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17 Attorneys for Counter-Plaintiff,
18 Palladium Books, Inc.

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

22 PALLADIUM BOOKS, INC., a Michigan
corporation

23 Counter-Plaintiff,

24 v.

25
26 TRION WORLDS, INC., a Delaware
27 corporation,

28 Counter-Defendant.

Case No. **3:10-cv-02466-CRB**

COUNTERCLAIM FOR:

- 1. **TRADEMARK INFRINGEMENT
(15 U.S.C. § 1114)**
- 2. **FALSE DESIGNATION OF
ORIGIN(15 U.S.C. § 1125)**
- 3. **CALIFORNIA STATUTORY**

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UNFAIR COMPETITION
(Cal. Bus. & Prof. Code § 17200 *et seq.*)

**4. INFRINGEMENT OF COMMON
LAW TRADEMARKS**

**5. CALIFORNIA COMMON LAW
UNFAIR COMPETITION**

DEMAND FOR JURY TRIAL

Palladium Books, Inc., by and through its undersigned counsel, for its Counterclaim against Trion Worlds, Inc., states as follows:

I. JURISDICTION AND VENUE

1. This is an action for (a) trademark infringement arising under 15 U.S.C. § 1114(a); (b) false designation of origin arising under 15 U.S.C. § 1125(a); (c) unfair competition arising under California Business & Professions Code § 17200 *et seq.*; (d) common law trademark infringement; and (e) unfair competition arising under the common law of the State of California.

2. The claims asserted in this Counterclaim arise under the trademark laws of the United States, 15 U.S.C. §§ 1051, *et seq.*, and the statutory and common laws of the State of California. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1338, 28 U.S.C. § 1367, and 15 U.S.C. § 1121.

3. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and (c).

II. THE PARTIES

4. Counter-Plaintiff PALLADIUM BOOKS, INC. (“Palladium”) is a Michigan corporation having its principal place of business at 39074 Webb Court, Westland, MI 48185.

5. Palladium is informed and believes that Counter-Defendant Trion Worlds, Inc. (“Trion”) is a corporation organized under the laws of the State of Delaware, having its principal place of business located at 303 Twin Dolphin Drive, Redwood City, California 94065. Palladium is informed and believes that Trion was formerly known as Trion World Network, Inc., and changed its name in or about April 2010.

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1 6. This Court has both general and specific personal jurisdiction over Trion, which
2 has its principal place of business within this Judicial District. Additionally, most of Trion's
3 tortious acts giving rise to this action occurred within this District.

4 **III. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

5 7. Palladium is the owner of numerous federally registered trademarks for "RIFTS,"
6 which is a very well-known series of over 80 fantasy/science fiction role-playing games and
7 supplements, which has been published over the past twenty (20) years. These registrations
8 include the RIFTS® mark for computer games. Palladium's RIFTS® series of games also
9 includes numerous volumes using the format "Rifts: _____," with a secondary name, such
10 as "Promise of Power" or "Chaos Earth," etc., identifying the particular game.

11 8. Trion, in late April 2010, announced its intention of marketing an online computer
12 game entitled "Rift: Planes of Telara," and has promoted it as a role-playing fantasy game of the
13 same type that is regularly produced by Palladium under the RIFTS® trademark, and which is the
14 genre of the Rifts: Promise of Power® computer game. Moreover, Trion is marketing its game on
15 a website accessed via the URL www.riftgame.com. Trion's use of a minor variant of Palladium's
16 long-standing and famous RIFTS® trademark is a knowing, intentional, and malicious attempt to
17 trade on the good will established in the RIFTS® marks over two decades and, if not enjoined,
18 will result in confusion in the marketplace and dilution of the RIFTS® mark.

19 9. Just days after Trion announced its intention to use a trademark confusingly similar
20 to Palladium's, Palladium filed suit against Trion in the Eastern District of Michigan, *Palladium*
21 *Books, Inc. v. Trion Worlds, Inc. et al.*, Case No. 10-11859, asserting claims for trademark
22 infringement, false designation, trademark dilution, and a variety of related state law claims.
23 Palladium subsequently filed for a preliminary injunction after learning that Trion was advertising
24 its infringing game in a publication that was being marketed within a few miles of Palladium's
25 headquarters, as well as on its moderately interactive website. Trion had also advertised itself on
26 its website as the "premier publisher and developer" of connected video games, giving rise to the
27 logical conclusion that it was doing business in Michigan, given the national and international
28 scope of the "massively multiplayer online games" of which Trion was claiming to be the premier

1 publisher. As Trion later admitted, however, it has as yet not published any games whatsoever,
2 with all of its anticipated products still in pre-launch development phase.

3 10. Trion filed a motion to dismiss for lack of personal jurisdiction. In the interim,
4 while the Michigan case was still pending, Trion filed this action, seeking a declaration of non-
5 infringement, along with several other “defensive” claims challenging the validity of Palladium’s
6 trademarks.

7 11. The Michigan court held a hearing on Trion’s motion to dismiss on June 9, 2010
8 and, on June 11, 2010, entered an order dismissing the case for lack of personal jurisdiction. The
9 Court did not hold a hearing or rule on the merits of Palladium’s motion for a preliminary
10 injunction, given its ruling on the motion to dismiss.

11 12. Palladium now asserts its Counterclaim for the affirmative claims stated above,
12 including the federal claims asserted in the prior Michigan action, along with California state law
13 claims.

14 **A. Palladium and the Rifts® Family of Products.**

15 13. Palladium, a Michigan corporation headquartered in Westland, Michigan, creates,
16 develops, publishes, markets and sells fantasy and science-fiction role-playing games (RPGs)
17 involving multidimensional travel. Palladium has created a fantasy and science-fiction universe,
18 or Megaverse®, populated by aliens, alien invaders, embattled humans, supernatural beings, time
19 travelers, robots, powerful characters, and mythic figures, all of whom come through portals or
20 dimensional tears, and are engaged in invading the earth and in other wars or conflicts, using a
21 wide range of weapons, magic, armor, vehicles, demons, elemental creatures, aliens, and
22 supernatural beings.

23 14. Palladium’s most popular and renowned RPGs are the RIFTS® series, and are
24 well-known throughout the fantasy and science fiction game industry and beyond. Rifts® is a
25 series of games set 300 years in the future, after a major nuclear catastrophe has destroyed most of
26 the world’s population. Tears or rips in the fabric of the universe act as extra-dimensional
27 gateways, leading to scenarios involving aliens, cybertechnology, elemental creatures,
28 supernatural beings, and intricate military maneuvers for power. In the Rifts® scenarios, aliens

1 and monsters have come through the tears or rips to invade the earth and fight against humans for
2 control of the planet. Palladium published the first Rifts® game book in 1990 and since then has
3 published more than 80 Rifts® titles.

4 15. In order to convey the continuity of the Rifts® series, many of the Rifts® games
5 are titled “Rifts _____” – with a secondary phrase, such as “Promise of Power”; “Dark
6 Conversions”; “Chaos Earth”; “Megaverse in Flames”; or “Shemarrian Nation,” among many
7 others, used to denote the particular story in the Rifts® series. See **EXHIBIT 1**, printout from
8 www.palladiumbooks.com website, showing some of the “Rifts®” products currently being
9 marketed by Palladium.

10 16. Palladium’s Rifts® games have been produced in a variety of media and formats.
11 For example, in 2001, Palladium created and licensed a Rifts® Collectible Card Game (“Rifts®
12 CCG”). See **EXHIBIT 2**, excerpts from players’ manual accompanying the Rifts® CCG.

13 17. Palladium’s Rifts® game has also been produced and marketed in various
14 electronic and computer game formats. For example, in 1995, Palladium came out with the
15 RIFTS® Game Master Companion™, a computerized add-on to the original Rifts® role-playing
16 game. See **EXHIBIT 3**, photocopies of the RIFTS® Game Master Companion™ floppy disks.

17 18. Palladium also developed and licensed a Rifts® computer video game, which
18 debuted in 2005, and which was produced by Nokia, a global leader in video game technology.
19 That game was entitled “Rifts: Promise of Power.” See **EXHIBIT 4**, photocopies of front, back,
20 and inside covers of the Rifts: Promise of Power® computer game.

21 19. Palladium’s Rifts® role-playing games have been continuously marketed
22 throughout the United States and internationally, in one or more of the various media and formats
23 in which they have been produced, since 1990.

24 20. Palladium has also optioned Rifts® to Walt Disney Studios for production of a
25 major motion picture to be produced by world-famous action film producer Jerry Bruckheimer. A
26 screen play has been developed, Disney renewed its option in April 2010, and Palladium
27 anticipates that the film will be “greenlighted.” Both of these developments have been widely
28 publicized by Palladium.

1 21. For the past four years, Palladium has also been involved in negotiations with
2 various companies to produce a massively multiplayer online role-playing game (“MMORPG”).
3 MMORPGs are games played by many thousands, or even millions of players, in the case of the
4 more successful games, who subscribe to the game and play online through the hosting company’s
5 servers against other players in far-flung locations.

6 22. Given the popularity of the Rifts® products and these recent developments, it is not
7 surprising that competitors in the industry would attempt to free-ride on the good will established
8 in the Rifts® name.

9 23. In order to protect its valuable intellectual property, Palladium has obtained a
10 number of registered trademarks for the RIFTS® mark. Among these are included, without
11 limitation, the following U.S. registrations:

12 Reg. No. 2,889,353, for “Books, manuals and comic books containing role playing games
13 involving science fiction or fantasy adventures, ...”;

14 Reg. No. 3,036,181, for “Production of motion pictures, television programs, videotapes
15 and DVDs involving science fiction and fantasy adventures”; and, most importantly for
16 this action

17 Reg. No. 2,045,806, for “Computer game software and computer game programs
18 containing role playing games involving science fiction or fantasy adventures, or involving
19 character generation or scenario generation.”

20 Copies of the Certificates of Registration for these trademarks, printed from the USPTO database,
21 are attached, respectively, as **EXHIBITS 5, 6, and 7** to this Counterclaim.

22 24. Palladium is also the owner of common law trademark rights in the “Rifts” mark
23 for games, namely, role-playing games in the fantasy and science-fiction genres, which have been
24 continuously produced and sold in various media, including, but not necessarily limited to printed
25 publications, collectible card games, and electronic and computer games, throughout the United
26 States and on a worldwide basis, dating back to 1990.

27 25. Palladium is the owner of a pending U.S. trademark application, Serial No.
28 85/043338 for “role playing games,” to further memorialize its rights in the Rifts mark established

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1 over the past 20 years, and already covered by its various existing registrations. *See* **EXHIBIT 8**,
2 printout from USPTO database re: Palladium’s pending registration.

3 26. The trademark for RIFTS® in the field of computer games and software was
4 registered on March 18, 1997, renewed in 2007, and has achieved incontestable status.

5 27. Additionally, Palladium obtained a federal registration for its “Rifts: Promise of
6 Power” computer game. Attached as **EXHIBIT 9** is a copy of the specimen submitted to the
7 USPTO in conjunction with that application, showing a picture of the package cover to the game.
8 Palladium has been in negotiation over the past two years with several companies for development
9 of another computer game, an online MMORPG, which it expects to develop and launch in the
10 near future.

11 28. Palladium also owns a federally registered trademark for RIFTER®, for
12 publications relating to role-playing and games and fantasy adventures. *See* **EXHIBIT 10**, copy
13 of trademark registration certificate number 2,328,782 for RIFTER®.

14 **B. Trion’s Wrongful Conduct.**

15 **1. The Infringing Game**

16 29. Trion is, upon information and belief, the recently adopted new name for Trion
17 World Network, Inc. *See* **EXHIBIT 11**, Printout from Trion’s website at www.riftgame.com, p. 1
18 (“Trion Worlds, formerly known as Trion World Network, is poised to revolutionize the
19 connected games space ...).

20 30. Trion claims to be “the premier publisher and developer of connected video games
21” *Id.*

22 31. Trion claims to produce a variety of games in the genre known as “massively
23 multiplayer online games,” also known as “MMOs.” These are games that are played on
24 computers by thousands or even millions of players at once, via the internet. They rely on
25 computer software for the operation of the game, just as would a game played on a single
26 computer by one or two players.

27 32. On or about April 26, 2010, Trion announced that it would be launching a new
28 MMORPG in the near future entitled “Rift: Planes of Telara.” *Id.*

1 33. According to Trion’s other website, located at www.trionworlds.com, “Rift: Planes
2 of Telara™ is a fantasy MMO Role Playing Game set in a dynamic world being torn apart by
3 powerful rifts from other planes.” *See* **EXHIBIT 12**, printout from www.trionworlds.com
4 website, p. 5.

5 34. As described, Rift: Planes of Telara (the “Rift Game”) is precisely the type of game
6 – a fantasy role-playing game – that Palladium has been marketing in a variety of media for 20
7 years under its RIFTS® trademarks, and which was the subject of the Rifts: Promise of Power®
8 computer game.

9 35. As evidenced from Trion’s websites, the RIFT mark is the dominant portion of the
10 Rift Game’s title and is, in fact, made more prominent in the game’s design logo. *See, e.g.*,
11 Exhibit 11, p.1, Banner Heading; Exhibit 12, p.1.

12 36. Furthermore, Trion previously introduced a version of this new game at an annual
13 industry trade show in 2009, the E3 Expo, as “Heroes of Telara,” announcing only recently a
14 change to a title including a variation of the RIFTS® trademark. As noted in a column dated April
15 26, 2010 by William Murphy of MMORPG.com (which stands for “Massively Multiplayer Online
16 Role Playing Game”):

17 At last year’s E3 Trion unveiled plans for their flagship MMORPG, Heroes of
18 Telara.... Heroes of Telara went into ninja-stealth mode and hardly a word was
19 uttered about it in the time since. The silence was finally broken Thursday night
20 with the unveiling of a brand new trailer, along with a brand new name. Heroes of
21 Telara is no more. Long live **Rift: Planes of Telara**.

22 *See* **EXHIBIT 13**, Printout from www.mmorpg.com website, pp. 1-2.

23 37. Whatever “buzz” or preliminary good will Trion may have built up in its proposed
24 new game, came under the title “Heroes of Telara,” until it announced on April 26, 2010 that it
25 intended to change the title.

26 2. **Likelihood of Confusion.**

27 38. It is also clear that the public will not readily distinguish between Trion’s “RIFT”
28 mark and Palladium’s RIFTS® mark. The Murphy column quoted above quickly moves, in

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1 discussing the new game, from use of “Rift” to the use of “Rifts” on a regular basis. A few
2 examples, among many, include:

- 3 • “The Rifts are causing creatures and life from other worlds to seep into and threaten
4 Telara.
- 5 • “There are two factions of belief concerning the Rifts of Telara.”
- 6 • “[T]he Defiants want nothing more than to harness the Rifts’ power.”

7 Exh. 13, at 2.

8 39. It is virtually certain that the “Rifts” version of the word will be used frequently
9 with reference to the Rift Game, thereby increasing the likelihood of confusion. Indeed, in
10 interviews and various materials, Trion and others have already begun referring to their proposed
11 game as simply “Rift.” See **EXHIBIT 14**, printouts from various internet websites, demonstrating
12 the contraction of the game’s title by both Trion and fans, even at this early date, with references
13 to “Rift”; “Rift’s”; and “Rifts” when referring to the game. Virtually nobody refers to the game as
14 “Telara” or “Planes of Telara.”

15 40. In fact, Trion promoted its Rift Game at the 2010 E3 Expo, held from June 15-17,
16 2010, after it had been sued by Palladium. As shown by **EXHIBIT 15**, a photograph of Trion’s
17 exhibit booth at E3 2010 promoting the Rift Game, the hugely dominant portion of the Rift Game
18 logo is the single word “RIFT,” cast in font many times the size of the infinitesimal “Planes of
19 Telara,” which can barely be seen beneath the RIFT logo.

20 41. Even where an effort is made to distinguish between RIFT and RIFTS, where the
21 singular term is used in its possessive, as it is already being used, “Rift’s” – referring to Trion’s
22 game – will sound exactly like “Rifts.”

23 42. In fact, the internet posters whose comments follow the Murphy article demonstrate
24 the conversion from RIFT to RIFTS within a mere day or two of the announcement of the game’s
25 title. Exh. 13, at 4 *et seq.*

26 **3. The Infringing Trademark Application.**

27 43. On April 21, 2010, Trion filed an application with the U.S. Patent and Trademark
28 Office for “Rift: Planes of Telara.” See **EXHIBIT 16**, Printout from USPTO’s TESS database for

1 Serial No. 85/020022, for “Entertainment Services, namely providing online video games and
2 computer games.”

3 44. That application was filed under section 1(b), indicating that it is an “intent to use”
4 application and that Trion was not at that time using the mark commercially.

5 45. For the reasons shown above, the applied-for mark, as applied to the services it
6 purports to cover, infringes Palladium’s RIFTS® family of trademarks.

7 **4. The Infringing Domain Name.**

8 46. Trion has also acquired the domain name (URL) “riftgame.com.” See **EXHIBIT**
9 **17**, Printout from www.godaddy.com website. Although purchased by a “proxy” service to avoid
10 having to identify the owner, the information provided by godaddy.com indicates that the site is
11 being operated through “trionworld” servers.

12 47. The riftgame.com URL is being used to operate a website promoting the Rift
13 Game. The domain name consists solely of a minor variation on the RIFTS® trademark, in
14 conjunction with the purely descriptive term “game,” which is descriptive of the type of product
15 offered by both Trion and Palladium.

16 48. Used in this manner, the riftgame.com domain name is likely to cause confusion
17 among prospective customers seeking out Palladium’s Rifts® games on the internet. Indeed, a
18 variety of searches on Google.com indicate how Trion’s game is infiltrating searches that
19 primarily direct internet traffic to Palladium’s website and games. See **EXHIBIT 18**, Printouts of
20 Google searches for “Rifts MMO,” showing confusion as to whether Trion’s game is actually an
21 MMORPG of Palladium’s RIFTS®, and also showing likely diversion of internet users searching
22 for information on Rifts® to sites featuring information on Trion’s game.

23 49. Indeed, within mere days of Trion’s announcement of its “new” Rift Game, there
24 was ample evidence of actual confusion among the gaming community, the most likely users of
25 both Palladium’s trademarked role-playing game products and Trion’s new role-playing game
26 product. See, e.g., **EXHIBIT 19**, printouts of internet forum entries from fans of role-playing
27 games, containing just some of the numerous examples of consumer confusion already found
28 (with references to the page number in Exhibit 19 on which it is found)(emphasis is added):

- 1 • **... is this based off the old paper pencil rifts game?** there are no gun, robots,
2 power, armor. nothing. but there is a lot of stuff that is like it looks like it is going
3 to be a bad rip off mixed with wow [“wow” stands for “World of Warcraft, a
4 popular MMORPG.] – p. 2.
- 5 • **Yeah, I looked at this because I thought to myself, “Sweet Jeebus, it’s about
6 time Rifts made an MMO....** And then I saw it, and I was like, damn another
7 fantasy MMO clone. How dull. – p. 3
- 8 • **So this is the Rifts, the classic pen and paper rpg game, converted to an
9 MMO?** Interesting, not sure how you can fit it all in, Rifts was pretty epic in scale
10 and number of factions. – p. 4.
- 11 • **Whoa, for a minute I thought they were making an MMO out of Rifts tabletop.
12 – p. 5.**
- 13 • **Honestly, I don’t blame Palladium Books a bit for suing Trion Worlds over this.
14 When I first heard of “Rift: Planes of Telara,” I assumed it had something to
15 do with the Rifts tabletop role-playing game myself. – p. 6.**
- 16 • **Ha, it’s funny because the first time I saw an article on Rift: Planes of Telara, I
17 immediately thought a Rifts MMO was coming out, and I got a little giddy.
18 RIFTS is an awesome setting, regardless of what anyone says. – p. 7.**
- 19 • **...when R;PoT was announced the first thing I thought of was Pallidium’s (sic)
20 Rift’s game, of which I have an somewhat unhealthy collection of books (30+). p.
21 8.**
- 22 • **RIFTS was the first thing I thought of too.... – p. 9.**
- 23 • **Same here. “Rift” immediately made me think of “Rifts” pnp [pen and paper
24 game]. Then I read into the details and thought even more that it was a game
25 based off of Palladium. – p. 9.**
- 26 • **I’m actually surprised that Trion went with the name, as it was the PnP game
27 [the Rifts® pen and paper game] that came to mind first when they announced
28 it. – p. 10.**

5. **Trion’s Wrongful Intent.**

50. Palladium’s RIFTS® games and trademark have been exceptionally well-known in
the fantasy and role-playing game industry for the past two decades.

51. Trion represents on its various websites that it has personnel with many years of
experience in the gaming industry. For example, Trion cites to the recent acquisition of Scott
Hartsman, “who comes to Trion with more than 20 years of games industry experience and has

1 contributed to more than 40 online products.” Purportedly, Hartsman was a former executive with
 2 Sony Online Entertainment. *See* Exhibit 12, p. 3. Trion also cites to the acquisition of David Reid
 3 as marketing director, who has “more than a decade of successes in the games industry.” *Id.*

4 52. It is inconceivable that a company boasting such a wealth of individuals with such
 5 broad-based experience in the gaming industry would not have institutional and individualized
 6 knowledge of the family of RIFTS® products produced by Palladium over the past 20 years –
 7 particularly given the introduction of the Nokia Rifts® computer game several years ago. Thus, it
 8 is clear that Trion is knowingly and intentionally attempting to free-ride on the good will
 9 established in the RIFTS® marks.

10 **C. Irreparable Injury To Palladium.**

11 53. Trion’s continued use of a mark substantially similar to Palladium’s RIFTS®
 12 trademark will cause substantial consumer confusion and, in turn, will cause Palladium irreparable
 13 economic harm. Palladium’s advertising and marketing are targeted to unsophisticated teenagers
 14 and other fantasy and science fiction role playing game players looking for an exciting RPG, or
 15 video/computer game. Many of these potential customers, who may have experience or be
 16 familiar with Palladium’s high-quality and well-known products, will undoubtedly be confused
 17 and misled by the existence of a competitor’s product – new and unproven – bearing a name
 18 clearly evocative of the well-known Palladium family of Rifts® products. Moreover, the entry
 19 into the market of a “Rift” MMORPG will taint that market irretrievably and make it far more
 20 difficult for Palladium to succeed with its own planned Rifts® MMORPG.

21 **IV. CLAIMS FOR RELIEF**

22 **First Claim For Relief**

23 **Trademark Infringement (15 U.S.C. § 1114)**

24 54. Palladium repeats and realleges all allegations of the Counterclaim as if fully
 25 restated herein.

26 55. At all times relevant hereto, Palladium has been the exclusive owner of the
 27 trademark “Rifts,” including, among others, the following United States trademark registrations

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1 for “Rifts”: Reg. No. 2,045,806; Reg. No. 2,889,353; and Reg No. 3,036,181, all of which are
2 valid and subsisting.

3 56. Palladium’s registered trademarks include:

4 “Computer game software and computer game programs containing role playing
5 games involving science fiction or fantasy adventures, or involving character
6 generation or scenario generation.”

7 57. Palladium is also the owner of a pending U.S. trademark application, Serial No.
8 85/043338 for “role playing games,” to further memorialize its rights in the Rifts mark established
9 over the past 20 years, and already covered by its various existing registrations.

10 58. Through continued and extensive use and advertising, the RIFTS® mark has
11 become exclusively identified with Palladium.

12 59. Trion has infringed Palladium’s mark in interstate commerce by various acts,
13 including the promotion and marketing of a computer role playing game entitled “Rift: Planes of
14 Telara.” Trion wrongfully used and continues to use a mark substantially similar to the RIFTS®
15 mark and/or other words, terms, names, symbols, or devices, in commerce, in connection with its
16 goods and services.

17 60. Such use is without permission or authority of Palladium and is likely to cause, and
18 has already caused, confusion, to cause mistake, and to deceive as to the affiliation, connection, or
19 association of Trion with Palladium, or as to the origin, sponsorship, or approval of Trion’s goods,
20 services, or commercial activities, by Palladium.

21 61. Trion’s violation of Palladium’s rights in the trademark “Rifts” is knowing, willful,
22 deliberate, fraudulent, and intentional, and was made with the knowledge that such violation
23 would damage Palladium and the trademark.

24 62. As a direct result of Trion’s violations, as aforesaid, Palladium has suffered
25 substantial harm including, but not limited to, irreparable harm which cannot be remedied unless
26 Trion is enjoined from use of the trademarks, as well as damages in an amount to be proven at
27 trial.

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1 **Second Claim For Relief**

2 **False Designation of Origin -- 15 U.S.C. § 1125**

3 63. Palladium repeats and realleges all allegations of the Counterclaim as if fully set
4 forth herein.

5 64. At all times relevant hereto, Palladium has been the exclusive owner of the
6 trademark "Rifts."

7 65. Through continued and extensive use and advertising, the trademark "Rifts" has
8 become exclusively identified with Palladium.

9 66. Trion has wrongfully used and continue to use the mark RIFTS® and/or other
10 confusingly similar words, terms, names, symbols, or devices, in commerce, in connection with
11 their goods and services.

12 67. Such use is likely to cause and has already caused confusion, or to cause mistake,
13 or to deceive as to the affiliation, connection, or association of Trion with Palladium, or as to the
14 origin, sponsorship, or approval of Trion's goods, services, or commercial activities, by
15 Palladium.

16 68. Trion's violation of Palladium's rights in the trademark "Rifts" is knowing, willful,
17 deliberate, fraudulent, and intentional, and was made with the knowledge that such violation
18 would damage Palladium and the trademark.

19 69. As a direct result of Trion's violations, as aforesaid, Palladium has suffered
20 substantial harm including, but not limited to, irreparable harm which cannot be remedied unless
21 Trion is enjoined from use of the trademarks, as well as damages in an amount to be proven at
22 trial.

23 **Third Claim For Relief**

24 **California Statutory Unfair Competition – Cal. Bus. & Prof. Code § 17200 *et seq.***

25 70. Palladium repeats and realleges all allegations in the Counterclaim as though fully
26 set forth herein.

27 71. At all times relevant hereto, Palladium has been the exclusive owner of the
28 trademark RIFTS®.

1 72. Through continued and extensive use and advertising, the trademark RIFTS® has
2 become exclusively identified with Palladium.

3 73. Trion has wrongfully used and continues to wrongfully use the trademark and/or
4 colorable imitations thereof, in commerce, in connection with the sale, offering for sale,
5 distribution, or advertising of its goods and services, in violation of Palladium's rights.

6 74. Trion's conduct aforesaid is likely to cause confusion, or to cause mistake, or to
7 deceive consumers and the public.

8 75. Trion's violation of Palladium's rights in the trademark is willful, deliberate,
9 fraudulent, and intentional, and was made with the knowledge that such violation would damage
10 Palladium and the trademark.

11 76. By reason of the foregoing acts, Trion has intentionally caused a likelihood of
12 confusion among the purchasing public in this Judicial District and elsewhere, thereby unfairly
13 competing with Palladium in violation of California Business & Professions Code § 17200 *et seq.*

14 77. Trion's aforesaid actions constitute unlawful, unfair, malicious, or fraudulent
15 practices that have injured and violated the rights of Palladium in an amount to be determined at
16 trial.

17 78. Further, as a direct result of Trion's violations, as aforesaid, Palladium has suffered
18 substantial harm including, but not limited to, irreparable harm which cannot be remedied unless
19 Trion is enjoined from further violation of Palladium's rights, for which Palladium has no
20 adequate remedy at law.

21 **Fourth Claim For Relief**

22 **Infringement of Common Law Trademarks**

23 79. Palladium repeats and realleges all allegations in the Counterclaim as though fully
24 set forth herein.

25 80. Since 1990, Palladium has been the owner of common law trademark rights in the
26 mark "Rifts" for games, namely role-playing games in the fantasy and science fiction genres.

27 81. The Rifts games involve, among other things, aliens, alien invaders, embattled
28 humans, supernatural beings, magic, time travelers, robots, powerful characters, and mythic

1 figures, all of whom come through portals or dimensional tears, are engaged in invading the earth
2 and in other wars or conflicts, using a wide range of weapons, magic, armor, vehicles, demons,
3 elemental creatures, aliens, and supernatural beings.

4 82. In order to convey the continuity of the Rifts® series, many of the Rifts® games
5 are titled “Rifts _____” – with a secondary phrase, such as “Promise of Power”; “Dark
6 Conversions”; “Chaos Earth”; “Megaverse in Flames”; and “Shemarrian Nation,” among others,
7 used to denote the particular story in the Rifts® series.

8 83. Over the past twenty years, Palladium’s Rifts games have been published and sold
9 in a variety of media, including, but not necessarily limited to, printed publications (i.e., pen and
10 paper games), collectible card games, electronic games, and computer games.

11 84. Palladium’s Rifts role-playing games have been sold continuously, and continue to
12 be sold, throughout the United States and internationally in numerous foreign countries.

13 85. Through its continuous use of its Rifts trademark over 20 years, Palladium has
14 established common law rights in the Rifts mark for games, particularly role-playing games in the
15 fantasy and science fiction genres.

16 86. Trion has infringed Palladium’s mark in interstate commerce by various acts,
17 including the promotion and marketing of a computer role playing game entitled “Rift: Planes of
18 Telara.” Trion wrongfully used and continues to use a mark substantially similar to the RIFTS®
19 mark and/or other words, terms, names, symbols, or devices, in commerce, in connection with its
20 goods and services

21 87. Such use is without permission or authority of Palladium and is likely to cause and
22 has already caused confusion, to cause mistake, and to deceive as to the affiliation, connection, or
23 association of Trion with Palladium, or as to the origin, sponsorship, or approval of Trion’s goods,
24 services, or commercial activities, by Palladium.

25 88. Trion’s violation of Palladium’s rights in the trademark “Rifts” is knowing, willful,
26 deliberate, fraudulent, and intentional, and was made with the knowledge that such violation
27 would damage Palladium and the trademark.

28 ///

1 89. As a direct result of Trion's violations, as aforesaid, Palladium has suffered
2 substantial harm including, but not limited to, irreparable harm which cannot be remedied unless
3 Trion is enjoined from use of the trademarks.

4 **Fifth Claim For Relief**

5 **California Common Law of Unfair Competition**

6 90. Palladium repeats and realleges all allegations in the Counterclaim as though fully
7 set forth herein.

8 91. By reason of its acts aforesaid, Trion has intentionally caused a likelihood of
9 confusion among the purchasing public in this Judicial District and elsewhere, thereby unfairly
10 competing with Palladium in violation of the common law of the State of California.

11 92. By its actions, Trion has irreparably injured Palladium. Such irreparable injury will
12 continue unless Trion is preliminarily and permanently enjoined by this Court from further
13 violation of Palladium's rights, for which Palladium has no adequate remedy at law.

14 93. Trion's willful acts of unfair competition under the common law of the State of
15 California constitute fraud, oppression, and malice. Accordingly, Palladium is entitled to
16 exemplary damages pursuant to California Civil Code § 3294(a).

17 **IV. PRAYER FOR RELIEF**

18 WHEREFORE, Counter-Plaintiff Palladium prays for judgment against Counter-
19 Defendant Trion as follows:

20 A. That the Court enter judgment in favor of Palladium and against Trion on all claims
21 for relief alleged herein;

22 B. That the Court enter judgment that Trion has knowingly and willfully violated the
23 provisions of 15 U.S.C. § 1114(a) by infringing Palladium's trademark rights in its federally
24 registered RIFTS® mark;

25 C. That the Court enter judgment that Trion has knowingly and willfully violated the
26 provisions of 15 U.S.C. § 1125(a) by making a false designation origin, false description, and/or
27 false representation leading to a likelihood of confusion within the purchasing public;

28 ///

1 D. That the Court enter judgment that Trion willfully and unfairly competed with
2 Palladium in violation of California Business & Professions Code § 17200 *et seq.*;

3 E. That the Court enter judgment that Trion willfully infringed Palladium's common
4 law RIFTS trademarks;

5 F. That the Court enter judgment that Trion willfully and unfairly competed with
6 Palladium in violation of the common law of the State of California;

7 G. That the court enter a preliminary and permanent injunction providing as follows:

8 (a) That Trion, its partners, directors and officers, agents, servants, employees,
9 and all other persons in active concert or privity or in participation with Trion, be preliminarily
10 and permanently enjoined from directly or indirectly using "Rifts" or any other trademark of
11 Palladium, or any colorable imitation or variant thereof, as part of any trademark, service mark or
12 trade name, or in such a way as to be likely to cause confusion, mistake, or to deceive as to the
13 affiliation, connection, or association of Trion with Palladium, or as to the origin, sponsorship, or
14 approval of Trion's goods, services, or commercial activities, by Palladium, enjoining specifically,
15 but not limited to, Trion's use of "Rift: Planes of Telara" as the name of a computer game;

16 (b) That Trion be preliminarily and permanently required to cease the use of the
17 domain name "riftgame.com," and to immediately shut down the website accessed via said
18 domain name, and to transfer said domain name to Palladium;

19 H. That Trion be directed to file with this Court and serve on Palladium within thirty
20 (30) days after the service of the injunction, a report, in writing, under oath, setting forth in detail
21 the manner and form in which Trion has complied with the injunction, pursuant to 15 U.S.C. §
22 1116;

23 I. That Trion be required to account to Palladium for all income and benefits received
24 by Trion from the use of Palladium's trademark, or colorable imitation thereof, and that Trion be
25 required to disgorge all such income;

26 J. That Trion be required to deliver to Palladium and/or destroy, at Trion's sole
27 expense, any and all goods, products, devices, literature, advertising, and other materials bearing
28 the infringing mark, pursuant to 15 U.S.C. § 1118;

1 K. That Trion be required to withdraw with prejudice their federal application, Serial
2 No. 85/020022, for the service mark “Rift: Planes of Telara”;

3 L. That Trion pay Palladium all damages available under the Lanham Trademark Act,
4 suffered by Palladium as a result of Trion’s violations of Palladium’s rights under the Lanham
5 Act, 15 U.S.C. § 1050 *et seq.*, as aforesaid;

6 M. That Trion pay Palladium all damages available under California statutory and
7 common law for its violations of Palladium’s rights;

8 N. That Trion pay Palladium costs and expenses, including attorney fees, and all other
9 damages available for violation of the Lanham Act, 15 U.S.C. §§ 1051, *et seq.* and/or California
10 statutory and common law;

11 O. That Palladium be awarded treble damages pursuant to 15 U.S.C. § 1117;

12 P. That Palladium be awarded exemplary damages from Trion pursuant to California
13 Civ. Code § 3294; and

14 Q. That Palladium be granted such other and further relief as this Honorable Court
15 deems just.

16 **DEMAND FOR TRIAL BY JURY**

17 Pursuant to Fed. R. Civ. P. 38(b), Palladium Books, Inc. demands a trial by jury of all
18 issues in this case that are triable to a jury.

19
20 Dated: June 28, 2010

Respectfully Submitted,

21 THE KAUFMAN LAW GROUP

22
23 By: _____/s/_____

24 Gary Jay Kaufman
25 Attorneys for Defendant and Counter-Plaintiff,
26 Palladium Books, Inc.
27
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