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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

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11 Attorneys for Plaintiff,  
 12 F.M. Tarbell Co. dba Tarbell, Realtors

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Winston & Strawn LLP  
 333 S. Grand Avenue  
 Los Angeles, CA 90071-1543

13 F.M. TARBELL CO. DBA TARBELL, )  
 14 REALTORS, a California corporation, )  
 15 Plaintiff, )

16 v. )

17 WINDERMERE REAL )  
 18 ESTATE/PREFERRED PROPERTIES, )  
 19 a.k.a. WINDERMERE PREFERRED )  
 20 PROPERTIES, an unknown business )  
 21 entity; JAMES CROTWELL, an )  
 22 individual; ANDREA MARQUEZ, an )  
 23 individual, RICHARD MICHAEL )  
 24 KING, an individual, and A & L )  
 25 PARTNERS, INC., a California )  
 26 corporation, )

27 Defendants. )

Case No. 2:10-cv-04048-PSG -E

FIRST AMENDED COMPLAINT FOR:

- 1. TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(A);
- 2. UNFAIR COMPETITION UNDER CAL. BUS. & PROF. CODE § 17200, *ET SEQ.*;
- 3. FALSE ADVERTISING UNDER CAL. BUS. & PROF. CODE § 17500, *ET SEQ.*;
- 4. COMMON LAW TRADEMARK INFRINGEMENT

DEMAND FOR JURY TRIAL

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**COMPLAINT**

Plaintiff F.M. Tarbell Co. dba Tarbell, Realtors (“Tarbell”), by its attorneys, for its First Amended Complaint against Defendants Windermere Real Estate/Preferred Properties, James Crotwell, Andrea Marquez, Richard Michael King, and A & L Partners, Inc. (collectively “Defendants”), alleges as follows:

**NATURE OF THIS ACTION**

1. This is an action for trademark infringement and unfair competition pursuant to 15 U.S.C. § 1125(a) of the Trademark Act of 1946 (the “Lanham Act”), California Business and Professions Code §§ 17200, *et seq.* & 17500, *et seq.*, and common law. Plaintiff Tarbell is the largest family-owned real estate agency in Southern California, a community that it has proudly served for the last eighty years. Founded in 1926 by Frank Tarbell, Tarbell, Realtors has dedicated more than 80 years of service to America’s dream of home ownership. Through years of tremendous growth and expansion, Tarbell, Realtors has positioned itself as a leader in real estate today.

2. For more than a decade, Tarbell has devoted special resources and attention to buyers and sellers of upper scale homes in the Southern California area through its Preferred Properties<sup>SM</sup> division. Tarbell’s Preferred Properties<sup>SM</sup> services focus upon assisting members of the Southern California community locate or sell some of the most elite housing available in the area. Moreover, during this period, Tarbell has expended significant resources to establish and promote the Preferred Properties<sup>SM</sup> services. Through extensive marketing and sales, Tarbell has developed substantial goodwill in and consumer recognition of the Preferred Properties mark such that residents of the Southern California community readily recognize and identify Tarbell as the source of Preferred Properties<sup>SM</sup> services.



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1 CA. Defendant Crotwell’s current licensing status with the California Department of  
2 Real Estate (DRE) is “Licensed NBA”, which the means that the DRE has Crotwell’s  
3 license as currently being in a “non-working status. The licensee may not perform  
4 acts for which a real estate license is required in California. Salesperson reference for  
5 NBA is equivalent to ‘No Broker Affiliation’ and the broker/corporation reference to  
6 NBA is equivalent to ‘No Business (current main office) Address.’” Based on  
7 Crotwell’s contact information listed with the DRE, Tarbell is informed and believes  
8 that Crotwell is a resident of the County of Orange, State of California.

9 7. Defendant Andrea Marquez (“Marquez”) holds herself out as the Chief  
10 Financial Officer and Managing Partner of Defendant Windermere Real  
11 Estate/Preferred Properties’ location at 135 S. State College Blvd, Suite 110, Brea  
12 CA. Based upon Defendant Marquez’s identification of herself as working at the Brea  
13 address, Tarbell is informed and believes that Marquez is a resident of the District.

14 8. Defendant Richard Michael King (“King”) is a licensed real estate broker  
15 with the DRE. King’s DRE-assigned Broker Number of 00815016 is listed as the  
16 Broker Number in documentation relating Defendant Windermere Real  
17 Estate/Preferred Properties’ location at 135 S. State College Blvd, Suite 110, Brea  
18 CA. However, Defendant King’s current status with the DRE is that he is operating  
19 under the fictitious name of “Canyon Hills Mortgage Co.” at 14726 Ramona Avenue,  
20 Suite 410 W16 in Chino, California with no branch offices being listed for this  
21 company. King has also listed with the DRE as affiliated with several corporations,  
22 none of which have Windermere in their name or are located in Brea, California.  
23 Based on King’s contact information listed with the DRE, Tarbell is informed and  
24 believes that King is a resident of the County of San Bernardino, State of California.

25 9. Defendant A & L Partners, Inc. ("A & L Partners") is a California  
26 corporation that resides at 135 S. State College Blvd, Suite 110, Brea CA. Tarbell is  
27 informed and believes that Andrea L. Marquez is the same Andrea Marquez who  
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1 holds herself out as the Chief Financial Officer and Managing Partner of Defendant  
2 Windermere Real Estate/Preferred Properties' location at 135 S. State College Blvd,  
3 Suite 110, Brea CA. Tarbell is further informed and believes that A & L Partners  
4 registered and operates the domain name www.windermerepreferred.com for the  
5 purpose of advertising and marketing Windermere Preferred Properties in Brea,  
6 California.

7 10. Tarbell is informed and believes that each of the defendants is the agent,  
8 employee, successor or assign of each other defendant and each of them, as well as the  
9 agents of all Defendants, and at all times herein mentioned, were acting within the  
10 course and scope of said agency, employment, succession of interest or assignment.

11  
12 **JURISDICTION AND VENUE**

13 11. This action arises under the Trademark Act of July 5, 1946, as amended,  
14 commonly known as the Lanham Act, 15 U.S.C. § 1051, *et seq.*; Cal. Bus. & Prof.  
15 Code §§ 17200, *et seq.* & 17500, *et seq.*; and common law.

16 12. This Court has subject matter jurisdiction over the claims in this  
17 Complaint pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. This Court  
18 has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

19 13. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b). In  
20 addition, the acts constituting the state law violations alleged herein occurred within  
21 this judicial district.

22 14. This Court has personal jurisdiction over Defendants because, on  
23 information and belief, Defendant Windermere Real Estate/Preferred Properties has  
24 established its sale business address in this district and is actively recruiting agents in  
25 order to offer services in this judicial district. Defendant is marketing itself under the  
26 name "Windermere Real Estate/Preferred Properties" and "Windermere Preferred  
27 Properties" and identifying its place of business in Brea, California, thereby engaging  
28

1 in infringing conduct with the intent of generating business in and around the City of  
2 Brea, California. Personal jurisdiction over Defendants Crotwell, Marquez, King and  
3 A & L Partners exists because they reside in this judicial district and their conduct as  
4 outlined in this complaint occurred in this judicial district.

5  
6 **TARBELL AND ITS PREFERRED PROPERTIES<sup>SM</sup> SERVICES**

7 15. For over eighty years, Tarbell has been engaged in the business of  
8 assisting existing and prospective homeowners in the Southern California  
9 communities in the Counties of Orange, Riverside, San Bernardino, Los Angeles and  
10 San Diego. For at least the last five years, Tarbell's specialized Preferred Properties<sup>SM</sup>  
11 division has been widely recognized as the premiere resource for sellers of upscale  
12 residences in the counties served by Tarbell. Only the higher echelon agents are  
13 permitted to be associated with Tarbell's Preferred Properties<sup>SM</sup> division. Clients  
14 serviced by the Preferred Properties<sup>SM</sup> division are ensured that their properties are  
15 appropriately marketed because "Special Homes Deserve Special Attention."

16 16. Tarbell has devoted substantial resources to the development and  
17 maintenance of its Preferred Properties<sup>SM</sup> division and high quality services. Clients  
18 of this division are expecting the following service amenities from Tarbell:



21 **Preferred Properties** offers the special attention that a  
22 distinctive home requires. That attention includes the  
23 following:

24 **Individual Pictorial Brochures**, complete with color photo to  
25 present your home at its best.

26 **Property News Releases** placed in major and local  
27 newspapers.

28 **Professional Photography** that insures consistent quality.



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1 and/or “Windermere Real Estate/Preferred Properties” in connection with real estate  
2 services in the County of Orange, City of Brea and surrounding communities. These  
3 are same communities served by Tarbell and its Preferred Properties<sup>SM</sup> division,  
4 operating through offices located throughout Orange County and the Inland Empire,  
5 including those offices closest to Brea in Anaheim, East Anaheim, Anaheim Hills and  
6 Yorba Linda. Tarbell is informed and believes that the Defendants’ office opened on  
7 May 3, 2010 and is operating as “Windermere Preferred Properties” and “Windermere  
8 Real Estate/Preferred Properties”.

9 21. Additionally, as of May 3, 2010, Defendants started using the Tarbell’s  
10 Preferred Properties mark in listing its businesses with the Brea Chamber of  
11 Commerce and real estate-related websites.

12 22. Under California Code of Regulations section 2710, notice of changes in  
13 license information or status required to be submitted to the Department under  
14 provisions of the Real Estate Law and regulations of the Commissioner no later than  
15 five days after the effective date of the change. Furthermore, brokers and real estate  
16 salespersons are required to keep their business addresses current with the DRE  
17 pursuant to CCR § 2715.

18 23. Additionally, under CCR § 2731, a DRE licensee is prohibited from  
19 using a fictitious name in the conduct of any activity for which a license is required  
20 under the Real Estate Law unless the licensee is the holder of a license bearing the  
21 fictitious name.

22 24. As of the filing of this lawsuit, however, there exists no record in the  
23 California Department of Real Estate licensee lookup for a “dba” of “Windermere  
24 Preferred Properties” or “Windermere Real Estate/Preferred Properties” in Brea as  
25 required under the rules and regulations governing real estate licensees operating  
26 under a fictitious name. Accordingly, there has been no identification to the DRE of  
27 the broker’s license under which this office is operating. There is no listing with the  
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1 California Secretary of State of any corporation, limited liability company or limited  
2 partnership under the name Windermere Preferred Properties or Windermere Real  
3 Estate/Preferred Properties.

4 25. Accordingly, it appears that each of the Defendants is operating in direct  
5 contravention to the rules and regulations of the California Department of Real Estate  
6 while deliberately infringing Tarbell's Preferred Properties mark.

7 26. Defendants' prominent use of Tarbell's Preferred Properties mark in its  
8 name, and in combination with the services in residential real estate, is likely to  
9 mislead or deceive real estate professionals and the consuming public into believing  
10 that Defendants or their services are sponsored by or associated with Tarbell.  
11 Defendants' use of Tarbell's Preferred Properties mark is without authorization from  
12 Tarbell. In addition, Defendants' use of Tarbell's Preferred Properties mark will  
13 result in lost sales opportunities for Tarbell.

14 27. Defendants' conduct is continuing and will continue unless restrained by  
15 the Court. Defendants' conduct Defendants use of Tarbell's Preferred Properties mark  
16 in the marketing of their job opportunities and services to the same communities  
17 served by Tarbell actively promotes confusion among real estate professionals and  
18 consumers such that Tarbell had no choice but to file the instant complaint to stop the  
19 continuing irreparable injury to Tarbell and the Tarbell's Preferred Properties<sup>SM</sup>  
20 division. Unless Defendants' are enjoined from engaging in the wrongful conduct  
21 described above, Tarbell will suffer irreparable injury and further harm.

22  
23 **FIRST CLAIM FOR RELIEF**

24 **Trademark Infringement, Unfair Competition**  
25 **and False Designation of Origin 15 U.S.C. § 1125(a)**

26 28. Tarbell repeats and realleges the allegations set forth in paragraphs 1  
27 through 27 above, as though fully set forth herein.

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1           29. Tarbell has built up valuable goodwill in its Preferred Properties mark  
2 within Southern California. Defendants’ wrongful acts have permitted or will permit  
3 Defendants to make substantial sales and profits on the strength of Tarbell’s  
4 substantial advertising, sales, consumer recognition, and goodwill.

5           30. With knowledge of the value of breadth and depth of recognition of  
6 Tarbell’s Preferred Properties mark within the Southern California real estate industry  
7 and local communities, and without Tarbell’s authorization and consent, Defendants  
8 have traded and continue to trade on the goodwill associated with Tarbell’s Preferred  
9 Properties mark and mislead the public into assuming a connection between  
10 Defendants’ services and those of Tarbell.

11           31. As a direct and proximate result of Defendants’ wrongful conduct,  
12 Tarbell has been and will be deprived of the value of the Preferred Properties mark as  
13 a commercial asset. Defendants’ prominent use of Tarbell’s Preferred Properties mark  
14 in connection with recruiting real estate sales persons and the offering of services in  
15 relation to the purchase and sale of upscale homes, and advertising of its related  
16 services without consent of Tarbell, is likely to cause and is causing confusion and  
17 deception among real estate professionals and the general consuming public as to the  
18 origin of Defendants’ services. Defendants’ actions are likely to deceive the public  
19 into believing that the employment opportunities and services being offered by  
20 Defendants originated from, are sponsored by, or are associated with, or otherwise  
21 authorized by Tarbell.

22           32. Defendants’ activities have caused, and will continue to cause Tarbell to  
23 suffer substantial injury. Tarbell has no adequate remedy at law and, if Defendants’  
24 activities in the use of “Preferred Properties” are not enjoined, Tarbell will continue to  
25 suffer irreparable harm and injury to its goodwill and reputation.

**SECOND CLAIM FOR RELIEF**

**Unfair Competition Under Cal. Bus. & Prof. Code § 17200, et seq.**

33. Tarbell repeats and realleges the allegations contained in the foregoing paragraphs 1 through 32, as if fully set forth herein.

34. The above-described acts and practices by Defendants are likely to mislead the general public and therefore constitute unfair and fraudulent business practices and unfair, deceptive, untrue, and misleading advertising in violation of California Business and Professions Code § 17200, et seq.

35. Tarbell has built valuable goodwill in its Preferred Properties mark. Defendants' use of Tarbell's Preferred Properties mark in advertising and marketing is likely to confuse and deceive real estate professionals and the public such that they will believe there is a connection or affiliation between Tarbell and Defendants. This conduct results in damage to Tarbell's goodwill and reputation and unjust enrichment of Defendants.

36. Defendants have also unfairly competed with Tarbell by violating California Code of Regulations regarding the identification of the provider of services, opening for business while failing to register this operation with the Department of Real Estate, and failing to identify new real estate affiliations with the DRE and thus shielding itself from accountability with the Department of Real Estate.

37. The unfair and fraudulent business practices and deceptive and untrue advertising of Defendants described above presents a continuing threat to members of the public in that Defendants intend to promote and advertise their services by wrongfully trading on the name and goodwill of Tarbell and the Tarbell Preferred Properties mark.

38. Defendants' conduct has injured Tarbell and, unless enjoined, will continue to cause great, immediate, and irreparable injury to Tarbell. Tarbell is

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1 entitled to injunctive relief and an order for restitutionary disgorgement of all of  
2 Defendants' ill-gotten gains.

3  
4 **THIRD CLAIM FOR RELIEF**

5 **Deceptive, False and Misleading Advertising**

6 **under Under Cal. Bus. & Prof. Code § 17500, *et seq.***

7 39. Tarbell repeats and realleges the allegations set forth in paragraphs 1  
8 through 38 above, as though fully set forth herein.

9 40. The above-described acts of Defendants constitute untrue and misleading  
10 advertising as defined by California Business & Professions Code § 17500, *et seq.*

11 41. The acts of untrue and misleading advertising by Defendants described  
12 above present a continuing threat to members of the public in that Defendants' will  
13 misrepresent the source of their services.

14 42. Defendants' false and misleading advertising will permit them to make  
15 substantial sales and profits on the strength of Tarbell's success, goodwill, and  
16 consumer recognition.

17 43. As a direct and proximate result of Defendants' wrongful conduct,  
18 Tarbell will be injured by Defendants' wrongful acts, and such harm will continue  
19 unless the Court enjoins Defendants' acts. Tarbell has no adequate remedy at law for  
20 Defendants' continuing violations of Tarbell's rights.

21  
22 **FOURTH CLAIM FOR RELIEF**

23 **Trademark Infringement**

24 **under Common Law**

25 44. Tarbell repeats and realleges the allegations set forth in paragraphs 1  
26 through 43 above, as though fully set forth herein.

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1 Defendants offer are directly or indirectly sponsored by, approved by, or affiliated  
2 with Tarbell.

3 C. Awarding Tarbell damages, costs, attorneys' fees, and investigator's fees,  
4 and an accounting of Defendants' profits attributable to Defendants' unauthorized use  
5 of Tarbell's trademarks.

6 D. Awarding Tarbell treble damages, pursuant to 15 U.S.C. § 1117(b), as a  
7 result of Defendants' wanton, deliberate, malicious, and willful conduct.

8 E. Entering an order, pursuant to 15 U.S.C. § 1118 and other applicable law,  
9 directing Defendants to deliver for impoundment and destruction all manuals,  
10 packaging, images, and promotional materials bearing any unauthorized use of  
11 Tarbell's Preferred Properties trademark or any simulation, reproduction, counterfeit,  
12 copy, confusingly similar variation, or colorable imitation thereof.

13 F. Entering an order, directing Defendants to delete the  
14 Windermerepreferred.com domain name.

15 G. Directing that Defendants pay to Tarbell the costs of this action,  
16 including their reasonable attorneys' fees incurred herein.

17 H. Awarding Tarbell punitive damages in an amount sufficient to punish  
18 Defendants.

19 I. Awarding Tarbell pre-judgment and post-judgment interest on any  
20 monetary awards.

21 J. Ordering Defendants to disgorge all of their ill-gotten gains pursuant to  
22 California Business & Professions Code § 17203.

23 K. Granting Tarbell any other and further relief as the Court may deem just  
24 and proper.

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**Jury Demand**

Plaintiff Tarbell demands a trial by jury on all issues so triable.

Respectfully submitted,

Dated: June 15, 2010

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Plaintiff, F.M. Tarbell Co. dba Tarbell, Realtors

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

F.M. TARBELL CO. DBA TARBELL, REALTORS, a  
California corporation,  
  
PLAINTIFF(S)

v.

WINDERMERE REAL ESTATE/PREFERRED  
PROPERTIES, a.k.a. WINDERMERE PREFERRED  
PROPERTIES, an unknown business entity; JAMES  
CROTWELL, an individual; ANDREA MARQUEZ,  
an individual, RICHARD MICHAEL KING, an  
individual, and A & L PARTNERS, INC., a California  
corporation,  
  
DEFENDANT(S).

CASE NUMBER  
2:10-cv-04048-PSG -E

**SUMMONS**

TO:DEFENDANT(S):

WINDERMERE REAL ESTATE/PREFERRED PROPERTIES, a.k.a. WINDERMERE PREFERRED PROPERTIES, an unknown business entity; JAMES CROTWELL, an individual; ANDREA MARQUEZ, an individual, RICHARD MICHAEL KING, an individual, and A & L PARTNERS, INC., a California corporation,

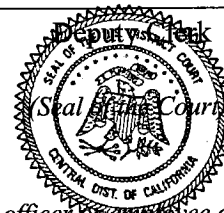
A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached  complaint  First amended complaint  counterclaim  cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, WINSTON & STRAWN LLP, whose address is 333 S. Grand Ave., Suite 3800, Los Angeles, CA 90071. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: JUN 16 2010

By: NATALIE LONGORIA



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

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