiff with a  
22 discounted rate to account for the high distribution costs only in the New York  
23 metropolitan area.  
24

25 17. The distribution costs in New York, Los Angeles and Chicago are the  
26 highest in the United States, and are significantly higher than the costs in other  
27 markets. The prices unilaterally imposed by Defendant do not account for the  
28

1 high distribution costs in these markets, including the increased costs of fuel  
2 trucks, and labor (resulting from greater geographic distances between retailers  
3 in these vast metropolitan markets). Because Defendant refuses to account for  
4 these increased distribution costs, Defendant is deliberately forcing Plaintiff to  
5 operate at significantly lower margins in these markets.  
6

7  
8 **Defendant's Interference with Plaintiff's Customers**

9 18. In or about March 2007, Defendant contacted Plaintiff's single largest  
10 customer, Barnes & Noble, with whom Plaintiff has a long-standing business and  
11 contractual relationship. Defendant provided Barnes & Noble with false  
12 information regarding Plaintiff in a deliberate and intentional effort to apply  
13 pressure to Plaintiff to accept unsatisfactory pricing terms with Plaintiff.  
14

15 19. On or about May 6, 2008, Defendant contacted Plaintiff's customer  
16 Border's to set up a meeting regarding its return policy and intentionally  
17 excluded Plaintiff from the meeting.  
18

19 20. Plaintiff is informed and believes and thereon contends that  
20 Defendant has contacted Plaintiff's retailers in an effort to interfere with its  
21 business relationships and to exert pressure to force Plaintiff into substantially  
22 devalued pricing deals.  
23

24 **FIRST CAUSE OF ACTION**

25 **(Breach of Contract)**  
26  
27  
28

1           21. Plaintiff hereby repeats and realleges each and every allegation set  
2 forth in the foregoing paragraphs 1-13 of this Complaint with the same force and  
3 effect as though fully set forth herein.  
4

5           22. Plaintiff has duly performed all the conditions and obligations imposed  
6 on it under the 2001 Agreement.  
7

8           23. Notwithstanding the foregoing, defendant TDS has acted in utter  
9 derogation of Plaintiff's rights and the terms of the Agreement, and has failed to  
10 fulfill its obligations under the Agreement in material breach of its Agreement  
11 with Plaintiff by, among other things, without Plaintiff's permission or consent,  
12 and without seeking Plaintiff's permission or consent, selling Plaintiff's  
13 confidential business information in competition with Plaintiff, causing injury to  
14 Plaintiff's business and goodwill.  
15

16           24. As a direct and proximate result of Defendant's breach of the  
17 Agreement, Plaintiff has been pecuniarily damaged in its business of selling  
18 information products, particularly in its relationships with its magazine  
19 publishers. Accordingly, Plaintiff has sustained and will sustain the following  
20 injuries, among others:  
21

22                   (a) Plaintiff has lost or will lose customers, revenues, and/or profits  
23 in an amount as yet undetermined with certainty;  
24

25                   (b) Plaintiff has suffered or will suffer a loss in the value of its  
26 business;  
27  
28

1 (c) Plaintiff has suffered or will suffer a substantial loss of goodwill  
2 normally attached to a successful enterprise;

3 (d) Plaintiff has potentially lost significant business opportunities.

4  
5 25. Plaintiff cannot now measure its damages with specificity, but has  
6 reason to believe that its damages are not less than \$4.6 million. When Plaintiff  
7 has sufficient information to allege the quantum of its damages with greater  
8 specificity, Plaintiff will seek leave of the Court to amend this Complaint to insert  
9 said sum herein.  
10

11 **SECOND CAUSE OF ACTION**

12 **Declaratory Relief**

13  
14 26. Plaintiff hereby repeats and realleges each and every allegation set  
15 forth in the foregoing paragraphs 1-25 of this Complaint with the same force and  
16 effect as though fully set forth herein.

17  
18 27. An actual and present controversy has arisen and now exists between  
19 Plaintiff and Defendant regarding their respective rights and duties with respect  
20 to the manner of handling magazine returns, in that Defendant contends that  
21 Plaintiff's retailers are obligated to return complete copies of unsold magazines,  
22 a contention which Plaintiff disputes.  
23

24 28. Accordingly, Plaintiff desires a judicial determination of the parties'  
25 respective rights and duties, and a declaration that Defendant has no right to  
26 unilaterally enforce a new arbitrary, capricious, discriminatory and retaliatory  
27 return policy solely with respect to Plaintiff that is contrary to long-established  
28

1 custom and practice and the parties' course of dealing, and a policy that is  
2 inconsistent with what is actually practiced by its own distribution service.

3  
4 29. A judicial declaration is necessary and appropriate at this time to  
5 remove the doubt and uncertainty defendants have created regarding the  
6 parties' rights with respect to Defendant's return policy.

7  
8 **THIRD CAUSE OF ACTION**

9 **Unfair Competition - Violation of Business & Professions Code § 17200**

10 30. Plaintiff hereby repeats and realleges each and every allegation set  
11 forth in the foregoing paragraphs 1-25 of this Complaint with the same force and  
12 effect as though fully set forth herein.

13  
14 31. Beginning at least as early as March 2007, Defendant has committed  
15 acts of unfair competition as defined by Business and Professions Code §  
16 17200 by, inter alia:

- 17  
18 (1) Disclosing, without seeking or obtaining Plaintiff's consent or  
19 permission, Plaintiff's proprietary business information (the Levy  
20 Data) in competition with Plaintiff, and in violation of the express  
21 Agreement between the parties, as described above;  
22  
23 (2) Implementing a discriminatory and retaliatory return policy that  
24 applies solely to plaintiff in violation of the well-established  
25 course of dealing of several years;  
26  
27 (3) Deliberately overcharging Plaintiff so that Plaintiff is operating  
28 under margin in Chicago and Los Angeles markets by not

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

adequately discounting to adjust for increased distribution costs in these markets;

(4) Interfering with Plaintiff's customers and existing contractual relations, as explained in Count Four.

32. By reason of Defendant's wrongful conduct as alleged herein, Plaintiff is entitled to injunctive relief and restitution for the overpayment.

33. Plaintiff has no adequate remedy at law for the injuries sustained as a result of Defendant's wrongful conduct as alleged herein. Defendant's wrongful conduct will continue unless and until enjoined and restrained by order of this Court and will cause great and irreparable injury to Plaintiff's business.

**FOURTH CAUSE OF ACTION**

**Tortious Interference with Contractual Relations**

34. Plaintiff hereby repeats and realleges each and every allegation set forth in the foregoing paragraphs 1-25 of this Complaint with the same force and effect as though fully set forth herein.

35. Plaintiff has had, for many years, valuable and reasonable business relationships from existing and prospective customers, including but not limited to, Barnes & Noble, Borders, Ralphps, Stater Bros., Albertsons, Safeway, Walmart, Target, Kmart, Rite-Aid and CVS.

36. Defendant knew of these contracts and business relationships between Plaintiff and its actual and prospective customers, including, without limiting the generality of the foregoing, Barnes & Noble, Borders, Ralphps, Stater

1 Bros., Albertsons, Safeway, Walmart, Target, Kmart, Rite-Aid and CVS, and  
2 knew of Plaintiff's expectations of continued or prospective business  
3 relationships with each such existing and potential customers.  
4

5 37. Defendant has engaged in the wrongful conduct alleged with the  
6 specific intent of interfering with and destroying those business relationships and  
7 with the specific intent of causing termination of Plaintiff's relationships with its  
8 retailers. Defendant engaged in such conduct in order to artificially control  
9 Plaintiff's operating margin and to suggest to distributors generally that it has the  
10 market power to set purchase/sale prices to distributors. Defendant has, with  
11 malicious intent, actually interfered with those relationships and the business  
12 expectancy associated with each of them and plaintiff is, therefore, entitled to  
13 punitive damages.  
14  
15

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff requests that this Court adjudge and decree as  
18 follows:  
19

20 1. On the First Cause of Action, that Plaintiff recover its compensatory  
21 damages and lost profits in an amount to be determined at trial from Defendant  
22 for its deliberate breach of the Agreement.  
23

24 2. On the Second Cause of Action, for declaratory relief in the form of an  
25 order as set forth in paragraph 28 of the Complaint.

26 3. On the Third Cause of Action, for an injunction requiring Defendant  
27 from engaging in unfair competition and for restitution for overpayment.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

4. On the Fourth Cause of Action, for compensatory and exemplary damages for defendant's intentional interference with existing contractual relations; and

5. That this Court award Plaintiff such other further and general relief that it deems just and proper.

Dated: May 9, 2008

BLECHER & COLLINS, P.C.  
MAXWELL M. BLECHER  
COURTNEY A. PALKO

By \_\_\_\_\_  
MAXWELL M. BLECHER  
Attorneys for Plaintiff

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**JURY TRIAL DEMAND**

Plaintiff demands a trial by jury as to all issues of fact which may be  
tried to a jury as pled in this Complaint.

Dated: May 9, 2008

BLECHER & COLLINS, P.C.  
MAXWELL M. BLECHER  
COURTNEY A. PALKO

By \_\_\_\_\_  
MAXWELL M. BLECHER  
Attorneys for Plaintiff

# 36217