

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
GREENBELT DIVISION

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TROPICAL PARADISE ENTERPRISES, S.A.	)	
	)	
Plaintiff,	)	CASE NO. <u>(PJM) 04-CV-1243</u>
	)	
v.	)	
	)	
DISCOVERY COMMUNICATIONS, INC.	)	
	)	
Defendant.	)	

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**AMENDED COMPLAINT**

Pursuant to Rule 15(a), Fed. R. Civ. P., Plaintiff, TROPICAL PARADISE ENTERPRISES, S.A. ("Tropical Paradise"), files this Amended Complaint against defendant, DISCOVERY COMMUNICATIONS. INC. ("Discovery") and states:

**JURISDICTION, PARTIES, AND VENUE**

1. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(2), as this is a civil action where the matter in controversy exceeds the value of \$75,000.00, exclusive of interests and costs, and in is between the citizens of a state and citizens of a foreign state.

2. Plaintiff is a citizen of Costa Rica with its principal place of business in Costa Rica.

3. Defendant Discovery is a Delaware corporation with its principal place of business in Silver Spring, Maryland. In addition, Discovery transacts business in the State

of Maryland. Thus, jurisdiction in this court is appropriate. Md. Code Ann., Cts. & Jud. Proc. §§ 6-102(a) and 6-103(b)(1).

4. Discovery resides in Montgomery County in the State of Maryland, and a substantial part of the event, underlying this lawsuit occurred in Montgomery County, Maryland. Thus, venue lies within this District pursuant to 28 U.S.C. § 1391.

5. All conditions precedent to bringing this action have been waived, excused, performed, or otherwise occurred.

### **BACKGROUND ALLEGATIONS**

6. Discovery is a media conglomerate. In addition to broadcasting under the name "Discovery Channel," it owns and operates other cable television channels. One of the cable television channels that Discovery owns and operates is the Travel Channel. Moreover, Discovery owns other media outlets. Among these is Discovery iMedia, which is an unincorporated division of Discovery. Discovery iMedia operates the website "discovery.com."

7. The Travel Channel is a cable television based network. Its programming focuses on interesting, beautiful, and exotic locales throughout the world. Much of the Travel Channel's programming focuses on vacation spots and locations offering adventurous and/or interesting activities. One of the programs that the Travel Channel offers is the "World Poker Tour."

8. The "World Poker Tour" is a regularly scheduled program on the Travel Channel. The show focuses on poker tournaments held throughout the world, usually in vacation settings. The "World Poker Tour" is a commercial broadcast. Thus, the Travel Channel sells commercial time for advertisements to air during this program.

9. Tropical Paradise operates an Internet cyberspace service based on the poker card game. The name of the Tropical Paradise website is "paradisepoker.com." Tropical Paradise conducts its game entirely by computer without the use of any playing cards. The game exists only on the paradisepoker.com server. That server is located in Costa Rica.

### **ADVERTISING CONTRACTS**

10. Discovery had a history of selling advertising to the operators of websites offering computerized poker games. Discovery sold advertising on the Travel Channel's "World Poker Tour" program to partypoker.com, ultimatebet.com, and pokerstars.com. Travel Channel broadcast the advertising for these buyers during last year's debut season of the "World Poker Tour..."

11. In or about September 2003, Tropical Paradise contacted Discovery and sought to enter into contracts for Tropical Paradise to purchase advertising from Discovery. Specifically, Tropical Paradise asked to purchase television commercial time to air its advertisements on the Travel Channel's show, "World Poker Tour," and to purchase advertisements on the discovery.com website. In an e-mail from Discovery to Tropical Paradise, dated September 22, 2003, Discovery said that it would allow advertising that met advertising guidelines formulated by Discovery.

12. Discovery provided the guidelines to Tropical Paradise in order to a) demonstrate Discovery's understanding of the legal requirement for advertising on-line poker websites in the United States and b) assure Tropical Paradise that it legally could purchase, and Discovery legally could air, the advertisements in compliance with United

States law. Discovery used this professed expertise to induce Tropical Paradise to execute the advertising contracts.

13. Tropical Paradise and Discovery entered into a contract by letter agreement, dated October 5, 2003, to broadcast television commercials on the "World Poker Tour" show ("Television Contract"). The advertising guidelines that Discovery established required the following: 1) the commercials could advertise the ability to access paradisepoker.com to learn the game or to play or free, and 2) the commercials could not include visual, audio, or any implied references to actual gaming. The Television Contract required Tropical Paradise to pay Discovery \$3,500,000 to air commercials for paradisepoker.com during the remainder of the fourth quarter of 2003 and the first quarter of 2004. The actual dates covered by the contract were from the date of the signing, which was in the fourth quarter of 2003, to March 28, 2004, the close of the first quarter of 2004. The \$3,500,000 payment was to purchase \$1,750,000 of advertising in each of these two quarters. Over the six month period, Tropical Paradise would purchase time for Discovery to broadcast 308 thirty-second commercials on the Travel Channel during broadcasts of the "World Poker Tour." The Television Contract contained a provision that allowed Discovery to cancel any online gaming deals with 24 hours notice, refunding any money assigned to the units for commercial air time, which would not be run as a result of the cancellation. Tropical Paradise paid to Discovery the full \$3,500,000 amount due by wire transfer before the broadcasting of the commercials began. The broadcasts commenced on or about October 13, 2003.

14. Tropical Paradise and Discovery iMedia entered into a second contract ("Internet Contract") by letter, dated October 14, 2003. In the Internet Contract, Tropical

Paradise purchased advertising for its paradisepoker.com website on "discovery.com." As in the Television Contract, this contract included Discovery's guidelines that the advertisements could promote the ability to access Tropical Paradise's website to learn to play poker or to play the game for free. Moreover, the advertisements could not contain visual, audio, or implied references to actual gaming. The Internet Contract also covered the fourth quarter of 2003 and the first quarter of 2004, extending from October 13, 2003 to March 28, 2004. This contract required a total Tropical Paradise investment of \$350,000, split evenly between the fourth quarter of 2003 and the first quarter of 2004. Pursuant to the Internet Contract, Tropical Paradise paid Discovery through its Discovery iMedia division \$350,000 in advance of discovery.com beginning the advertisements. The Internet Contract also stipulated that Discovery iMedia would return to Tropical Paradise on a pro rata basis any unused funds should Discovery choose to cancel the advertising campaign.

15. Tropical Paradise entered into the advertising contracts and paid Discovery \$3,850,000 (combined Internet and Television Contracts) in reliance upon Discovery's presentation that it was legal for Tropical Paradise to purchase, and for Discovery to run, the advertisements as long as Tropical Paradise complied with Discovery's guidelines.

16. Tropical Paradise and Discovery began performance under the two contracts. After receiving payments under the contracts, Discovery began airing commercials for paradisepoker.com on the "World Poker Tour" and discovery.com began showing advertisements also. Discovery ran \$600,958 worth of advertising on its two media outlets pursuant to the Television Contract and the Internet Contract. All of the

commercials that Tropical Paradise ran on the Travel Channel and its advertisements on discovery.com advertised the playing of computerized poker for fun without charge or monetary risk, thus complying with Discovery's advertising guidelines. The following amounts comprise the \$600,958 advertising sum: \$456,840 for television advertising and \$144,118 for internet advertising.

**DISCOVERY CANCELED THE TELEVISION CONTRACT  
AND THE INTERNET CONTRACT**

17. After the airing of commercials on October 25, 2003, Discovery verbally advised Tropical Paradise that Discovery was canceling an advertising associated with gaming activity. This occurred less than two weeks after entry into the contracts and the start of the broadcast of Tropical Paradise's commercials and the placement of its internet advertisements. The parties mutually agreed that Discovery owed Tropical Paradise a refund of \$3,249,042 (\$3,043,160 from the Television Contract and \$205,882 from the Internet Contract).

18. Although Discovery canceled its contracts with Tropical Paradise, other online poker sites, such as partypokcr.com and ultimatebet.com, continue to pay World Poker Tours, Inc., for the right to host "World Poker Tour" events, and Discovery pays World Poker Tours, Inc., for the right to broadcast the events.

19. On December 9, 2003, Discovery's Vice President for Legal Affairs sent Tropical Paradise a letter. This letter advised that Discovery had received a grand jury subpoena, issued out of the Eastern District of Missouri. The letter further stated that the Eastern District of Missouri was investigating the advertising of offshore and/or online gambling businesses. Discovery's letter advised that the United States Department of Justice's position is that offshore and online gambling is illegal under various federal and

state laws. Discovery expressed its concern that the government might view the payment of a refund to Tropical Paradise as a potential violation of federal money laundering statutes and could seek forfeiture. Based on this concern, Discovery refused to refund Tropical Paradise's funds. Finally, the letter stated that Discovery would seek assurances from the Justice Department that the refund would not violate any applicable laws.

20. The grand jury issued the subpoena, referenced in Discovery's letter, as part of a group of subpoenas, which began to issue from the grand jury on or about September 8, 2003. At that time the United States Attorney for the Eastern District of Missouri issued subpoenas in the name of the grand jury to Internet portals and other media outlets throughout the country. The subpoenas demanded records relating to the advertising of offshore and internet gaming. At the time Discovery entered into the Television Contract and the Internet Contract, at least two weeks before Discovery canceled those contracts - Discovery should have been aware of the Justice Department's interest and concerns about the advertising of offshore and internet gaming.

21. Discovery entered into long term advertising contracts with Tropical Paradise and assured Tropical Paradise of their legality so long as they were performed consistent with its guidelines. Discovery required, months in advance, the prepayment of fees for advertising. Then, two weeks later, without any known intervening occurrences, Discovery decided the following: 1) that the Justice Department might consider Discovery to be in violation of federal law, 2) not to air the commercials and advertisements the Television Contract and the Internet Contract respectively required, and 3) not to refund to Tropical Paradise millions of dollars in paid, but unused, advertising fees.

22. Tropical Paradise has made repeated requests for Discovery to refund Tropical Paradise's funds. Several unanswered telephone calls and email communications to Discovery preceded Discovery's December 9, 2003, letter advising of the refusal to refund Tropical Paradise's monies. In a letter to counsel for Discovery, dated January 13, 2004, counsel for Tropical Paradise requested the refund of Tropical Paradise's money. In a meeting between counsel for Discovery and counsel for Tropical Paradise on February 19, 2004, counsel for Tropical Paradise renewed the request for a refund. Finally, in a letter to counsel for Discovery, dated March 8, 2004, counsel for Tropical Paradise demanded the refund of the monies from the Television Contract and the Internet Contract.

23. Discovery continued to withhold payment of the refund monies to Tropical Paradise without legal basis. It was not until May 20, 2004, after the filing of this action, that Tropical Paradise received notice from the FBI that it had seized the funds on April 6, 2004.

**COUNT ONE**  
**BREACH OF CONTRACT**  
**(Television Contract)**

24. Plaintiff Tropical Paradise realleges and reasserts Paragraphs 1 through 23 of this Amended Complaint as if fully set forth herein.

25. The continuing failure of Discovery to refund the remaining monies paid by Tropical Paradise pursuant to the Television Contract is a breach of that contract.

26. Defendant Discovery has breached the terms and conditions of the Television Contract by failing to repay to Tropical Paradise the sum of \$3,043,160 after Discovery's cancellation of the Television Contract.

27. As a direct and proximate result of the foregoing breach by Defendant Discovery, Plaintiff Tropical Paradise has been damaged.

**WHEREFORE**, Plaintiff TROPICAL PARADISE, ENTERPRISES, S.A., demands judgment against DISCOVERY COMMUNICATIONS, INC., for compensatory damages in the amount of \$3,043,160 plus interest and for such other and further relief as this Court deems just and appropriate.

**COUNT TWO**  
**BREACH OF CONTRACT**  
**(Internet Contract)**

28. Plaintiff Tropical Paradise realleges and reasserts Paragraphs 1 through 23 of this Amended Complaint as if fully set forth herein.

29. The continuing failure of Discovery to refund the remaining monies paid by Tropical Paradise pursuant to the Internet Contract is a breach of that contract.

30. Defendant Discovery has breached the terms and conditions of the Internet Contract by failing to repay to Tropical Paradise the sum of \$205,882 after Discovery's cancellation of the Internet Contract.

31. As a direct and proximate result of the foregoing breach by Defendant Discovery, Plaintiff Tropical Paradise has been damaged.

**WHEREFORE**, Plaintiff TROPICAL PARADISE, ENTERPRISES, S.A., demands judgment against DISCOVERY COMMUNICATIONS, INC. for compensatory damages in the amount of \$205,882 plus interest and for such other and further relief as this Court deems just and appropriate.

**COUNT THREE**  
**UNJUST ENRICHMENT**

32. Plaintiff Tropical Paradise realleges and reasserts Paragraphs 1 through 23 of this Amended Complaint as if fully let forth herein.

33. As a result of receiving, \$3,249,042 from Tropical Paradise under the Television and Internet Contracts for commercials and advertising that Discovery refused to run and Discovery's failure to return that sum to Tropical Paradise, Discovery has been conferred a benefit by Tropical Paradise.

34. The amount of \$3,249,042 (\$3,043,160 under the Television Contract and \$205,882 under the Internet Contract) is the sum of the benefit conferred upon Discovery by Tropical Paradise.

35. Discovery retained that benefit despite its cancellation of the Television Contract and Internet Contract and has refused to refund Tropical Paradise's monies.

**WHEREFORE**, Plaintiff, TROPICAL PARADISE ENTERPRISES. S.A., demands judgment against Defendant, DISCOVERY COMMUNICATIONS, INC., for compensatory damages of \$3,249,042 plus interest and for such other and further relief as this Court deems just and appropriate.

**COUNT FOUR**  
**CONVERSION**

36. Plaintiff Tropical Paradise realleges and reasserts Paragraphs 1 through 23 of this Amended Complaint as if fully set forth herein.

37. Discovery received \$3,249,042 from Tropical Paradise for commercials and advertising based upon consent and contractual understanding that it was for the commercials and advertising.

38. Discovery canceled the contracts and elected not to perform the services.

39. Discovery continued to hold Tropical Paradise's funds in the sum of \$3,249,042 despite Tropical Paradise's demand that Discovery return those funds.

**WHEREFORE**, Plaintiff, TROPICAL PARADISE ENTERPRISES, S.A., demands judgment against Defendant, DISCOVERY COMMUNICATIONS, INC., for compensatory damages of \$3,249,042 plus interest and for such other and further relief as this Court deems just and appropriate.

**COUNT FIVE**  
**NEGLIGENT MISREPRESENTATION**  
**(TELEVISION CONTRACT)**

40. Plaintiff Tropical Paradise realleges and reasserts Paragraphs 1-23 of its Amended Complaint as if fully set forth herein.

41. Discovery induced Tropical Paradise to enter into a contract, dated October 5, 2003, for television advertising based upon Discovery's representations concerning its knowledge of applicable United States law and its preparation of advertising guidelines which, if followed, insured compliance with United States law.

42. Discovery owed a duty of care to Tropical Paradise when Discovery made the representations that Tropical Paradise legally could advertise on its television station as long as it complied with Discovery's advertising guidelines and that these guidelines insured compliance with United States law.

43. Discovery intended for Tropical Paradise to rely and act upon its representations, which, if erroneous, would cause Tropical Paradise loss or injury.

44. Tropical Paradise justifiably relied upon Discovery's representations when it agreed to the contract for television advertising.

45. The applicable United States law did not change between the time

Discovery made the representations and provided the advertising guidelines and when Discovery informed Tropical Paradise of its determination to cease running the adds.

46. To the extent that the Tropical Paradise/Discovery television advertising contract violated applicable United States law, Discovery knew, or should have known, that to be the case, that its advertising guidelines did not insure compliance, and that its representations to Tropical Paradise were wrong. To the extent that the United States Department of Justice has seized the funds rightfully belonging to Tropical Paradise, this seizure was directly and proximately caused by Discovery's negligent misrepresentations to Tropical Paradise.

47. As a direct and proximate result of Discovery's negligence, Tropical Paradise has suffered damages at a minimum in the sum of \$3,043,160.

**WHEREFORE,** Plaintiff TROPICAL PARADISE, ENTERPRISES, S.A., demands judgment against DISCOVERY COMMUNICATIONS, INC., for compensatory damages at a minimum in the amount of \$3,043,160 plus interest and for such other and further relief as this Court deems just and appropriate.

**COUNT SIX**  
**NEGLIGENT MISREPRESENTATION**  
**(INTERNET CONTRACT)**

48. Plaintiff Tropical Paradise realleges and reasserts Paragraphs 1-23 of its Amended Complaint as if fully set forth herein.

49. Discovery induced Tropical Paradise to enter into a contract, dated October 14, 2003, for internet advertising based upon Discovery's representations concerning its knowledge of applicable United States law and its preparation of advertising guidelines which, if followed, insured compliance with United States law.

50. Discovery owed a duty of care to Tropical Paradise when Discovery made the representations that Tropical Paradise legally could advertise on its internet website as long as it complied with Discovery's advertising guidelines and that those guidelines insured compliance with United States law.

51. Discovery intended for Tropical Paradise to rely and act upon its representations, which, if erroneous, would cause Tropical Paradise loss or injury.

52. Tropical Paradise justifiably relied upon Discovery's representations when it agreed to enter into the contract for internet advertising.

53. The applicable United States law did not change between the time Discovery made the representations and provided the advertising guidelines and when Discovery informed Tropical Paradise of its determination to cease running the ads.

54. To the extent that the Tropical Paradise/Discovery website advertising contract violated applicable United States law, Discovery knew, or should have known, that to be the case, that its advertising guidelines did not insure compliance, and that its representations to Tropical Paradise were wrong. To the extent that the United States Department of Justice has seized the funds rightfully belonging to Tropical Paradise, this seizure was directly and proximately caused by Discovery's negligent misrepresentations to Tropical Paradise.

55. As a direct and proximate cause of Discovery's negligence, Tropical has suffered damages at a minimum in the amount of the sum of \$205,882.

**WHEREFORE**, Plaintiff TROPICAL PARADISE, ENTERPRISES, S.A., demands judgment against DISCOVERY COMMUNICATIONS, INC., for compensatory damages at a minimum in the amount of \$205,882 plus interest and for

such other and further relief as this Court deems just and appropriate.

Plaintiff Requests a Jury.

DATED this 21st day of May,2004

Respectfully submitted,

**GREENBERG TRAUIG, LLP**

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