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9 ERIC PARK, TAL GOLAN, INFORMATION  
10 SUPERBRAND, INC., SPORTSPEDIA, INC.,  
11 and TRAVELPEDIA, INC.

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

11 DAVID MAX,  
12  
13 Plaintiff,  
14 vs.

15 ERIC PARK; TAL GOLAN; INFORMATION  
16 SUPERBRAND, INC.; SPORTSPEDIA, INC.;  
17 TRAVELPEDIA, INC.; AUTOPEdia, INC.;  
18 DOES 1 through 100, inclusive,  
19 Defendants.

) CASE NO: 30-2010-00357210  
)  
) Complaint Filed: March 25, 2010  
) Trial Date: None Set

) **ANSWER**

20 Defendants ERIC PARK, TAL GOLAN, INFORMATION SUPERBRAND, INC.,  
21 SPORTSPEDIA, INC., TRAVELPEDIA, INC., and AUTOPEdia, INC., for themselves alone  
22 and no others, answer the Complaint filed by Plaintiff DAVID MAX, individually and respond  
23 as follows:

24 1. Under the provisions of section 431.30 of the California Code of Civil Procedure,  
25 answering Defendants deny generally and specifically each and every allegation contained in  
26 the Complaint, and the whole thereof, and each and every alleged cause of action thereof, and  
27 deny that Plaintiffs sustained damages in the sums alleged, or in any sum, or at all, by reason  
28 of any act, failure to act, breach or omission on the part of answering Defendants, or any agent,  
servant or employee of answering Defendants.

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**AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE,**  
**TO THE COMPLAINT, DEFENDANTS ALLEGE:**

**(Failure To State Cause of Action)**

2. Plaintiff's Complaint on file herein, and each and every cause of action therein, fails to state facts sufficient to constitute a cause of action against answering Defendants.

**AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,**  
**TO THE COMPLAINT, DEFENDANTS ALLEGE:**

**(Failure To Exercise Ordinary Care)**

3. Defendants are informed and believe, and thereon allege, that by the exercise of reasonable effort, Plaintiff could have prevented all of his damages alleged in Plaintiff's Complaint, or at least mitigated the amount of damages he purportedly suffered, had Plaintiff acted properly and reasonably, and any injury or damages to Plaintiff was legally caused by the negligence of Plaintiff in that he failed to exercise ordinary care under the circumstances and is therefore barred from recovery herein.

**AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,**  
**TO THE COMPLAINT, DEFENDANTS ALLEGE:**

**(Comparative Negligence)**

4. Defendants are informed and believe, and thereon allege, that the damages of which Plaintiff complains were caused by and/or are otherwise the fault of others, including, but not limited to, Plaintiff, Plaintiff's agents, employees, and/or other Defendants or Cross-Defendants, and/or such parties not presently known to answering Defendants, and that if any liability is found on the part of answering Defendants, then Plaintiff's recovery should be barred or reduced by such above-mentioned parties' comparative or contributory negligence, or conduct.

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1                   **AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
2                   **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

3                                   **(Unclean Hands)**

4           5.       Defendants are informed and believe, and thereon allege, that Plaintiff's Complaint  
5 is barred as to these answering Defendants by the doctrine of unclean hands. The Plaintiff is  
6 not entitled to the relief requested in his Complaint in this action because the Plaintiff does not  
7 come to court with clean hands.

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9                   **AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
10                   **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

11                                   **(Estoppel)**

12           6.       Defendants are informed and believe, and thereon allege, that Plaintiffs' Complaint  
13 is barred as to answering Defendants by the doctrine of estoppel. The Plaintiffs are not entitled  
14 to the relief requested in their Complaint in this action because the Plaintiffs are estopped to  
15 make the claims asserted.

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17                   **AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
18                   **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

19                                   **(Waiver)**

20           7.       Defendants are informed and believe, and thereon allege, that Plaintiff's Complaint  
21 is barred as to answering Defendants by the doctrine of waiver.

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23                   **AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
24                   **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

25                                   **(Failure To Mitigate)**

26           8.       Defendants are informed and believe, and thereon allege, that Plaintiff's Complaint  
27 is barred by the improper conduct of Plaintiff, including his failure to mitigate damages and take  
28 proper action to mitigate or reduce Plaintiff's alleged losses, if any.

1                   **AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
2                   **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

3                   **(Failure To Exercise All Available Remedies)**

4           9.       Defendants are informed and believe, and thereon allege, that the causes of action  
5 alleged in the Complaint herein are barred by Plaintiff's failure to exercise all reasonably  
6 available remedies prior to commencing this present action. Moreover, Plaintiff failed to  
7 exercise reasonable care in protecting his own interests in relation to the events alleged in the  
8 Complaint herein in that the loss and damage allegedly sustained by him was legally and  
9 proximately caused by his own conduct.

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11                   **AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
12                   **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

13                   **(Failure To Avoid Damages)**

14           10.       Defendants are informed and believe, and thereon allege, that the causes of action  
15 alleged in the Complaint herein are barred by Plaintiff's comparative or contributory negligence,  
16 in his failure to exercise reasonable and ordinary care, caution, or prudence for his own  
17 protection and well-being in order to avoid the alleged loss or damages. The resulting loss or  
18 damages, if any, sustained by Plaintiff were proximately caused and contributed to by the  
19 negligence of Plaintiff.

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21                   **AS AN TENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
22                   **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

23                   **(Affirmative and Active Misconduct of Others)**

24           11.       Defendants are informed and believe, and thereon allege, that the cause(s) of  
25 action alleged in the Complaint herein are barred by the affirmative negligence and active  
26 misconduct of other parties, or as to Plaintiff, or by other party Defendants, as a result of which  
27 answering Defendants could not have prevented or been accountable for the alleged loss or  
28 damages to Plaintiff.

1                   **AS A ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
2                   **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

3                   **(Failure to Comply With Law)**

4           12. Defendants are informed and believe, and thereon allege, that the cause(s) of  
5 action alleged in the Complaint herein are barred by Plaintiff's failure to comply with all  
6 required conditions, codes and regulations imposed by law concerning the matters sued upon,  
7 prior to commencing this present action.

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9                   **AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
10                  **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

11                  **(Right To Indemnification)**

12           13. Defendants are informed and believe, and thereon allege, that the damage to  
13 Plaintiff, if any, was actually and proximately caused by the acts and omissions of other parties,  
14 Co-Defendants, and Defendants are therefore entitled to be indemnified and held harmless by  
15 Plaintiff, and/or each and every other Defendant herein, with regard to liability, if any, which  
16 may be attributed to him, or it.

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18                  **AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
19                  **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

20                  **(Assumption of Risk)**

21           14. Defendants are informed and believe, and thereon allege, that if Plaintiff or any  
22 other party or person in this action has sustained injury or damages, if any, all such injuries and  
23 damages were the direct result of risk assumed by and on the part of Plaintiff.

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1                   **AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
2                   **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

3                   **(Intervening and Superseding Causes)**

4           15.    Defendants are informed and believe, and thereon allege, that if Plaintiff or any  
5 other party or person in this action has sustained injury or damages, if any, all such injuries and  
6 damages were the direct result and proximately caused or contributed to by the conduct or  
7 omissions of other parties, persons, entities, or conditions, and said conduct or omissions of  
8 other parties, persons, entities, or conditions were intervening and superseding causes of the  
9 damages allegedly suffered.

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11                   **AS A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
12                   **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

13                   **(No Fault)**

14           16.    Defendants are informed and believe, and thereon allege, that if Plaintiff or any  
15 other party or person in this action has sustained injury or damages, if any, all such injuries and  
16 damages were proximately caused or contributed to by persons other than answering Defendants  
17 or conditions beyond the control of answering Defendants. The liability of all parties, named  
18 or unnamed, should be apportioned according to their relative degree of fault, the liability of  
19 answering Defendants, if any, should be reduced accordingly, and Civil Code sections 1431 *et*  
20 *seq.* should be applied.

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22                   **AS A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
23                   **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

24                   **(Consent)**

25           17.    Defendants are informed and believe, and thereon allege, that if Plaintiff or any  
26 other party or person in this action has sustained injury or damages, if any, all such injuries and  
27 damages were the direct result of consent by Plaintiff.

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**AS A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
**TO THE COMPLAINT, DEFENDANTS ALLEGE:**

**(Privilege or Justification)**

18. Defendants are informed and believe, and thereon allege, that Plaintiff's Complaint is barred as to answering Defendants by the fact that all acts were undertaken or performed by answering Defendants with privilege or justification.

**AS A EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
**TO THE COMPLAINT, DEFENDANTS ALLEGE:**

**(Reasonable and Good Faith Acts)**

19. Defendants are informed and believe, and thereon allege, that Plaintiff's Complaint is barred as to Defendants by the fact that all acts were undertaken or performed by answering Defendants in a permissible way, in good faith, and in the reasonable belief that such actions or conduct were lawful and valid.

**AS A NINETEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
**TO THE COMPLAINT, DEFENDANTS ALLEGE:**

**(Lack of Necessity)**

20. Defendants are informed and believe, and thereon allege, that Plaintiff's Complaint is barred as to Defendants by the fact that the purported claim of Plaintiff is not supported by any actual necessity, and Plaintiff have other reasonable alternatives available to him concerning the matters subject of his purported claim.

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1                   **AS A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
2                   **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

3                                   **(Limitation of Actions)**

4           21.   Defendants are informed and believe, and thereon allege, that Plaintiff's Complaint  
5 is barred as to Defendants by the application of including, but not limited to Code of Civil  
6 Procedure sections 312, 335, 335.1, 337, 338, 339, 340, and 343, and other provisions of law  
7 concerning limitation of actions.

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9                   **AS A TWENTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE,**  
10                   **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

11                                   **(Permissive Use)**

12           22.   Defendants are informed and believe, and thereon allege, that Plaintiff's Complaint  
13 is barred as to Defendants by the fact that any purported use by Plaintiff of the website described  
14 at paragraph one of the Complaint was permissive.

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16                   **AS A TWENTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,**  
17                   **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

18                                   **(Lack of Title and Ownership)**

19           23.   Defendants are informed and believe, and thereon allege, that Plaintiffs' Complaint  
20 is barred as to Defendants by the fact that any purported use by Plaintiff of the website described  
21 at paragraph one of the Complaint was without title, ownership or claim of right, and Plaintiff  
22 in his use of the website was at all times acting as an officer, agent or employee of  
23 INFORMATION SUPERBRAND, INC., SPORTSPEDIA, INC., TRAVELPEDIA, INC., and  
24 AUTOPEDIA, INC..

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1                   **AS A TWENTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,**  
2                   **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

3                   **(Exclusion and Unreasonable Interference With Use)**

4           24.     Defendants are informed and believe, and thereon allege, that Plaintiff's Complaint  
5 is barred as to Defendants by the fact that the claims by Plaintiff against the website described  
6 at paragraph one of the Complaint are untenable, and the conduct of Plaintiff has resulted in the  
7 attempted exclusion and unreasonable interference with the normal use and development of the  
8 website by Defendants, and as a practical matter prohibit Defendants from using their own  
9 property.

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11                   **AS A TWENTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
12                   **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

13                   **(Laches)**

14           25.     Defendants are informed and believe, and thereon allege, that Plaintiff's Complaint  
15 is barred as to Defendants by the fact that Plaintiff unreasonably delayed making the claims  
16 asserted in his Complaint to the detriment and prejudice of Defendants.

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18                   **AS A TWENTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
19                   **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

20                   **(Bad Faith Acts and Refusal to Accept Reasonable Alternatives)**

21           26.     Defendants are informed and believe, and thereon allege, that Plaintiff's Complaint  
22 is barred as to Defendants by the fact that Plaintiff acted in bad faith as to attempts toward  
23 reasonable accommodation of the claims made in his Complaint, and has failed and refused  
24 reasonable alternatives so as to avoid the dispute over the website described at paragraph one  
25 of the Complaint.

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**AS A TWENTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
**TO THE COMPLAINT, DEFENDANTS ALLEGE:**

**(Breach of Contract)**

27. Defendants are informed and believe, and thereon allege, that Plaintiff's Complaint is barred as to Defendants by the fact that Plaintiff breached the contracts between the parties concerning the website described at paragraph one of the Complaint.

**AS A TWENTY-SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
**TO THE COMPLAINT, DEFENDANTS ALLEGE:**

**(Claims Barred By Contractual Provisions)**

28. Defendants are informed and believe, and thereon allege, that Plaintiff's Complaint is barred as to Defendants by the fact that the claim of Plaintiff is barred by the terms and conditions of the contracts and agreements between the parties concerning the website described at paragraph one of the Complaint.

**AS A TWENTY-EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
**TO THE COMPLAINT, DEFENDANTS ALLEGE:**

**(Claims Voidable By Corporations Code Provisions)**

29. Defendants are informed and believe, and thereon allege, that Plaintiff's Complaint is barred as to Defendants by the provisions of the California Corporations Code relating to self-dealing by company directors and officers, including but not limited to section 310.

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1           **AS A TWENTY-NINTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
2           **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

3           **(Claims Voidable By Corporate Bylaw Provisions)**

4           30. Defendants are informed and believe, and thereon allege, that Plaintiff's Complaint  
5 is barred as to Defendants by the provisions of the corporate bylaws relating to self-dealing by  
6 company directors and officers, and Plaintiff was at all times a company director and officer.

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8           **AS A THIRTIETH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
9           **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

10           **(Lack of Consideration)**

11           31. Defendants are informed and believe, and thereon allege, that Plaintiff's Complaint  
12 is barred as to Defendants by the fact that the claim of Plaintiff is unsupported by any reasonable  
13 or valid consideration.

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15           **AS A THIRTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE,**  
16           **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

17           **(Discriminatory Conduct)**

18           32. Defendants are informed and believe, and thereon allege, that Plaintiff's Complaint  
19 is barred as to Defendants by the fact that Plaintiff engaged in abusive and discriminatory  
20 conduct against Defendants in violation of the United States and California Constitutions.

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22           **AS A THIRTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,**  
23           **TO THE COMPLAINT, DEFENDANTS ALLEGE:**

24           **(Parol Evidence Rule)**

25           33. Defendants are informed and believe, and thereon allege, that the Plaintiff's  
26 Complaint on file herein, and each and every cause of action therein, is barred against answering  
27 Defendants by the Parol Evidence Rule.

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**AS A THIRTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,**  
**TO THE COMPLAINT, DEFENDANTS ALLEGE:**

**(Chilling Effect)**

34. Defendants are informed and believe, and thereon allege, that the Plaintiff's Complaint on file herein, and each and every cause of action therein, is barred against answering Defendants by the personal conduct of Plaintiff which was designed to violate the public policy in favor of free speech, association, and right to commentary on matters of public interest as protected by the United States and California Constitutions.

**AS A THIRTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
**TO THE COMPLAINT, DEFENDANTS ALLEGE:**

**(Violation of Fiduciary Duty)**

35. Defendants are informed and believe, and thereon allege, that the Plaintiff's Complaint on file herein, and each and every cause of action therein, is barred against answering Defendants by the conduct of Plaintiff which was in violation of his fiduciary duties as a company director and officer.

**AS A THIRTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
**TO THE COMPLAINT, DEFENDANTS ALLEGE:**

**(Violation of Duty To Safeguard Trade Secrets)**

36. Defendants are informed and believe, and thereon allege, that the Plaintiff's Complaint on file herein, and each and every cause of action therein, is barred against answering Defendants by the conduct of Plaintiff which was in violation of his duties as a company director and officer to safeguard company trade secrets and intellectual property.

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**AS A THIRTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
**TO THE COMPLAINT, DEFENDANTS ALLEGE:**

**(Unfair Competition)**

37. Defendants are informed and believe, and thereon allege, that the Plaintiff's Complaint on file herein, and each and every cause of action therein, is barred against answering Defendants by the conduct of Plaintiff which was in unfair competition with his company, and intended to unreasonably harm the value of the business of the website described at paragraph one of the Complaint.

**AS A THIRTY-SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
**TO THE COMPLAINT, DEFENDANTS ALLEGE:**

**(Set-Off)**

38. Defendants are informed and believe, and thereon allege, that the Plaintiff's Complaint on file herein, and each and every cause of action therein, is barred against answering Defendants by the conduct of Plaintiff which has resulted in monies owed to Defendants by Plaintiff, which Defendants are entitled to set-off against any possible claim of Plaintiff.

**AS A THIRTY-EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
**TO THE COMPLAINT, DEFENDANTS ALLEGE:**

**(Equitable Lien)**

39. Defendants are informed and believe, and thereon allege, that the Plaintiff's Complaint on file herein, and each and every cause of action therein, is barred against answering Defendants by the conduct of Plaintiff which has resulted in an equitable lien in favor of Defendants against Plaintiff and his claims.

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