

NO. \_\_\_\_\_

EDMUNDS.COM, INC.	§	IN THE DISTRICT COURT
a New York Corporation,	§	
Plaintiff,	§	
	§	
vs.	§	GALVESTON COUNTY, TEXAS
	§	
HUMANKIND DESIGN, LTD.,	§	
a Texas Limited Partnership,	§	
HUMAN DESIGN MANAGEMENT,	§	
LLC, a Texas Limited Liability	§	
Company, and JUSTIN ANDERSON,	§	
Defendants.	§	_____ JUDICIAL DISTRICT

### **PLAINTIFF’S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES EDMUNDS.COM, INC. (“Edmunds”) and files its Original Petition against Defendants HUMANKIND DESIGN, LTD., HUMAN DESIGN MANAGEMENT, LLC, and JUSTIN ANDERSON (collectively “Defendants”). Edmunds would respectfully show the Court as follows:

#### **I. DISCOVERY PLAN**

1. Edmunds intends to conduct discovery under Level Two of Texas Rule of Civil Procedure 190 and affirmatively pleads that it seeks injunctive relief.

#### **II. THE PARTIES**

2. Edmunds is incorporated and existing under the laws of New York with its principal place of business in Santa Monica, California.

3. According to the records of the Texas Secretary of State, Humankind Design, Ltd. is a limited partnership formed and existing under the laws of Texas with its principal place of business at 1414 S. Friendswood Dr., Friendswood, TX 77546. Upon information and belief, Humankind Design, Ltd.’s current principal place of business is located at 820 S. Friendswood

Dr., Suite 205, Friendswood, TX 77546. Humankind Design, Ltd. may be served with process by serving its registered agent, Justin Anderson, at his usual place of business at 820 S. Friendswood Dr., Suite 205, Friendswood, TX 77546.

4. According to the records of the Texas Secretary of State, Human Design Management, LLC is a limited liability company formed and existing under the laws of Texas with its principal place of business at 1414 S. Friendswood Dr., Friendswood, TX 77546. Upon information and belief, Human Design Management, LLC's current principal place of business is located at 820 S. Friendswood Dr., Suite 205, Friendswood, TX 77546. Human Design Management, LLC may be served with process by serving its registered agent, Justin Anderson, at his usual place of business at 820 S. Friendswood Dr., Suite 205, Friendswood, TX 77546.

5. Justin Anderson is an individual and resident of Galveston County, Texas. Justin Anderson may be served with process at his usual place of business at 820 S. Friendswood Dr., Suite 205, Friendswood, TX 77546 or at his residence at 2433 Mountain Falls Ct., Friendswood, TX 77546.

6. Upon information and belief, Defendants Humankind Design, Ltd., Human Design Management, LLC, and Justin Anderson are doing business as a single business enterprise under the name "Humankind Inc." and provide services through the websites [www.humankindinc.com](http://www.humankindinc.com), [www.glowingreviews.com](http://www.glowingreviews.com), and [www.glowingreviews.co](http://www.glowingreviews.co).

### **III. JURISDICTION AND VENUE**

7. This Court has jurisdiction over this proceeding because the amount in controversy in this litigation exceeds the minimum jurisdictional limits of this Court and because Edmunds seeks injunctive relief.

8. Venue is proper in Galveston County under Texas Civil Practice and Remedies Code § 15.002 because Defendant Justin Anderson is a resident of Galveston County and the

principal office of Defendants Humankind Design, Ltd. and Human Design Management, LLC is in Galveston County.

#### **IV. FACTS SUPPORTING ALL CLAIMS AND BASES FOR RELIEF**

9. Since the 1960s, Edmunds has been a preeminent provider of information and advice related to the automotive industry. For almost 50 years, Edmunds has remained at the forefront of the industry by continually developing its line of goods and services to best serve its customers. A watershed moment came in 1995 when Edmunds launched [www.edmunds.com](http://www.edmunds.com), which was the first automotive information website. In the eighteen (18) years since the website's launch, Edmunds has been the premier online resource for automotive information. The website attracts millions of unique readers each month by consistently offering innovative, user-friendly features through [www.edmunds.com](http://www.edmunds.com).

10. Edmunds has earned its reputation as the go-to source for automotive resources by providing an abundance of trustworthy information. Edmunds employs automotive engineers, automotive journalists, PhDs, statisticians, and other experts to compile and analyze vehicle, consumer, and industry data so that the information it provides is as accurate as possible.

11. Consumers know Edmunds is committed to providing accurate, useful information that is both free and easy to access. As a result, consumers in the market for a new or used car know they only need one source to make informed decisions about what to buy and where to buy it: [www.edmunds.com](http://www.edmunds.com).

12. Among its many comprehensive services, Edmunds operates a website at which consumers can:

- obtain automotive-related news;
- read tips and advice on myriad car-related issues;

- research and compare cars, car dealerships, and car repair shops;
- view vehicle photos and videos;
- obtain technical and performance specifications;
- research vehicle pricing data;
- use Edmunds' True Cost to Own® pricing system, which calculates the additional, hidden costs of car ownership (such as depreciation, interest on a car loan, taxes and fees, insurance premiums, fuel costs, maintenance, and repairs);
- use Edmunds' True Market Value® pricing tools, which uses actual sales data to derive what others in the same geographical area paid for the same car, empowering consumers to negotiate a fair price; and
- obtain a host of other data and information relevant to car buyers, owners, and enthusiasts.

13. In addition to providing information synthesized from the industry and financial data it gathers, Edmunds provides interactive services including member discussion forums. Among the available member discussion forums is a “Dealer Reviews & Ratings” forum. As the name suggests, this forum allows consumers to share their personal experiences at car dealerships—whether positive or negative—with other potential consumers of such dealerships.

14. In order to ensure the integrity of the reviews published on its website and protect the millions of consumers who rely on Edmunds' data each month, Edmunds only accepts reviews from individuals who contract with Edmunds by becoming members of the Edmunds Automotive Network and agreeing to the terms of the Membership Agreement, which sets forth members' obligations. A true and correct copy of the Membership Agreement is attached hereto as Exhibit 1.

15. The Membership Agreement provides that it “shall be governed by and construed in accordance with the laws of the State of California, excluding its conflicts of law rules.” The Membership Agreement also provides that “the exclusive jurisdiction for any claim or action arising out of or relating to this Membership...shall be in the state or federal courts located in the County of Los Angeles, State of California” except where, as here, such jurisdiction is “expressly waived by [Edmunds] or [Edmunds] bring[s] an action in a different jurisdiction...”

16. The Membership Agreement requires members to “**agree to register only once using a single username.**” Members likewise agree that they will not:

- “(i) register under the name of another person;
- (ii) choose a username that constitutes or suggests an impersonation of any other person or entity or that [the member is] a representative of an entity when [the member is] not, or that is offensive;
- (iii) choose a username for the purposes of deceiving or misleading [Edmunds’] visitors and/or the Hosts as to [the member’s] true identity; or
- (iv) choose a username that incorporates a solicitation (e.g., yoursitedotcom, dealershipname, isellporsches).”

17. The Membership Agreement further provides that it “is a violation of this Membership Agreement for [a member] to create or post, to advise or induce anyone else to create or post, or to participate or assist anyone in the creation or posting of, any review that is not a bona fide reflection of the actual experience of the person submitting that review.”

18. These provisions are necessary both to protect Edmunds’ reputation as a provider of trustworthy information and to prevent the misuse of Edmunds’ “Dealer Reviews & Ratings” forum in a manner that would violate the Federal Trade Commission Act, specifically the

regulations set forth in 16 C.F.R. § 255.5 that prohibit the posting of fictitious reviews on websites.

19. Defendants, however, have engaged in exactly the activity that is prohibited not only by the Membership Agreement but by law. Specifically, Defendants register fraudulent accounts at Edmunds using fictitious names and then use those fraudulent accounts to submit “reviews” to Edmunds on behalf of fictitious third parties that do not reflect an actual experience of the person submitting the review.

20. Indeed, upon information and belief, the reviews Defendants submit to Edmunds do not reflect an actual experience of any person, but rather are entirely fabricated to lure new customers to the dealerships that are the subject of the fictitious “glowing” reviews.

21. Defendants have registered more than 2,000 fraudulent accounts at Edmunds using fictitious names and have misused fraudulent accounts to submit fictitious reviews to Edmunds. Edmunds has been forced to incur significant burdens to identify Defendants’ wrongful submissions.

22. Defendants are aware that their conduct violates the Membership Agreement. Indeed, Defendants’ [www.glowingreviews.co](http://www.glowingreviews.co) website acknowledges that Defendants’ services violate common Terms of Service (“TOS”)—and then shrugs its violations off—as the following Frequently Asked Question (“FAQ”) answer brazenly reveals:

## Does **posting reviews with Glowing Reviews** violate TOS of the assorted review sites?

In general, the review sites state that you must be posting for yourself and not for someone else. So in these cases the answer would be yes. That said, if you take the time to actually read the TOS you'll see that it's very easy to break something.

But this really begs looking back at the big picture. Take SEO as an example. Every link that you build to your site, every fiverr gig that you buy, every article you publish on EZine Articles is violating Google TOS. In fact, anything you do to help improve your site's ranking violates Google terms.

Every business plays in this grey area and this service just lets you do it much more efficiently.

Source: <http://glowingreviews.co/faqs/index>.

23. What Defendants callously treat as a “grey area” in which they have wiggle room to lie and defraud is, in reality, the very core of the integrity and goodwill that Edmunds has spent decades building and on which many millions of consumers rely each year.

24. Remarkably, Defendants use the fraudulent nature of the fictitious accounts they create as a purported benefit of their services. Specifically, Defendants tout the use of “aged” accounts—that is, accounts they create in advance so that by the time they are used to submit reviews, they appear authentic. Defendants acknowledge that posts linked to such “aged” accounts are more likely to be considered by consumers to be “real” reviews from “real” people—in other words, Defendants admit their business model is to deceive consumers.

25. Additionally, Defendants falsely suggest Edmunds' approval of or affiliation with Defendants' services by stating [www.edmunds.com](http://www.edmunds.com) is a "supported site" and by using a reproduction, counterfeit, copy, or colorable imitation of Edmunds' registered and common law trademarks:



Source: <http://glowingreviews.co>.

26. Edmunds has not authorized Defendants' use of Edmunds' registered logo mark, specifically U.S. Registration No. 3,843,519:



27. Likewise, Edmunds has not authorized Defendants' use of Edmunds' common law trademark ASK THE CAR PEOPLE<sup>SM</sup>, which is the subject of U.S. Trademark Application No. 85/645,574.



28. Defendants' infringing, unauthorized use of Edmunds' registered and common law trademarks further harms both Edmunds and consumers by falsely suggesting that Edmunds is willingly associated with Defendants' illegal and fraudulent actions.

29. The harm to both Edmunds and consumers is palpable and will continue unless this Court enjoins Defendants from their violations of law and contract.

30. Upon information and belief, Defendants have acted as a single business enterprise with respect to the conduct at issue in this case, making each responsible for all causes of action pleaded herein.

## **V. CAUSES OF ACTION**

### **COUNT 1 (BREACH OF CONTRACT)**

31. Edmunds repeats and incorporates each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

32. Edmunds and Defendants are parties to the Membership Agreement, a valid and enforceable contract.

33. Edmunds has fully performed and/or is excused from performance of its obligations under the Membership Agreement.

34. Defendants have breached their obligations pursuant to the Membership Agreement by, inter alia, creating multiple fictitious accounts, deceiving or misleading Edmunds' visitors, and submitting reviews that are not a bona fide reflection of the actual experience of the person submitting such reviews.

35. Edmunds has been damaged by such breach of contract in an amount to be proven at trial.

36. Edmunds is entitled to attorneys' fees under the terms of the Membership Agreement.

37. Defendants' breach of the Membership Agreement is causing irreparable harm to Edmunds, which will continue unless Defendants are enjoined by this Court.

**COUNT 2  
(TRADEMARK INFRINGEMENT)**

38. Edmunds repeats and incorporates each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

39. Edmunds is the owner of U.S. Registration No. 3,843,519 (and all common law rights and goodwill of the business associated therewith) for the trademark:



40. Edmunds is the owner of U.S. Trademark Application No. 85/645,574 for ASK THE CAR PEOPLE<sup>SM</sup> and all common law rights and goodwill of the business associated therewith.

41. Defendants have infringed Edmunds' trademarks by using a reproduction, counterfeit, copy, or colorable imitation of Edmunds' registered and common law trademarks in commerce.

42. Defendants' infringement has not been authorized by Edmunds. Such use is likely to cause confusion, to cause mistake, or to deceive the public as to the affiliation, connection, or association of Defendants with Edmunds, or as to source, origin, sponsorship, or approval of Defendants' services by Edmunds. Additionally, such use misappropriates the extensive goodwill built up by Edmunds.

43. Defendants' trademark infringement has been committed with the intent to cause confusion, mistake, and to deceive, and was otherwise deliberate, knowing, willful and/or in bad faith.

44. Defendants' trademark infringement has damaged and is likely to continue to damage Edmunds' business, reputation, and goodwill.

45. Defendants' trademark infringement is causing irreparable harm to Edmunds, which will continue unless Defendants are enjoined by this Court.

46. Edmunds is entitled to monetary damages in an amount to be proven at trial.

47. Defendants have acted with actual knowledge of the Edmunds' trademark and in bad faith, and thus Edmunds seeks attorneys' fees and that any damages awarded be tripled and any profits awarded be increased to the amount this Court finds just.

**COUNT 3  
(TRADEMARK DILUTION)**

48. Edmunds repeats and incorporates each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

49. Edmunds is the owner of U.S. Registration No. 3,843,519 (and all common law rights and goodwill of the business associated therewith) for the trademark:



50. Edmunds' trademark is famous.

51. Defendants' infringement is likely to cause dilution of Edmunds' famous trademark because Defendants' infringement harms the reputation of Edmunds' famous trademark.

52. Defendants' trademark dilution has damaged and is likely to continue to damage Edmunds' business, reputation, and goodwill.

53. Defendants' trademark dilution is causing irreparable harm to Edmunds, which will continue unless Defendants are enjoined by this Court.

54. Edmunds is entitled to monetary damages in an amount to be proven at trial.

55. Defendants have acted with actual knowledge of the Edmunds' trademark and in bad faith, and thus Edmunds seeks attorneys' fees and that any damages awarded be tripled and any profits awarded be increased to the amount this Court finds just.

**COUNT 4**  
**(FRAUD)**

56. Edmunds repeats and incorporates each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

57. Defendants entered into the Membership Agreement, a valid and enforceable contract.

58. At the time Defendants entered into the Membership Agreement, Defendants did not intend to comply with their obligations under the contract. To the contrary, Defendants entered into the Membership Agreement in order to create fraudulent accounts at Edmunds to submit fictitious reviews.

59. Defendants' promise of future performance constitutes an actionable misrepresentation on which Edmunds justifiably relied in allowing Defendants to become members of the Edmunds Automotive Network.

60. Edmunds has suffered damages as a result of such fraud in an amount to be proven at trial.

61. Edmunds' injury resulted from actual fraud, which entitles Edmunds to exemplary damages.

62. Defendants' fraud is causing irreparable harm to Edmunds, which will continue unless Defendants are enjoined by this Court.

**COUNT 5  
(UNFAIR COMPETITION)**

63. Edmunds repeats and incorporates each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

64. Defendants' unlawful and illegal acts and practices as described above constitute fraudulent, unlawful, and unfair competition as defined by Cal. Bus. & Prof. Code §§ 17200, *et seq.*

65. Defendants' unfair competition is causing irreparable harm to Edmunds, which will continue unless Defendants are enjoined by this Court.

66. Edmunds requests the disgorgement of any and all ill-gotten gains Defendants obtained in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

**COUNT 6  
(FALSE ADVERTISING)**

67. Edmunds repeats and incorporates each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

68. Defendants' illegal acts and practices as described above constitute false advertising as defined by Cal. Bus. & Prof. Code § 17500.

69. Edmunds has suffered injury in fact and has lost money or property as a result of Defendants' false advertising.

70. Defendants' false advertising is causing irreparable harm to Edmunds, which will continue unless Defendants are enjoined by this Court.

**COUNT 7  
(UNJUST ENRICHMENT)**

71. Edmunds repeats and incorporates each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

72. Defendants have obtained benefits through the fraudulent activity described herein.

73. It would be unjust for Defendants to retain the benefits of such fraudulent and wrongful conduct.

74. Edmunds requests the disgorgement of any and all ill-gotten gains Defendants obtained through their fraudulent and wrongful conduct.

**VI. REQUEST FOR DISCLOSURE**

75. Pursuant to Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants disclose, within 30 days of service of this request, the information or material described in Texas Rule of Civil Procedure 194.2.

**VII. PRAYER**

WHEREFORE, Edmunds prays for judgment against Defendants Humankind Design, Ltd., Human Design Management, LLC, and Justin Anderson for temporary and permanent injunctive relief, actual damages, exemplary damages, prejudgment and post-judgment interest, costs, and attorneys' fees. Edmunds further requests all other relief to which it is entitled.

Dated: July 23, 2013

Respectfully submitted,

HITCHCOCK EVERT LLP

By: /s/ Megan M. O'Laughlin

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