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*Attorneys for Western New York Public Broadcasting Association*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

WESTERN NEW YORK PUBLIC  
BROADCASTING ASSOCIATION,  
*a New York corporation,*

Plaintiff,

v.

RRKIDZ, INC., d/b/a LEVAR BURTON KIDS,  
*a Delaware corporation,* LEVARDIS ROBERT  
MARTYN BURTON, JR., *an individual,*

Defendant,

*and*

RAYMONDS CAPITAL, LLC, *a Delaware  
limited liability company,*

Nominal Defendant.

Case No. 1:17-cv-5914

**COMPLAINT FOR (1) COPYRIGHT  
INFRINGEMENT, (2) CONVERSION,  
(3) CYBERSQUATTING, (4) BREACH  
OF CONTRACT, (5) BREACH OF  
THE IMPLIED COVENANT OF  
GOOD FAITH AND FAIR DEALING,  
(6) INTERFERENCE WITH  
CUSTOMER RELATIONS, (7)  
TRADEMARK INFRINGEMENT,  
AND (8) DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Plaintiff Western New York Public Broadcasting Association (“WNED”), by its undersigned attorneys, Lupkin & Associates PLLC, as and for its Complaint against defendants RRKidz, Inc. d/b/a LeVar Burton Kids (“RRKidz”), Levardis Robert Martyn Burton, Jr. (“LeVar Burton”), and Raymonds Capital LLC (“Raymonds Capital”) alleges the following based upon personal knowledge with respect to its own acts and status, and upon information and belief with respect to all other matters:

### **Nature of the Dispute**

1. *Reading Rainbow* (the “RR Series”) is one of the longest-running and best-loved children’s television series. The last episode of the RR Series aired in 2006, after changes in federal funding for education depleted the revenue available for production of new episodes. The Series continued to air in re-runs until 2009.

2. The RR Series employed a consistent format throughout its 155 episodes. With few—if any—exceptions, every episode:

- a. begins with a whimsical semi-animated sequence featuring children, books, rainbows and butterflies over the theme song “Butterfly in the Sky,” composed by Stephen Horelick (the “Intro”);
- b. is hosted by LeVar Burton, who typically speaks directly to the camera (the “Host”);
- c. features a different children’s book, partially animated and read aloud—often by a celebrity guest (the “Book”);
- d. includes one or two segments in which Mr. Burton visits a location, person, event, etc. related to a theme from the book (the “Field Trips”);
- e. includes a segment featuring children talking about books they like (the “Reviews”), introduced by Mr. Burton with the catchphrase, “...but you don’t have to take my word for it” (the “Slogan”); and
- f. ends with Mr. Burton saying, “I’ll see you next time” (the “Tagline”).

3. WNED, a PBS affiliate television station in Buffalo, New York, and a co-creator of the series, owns the exclusive rights to *Reading Rainbow* and the associated intellectual property (the “RR Intellectual Property”), including the copyrights in the RR Series episodes and

various famous and distinctive trademarks such as READING RAINBOW, the *Reading Rainbow* logo, and the slogan “...but you don’t have to take my word for it.” (collectively, the “RR Marks”).<sup>1</sup>

4. In late 2011, LeVar Burton’s newly-formed company, defendant RRRKidz, obtained a license from WNED to use the RR Intellectual Property (the “License Agreement”).<sup>2</sup> As WNED’s licensee, RRRKidz took over digital distribution of the RR Series and developed of a *Reading Rainbow*-branded digital platform for the distribution of old and new *Reading Rainbow* content (eventually called “Reading Rainbow Skybrary”). At no point has LeVar Burton ever held, in his personal capacity, any rights in the RR Intellectual Property.

5. By 2015, the relationship between the parties had soured to the point where WNED chose to terminate the license. In this case, termination meant that many—but not all—of the licensed rights reverted to WNED.

6. The License Agreement gives RRRKidz ownership of those elements of the *Reading Rainbow*-branded products and services that it created independent of the RR Intellectual Property. Accordingly, the agreement granted RRRKidz a perpetual non-exclusive license to continue exploiting such “hybrid” products and services post-termination, provided it continued to pay royalties to WNED, and did not create any new products or services incorporating RR Intellectual Property.

7. RRRKidz challenged WNED’s termination, and WNED and RRRKidz have been embroiled in contentious litigation arising out of that termination for the better part of two years. The validity of WNED’s termination has yet to be fully adjudicated.

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<sup>1</sup> A table of RR Marks registered on the Principal Register in the United States Patent and Trademark Office is attached hereto as Exhibit A.

<sup>2</sup> A copy of the License Agreement is attached hereto as Exhibit B.

8. Until August 1, 2017, RRKidz conducted its business as if the License Agreement had not been terminated. On August 1, 2017, near the close of discovery in that litigation, RRKidz (1) purported to “terminate” the License Agreement, (2) purported to transfer the exclusive right to distribute the RR Series to Raymonds Capital, a company owned by John Raymonds (LeVar Burton’s longtime friend), to whom they secretly had pledged those rights in exchange for \$2.5 million, (3) moved the contents of the *Reading Rainbow* website at readingrainbow.com to levarburtonkids.com, (4) rebranded *Reading Rainbow Skybrary* as “LeVar Burton Kids Skybrary”; and (5) reduced the *Reading Rainbow* website to a single page directing visitors to the LeVar Burton Kids website.

9. As of the filing of this Complaint, RRKidz retains exclusive control over WNED’s domains, social media accounts, and YouTube pages. It is not clear who, if anyone, is administering the many sublicenses for distribution of the classic RR Series that RRKidz had been managing prior to its abdication of that role. In addition, RRKidz claims exclusive ownership of *Reading Rainbow Skybrary*, and is using the readingrainbow.com domain to redirect consumers to its new “copycat” site, levarburtonkids.com.

10. As a result of defendants’ actions, WNED has no meaningful access to *Reading Rainbow* customers, no control over the distribution of the classic RR Series, and no revenue from the exploitation of either the RR Series or *Reading Rainbow Skybrary*. At the same time, defendants are exerting full control over the RR Intellectual Property, and using it to promote Mr. Burton at the expense of WNED and *Reading Rainbow*.

11. As WNED’s licensee, RRKidz had two privileges: the right to sell products and services incorporating the RR Intellectual Property (*i.e.*, *Reading Rainbow Skybrary*), and the right to distribute episodes of the classic RR Series. Those rights came with concomitant

obligations, not least of which was the obligation to protect and promote *Reading Rainbow* and associated products and services for the benefit of WNED.

12. RRKidz has tried for years to enjoy the privileges without assuming the obligations. When all else failed, RRKidz (1) co-opted *Reading Rainbow*'s Internet presence, content, and subscription service, slapped LeVar Burton's name on them, and claimed exclusive ownership; and (2) purported to hand over exclusive rights to the classic RR Series to LeVar Burton's longtime friend, an investor with no apparent experience or ability to successfully manage the distribution of a television series.

### **Parties**

13. WNED is a New York not-for-profit educational group with its principal place of business at Horizons Plaza, 140 Lower Terrace, Buffalo, New York.

14. LeVar Burton is an individual residing in California and an officer of RRKidz. Mr. Burton is an actor known for, among other things, his role as the host of *Reading Rainbow*.

15. RRKidz is a Delaware corporation with its principal place of business at 101 S. First Street, Suite 204, Burbank, California. RRKidz was co-founded in 2011 by LeVar Burton.

16. Nominal defendant Raymonds Capital is a Delaware limited liability company with its principal place of business at 5 Mason Hill Road, Warren, New Jersey.

### **Jurisdiction and Venue**

17. This Court has original subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the Lanham Act, 15 U.S.C. §§ 1501 et seq. and the United States Copyright Act, 17 U.S.C. §§ 101 et seq. This Court also has supplemental jurisdiction over the state law claims herein pursuant to 28 U.S.C. § 1367.

18. In addition, subject matter jurisdiction exists under 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000.

19. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District. Moreover, the agreement from which many of the claims herein arise out of or relate to provides:

All actions, proceedings or litigation arising from this Agreement shall be instituted and prosecuted solely within [the State of New York].

20. This Court has *in personam* jurisdiction over the defendants pursuant to FRCP 4(k) under New York State's "long arm statute," CPLR 302. Upon information and belief, each of the defendants, including LeVar Burton, transacts business within this state and/or contracts to supply goods or services in this state, has committed a tortious act causing injury to person or property within this state, and committed tortious acts within the state.

21. This Court also has *in personam* jurisdiction over RRRKidz because RRRKidz expressly consented to the jurisdiction of this Court when it executed the License Agreement, which provides, in relevant part:

The parties hereby consent to the jurisdiction of the... federal courts located in the Southern District of New York as to any matter arising out of or relating to this agreement.

Raymonds Capital similarly consented to the jurisdiction of this Court when it purported to assume RRRKidz's rights under the License Agreement.

**LeVar Burton's Public Campaign to "Bring Back" *Reading Rainbow***

22. On or about February 18, 2009, LeVar Burton tweeted: "Want y'all to know that I'm seriously moving forward with an idea for a new version of a Reading Rainbow like show. Webisodes for adults."<sup>3</sup>

23. On or about February 11, 2010, LeVar Burton appeared during the keynote presentation at Macworld Expo 2010, where he told the audience, in words or substance, he was planning to bring *Reading Rainbow* back via the Internet later that year.<sup>4</sup>

24. On or about March 19, 2010, LeVar Burton used his personal Twitter feed to announce that "Reading Rainbow 2.0 is in th[e] works! Stay tuned for more info. But, you don't have to...."<sup>5</sup>

25. At no time between February 2009 and August 2011 did Mr. Burton or any person or entity associated with Mr. Burton have any rights in or to the RR Intellectual Property, nor had WNED authorized Mr. Burton to promote any new *Reading Rainbow* content, product, or service.

**The License Agreement**

26. On or about August 23, 2011, two years after Mr. Burton began telling the public he was going to "bring back" *Reading Rainbow*, RRRKidz entered into the License Agreement, pursuant to which WNED granted RRRKidz the exclusive right to distribute existing episodes of the RR Series in channels other than broadcast television, and to create and exploit new goods,

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<sup>3</sup> <https://twitter.com/levarburton/status/1225549175>

<sup>4</sup> <https://arstechnica.com/gadgets/2010/02/pogues-macworld-keynote-overcomes-skepticism-entertains/>

<sup>5</sup> <https://twitter.com/levarburton/status/10730167290>

products, and services using the RR Intellectual Property, in exchange for a 1% royalty (subject to a guaranteed minimum annual payment).

27. WNED expressly reserved for itself the right to produce new episodes of the RR Series, or motion pictures featuring the RR Intellectual Property, but gave RRRKidz the rights of first negotiation and last refusal for the exploitation of such new content, and the opportunity to share in the revenue from exploitation of WNED's reserved rights by third parties.

28. The License Agreement contemplated a “divide and conquer” approach to the renascence of *Reading Rainbow*: While RRRKidz and Mr. Burton focused on “the creation of good, products and services” incorporating the RR Intellectual Property—specifically, a digital “app” for children—WNED would focus on developing new *Reading Rainbow* episodes. Once WNED launched the new series, both parties would share in the upside—the License Agreement provides that RRRKIDZ would share 50% of all proceeds from any license or transfer by WNED of its reserved rights in the RR Intellectual Property after the first \$2 million.

#### ***Reading Rainbow Skybrary***

29. On or about June 20, 2012, RRRKidz launched a *Reading Rainbow* branded iPad app. The app operated on a subscription model and featured children's books, partially animated and read aloud by Burton and others—*i.e.*, the “Book” segment of the RR Series. The app also featured RRRKidz-produced “video field trips” designed to look and feel like the “Field Trip” segments from the RR Series.



30. On or about May 28, 2014, RRRKidz launched a Kickstarter<sup>6</sup> campaign to raise money to “Bring Reading Rainbow Back for Every Child, Everywhere!”<sup>7</sup> RRRKidz raised over \$6.5 million to “Bring Reading Rainbow Back,” and used that money to expand the app to platforms other than the iPad.

31. On or about May 13, 2015, RRRKidz launched *Skybrary by Reading Rainbow*, a subscription-based digital library of children’s books, “video field trips”, and clips from the original RR Series that could be accessed on iPads, Android tablets, Kindle Fire tablets, or through a web browser at [www.readingrainbow.com/skybrary](http://www.readingrainbow.com/skybrary). The proceeds of the Reading Rainbow Kickstarter campaign funded the development, production, marketing, and distribution of *Skybrary by Reading Rainbow* (often referred to as *Reading Rainbow Skybrary*).

**RRKidz Impedes WNED’s Ability to Develop a New *Reading Rainbow* Series**

32. Unfortunately, even as RRRKidz rejoiced in the success of *Reading Rainbow Skybrary*, it was actively undermining WNED’s efforts to develop a new series.

33. During the Reading Rainbow Kickstarter campaign, Netflix’s Director of Content Acquisition, Andy Yeatman, reached out to RRRKIDZ about developing a new *Reading Rainbow* series. Even though WNED had the exclusive right to develop new episodes of the series, RRRKidz engaged in extensive discussions with Netflix without WNED’s knowledge. By the time WNED learned about those discussions, in late September 2014, RRRKidz had already negotiated the terms of a development and production deal with Netflix and brought in The Jim Henson Company as a producer.

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<sup>6</sup> Kickstarter is a digital “crowdfunding” platform where individuals or organizations can set up a webpage to solicit monetary contributions in exchange for various tiers of “rewards” to be delivered once funding goals are met.

<sup>7</sup> <https://www.kickstarter.com/projects/readingrainbow/bring-reading-rainbow-back-for-every-child-everywh/>

34. Even after RRRKidz finally revealed the Netflix deal to WNED, RRRKidz worked assiduously to prevent WNED from participating in discussions with Netflix. RRRKidz's then-CEO, Mark Wolfe, told WNED's CEO, Don Boswell, that RRRKidz would come to WNED after RRRKidz and Netflix (and The Jim Henson Company) had reached a final agreement, to get WNED's approval. RRRKidz's intentional exclusion of WNED ensured that a deal would not be consummated.

35. While RRRKidz was secretly negotiating with Netflix, WNED had been working on the development of a new *Reading Rainbow* series. As part of those development efforts, Don Boswell would occasionally seek advice or recommendations from an executive at PBS with expertise in children's programming. In or around April of 2015, WNED learned that representatives of RRRKidz had met with that executive and told her that a *Reading Rainbow* series could not be made without LeVar Burton as the host. RRRKidz failed to inform her that RRRKidz was not involved in WNED's development efforts, and had no right to direct those efforts. Mr. Burton knew at that time that WNED was not considering using Mr. Burton as the host for the new series.

36. The License Agreement created a licensing paradigm that, if followed, would prevent WNED and RRRKidz from working at cross-purposes. For example, the License Agreement imposed explicit restrictions on the RRRKidz's distribution of audiovisual content. Among other things, it prohibited RRRKidz from distributing any single piece, or collection of pieces, the total length of which was fifteen minutes or longer—*i.e.*, content that might be consumed in the same manner or method as an episode of a TV series, and thus cross over into the territory reserved for WNED.

37. In or around March 2015, WNED learned that RRRKidz was making available on the *Reading Rainbow* YouTube channel collections of “video field trips” longer than 15 minutes in duration. Concerned that the availability—for free—of episodic content similar to the original RR Series episodes would discourage potential business partners from investing in new *Reading Rainbow* content, WNED repeatedly asked RRRKidz to conform the content available on YouTube to the requirements of the License Agreement. RRRKidz refused.

38. On or about August 7, 2015, WNED provided RRRKidz with formal notice of breach of the License Agreement, triggering a 60-day period after which, if RRRKidz had not cured its breach, the License Agreement would terminate.

39. Termination of the License Agreement pursuant to its terms would not fully sever the relationship between the parties. Rather, it would permit RRRKidz to continue exploiting existing *Reading Rainbow* branded products (*i.e.*, *Reading Rainbow Skybrary*) on a non-exclusive basis, while returning exclusive control of the RR Series to WNED. RRRKidz would no longer have the right to distribute episodes of the original RR Series, nor would it have the rights of first negotiation and last refusal for, or the right to share in the revenue from, any new episodes produced by WNED.

40. Termination pursuant to the License Agreement also would return control of the *Reading Rainbow* website, social media, domains, and YouTube pages to WNED.

#### **RRKidz Sues WNED to Avoid the Restrictions in the License Agreement**

41. On February 5, 2016, after WNED and RRRKidz agreed to several extensions of the cure period, RRRKidz filed a lawsuit against WNED seeking, among other things, a declaration that “the Agreement is not and cannot be terminated by the WNED Termination Notice or otherwise” and that WNED’s termination notice “constitutes a material anticipatory

breach and repudiation...[which] excuses further performance under the Agreement by RRRKidz.”<sup>8</sup>

42. The relief RRRKidz sought (and, paradoxically, still is seeking in that action) is telling. RRRKidz asked the Court to rule that the License Agreement remains valid and enforceable insofar as it imposes obligations and restrictions on WNED (*e.g.*, RRRKidz would continue to enjoy an exclusive license to the RR Intellectual Property, the right of first refusal/last negotiation for the production of any new episodes, and revenue participation in WNED’s exploitation of those rights) but at the same time free RRRKidz from its own obligations (*e.g.*, payment of royalties, identification of WNED as the owner and licensor of the RR Intellectual Property, accountability to WNED, etc.), as well as the consequences of termination (*e.g.*, the reversion of rights to WNED).

43. On March 10, 2016, WNED filed an answer, affirmative defenses, and counterclaims against RRRKidz. The counterclaims asserted, among other things, breach of the License Agreement, violation of WNED’s trademark rights, and unfair and deceptive business practices. (RRKIDZ Action, Dkt. No. 22). In its prayer for relief, WNED asked the court to dismiss RRRKidz’s complaint, order RRRKidz to comply with its obligations under the License Agreement, and stop misrepresenting the scope of its rights in the RR Intellectual Property.

44. On March 18, 2016, the extended cure period expired and the License Agreement was terminated. RRRKidz refused to acknowledge that termination, and continued to exploit the original episodes of the RR Series and control the *Reading Rainbow* website, YouTube page, and social media accounts.

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<sup>8</sup> *RRKidz, Inc. v. Western New York Public Broadcasting Association*, 1:16-cv-00912-VSB-DCF (the “RRKIDZ Action”).

45. On August 4, 2016, WNED was forced to seek a preliminary injunction after RRRKidz and Mr. Burton refused to withdraw or correct numerous false and misleading assertions—including on the *Reading Rainbow* website, a book authored by Mr. Burton, and on the Facebook page of Mr. Burton’s business partner—that Mr. Burton is the “owner” of *Reading Rainbow*. (RRKIDZ Action, Dkt. Nos. 45, 46, 67).

46. Only after a hearing before the Court on October 11, 2016 did RRRKidz finally agree to correct the misleading statements. On October 20, 2016, the Court entered an order enjoining RRRKidz from representing that Mr. Burton owns *Reading Rainbow*. (RRKIDZ Action, Dkt. No. 76).

#### **Mr. Burton Uses the RR Marks to Promote his New Podcast**

47. On or about June 13, 2017, Mr. Burton launched a new podcast entitled “Levar Burton Reads,” in which Mr. Burton narrates short stories.<sup>9</sup>

48. Approximately 48 seconds into the first episode, after a musical intro, the following exchange occurs:

FEMALE VOICE: Let’s talk about...

LEVAR BURTON: Why I want to do a podcast?

FEMALE VOICE: Yeah, let’s talk about that.

LEVAR BURTON: [laughs] Yeah, yeah. Well here’s the thing: people have asked me, um, for years and years and years, **when are you going to do a Reading Rainbow for adults?** And it’s always been something that’s on my mind so I wanted to address that, **I wanted to address a Reading Rainbow for adults.**

(emphasis added).

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<sup>9</sup> The podcast can be found at <http://www.levarburtonpodcast.com/>

49. In the days and weeks following the release of that episode, the media latched on to Mr. Burton's use of the phrase "Reading Rainbow for adults," and it became the *de facto* slogan for the podcast.<sup>10</sup>

50. On July 27, 2017, Mr. Burton appeared on The Brian Lehrer Show on WNYC in New York to promote his new podcast. The first question Mr. Lehrer asked Mr. Burton was: "Is the podcast Reading Rainbow for the millennials who grew up watching it?" Mr. Burton replied: "It's not intended to be a direct translation of Reading Rainbow. The commonalities are: it is storytelling. It's simply just me reading short stories honestly, that's the deal. But **people are calling it Reading Rainbow for adults and I can't stop them from that.**" (emphasis added).

51. Mr. Burton's response reflects his sophistication as a promoter: he deftly seized upon an unremarkable question about the target market for his podcast as an opportunity to repeat his pithy slogan, even as he coyly purported to distance himself from it. WNED did not authorize Mr. Burton to use the registered mark *Reading Rainbow* in connection with his podcast.

52. Mr. Burton also closes each episode of his podcast by saying "I'll see you next time, but you don't have to take my word for it." Burton's use of both the Slogan and the Tagline from the RR Series is an unmistakable—and unauthorized—invocation of *Reading Rainbow* and

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<sup>10</sup> See, e.g., <https://www.elephantjournal.com/2017/06/reading-rainbow-for-adults-is-a-real-thing-its-just-what-we-all-need/>, <https://www.bustle.com/p/reading-rainbow-host-levar-burton-has-a-new-podcast-where-he-reads-to-adults-its-soothing-af-65810>, <https://geektyrant.com/news/levar-burton-has-a-new-podcast-that-is-basically-reading-rainbow-for-adults>, [http://www.huffingtonpost.com/entry/levar-burton-reading-rainbow-podcast\\_us\\_594a7413e4b00cdb99cbb1c1](http://www.huffingtonpost.com/entry/levar-burton-reading-rainbow-podcast_us_594a7413e4b00cdb99cbb1c1), <https://www.nerdist.com/levar-burtons-new-podcast-is-like-reading-rainbow-for-adults/>, <http://fanfest.com/2017/06/28/levar-burtons-new-short-fiction-podcast-is-basically-reading-rainbow-for-adults/>, <http://www.neatorama.com/neatogeek/2017/07/08/LeVar-Burtons-New-Podcast-Is-Like-Reading-Rainbow-For-Adults/>, <http://www.sfgate.com/entertainment/article/Reading-Rainbow-LeVar-Burton-new-podcast-11250797.php>.

its goodwill in the service of Mr. Burton's personal career goals. When WNED demanded that Mr. Burton cease using the RR Marks to promote his podcast, counsel for RRRKidz and Mr. Burton refused, claiming that RRRKidz had no control over Mr. Burton's actions and suggesting Mr. Burton believes he has the unrestricted right to use the Slogan.

**RRKidz Misappropriates *Reading Rainbow* Skybrary**

53. On the evening of July 31, 2017, with only residual discovery left before the parties were due to file dispositive motions and prepare for trial in the RRRKIDZ Action, RRRKidz's counsel sent WNED a draft settlement agreement and an ultimatum:

Due to the availability of certain RRRKidz personnel who are critical to the transition process, RRRKidz must transition Skybrary to a new branded website tomorrow (August 1, 2017). RRRKidz sees three potential paths forward:

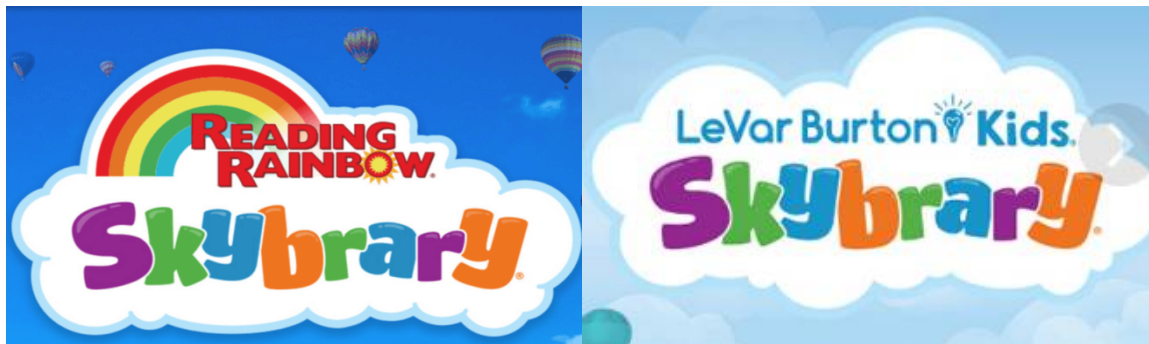
1. The parties can sign the attached settlement agreement today or tomorrow;
2. If the attached settlement terms are acceptable to WNED (and WNED expects they will be after discussion with the Board), but WNED needs additional time for logistics, WNED can send RRRKidz a simple email agreeing that RRRKidz can launch a new branded website for Skybrary tomorrow and that RRRKidz will keep [readingrainbow.com](http://readingrainbow.com) active with clips and content re: the classic series until the settlement closes; or,
3. If the attached settlement terms are not acceptable to WNED, RRRKidz can terminate the RR license agreement and the parties can proceed with litigation.

54. WNED never authorized RRRKidz to "transition Skybrary to a new branded website." Upon receiving this ultimatum, WNED promptly notified RRRKidz, through counsel, that RRRKidz could not terminate the license agreement in the threatened manner.

55. Late on the night of July 31, 2017 or early in the morning of August 1, 2017, RRRKidz replaced the entire *Reading Rainbow* website at [www.readingrainbow.com](http://www.readingrainbow.com) with a single page headed by a large banner:



56. The banner shows two logos. The first is the *Reading Rainbow* logo; the second is the *Reading Rainbow Skybrary* logo, with a simple but profound change: RRRKidz replaced “Reading Rainbow” with “LeVar Burton Kids”:

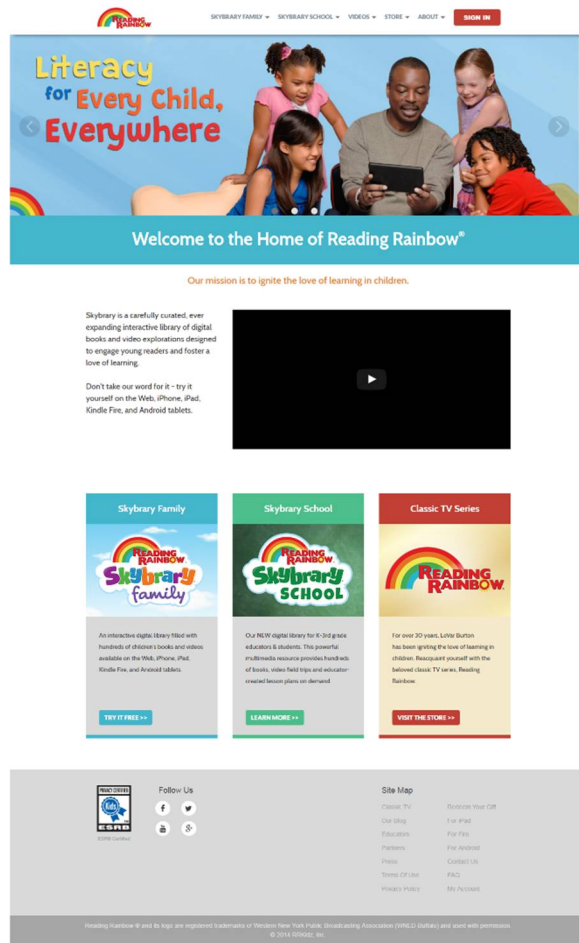


57. Below the banner is a notice that reads: “As of August 1, 2017 RRRKidz will no longer license the Reading Rainbow brand. ReadingRainbow.com is owned and operated by WNED-Buffalo.”

58. The “CLICK HERE” link beneath the adulterated *Reading Rainbow Skybrary* logo takes the user to [www.levurburtonkids.com](http://www.levurburtonkids.com), which is where RRRKidz moved the rest of the *Reading Rainbow* website, replacing “Reading Rainbow” with “LeVar Burton Kids”. Below are comparisons of pages currently on [levurburtonkids.com](http://levurburtonkids.com) with pages that were on [readingrainbow.com](http://readingrainbow.com) just a few days ago.



readingrainbow.com, July 25, 2017:



levarburtonkids.com, August 2, 2017:



readingrainbow.com/skybrary-family, July 10, 2017



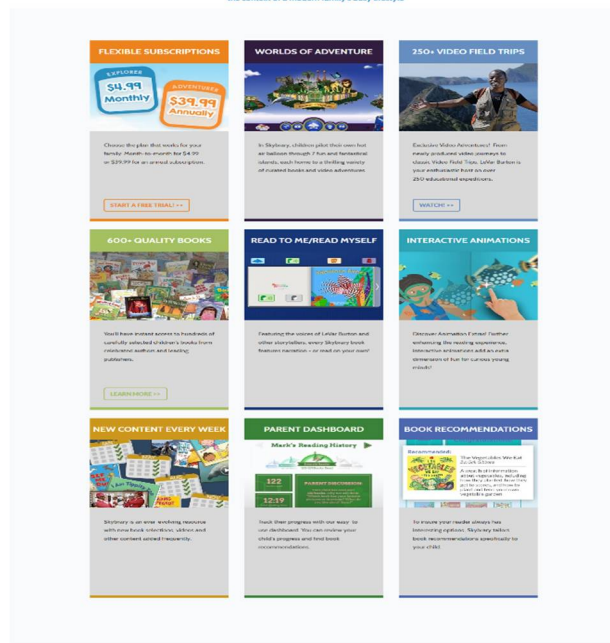
With Skybrary Family, your child can go anywhere and be anything!



### Why Skybrary Family?

- Embodies the Educational Values of the National Literacy Council's PBS TV series Reading Rainbow
- Enhances a Child's Relationship to Reading by Making it Fun, Interesting and Relevant!
- Supports Increased Reading Frequency & Literacy Development
- Provides Healthy, Interactive, Educational Screen Time
- Award-Winning Learning App Recognized by PBS Kids and More!

Designed to engage young minds within the context of a modern family's busy lifestyle

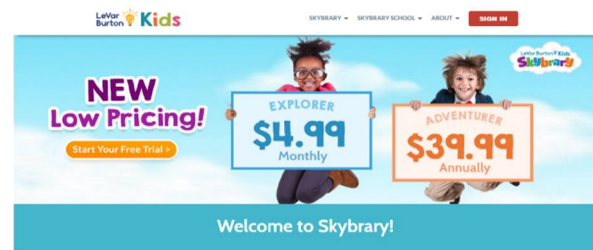


christinahibbards

Spring Break is officially over! I faced the reality today and began to revamp my listening center. We're going to use the Reading Rainbow Skybrary app in our listening center with these response sheets that I made for fiction and non-fiction books. I'm pretty excited for them to try out this app. It's amazing!



levarburton.com/skybrary, August 3, 2017:

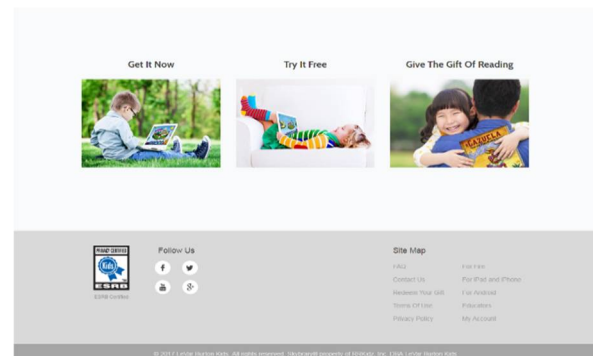
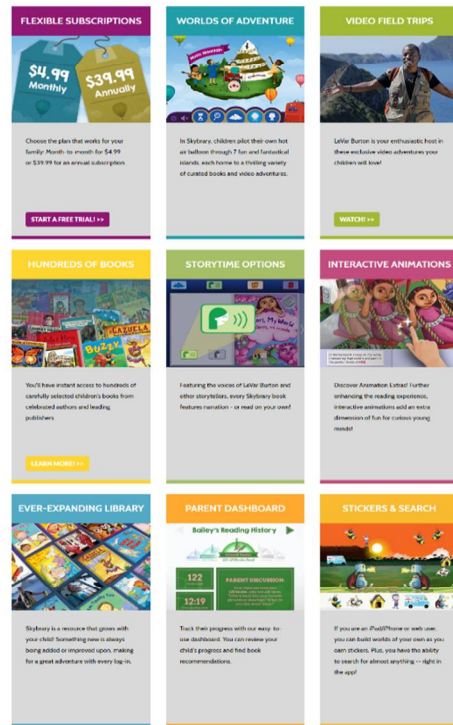


Welcome to Skybrary!

Skybrary is a carefully curated, ever expanding interactive library of digital books and video explorations designed to engage young readers and foster a love of learning. Don't take our word for it - try it yourself on the Web, iPhone, iPad, Kindle Fire, and Android tablets.



Instant, Unlimited Access To Books & Videos Your Child Will Love!



59. At the same time, RRRKidz “updated” the *Reading Rainbow Skybrary* app, renaming it *LeVar Burton Kids Skybrary* on iTunes and simply *Skybrary* on Amazon and Google Play. As with the webpages, RRRKidz merely replaced “Reading Rainbow” with “LeVar Burton Kids”:



60. RRRKidz also removed most of the content from the *Reading Rainbow* YouTube page.

61. At 11:34 on the morning of August 1, WNED demanded that RRRKidz restore the *Reading Rainbow* website and YouTube page.



62. At 6:49 that evening (*after* it had sabotaged *Reading Rainbow*'s internet presence and converted the website and *Skybrary* for its exclusive use), RRKidz sent a notice to WNED stating "effective August 1, 2017, RRKidz will not pay to WNED the Minimum Guarantee as set forth in paragraphs 5 and 6 of the License Agreement. Accordingly, under paragraph 8.c., the License Agreement has expired." RRKidz's claim that License Agreement expired is contrary to the terms of the License Agreement itself.

63. Paragraph 5 of the License Agreement requires RRKidz to pay a minimum annual royalty (the "Minimum Guarantee") by December 31 of each year.

64. Paragraph 6 of the License Agreement states that the agreement "will be automatically extended in one-year increments (in perpetuity) for each year that WNED receives the Minimum Guarantee set forth in paragraph 5 above. In the event the applicable Minimum Guarantee is not timely paid to WNED, **WNED may** elect to terminate this Agreement upon 60 (sixty) days' notice to RRKIDZ." (emphasis added).

65. Paragraph 8.c sets forth the consequences of "termination of this Agreement by WNED or expiration of the Term of this Agreement [at WNED's election] on account of the failure of RRKIDZ to pay the Minimum Guarantee as set forth in paragraphs 5 and 6 hereof."

66. In other words, RRKidz asserts the License Agreement is terminated, effective immediately, because in five months' time, when the Minimum Guarantee comes due, RRKidz will not pay it. But that failure to pay, should it happen, would give WNED (not RRKidz) the **option** to terminate the agreement—no earlier than March 1, 2018.

67. Why would RRKidz concoct such a flimsy and contractually baseless pretext for terminating the License Agreement, especially since WNED gave RRKidz notice of termination almost two years ago, and RRKidz has spent the past two years fighting about its validity? The

answer, as set forth more fully below, is that RRKidz and Mr. Burton realized their litigation gambit had failed.

### **Defendants' Bait-and-Switch**

68. As evidenced by Mr. Burton's conduct since he began "teasing" the public about the return of *Reading Rainbow* years before his company acquired any rights to do so, Mr. Burton's goal is to control and reap the benefits of *Reading Rainbow*'s substantial goodwill—goodwill that unquestionably belongs to WNED.

69. First, defendants tried to assert control over the brand through deception: secret negotiations with Netflix, false assertions of ownership of the RR Intellectual Property, and misleading efforts to persuade WNED's business associates to make Mr. Burton the host of any new series.

70. Then, defendants tried brute force: the RRKIDZ Action, through which they tied up the RR Intellectual Property while waging a war of attrition intended to extract a settlement that would loosen restrictions of their ability to exploit the RR Intellectual Property.

71. Now that WNED has called their bluff and is prepared to take the RRKIDZ Action to trial, defendants have resorted to theft and extortion.

72. As the RRKIDZ Action moved closer to trial, RRKidz began working with Mr. Burton's longtime friend, John Raymonds, to secretly encumber the RR Intellectual Property as collateral for \$2.5 million in loans from Raymonds Capital.

73. To be sure, the License Agreement permits RRKidz to pledge its rights in the RR Intellectual Property as security to finance its exploitation of the *Reading Rainbow* brand. It also provides that, upon termination of the agreement, "any such rights that are subject to a Security Interest at the time of termination or expiration will transfer to the holder of such Security

interest and WNED, in its sole discretion, will have the right, but not the obligation, to purchase such rights from the holder of the Security Interest.”

74. But what RRKidz did during the pendency of the RRKIDZ Action was neither contemplated nor permitted by the License Agreement.

75. Prior to WNED’s termination of the License Agreement effective March 18, 2016, RRKidz’s rights under the License Agreement were pledged to Raymonds Capital as security for a promissory note in the amount of \$351,750.

76. During the pendency of the RRKIDZ Action, RRKidz paid Raymonds Capital \$400,000 (*i.e.*, more than the full amount outstanding on the pre-termination note) and borrowed an additional \$2.5 million against its rights under the License Agreement.

77. WNED did not learn of this significant encumbrance until mid-July 2017, when RRKidz made its settlement proposal with the arbitrary August 1 deadline. The message was clear: if WNED did not accept settlement on RRKidz’s terms, WNED would face a massive encumbrance on its intellectual property and the possible transfer of those rights to a third party aligned with RRKidz, and from whom WNED would have to buy back its own rights.

78. When WNED again called RRKidz’s bluff, RRKidz concocted the theory it put forth in its August 1 letter: that it could unilaterally terminate the License Agreement under a provision that gives WNED—and *only* WNED—the *option* to terminate the agreement.

79. The proof of RRKidz’s desperate intent can be found in the fifth paragraph of its August 1 letter:

As you are already aware, the rights to exploit the classic series under the SV License and the RRKIDZ/SV Acquisition (as defined in the License Agreement) are subject to a security interest held by Raymonds Capital LLC. Therefore, pursuant to paragraph 8.c.(i) of the License Agreement, those rights have transferred to Raymonds Capital LLC. If WNED is interested in purchasing those

rights from Raymonds Capital LLC, please let me know and I will put you in contact with the proper representative from Raymonds Capital LLC.

80. Presumably, RRRKidz continues to enjoy the \$2.5 million dollars it obtained from Raymonds Capital. At the same time, RRRKidz's clear implication is that Raymonds Capital is free to extract whatever price it chooses from WNED for the return of WNED's rights.

81. RRRKidz is wrong. Once WNED terminated the License Agreement effective March 18, 2016, RRRKidz lost both the right to distribute the RR Series and the right to use that right as security. Thus, RRRKidz's post-termination pledge of \$2.5 million to Raymonds Capital is void.

**Count I**  
**(Copyright Infringement – against RRRKidz and LeVar Burton)**

82. WNED hereby repeats and re-alleges the allegations set forth in paragraphs 1 through 81 of these counterclaims, as though fully set forth herein.

83. WNED owns the rights and title to the copyright in the RR Series.

84. WNED has registered with the United States Copyright Office individual episodes of the Series as television motion pictures (the "Works").

85. A list of the Works appears as Schedule B to the License Agreement (Exhibit B).

86. The Works are original, creative, copyrightable works composed of numerous protectable elements that recur from episode to episode, including, among others, the Intro, the Host, the Book, the Field Trips, the Reviews, and the Slogan.

87. RRRKidz has had copies of the master tapes for each of the Works in its possession, custody, or control since 2011.

88. RRRKidz, as WNED's licensee, created original audiovisual content for use in connection with *Reading Rainbow Skybrary* (the "Skybrary Content") That content was and is

substantially similar to the Works, and observers immediately recognized those similarities—describing them as “basically new video segments in the style of the old show, recorded with Burton,”<sup>11</sup> “recorded segments featuring Burton that are reminiscent of the old show,”<sup>12</sup> and “video segments in the style of the old show with Burton showing the children an environment.”<sup>13</sup>

89. RRKidz was authorized to create and distribute the Skybrary Content pursuant to section 2.a of the License Agreement, which granted RRKidz the right to “use [RR Intellectual Property] in the creation of goods, products and services (collectively ‘RRKIDZ/RR Branded Content’) and the exploitation thereof....”

90. Upon termination of the License Agreement, pursuant to section 8.c.(v), RRKidz retained the nonexclusive right to exploit RRKIDZ/RR Branded Content created by RRKidz prior to termination, so long as WNED continued to receive royalty payments for such exploitation. RRKidz would retain ownership of that portion of the RRKIDZ/RR Branded Content that did not constitute RR Intellectual Property (§ 2.b), but could not, after termination, create any new content using RR Intellectual Property (§ 8.c.(v)).

91. Also on August 1, 2017, at the direction (and with the participation) of its officer, Mr. Burton, RRKidz began to exploit a new product (“Levar Burton Kids Skybrary”), which incorporates the Skybrary Content.

92. Although the parties dispute the date on which the License Agreement terminated, both agree it was terminated by August 1, 2017. Thus, there is no dispute defendants do not have any license, authorization, permission, or consent to use the Works or any of the protected

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<sup>11</sup> <https://techcrunch.com/2012/06/20/reading-rainbow-ipad/>

<sup>12</sup> <http://www.nydailynews.com/life-style/reading-rainbow-back-ipad-app-article-1.1099278>

<sup>13</sup> <http://vator.tv/news/2012-06-20-reading-rainbow-reborn-on-the-smaller-screen>



elements thereof in “LeVar Burton Kids Skybrary”—or in any other goods, products, or services other than *Reading Rainbow Skybrary*, as it existed at the time of termination.

93. Defendants have infringed and are continuing to infringe WNED’s copyrights in and relating to the RR Series by, *inter alia*, reproducing, distributing, publicly performing and publicly displaying the Skybrary Content outside of *Reading Rainbow Skybrary* (as it existed at the time of termination of the License Agreement) without any authorization or other permission from WNED.

94. Defendants’ infringement of WNED’s copyrights has been deliberate, willful and in utter disregard of WNED’s rights.

95. As a direct and proximate result of defendants’ wrongful conduct, WNED has been substantially and irreparably harmed in an amount not readily capable of determination. Unless restrained by this Court, defendants will cause further irreparable injury to WNED. Thus, WNED is entitled to an order enjoining RRRKidz, its officers, agents, employees, and all persons acting in concert or participation with them, from engaging in any further infringement of WNED’s rights in the RR Series.

96. WNED also is entitled to monetary damages, including any gains, profits and advantages obtained by defendants as a result of their wrongful acts, or statutory damages, pursuant to 17 U.S.C. § 504.

**Count II**  
**(Conversion – against RRRKidz)**

97. WNED hereby repeats and re-alleges the allegations set forth in paragraphs 1 through 96 of these counterclaims, as though fully set forth herein.

98. As WNED's licensee, RRKidz was responsible for operating and maintaining the websites, blogs, and social media accounts employed in connection with the marketing and distribution of RRKIDZ/RR Branded Content.

99. RRKidz has sole control over and access to the passwords and other credentials for those websites and social media accounts, associated email accounts, and the servers where the content on those various sites and accounts is stored.

100. On August 1, 2017 RRKidz purported to terminate the License Agreement and abdicate its responsibilities as WNED's licensee. At the same time, it made significant changes to the website at readingrainbow.com, and to the *Reading Rainbow* YouTube channel.

101. When WNED demanded that RRKidz reverse the changes it made, RRKidz refused.

102. On August 2, 2017, WNED demanded that RRKidz immediately turn over to WNED all access and administrative rights in (and any and all files, credentials, services, software, or other assets or information on, or necessary to the operation or maintenance of) every website, webpage, and social media account associated with Reading Rainbow—including, without limitation, the Reading Rainbow Facebook, Twitter, Instagram, Pinterest, Google+, and YouTube pages, and the following domains, including all subdirectories and subdomains thereof (e.g., reader.readingrainbow.com, assets.readingrainbow.com, cdn.readingrainbow.com, cdn1.readingrainbow.com, cdn2.readingrainbow.com, content.readingrainbow.com, readingrainbow.com/skybrary-family, readingrainbow.com/school, etc.):

- readingrainbow.com
- readingrainbow.net

- readingrainbow.org
- reading-rainbow.com
- reading-rainbow.net
- reading-rainbow.org
- readingrainbowdvd.com
- rrkickstarter.com
- supportreadingrainbow.com
- helpreading-rainbow.com
- savereadingrainbow.com

(collectively, the “Electronic Assets”).

103. RRKidz has not turned over control of, or provided access to, any of the Electronic Assets.

104. So long as RRKidz remains in possession of WNED’s Electronic Assets, and therefore in control over *Reading Rainbow*’s entire Internet presence and the means by which WNED would communicate with *Reading Rainbow* customers, WNED will continue to suffer irreparable harm.

105. WNED seeks an order requiring RRKidz to immediately turn over and surrender to WNED all the Electronic Assets, and to destroy any and all copies that thereafter remain within RRKidz’s possession, custody, or control.

**Count III**  
**(Lanham Act § 43(d) – against RRKidz)**

106. WNED hereby repeats and re-alleges the allegations set forth in paragraphs 1 through 105 of these counterclaims, as though fully set forth herein.

107. WNED has long used the RR Marks in interstate commerce in connection with the advertising, promotion, and distribution of the RR Series and associated products and services.

108. RRRKidz is aware of WNED's exclusive ownership of the RR Marks.

109. RRRKidz is the registrant of the domain name readingrainbow.com.

110. RRRKidz is using the domain name readingrainbow.com to direct customers of *Reading Rainbow* to levarburtonkids.com, a site promoting products and services from which RRRKidz seeks to profit at the expense of WNED.

111. RRRKidz has violated 15 U.S.C. § 1125(d)(1)(A) in that it has used, and is using, a domain name that is identical to the famous registered mark READING RAINBOW with a bad faith intent to profit from that mark.

112. RRRKidz's unauthorized and tortious conduct has caused WNED to suffer commercial damage, as well as the loss of goodwill and reputation established by WNED in the RR Marks.

113. WNED seeks an order transferring the domain readingrainbow.com to WNED and an award of statutory damages in the amount of not less than \$1,000 and not more than \$100,000, as the Court considers just.

114. Because RRRKidz acted knowingly, deliberately, and willfully, this is an exceptional case under § 1117(a), entitling WNED to recover its reasonable attorneys' fees.

**Count IV**  
**(Breach of Contract – against RRRKidz)**

115. WNED hereby repeats and re-alleges the allegations set forth in paragraphs 1 through 114 as though fully set forth herein.

116. WNED and RRKidz are parties to a valid and enforceable license agreement.

117. WNED contends it terminated the License Agreement effective March 18, 2016. RRKidz contends the License Agreement was only terminated on August 1, 2017. In either case, WNED has fully performed under the agreement and RRKidz has breached it.

118. RRKidz breached section 8.c the License Agreement, which sets forth certain changes triggered by termination of the agreement, by failing to acknowledge the reversion of rights to WNED, continuing to assert the exclusive right to distribute the RR Series, purporting to assign that right to Raymonds Capital as security for a loan, and refusing to return control to WNED over its Internet presence, content and subscription services.

119. RRKidz breached section 2.b of the License Agreement by failing to “consult with WNED regarding the design(s) of RRKIDZ’ sites.”

120. RRKidz breached section 7.j of the License Agreement by engaging in “activity or conduct which reflects unfavorably on the goodwill associated with the Registered Marks,” including by removing most of the content from the *Reading Rainbow* website and YouTube page, by turning the *Reading Rainbow* website into an advertisement for “LeVar Burton Kids,” and by falsely announcing to the world (including on the *Reading Rainbow* website), without explanation or context, that RRKidz is no longer a licensee of WNED.

121. RRKidz breached sections 7.a and 7.b of the License Agreement by failing to exert commercially reasonable efforts to cause LeVar Burton to comport himself with professionalism, decorum, and honesty in connection with the RR Intellectual Property.

122. RRKidz breached section 7.l of the License Agreement by failing to promptly inform WNED of LeVar Burton’s unauthorized use of the RR Marks, and by refusing to assist WNED in the enforcement of WNED’s rights against LeVar Burton.

123. RRKidz breached section 7.r of the License Agreement by failing to “use commercially reasonable efforts to promote the exploitation of the RR Series...and the exploitation of RR Branded products,” instead abandoning the RR Series, removing the *Reading Rainbow* brand from *Reading Rainbow Skybrary*, and exploiting that formerly RR Branded product for the exclusive benefit of RRKidz and LeVar Burton

124. RRKidz breached section 8.c.(v) by “exploit[ing] RRKIDZ/RR Branded Content created by RRKIDZ prior to the termination of” the License Agreement (*i.e.*, *Reading Rainbow Skybrary*) in a manner other than that permitted by WNED, by excluding WNED from its Gross Receipts participation in RRKIDZ’s exploitation of *Reading Rainbow Skybrary*, and by “creat[ing]...new RRKIDZ/RR Branded Content that uses the RR Intellectual Property” (*i.e.*, “LeVar Burton Kids Skybrary”).

125. RRKidz’s conduct has caused, and continues to cause, substantial injury to WNED, for which WNED seeks monetary damages in an amount to be proven at trial.

126. WNED is entitled to reasonable attorneys’ fees under section 18.e. of the License Agreement because this claim and controversy arise out of or relate to the Agreement.

127. WNED further requests such other or additional relief as the Court may find just according to the circumstances of the case.

**Count V**  
**(Breach of Implied Covenant of**  
**Good Faith and Fair Dealing – against RRKidz)**

128. WNED hereby repeats and re-alleges the allegations set forth in paragraphs 1 through 128 of these counterclaims, as though fully set forth herein.

129. In the alternative, to the extent that RRRKidz's conduct described in Count IV above did not constitute a breach of the Agreement, it was a breach of the implied covenant of good faith and fair dealing.

130. If it is finally adjudicated that the License Agreement was terminated effective March 18, 2016, certain provisions of that agreement would not have applied after that date. However, because RRRKidz behaved (until August 1, 2017) as if the agreement were in place, to the extent its conduct did not technically constitute a breach of the License Agreement, it was a breach of the implied covenant of good faith and fair dealing.

131. RRRKidz's unauthorized conduct has caused, and continues to cause, substantial injury to WNED, for which WNED seeks monetary damages, the costs of the action together with WNED's reasonable attorneys' fees, and such other or additional relief as the Court may find just according to the circumstances of the case.

132. WNED is entitled to reasonable attorneys' fees under section 18.e. of the Agreement because this claim and controversy arise out of or relate to the Agreement.

**Count VI**  
**(Interference with Customer Relations – against RRRKidz)**

133. WNED hereby repeats and re-alleges the allegations set forth in paragraphs 1 through 132 of these counterclaims, as though fully set forth herein.

134. WNED, as the owner and licensor of the RR Intellectual Property, has an existing or prospective economic relationship with present and former subscribers to *Reading Rainbow Skybrary* and contributors to the *Reading Rainbow* Kickstarter campaign.

135. RRRKidz, as WNED's licensee, is aware of those relationships.

136. On or about August 1, 2017, RRRKidz intentionally interfered with those relationships by unilaterally and without notice transferring those consumers' accounts from *Reading Rainbow* to "LeVar Burton Kids", and changing all emails, websites, and other conduits of information associated with those relationships to ones solely within RRRKidz's ownership and control, thus preventing WNED from communicating or transacting with those customers and vice versa.

137. RRRKidz acted without justification when it cut off WNED's access to *Reading Rainbow*'s customers and used dishonest, unfair, and improper means to do so.

138. RRRKidz's tortious and unauthorized conduct has caused, and continues to cause, substantial injury to WNED, for which WNED seeks monetary damages (including the lost opportunities for profits on the business RRRKidz diverted), the costs of the action together with WNED's reasonable attorneys' fees, and such other or additional relief as the Court may find just according to the circumstances of the case.

139. WNED is entitled to reasonable attorneys' fees under section 18.e. of the Agreement because this claim and controversy arise out of or relate to the Agreement.

**Count VII**  
**(Lanham Act § 43(a) – against LeVar Burton)**

140. WNED hereby repeats and re-alleges the allegations set forth in paragraphs 1 through 139 of these counterclaims, as though fully set forth herein.

141. WNED is the registered owner of the famous mark, READING RAINBOW.

142. The Slogan ("...but you don't have to take my word for it") was recited in each of the 155 episodes of the RR Series and incorporated into related content and associated marketing and promotional materials. Therefore, over the past 35 years, the Slogan has become immutably



associated with *Reading Rainbow* and acquired secondary meaning sufficient to qualify for protection under the Lanham Act.

143. WNED has long used the RR Marks in interstate commerce in connection with the advertising, promotion, and distribution of the RR Series and associated products and services.

144. Mr. Burton is aware of WNED's exclusive ownership of the RR Marks.

145. Mr. Burton has violated 15 U.S.C. § 1125(a)(1)(A) in that he has used, and is using, the RR Marks (specifically, READING RAINBOW and the Slogan) in a manner not authorized by WNED that is likely to cause—and has caused—confusion, mistake or deception as to the origin of its goods, services, and commercial activities.

146. Mr. Burton's unauthorized and tortious conduct has caused WNED to suffer commercial damage, as well as the loss of goodwill and reputation established by WNED in the RR Marks.

147. WNED seeks recovery of Mr. Burton's profits from the "LeVar Burton Reads" podcast, WNED's actual damages, and treble damages under 15 U.S.C. § 1117(a). Because Mr. Burton acted knowingly, deliberately, and willfully, this is an exceptional case under § 1117(a), entitling WNED to recover its reasonable attorneys' fees.

148. WNED also seeks an injunction under 15 U.S.C. § 1116(a) restraining and enjoining Mr. Burton from using the phrases "Reading Rainbow for adults" and "but you don't have to take my word for it," in connection with the "LeVar Burton Reads" podcast.

**Count VIII**  
**(Declaratory Relief)**

149. WNED hereby repeats and re-alleges the allegations set forth in paragraphs 1 through \_\_\_ of these counterclaims, as though fully set forth herein.

150. A bona fide justiciable and substantial controversy has arisen and now exists between RRRKidz and WNED concerning their present and prospective rights and obligations.

151. RRRKidz contends:

- a. it caused the License Agreement to expire effective August 1;
- b. the rights to exploit the RR Series are subject to a security interest held by Raymonds Capital;
- c. those rights have transferred to Raymonds Capital; and
- d. RRRKidz has no further obligations to WNED or *Reading Rainbow*.

152. WNED contends:

- a. there is no provision of the License Agreement that permits RRRKidz to cause it to expire, as RRRKidz contends it did;
- b. the purported security interest in the rights to the RR Series is void, as RRRKidz lacked the authority to pledge those rights as security after WNED terminated the License Agreement effective March 18, 2016 and, in any event, had repaid all amounts secured prior to that date;
- c. Raymonds Capital has no right, title, or interest in the RR Series, RR Intellectual Property, or any associated rights; and
- d. RRRKidz remains bound by the provisions of the License Agreement, which includes the obligations that survive termination, regardless of whether or when it was terminated.

153. Accordingly, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201, et seq., WNED desires judicial determination of its rights and duties, and specifically judicial declarations that:

- a. RRRKidz's purported termination by "expiration" of the License Agreement was ineffective;
- b. RRRKidz's purported encumbrance of the RR Intellectual Property as security for post-termination loans by Raymonds Capital was ineffective;
- c. Raymonds Capital has no right, title, or interest in the RR Series, RR Intellectual Property, or any associated rights; and
- d. RRRKidz remains bound by the provisions of the License Agreement.

154. Such judicial determinations are necessary and serve a useful purpose in clarifying the parties' respective rights and would finalize the controversy and offer relief from uncertainty.

#### **PRAYER FOR RELIEF**

WHEREFORE, WNED prays for entry of judgment against RRRKidz and LeVar Burton and in favor of WNED as follows:

- a. Enjoining and restraining RRRKidz, its officers, agents, employees, and all persons acting in concert or participation with them, from reproducing, distributing, publicly performing, or publicly displaying content substantially similar to the RR Series, other than the continued distribution of content created prior to March 18, 2016 through *Reading Rainbow Skybrary*, as that product existed at the time of the termination of the License Agreement.

b. Directing RRRKidz to immediately turn over to WNED (and thereafter destroy any copies that remain in RRRKidz's possession, custody, or control) all access and administrative rights in (and any and all files, credentials, services, software, or other assets or information on, or necessary to the operation or maintenance of) every website, webpage, and social media account associated with Reading Rainbow—including, without limitation, the Reading Rainbow Facebook, Twitter, Instagram, Pinterest, Google+, and YouTube pages, and the following domains, including all subdirectories and subdomains thereof (e.g., reader.readingrainbow.com, assets.readingrainbow.com, cdn.readingrainbow.com, cdn1.readingrainbow.com, cdn2.readingrainbow.com, content.readingrainbow.com, readingrainbow.com/skybrary-family, readingrainbow.com/school, etc.):

- readingrainbow.com
- readingrainbow.net
- readingrainbow.org
- reading-rainbow.com
- reading-rainbow.net
- reading-rainbow.org
- readingrainbowdvd.com
- rrkickstarter.com
- supportreadingrainbow.com
- helpreading-rainbow.com
- savereadingrainbow.com

c. Directing that registration of each of the above domains be transferred to WNED.

d. Enjoining and restraining LeVar Burton from using the phrases “Reading Rainbow for adults” and “...but you don’t have to take my word for it” in connection with the “LeVar Burton Reads” podcast.

e. Declaring RRRKidz’s purported “expiration” of the License Agreement a nullity.

f. Declaring RRRKidz’s purported encumbrance of the RR Intellectual Property as security for loans made after March 18, 2016 a nullity.

g. Declaring Raymonds Capital has no right, title, or interest in the RR Series, RR Intellectual Property, or any associated rights.

h. Declaring RRRKidz remains bound by the provisions of the License Agreement.

i. Awarding WNED monetary damages in an amount to be proven at trial.

j. Awarding WNED its reasonable costs and attorneys’ fees.

k. Awarding WNED statutory damages of not less than \$1,000 and not more than \$100,000, as the Court considers just, pursuant to 15 U.S.C. § 1117(a).

l. Awarding WNED treble damages pursuant to 15 U.S.C. § 1117(a).

m. Awarding WNED such other or additional relief as the court may find just according to the circumstances of the case.

Dated: New York, New York  
August 4, 2017

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