

CALENDAR

YEAR 2000

The Space Race

The interactive experience that puts you in the midst of mankind's ultimate race.

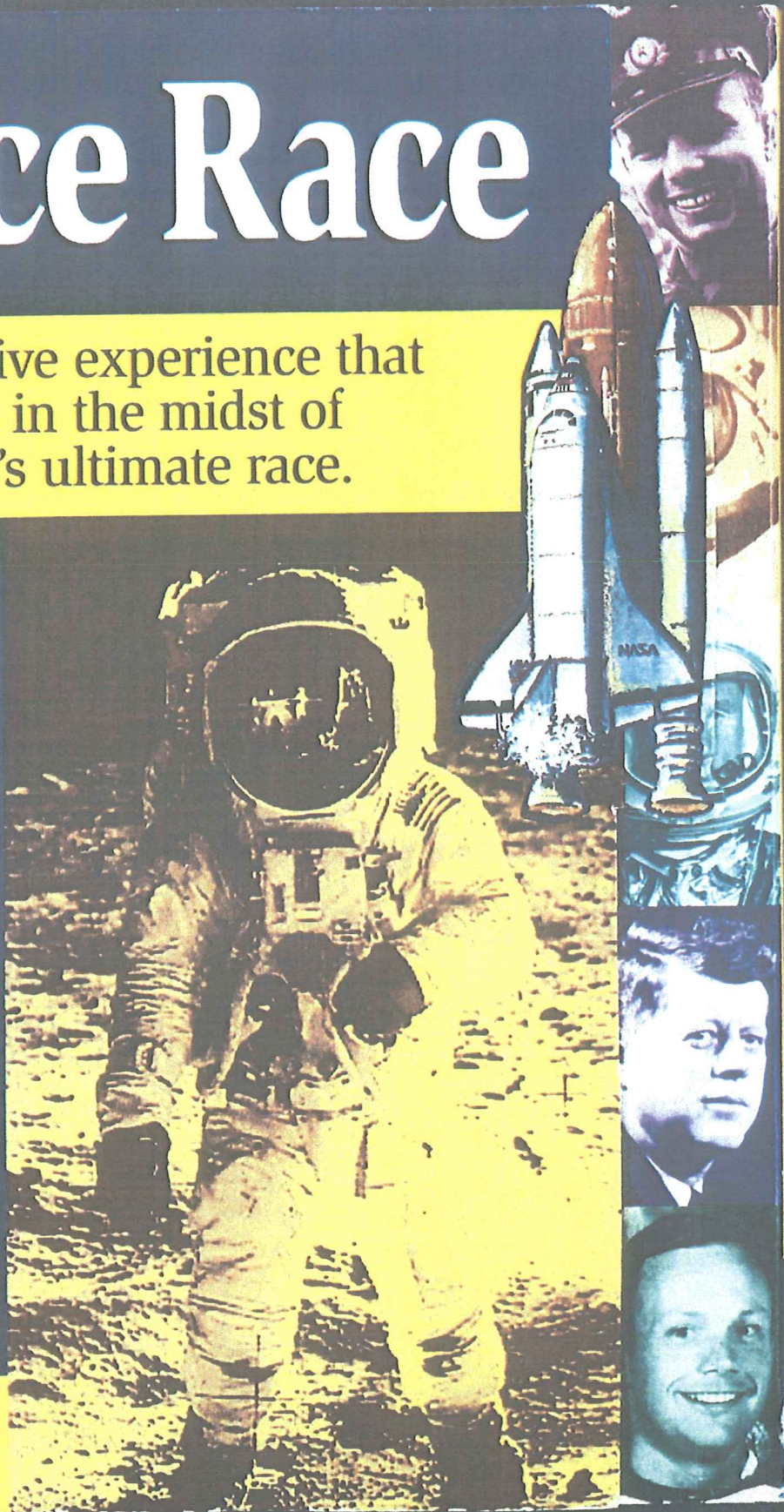


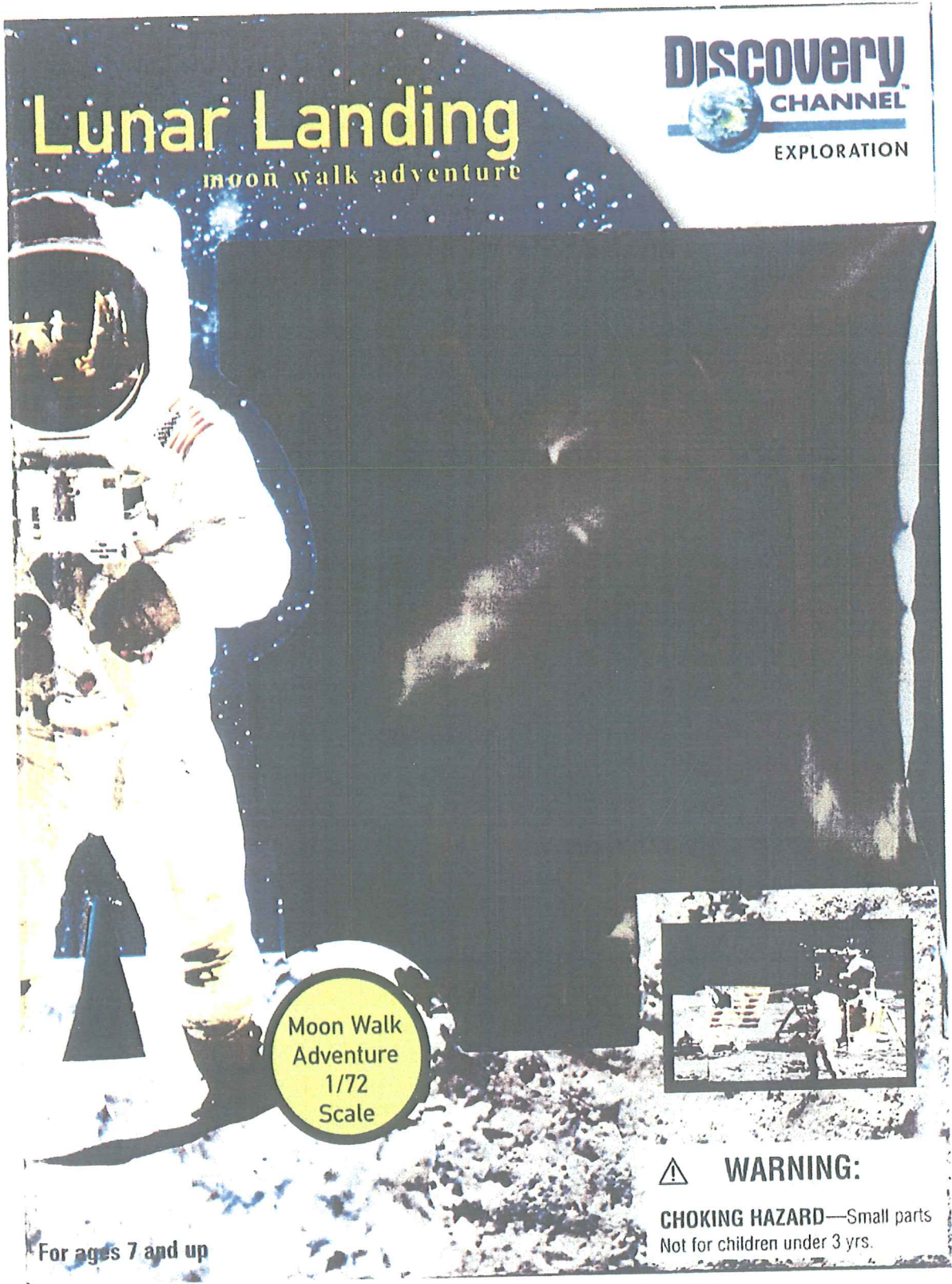
2 full hours of authentic sights and sounds, including 27 minutes of video, 960 photographs, and 120 minutes of audio commentary

- Witness the Soviet Union and the United States battle for supremacy in space
- See man break the boundaries of earth for the very first time
- Watch the television transmission of mankind's first steps on the moon

 **FlagTower**

An interactive journey back in time





The image shows a toy box for a 1/72 scale lunar lander and astronaut. The box features a large illustration of an astronaut in a white spacesuit standing on the moon's surface. The background is a dark, starry space with a crescent moon. The Discovery Channel logo is in the top right corner, with the word 'EXPLORATION' below it. The title 'Lunar Landing' is in large yellow letters, with 'moon walk adventure' in smaller white letters below it. A circular yellow sticker on the front of the box reads 'Moon Walk Adventure 1/72 Scale'. A small inset photo shows the toy set in its packaging. A warning label is in the bottom right corner.

Lunar Landing

moon walk adventure

Discovery
CHANNEL
EXPLORATION

Moon Walk Adventure
1/72
Scale

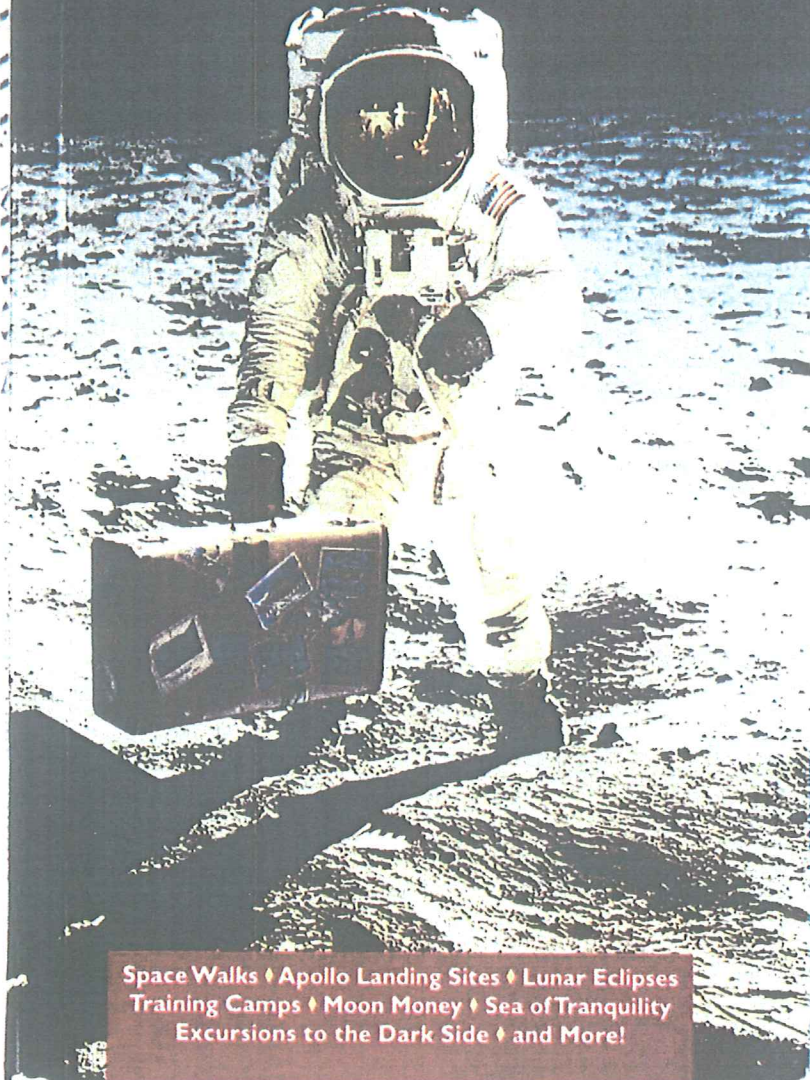
WARNING:
CHOKING HAZARD—Small parts
Not for children under 3 yrs.

For ages 7 and up

Frommer's®

THE MOON

A Guide for First-Time Visitors



Space Walks † Apollo Landing Sites † Lunar Eclipses
Training Camps † Moon Money † Sea of Tranquility
Excursions to the Dark Side † and More!

10
SUBJECTS

AGES 11 & UP

GRADES 6-8

Middle School ADVANTAGE 2003

- U.S. History
- Vocabulary
- Grammar
- Science & Technology
- Earth Science
- Spanish
- Typing
- Pre-Algebra
- Algebra
- Geometry

FOR ADDITIONAL
SELECTION SHOP
COSTCO.COM
#160246
\$28.99
-\$10.00
(MAIL-IN REBATE)
\$18.99



\$10.00

Mail-in Rebate

Details At Register
OFFER EXPIRES 12/31/03

as grac'as

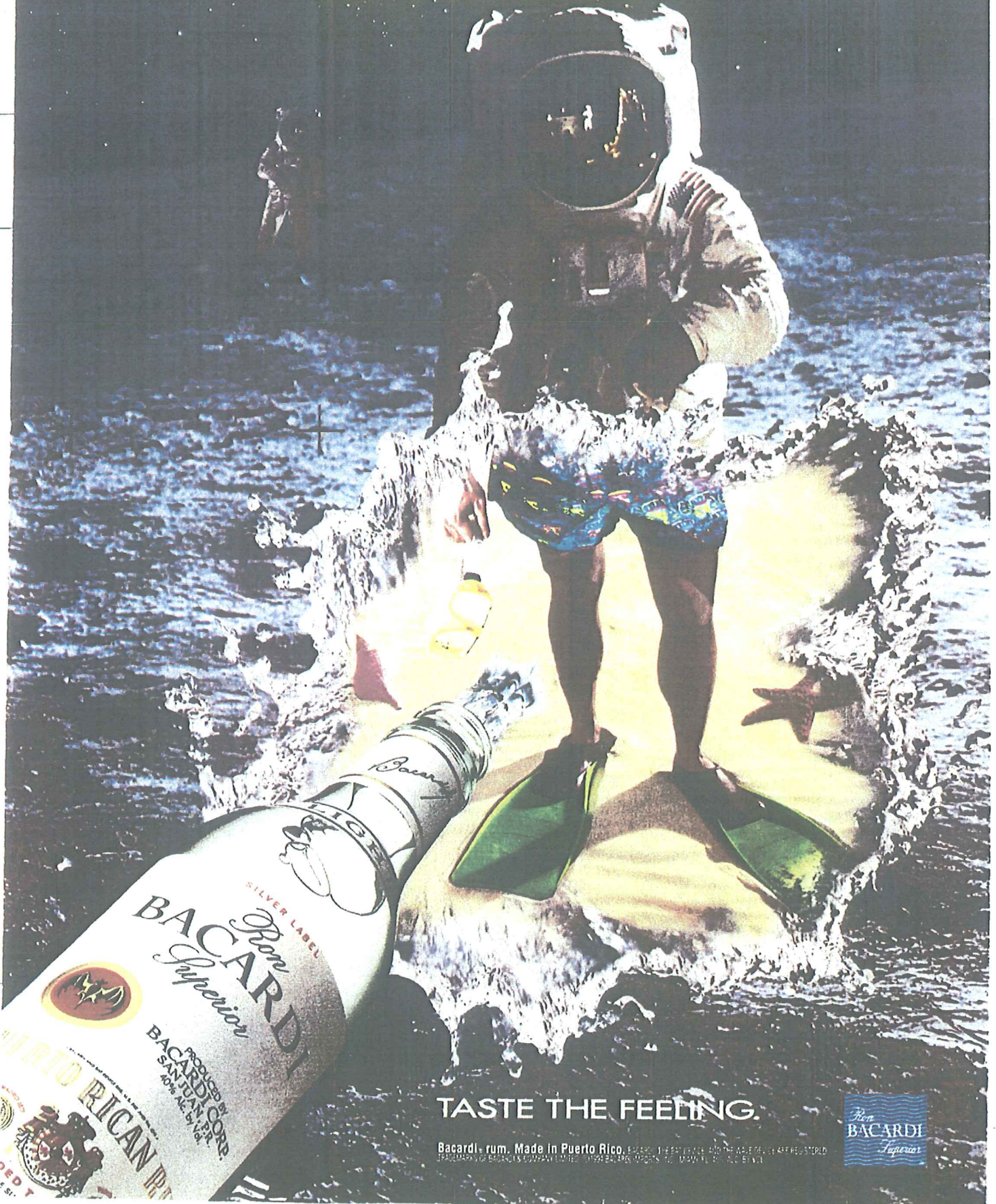


WINDOWS®

The Most Comprehensive Learning System Available™

ENCORE

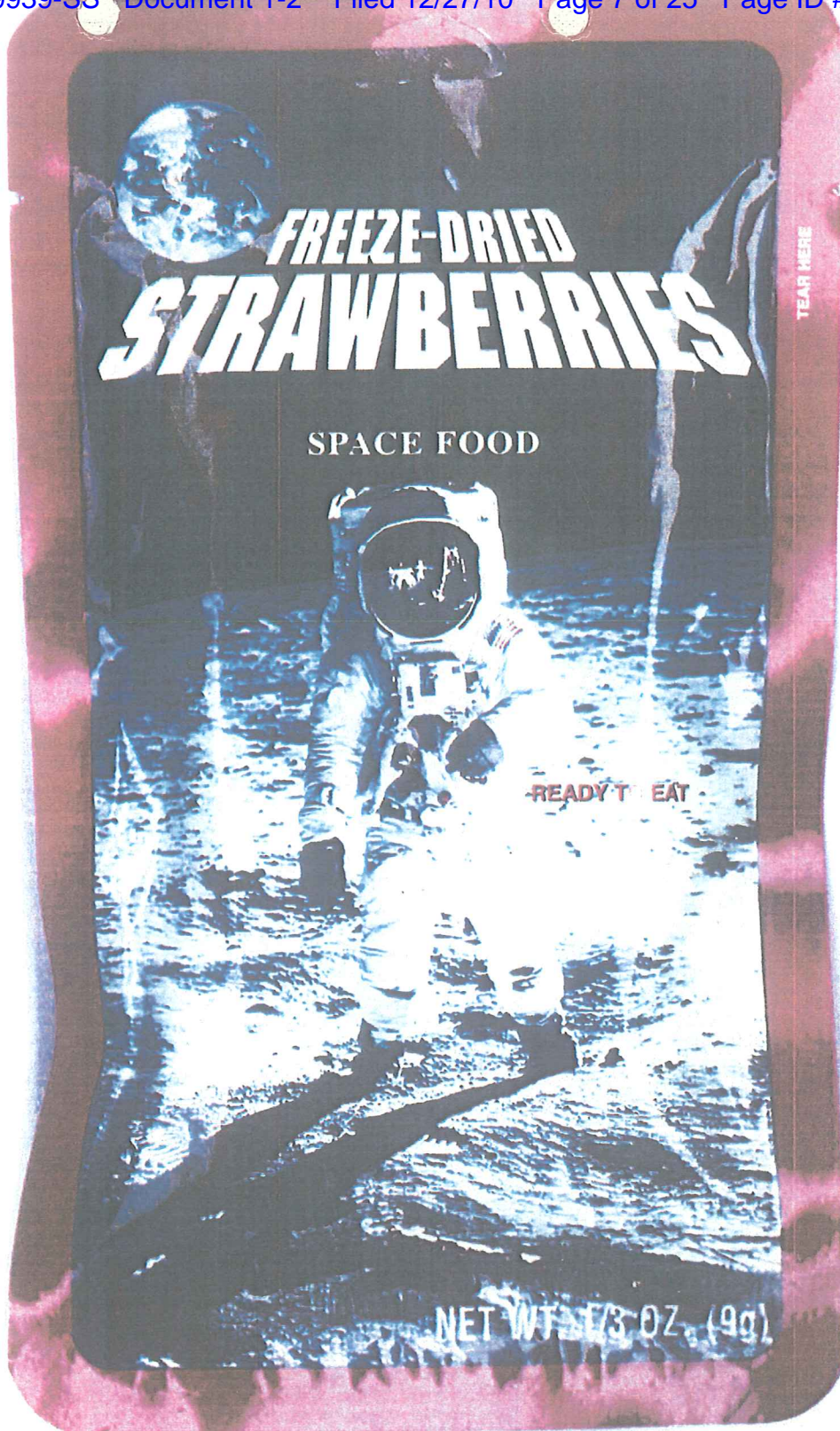
JUST ADD BACARDI



TASTE THE FEELING.

Bacardi - rum. Made in Puerto Rico. BACARDI SILVER LABEL and THE WAVE DESIGN ARE REGISTERED TRADEMARKS OF BACARDI & COMPANY LIMITED. © 1999 BACARDI, MEXICO, S.C. IMPORTED BY BACARDI & COMPANY LIMITED, NEW YORK, NY.





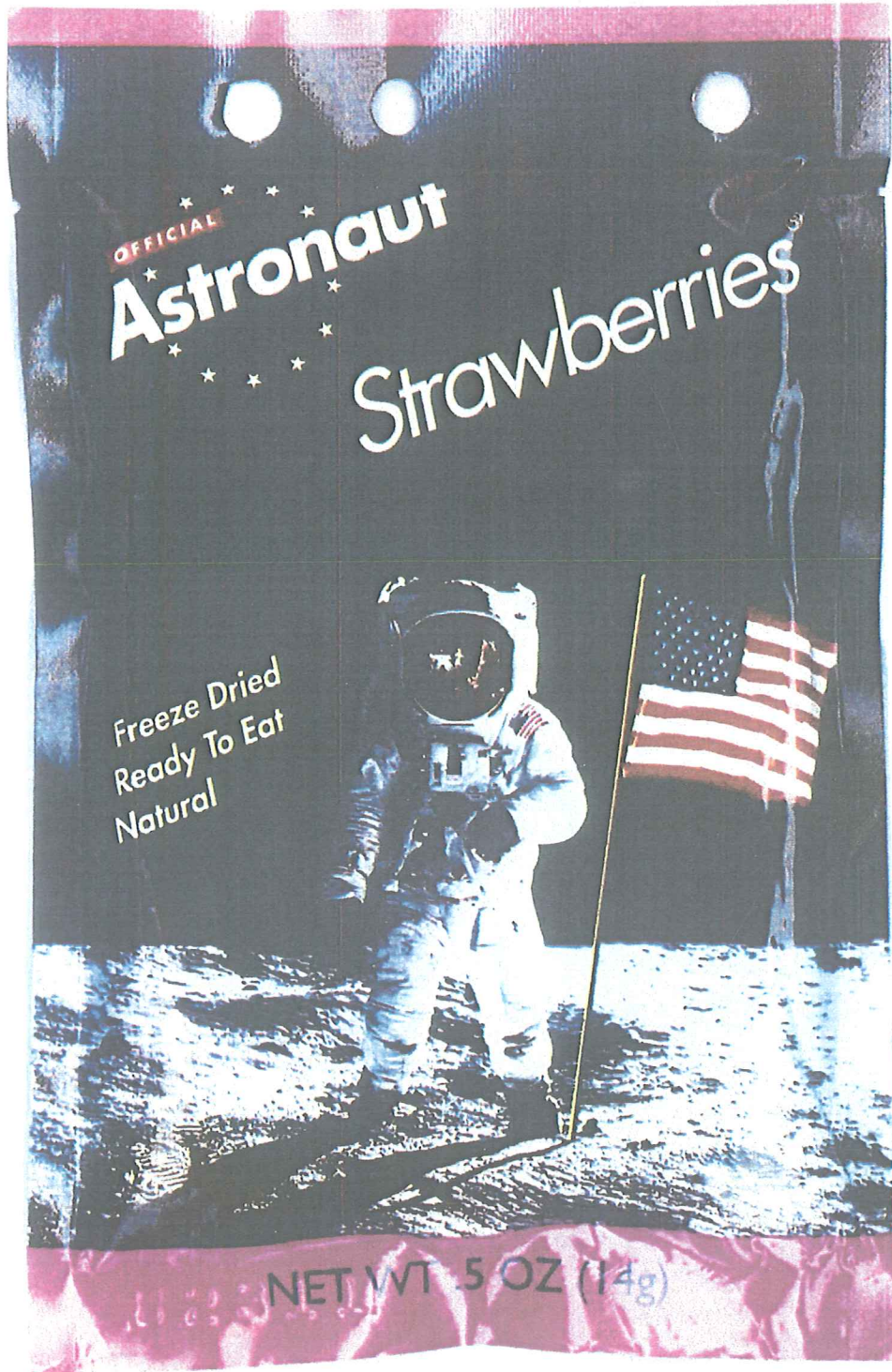
**FREEZE-DRIED
STRAWBERRIES**

SPACE FOOD

READY TO EAT

NET WT. 1.3 OZ. (90g)

TEAR HERE



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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

NANCY CONRAD, an individual;
DR. BUZZ ALDRIN, an individual;
MARY IRWIN, an individual; and
UNIVERSAL SPACEWORKS, LLC, a
California limited liability company,

Plaintiffs,

v.

ACTION PRODUCTS, INC., a
Florida corporation,

Defendant.

CASE NO. SA CV 99-1223 DOC (ANx)

(Tentative) ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

Before the Court is Plaintiffs' Motion for Preliminary Injunction. At issue is whether Defendant Action Products, Inc. ("Action Products") has misappropriated Plaintiffs' names and images in violation of Plaintiff Dr. Buzz Aldrin's right of publicity and Plaintiffs Nancy Conrad ("Mrs. Conrad") and Mary Irwin's (Mrs. Irwin) post-mortem right of publicity. After consideration of the moving and responding papers and oral argument at the hearing for this matter on January 18, 2000, the Court finds that Plaintiff's Motion for Preliminary Injunction is GRANTED.

1 Facts

2 The Plaintiffs in this case include Aldrin, Mrs. Conrad (the widow of Charles "Pete" Conrad
3 ("Conrad"), and Mrs. Irwin (the widow of James "Jim" B. Irwin ("Irwin")). Aldrin, Conrad and Irwin
4 all achieved notoriety as American astronauts and attempted to maintain their fame after their careers at
5 NASA. They allege that Action Products has violated their right to publicity in its manufacture and sale
6 of three products. Plaintiff Universal Spaceworks LLC ("Universal") is a California limited liability
7 company that has been granted an exclusive license to use the names, likenesses, images and identities
8 of eighteen American astronauts, including Conrad and Irwin.

9 Conrad was a member of the Apollo XII crew that made the second lunar landing and he was the
10 third person ever to walk on the moon. Following in the tradition of other manned space voyages, the
11 Apollo XII members chose an official emblem to wear during their mission ("the mission patch"). The
12 patch contains an image of a ship near the moon with an outside edge that bears the last names of the
13 three crewmembers: "Conrad • Bean • Gordon." See Conrad Decl., Ex. A. Action Products offers for
14 sale an "Apollo Astronaut Authentic Replica" action figure that includes a free replica of the mission
15 patch that bears Conrad's name.¹ See Kaplan Decl., Ex. A.

16 Plaintiff Aldrin walked on the moon on July 20, 1969 as part of the Apollo XI mission. NASA
17 had several photographs taken of that mission, including the "visor shot" at issue here. In that picture,
18 Aldrin's left arm is bent across his chest and the Eagle lunar landing module and fellow astronaut Neil
19 Armstrong are visible in Aldrin's visor. This photograph has appeared in countless magazines and news
20 stories, including the cover of Life Magazine's special report on the mission in 1969 and the collector's
21 edition replication of that report in Spring 1998. See Cannon Decl., Ex.s A, B. Action Products uses
22 this image in the packaging for two of its products. Its' "Lunar Landing, Moon Walk Adventure" toy
23 ("the Lunar Landing Toy") features a copy of the visor shot on the front of its packaging. See Kaplan
24 Decl., Ex. G. Its' "Space Voyagers: Apollo Astronaut Authentic Action Figure" ("the Action Figure")
25 includes a collector's card with the visor shot on it. See Kaplan Decl., Ex. F.

26
27 ¹Plaintiffs also claim that Action Products includes a Gemini patch bearing Conrad's
28 name with its "Gemini Astronaut Authentic Replica" but that patch was not included in Conrad's
Ex. B or in Defendant's Exhibits and is thus not addressed here.

1 Plaintiff Irwin walked on the moon as part of the Apollo XV mission in 1971. He set a new
2 record for length of time spent on the moon's surface and was the first to use the Lunar Rover. NASA
3 had photographs of that mission taken, one of the more famous of those was "the lunar landing image."
4 In that picture, Irwin is saluting the American flag on the moon with the Lunar Module and the Lunar
5 Rover in the background. Action Products uses the lunar landing image on the back of the packaging of
6 its' "Lunar Landing Toy." See Kaplan Decl., Ex. G.

7 Plaintiffs have presented sufficient evidence to demonstrate the fame that Conrad, Aldrin, and
8 Irwin have achieved. They have also presented evidence tending to show that the images and identities
9 of these three men has been licensed by many companies. Of particular relevance, Conrad and Irwin
10 have licensed their images to Bandai America Incorporated ("Bandai") to appear on Bandai's "Heroes of
11 Space" action figure toys and product packaging. See Conrad Decl. ¶ 22, Irwin Decl. ¶ 18. In addition,
12 Aldrin has licensed his image to Hasbro, Inc. for a G.I. Joe space figure and related products. See Aldrin
13 Decl. ¶ 15; Cannon Decl. ¶ 5. Mrs. Conrad was approached by a representative of Action Products in
14 1998 for the possible licensing of Conrad's name, image, likeness and identity for a series of action
15 figures. Mrs. Conrad states in her declaration that she informed Action Products that she was not
16 interested because several astronauts or their widows had granted an exclusive license to Universal to
17 use their names and likenesses for commercial purposes. Because Universal was in negotiations with
18 Bandai to develop the "Heroes of Space" action figures, the proposed Action Products figures would
19 compete directly with Bandai's.

20 According to Action Products, it selected the Apollo XII patch for its Apollo Astronaut
21 Authentic Replica in part because Richard "Dick" Gordon ("Gordon"), another member of the crew
22 whose name is listed alongside Conrad's, had been a member of Action Products' Board of Directors.
23 According to a letter from Action Products' counsel, Universal solicited and obtained a licensing
24 contract with Gordon. Action Products accused Universal of having a "malicious intent" and having
25 committed a "separate and independent actionable tort." See Kaplan Decl. Ex. E. The Court is not
26 aware of any court proceeding in which such a claim has been brought. Gordon is no longer a member
27 Action Products' Board of Directors.

28

1
2 Analysis

3 The Court has jurisdiction under the Lanham Act, 15 U.S.C. § 1125(a), which is a cause of action
4 in Plaintiffs' Complaint but is not the cause of action under which the preliminary injunction is sought.

5 Generally, courts grant equitable relief in the event of irreparable injury and the inadequacy of
6 legal remedies. See *Stanley v. University of Southern California*, 13 F.3d 1313, 1320 (9th Cir. 1994).
7 Plaintiffs must satisfy additional requirements in order to be granted preliminary relief. The "traditional
8 test" requires that Plaintiffs demonstrate 1) a fair chance of success on the merits; 2) a significant threat
9 of irreparable injury; 3) greater hardship to Plaintiffs than Defendant; and 4) that the public interest
10 favors granting the injunction. See *Atari Games v. Nintendo of America, Inc.*, 897 F.2d 1572, 1575 (Fed.
11 Cir. 1990); *American Motorcyclist Ass'n v. Watt*, 714 F.2d 962, 965 (9th Cir. 1983).

12 California recognizes the common law and statutory right of a person to appropriate his or her
13 name or likeness for commercial gain and to prevent others from doing so without permission. See
14 *Lugosi v. Universal Pictures*, 25 Cal.3d 813, 819, 160 Cal.Rptr. 323, 326 (1979); Samuel Warren &
15 Louis Brandeis, *The Right to Privacy*, 4 Harv.L.Rev. 193 (1890) (first generating the idea as part of the
16 right to privacy). The right of publicity under common law protects a person's name, likeness and
17 identity. See *Midler v. Ford Motor Company*, 849 F.2d 460, 462 (9th Cir. 1988). The right of publicity
18 under statutory law protects a person's "name, voice, signature, photograph or likeness." Civ. Code §
19 3344(a).

20 The elements of a common law right to publicity claim are "(1) the defendant's use of the
21 plaintiff's identity; (2) the appropriation of plaintiff's name or likeness to defendant's advantage,
22 commercial or otherwise; (3) lack of consent; and (4) resulting injury." *Eastwood v. Superior Court*
23 (*National Enquirer*), 198 Cal.Rptr. 342, 347 (1983). To plead the statutory cause of action two
24 additional elements are required: knowing use of the plaintiff's name or likeness for purposes of
25 advertising or solicitation of purchases, and a "direct connection" between the use and the commercial
26 purpose. *Id.* Injunctive relief is available under California law to protect the right to publicity. *Id.* At
27 348. Plaintiffs Irwin and Conrad sue under the post-mortem right of publicity, formerly codified at Civil
28 Code § 990 and now found at § 3344.1.

1 Defendant does not dispute that pictures of Aldrin and Irwin on toy packaging could meet all of
2 the elements of the statutory and common law claims for the right of publicity. Although Defendants
3 recognize that Aldrin and Irwin were inside the spacesuits in the visor shot and the lunar landing image,
4 respectively, they argue that the Plaintiffs are not "readily identifiable" in the pictures (Defendant does
5 not dispute that Conrad's name is used in the mission patch). Under § 3344(b)(1), a person is "readily
6 identifiable from a photograph when one who views the photograph with the naked eye can reasonably
7 determine that the person depicted in the photograph is the same person who is complaining of its
8 unauthorized use." A similar standard applies for post-mortem rights of publicity. See § 3344.1(i).

9 Plaintiff has submitted evidence tending to show that the Plaintiffs are identifiable in the
10 photographs. Plaintiff has submitted a number of magazines in which the visor shot appears. The
11 magazine articles are mostly either about Buzz Aldrin and contain the visor shot or about Apollo XI and
12 include Aldrin's name in the caption. An article in National Geographic described the photograph as
13 "[nearly] as famous as the words uttered on the moon" by Neil Armstrong. Plaintiff has also presented
14 evidence that various corporations have entered into licensing agreements with Aldrin to use the visor
15 shot for commercial purposes. These corporations include Apple Computer, Nestle, Merck
16 Pharmaceuticals, Pepsi, GTE, and Penguin Putnam Publishers. Similarly, the picture containing Irwin in
17 the lunar landing image has also been circulated throughout the world in magazines and advertisements.
18 Defendant argues that they are not readily identifiable because their faces are completely concealed by
19 the visors. Defendant claims that the evidence Plaintiff has presented fails to show that the pictures used
20 on the toy packages are sufficiently linked to Aldrin and Irwin in the public's mind.

21 The Court agrees with Plaintiff that the Ninth Circuit has identified celebrities in less
22 recognizable circumstances. Winston Cigarettes was found liable after it used a color photograph
23 depicting several racing cars to make one of its commercials. The Ninth Circuit found that Lothar
24 Motschenbacher's identity was "readily identifiable" even though his facial features were not visible and
25 Winston had made several changes to the design of his car, overruling Central District Judge Real. See
26 *Motschenbacher v. R.J. Reynolds Tobacco Company*, 498 F.2d 821, 827 (9th Cir. 1974). After Killian's
27 Red used a drawing traced from a newspaper photograph of the 1949 World Series to advertise its beer,
28 it changed the pitcher's uniform number from "36" to "39" and made the bill of the hat a different color

1 from the rest of the hat. The Ninth Circuit overruled the District Court and found that a triable issue of
2 fact was created as to whether the drawing was "readily identifiable" as former All-Star Don Newcombe.
3 See *Newcombe v. Adolf Coors Company*, 157 F.3d 686, 692 (1998). See also *White v. Samsung*
4 *Electronics America*, 971 F.2d 1395, 1399 (9th Cir. 1992) (finding that electronics ad using a robot
5 turning letters on a game show set similar to *Wheel of Fortune* may have violated Vanna White's right of
6 publicity). The Court finds that if things such as an altered photograph of Lothar Motschenbacher's race
7 car are "readily identifiable," then the world-famous pictures of Buzz Aldrin and Jim Irwin are also
8 "readily identifiable." Though the procedural posture of those cases (reviewing grants of summary
9 judgment in favor of the defendants) differs from the instant case, the Court finds that those cases
10 support Plaintiffs' likelihood of ultimate success on the issue of identifiability.

11 Defendant has tried to argue that Plaintiffs must establish that "generally the public viewing the
12 packaging will identify the faceless, space-suited figures as Aldrin and Irwin" and need to submit
13 "survey data" to support their assertion. Defendant has submitted a survey of mall shoppers in an effort
14 to show that Plaintiff has not met this general public test. The Court finds, however, that Defendant has
15 misstated the showing that Plaintiffs must make. The right of publicity statute considers a person
16 identifiable "when one who views the photograph with the naked eye can reasonably determine that the
17 person depicted in the photograph is the same person." Civ. Code § 3344(b)(1); see also Civ. Code §
18 3344.1(i). The statute does not require a majority of the general public to be able to identify the person
19 in the photograph. In *Newcombe*, the Court noted that "family, friends and former teammates
20 immediately recognized the pitcher featured in the advertisement as Newcombe." 157 F.3d at 689. In
21 *Motschenbacher*, "(s)everal of plaintiff's affiants who had seen the commercial on television had
22 immediately recognized plaintiff's car and had inferred that it was sponsored by Winston cigarettes."
23 498 F.2d at 822. Based on the evidence Plaintiff has presented linking Aldrin and Irwin to their
24 photographs, "one who views the photograph" could "reasonably determine" that the astronauts pictured
25 were Aldrin and Irwin. In addition, the survey was filed after the Opposition was due in violation of
26 Local Rule 7.6. Defendant's application to file a consumer report in opposition to the motion for
27 preliminary injunction is denied.

28 The other grounds that Defendant raised in its Opposition are also unavailing. NASA has not

1 unconditionally dedicated Plaintiffs' likenesses and identities to the public domain. Under NASA's
2 "Reproduction Guidelines for Use of NASA Images and Emblems," they may be used for "educational
3 or informational purposes." If, however, an image "includes an identifiable person, using the image for
4 commercial purposes may infringe that person's right of privacy or publicity, and permission should be
5 obtained from the person." Zarian Decl., Ex. 1 at 1-2. So although NASA may have been able to
6 copyright the picture itself or completely release it to the public domain, it has chosen a specific policy
7 preserving the rights of its' astronauts to profit from any commercial value their images have. Plaintiffs
8 have made a preliminary showing that Action Products violated that policy. Mrs. Irwin is not prevented
9 from relief here because Irwin was domiciled in Colorado at the time of his death. Though the law of
10 Colorado will be applied to Mrs. Irwin's claim, *see Cairns v. Franklin Mint Co.*, 24 F.Supp.2d 1013,
11 1029 (C.D.Cal. 1998) (the law of the decedent's domicile governs whether a right of publicity is
12 included in the estate), the Court finds that she is likely to prevail under Colorado law. *See Dittmar v.*
13 *Dickerson & Associates, LLC*, 1999 WL 1243312 (Colo.App.) (recognizing right of publicity). The sale
14 and mass-marketing of toys for profit, even "educational" toys, do not fit within the "public affairs"
15 exception in Civil Code §§ 3344(d) and 3344.1(j). The protections of the First Amendment do not bar
16 Plaintiffs' from being compensated from commercial exploitation of their names and likenesses.
17 Plaintiffs' claims are not preempted by federal copyright law since Plaintiffs have merely had their
18 picture taken or name written on a patch, they have not engaged in "a work of authorship fixed in a
19 tangible medium of expression" and thus lie outside the scope of copyright law. *See Michaels v.*
20 *Internet Entertainment Group*, 5 F.Supp.2d 823, 835 (C.D.Cal. 1998) (stating the test for determining
21 whether a state law claim is preempted by the Copyright Act).

22 In order to issue preliminary relief, there must be a danger of irreparable harm occurring absent
23 an injunction. Should Plaintiffs ultimately prevail, a monetary award may be difficult to quantify and
24 may not adequately compensate them for their injuries. If Defendant's products remain on the market
25 for sale, they may irreparably harm the competing products licensed by Plaintiffs which will be at the
26 vulnerable stage of trying to gain entry to the market. In addition, Defendant's products may limit
27 Plaintiffs' ability to make new licensing agreements, compensation for which would be extremely
28 difficult to quantify. Although there is some chance of harm to Action Products, the balance of harms

1 do not weigh heavily in its favor. There would be some financial hardship to Defendant, since it has
2 2,500 Action Figures and Landing Toys in inventory and redesigning the packaging would cost over
3 \$10,000 (Defendant's gross profits in 1998 were approximately \$2.8 million on sales of nearly \$6
4 million). An injunction may also harm Action Products' contractual relationship with the Discovery
5 Channel. Although the Court does not lightly impose serious burdens as a matter of preliminary relief,
6 they are justified in this case in light of the danger of injury to Plaintiffs and their strong probability of
7 success. The Court is not swayed by Defendant's claim that Plaintiffs were dilatory in bringing this
8 motion. Plaintiffs were trying to stop Action Products from continuing the production and sale of these
9 products outside of court (and were partially successful as Defendant pulled the "Apollo Astronaut
10 Authentic Replica" from QVC). Such efforts to resolve these matters informally do not show that
11 ceasing the allegedly illegal conduct was not urgent to Plaintiffs and, furthermore, are encouraged by
12 this Court.

13 **Disposition**

14 Plaintiff's Motion for a Preliminary Injunction is GRANTED. The prohibitions of the injunction
15 are set forth in the attached order.

16
17 IT IS SO ORDERED

18 DATED: JANUARY 18, 2000.

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DAVID O. CARTER
United States District Judge

23 **** If all counsel submit for ruling on this Tentative Order and notify the Courtroom Deputy Clerk
24 immediately, this Tentative Order will become the Court's order. After all appearances and submissions
25 have been noted by the Clerk, the matter will not be called and there will be no need to remain.
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE 02/10/00

DEPT. 3

HONORABLE Emilie Elias

JUDGE R. J. THRALL

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MC

G. YOUNG, CRT ASST.

Deputy Sheriff

NONE

Reporter

BC220508

Plaintiff

Counsel

DR BUZZ ALDRIN

NO APPEARANCES

VS

Defendant

UNIFIED PRECIOUS METALS INC

Counsel

NATURE OF PROCEEDINGS:

NON-APPEARANCE CASE REVIEW -
NOTICE OF ENTRY OF ORDER;

The court being in receipt of the proposed order granting preliminary injunction submitted by plaintiff, and objection thereto, said order is signed and filed this date with modification.

Copies of that order, and this minute order, are sent this date via US Mail to counsel addressed as follows:

FRIEDEMANN, O'BRIEN & ZARIAN
611 West Sixth Street
Suite 1600
Los Angeles, CA 90017

NEWMAYER & DILLION
Timothy Mentzer, Attorney
3501 Jamboree Road
North Tower, Sixth Floor
Newport Beach, CA 92660

MINUTES ENTERED
02/10/00
COUNTY CLERK

1 ROBERT C. O'BRIEN (SB No. 154372)
 JOHN M. ZARIAN (SB No. 145080)
 2 KYLE M. FISHER (SB No. 127334)
 FRIEDEMANN O'BRIEN & ZARIAN LLP
 3 511 West Sixth Street, Suite 1600
 Los Angeles, California 90017
 4 Telephone: (213) 861-7490
 Facsimile: (213) 861-7491
 5
 Attorneys for Plaintiff
 6 DR. BUZZ ALDRIN

ORIGINAL FILED

FEB 10 2000

SUPERIOR COURT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES

11 DR. BUZZ ALDRIN,

12 Plaintiff,

13 v.

14 UNIFIED PRECIOUS METALS, INC. dba
 AMERICAN HISTORIC SOCIETY;
 15 EXCELSIOR PRODUCTIONS INC.; WORLD
 NETWORK INC.; STEPHEN GORDON;
 16 PETER PAUL; and DOES 1 through 50,
 inclusive,

17 Defendants.

CASE NO. BC 220608

~~PLAINTIFF'S REQUESTED~~ ORDER
 GRANTING PLAINTIFF DR. BUZZ
 ALDRIN'S MOTION FOR
 PRELIMINARY INJUNCTION

Date: January 21, 2000

Time: 8:45 a.m.

Dept: 3

Judge: Commissioner Emilie Elias

Complaint Filed: November 23, 1999

Trial Date: None set

1 The Court has read and considered the papers filed in support of and in opposition to the
2 Motion for the Issuance of a Preliminary Injunction (the "Motion") of Plaintiff Dr. Buzz Aldrin
3 ("Dr. Aldrin") and has heard the argument of counsel at the hearing on this matter. Good cause
4 appearing therefore, the Court hereby finds and orders as follows:

5 WHEREAS, Dr. Aldrin has requested a preliminary injunction against Defendant
6 Excelsior Productions, Inc., World Network, Inc., Stephen Gordon and Peter Paul (collectively,
7 "Defendants") based on their alleged misappropriation of his name, image, likeness and identity
8 through the manufacture, sale and distribution of products containing or incorporating Dr. Aldrin
9 image as it appears on the photograph taken of Dr. Aldrin in a spacesuit standing on the moon
10 surface on July 20, 1969 with his fellow astronaut, Neil Armstrong and the Eagle lunar landing
11 module reflected in his visor (the image is hereafter referred to as the "Visor Shot"); and, -

12 WHEREAS, Dr. Aldrin has demonstrated that the criteria for granting injunctive
13 relief set forth in Code of Civil Procedure §526 are satisfied and that he will suffer immediate and
14 irreparable harm if a preliminary injunction is not issued against Defendants

15 ORDER

16 IT IS HEREBY ORDERED THAT:

- 17 1. The Motion is granted and a preliminary injunction (the "Preliminary Injunction") is
18 hereby issued effective as of the date of the posting of bond pursuant to paragraph 5 below.
- 19 2. The Preliminary Injunction is issued against defendants Excelsior Productions Inc.,
20 World Network Inc., Stephen Gordon and Peter Paul (collectively, "Defendants"), and each of
21 them, as well as their respective agents, officers, directors, partners, employees, assigns, successors,
22 representatives and all persons acting under or in concert with them (the "Enjoined Parties").
- 23 3. The Enjoined Parties are hereby ordered to immediately cease and desist from any
24 further manufacture, advertisement and/or sale of any products containing and/or incorporating Dr.
25 Aldrin's name, image, likeness or identity including, but not limited to, commemorative medallions,
26 pocket watches and coin collections replicating the Visor Shot, without the express written consent
27 of Dr. Aldrin's counsel of record in this action.

4. ~~In addition, the Enjoined Parties are hereby ordered as follows:~~

2 a. To immediately cease and desist from representing to anyone that
3 they are authorized or have the right to assign Dr. Aldrin's name, image, likeness or identity in
4 connection with the manufacture, advertisement or sale of any products containing or incorporat
5 Dr. Aldrin's name, image, likeness or identity.

6 b. To immediately cease and desist from moving to another location
7 and all products in their possession, custody and control containing and/or incorporating Dr.
8 Aldrin's name, image, likeness and identity including, but not limited to, commemorative
9 medallions, pocket watches and coin collections replicating the Visor Shot, without the express
10 written consent of Dr. Aldrin's counsel.

11 c. To immediately cease and desist from destroying or altering any and
12 all records related to any and all income derived from the licensing, manufacture, advertisement
13 and/or sale of any and all products containing and/or incorporating Dr. Aldrin's name, image,
14 likeness or identity including, but not limited to, commemorative medallions, pocket watches and
15 coin collections replicating the Visor Shot.

16 d. To immediately cease and desist from destroying or altering any and
17 all records related to past or present inventories of products containing or incorporating Dr. Aldrin's
18 name, likeness, image or identity, including, but not limited to, commemorative medallions, pocket
19 watches and coin collections replicating the Visor Shot.

20 5. Dr. Aldrin and/or his attorneys and agents are hereby authorized to provide notice of
21 the entry of this order as is reasonably necessary to effectuate the relief granted hereby.

22 6. Dr. Aldrin shall post with the Clerk of Court a bond in the amount of \$5,000.

23 IT IS SO ORDERED.

24
25 DATED: FEB 10 2000

EMILIE H. ELIAS
COMMISSIONER

Commissioner Emilie Elias
Los Angeles Superior Court

07/30/10 3:34 PAGE 3/3 HIGHSTAR

P-SEND
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ENTERED
AUG 20 2010
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA OFFICE
BY *[Signature]* DEPUTY

FILED
AUG 30 2010
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
BY *[Signature]* DEPUTY

ICD080
CLERK, U.S. DISTRICT COURT
AUG 28 2010
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

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HANCI CONRAD, an individual,
Plaintiff,
vs.
THE MEDIA GROUP, INC., a
Delaware corporation; DURA LUBE
CORPORATION, a Delaware
corporation; DURA LUBE PRODUCTS
CORPORATION, a New York
corporation,
Defendants.

Case No. SA CV 09-570-DOC (AMZ)
[PROPOSED] ORDER GRANTING
PLAINTIFF HANCI CONRAD'S MOTION
FOR PRELIMINARY INJUNCTION
Date:
Time:
Place: Courtroom 5-D, The
Honorable David O. Carter

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- Decketed
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[PROPOSED] ORDER GRANTING PLAINTIFF HANCI
CONRAD'S MOTION FOR PRELIMINARY INJUNCTION

216.33007.1

07/30/00 3:52 PM WDC 112 BARBIE/AA

1 The Court having read and considered the papers filed in
2 support of and in opposition to the Motion for the Issuance of a
3 Preliminary Injunction (the "Motion") of Plaintiff Nancy Conrad
4 ("Plaintiff") and having heard the argument of counsel at the
5 hearing on this matter on August 17, 2000, and good cause
6 appearing therefor, IT IS ORDERED THAT;

7 1. The Motion is granted in part and denied in part for
8 the reasons set forth in this Court's ruling issued at the
9 hearing on this matter.

10 2. The Preliminary Injunction ordered below will be
11 effective upon notice to defendants of the posting with the Court
12 of a bond by Plaintiff in the amount of \$25,000 (the "Preliminary
13 Injunction").

14 3. The Preliminary Injunction is issued against Defendants
15 the Media Group, Inc., Dura Lube Corporation and Dura Lube
16 Products Corporation as well as their officers and employees (the
17 "Enjoined Parties").

18 4. The enjoined parties are hereby ordered:

19 a. to immediately cease and desist from any
20 manufacture, advertisement and/or sale of any products containing
21 and/or incorporating the name, likeness, image and identity of
22 Charles "Pete" Conrad ("Conrad"), including, but not limited to,
23 the following: the name, image and signature of Conrad on
24 packaging for automobile-related products sold under the brand
25 name "Dura Lube" as well as the name, image and signature of
26 Conrad on advertisements for Dura Lube products including, but
27 not limited to, in print, on television or on the Internet.

28 b. To immediately cease and desist from making

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1 available to distributors, wholesalers and retailers any products
2 in the possession, custody and control of the Enjoined Parties
3 containing and/or incorporating the name, image and signature of
4 Conrad without the express written consent of Plaintiff's
5 counsel.

6
7 IT IS SO ORDERED.

Alvin G. Carter

8
9 Dated: August 29, 2000

United States District Judge

10
11 SUBMITTED BY:

12 BERD, MARELLA, BOXER & WOLFERT

13
14 *Deborah Wolfert*

15 Deborah Wolfert, Esq.
16 Attorneys for Defendants
17 THE MEDIA GROUP, INC., DURA LUBE
18 CORPORATION and DURA LUBE
19 PRODUCTS CORPORATION
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CLAIMED INJURIES

According to defendant: Brachial and ulnar neuritis; closed head trauma with residual headaches.

CLAIMED DAMAGES

According to defendant: \$9,894 past medical; unknown future medical; \$7,000 past income; unknown future income.

SETTLEMENT DISCUSSIONS

According to defendant: Demand: Over \$50,000 at mediation. This demand remained constant through trial. Offer: \$1,500 at mediation.

TRIAL EXPERTS

Plaintiff: Charles E. Turnbow, safety engineer, Apple Valley (760) 247-1050. Ronald Fluegel, chiropractor.

Defendant: None.

COMMENTS

According to defendant: Plaintiff was impeached by the testimony of his former employer, who refuted plaintiff's claim that he had an extended employment history with the company and that he was paid a certain rate of pay while employed. This employer denied that plaintiff ever would have been paid \$7,000 for his services as a day laborer/helper.

3 TD 6th 10

Widow sues for fraudulent transfer of real property by party involved in husband's fatal accident

REAL PROPERTY

Title: Fraudulent Conveyance

LOS ANGELES COUNTY SUPERIOR COURT

Reif v. Nadrich, No. SC062506, Santa Monica. Deborah Yang. Bench trial: 4 days. Verdict/Judgment: 5/14/2002.

VERDICT/JUDGMENT: DEFENSE

TRIAL COUNSEL

Plaintiff: C. Michael Alder, Law Offices of C. Michael Alder, Beverly Hills.

Defendant: Stephen H. Marcus, Gittler & Bradford, Los Angeles.

FACTS/CONTENTIONS

According to defendant: A widow sued for the alleged fraudulent transfer of real property by the party involved in the accident that killed her husband. The plaintiff was Bobbie

Reif. The defendant was Phillip Nadrich, a 51-year-old attorney. Plaintiff's husband had been killed in an auto accident involving a car driven by Phillip Nadrich, father of defendant. About one month later, Phillip Nadrich quit claimed his interest in his residence to defendant. Plaintiff alleged that the transfer was a fraudulent transfer.

Defendant contended that he paid a reasonably equivalent value for the property.

CLAIMED INJURIES

NA

CLAIMED DAMAGES

According to defendant: \$190,000 as the value of the interest transferred.

SETTLEMENT DISCUSSIONS

According to defendant: Confidential. No statutory offers or demands made.

TRIAL EXPERTS

None.

COMMENTS

According to defendant: In reaching its decision, the court reasoned that defendant's interest in the relevant property was 50 percent and the interest his parents owned was also 50 percent. At most, any transferred interest in the property would only constitute 50 percent of its value (\$172,000). While sympathetic to plaintiff's loss, the court ruled that the issue at trial was a technical one. Subsequent to the transfer of property to defendant, he spent over \$172,000 on his parents, which constituted a reasonably equivalent value in exchange for the transfer. Plaintiff therefore failed to meet her burden of proof pursuant to CC§3439.04 to show that the transfer was fraudulent.

3 TD 6th 11

SETTLEMENT—Widow of astronaut sues pen company for unauthorized use of his likeness

UNFAIR COMPETITION

Business Interference

UNFAIR BUSINESS PRACTICES

SAN DIEGO COUNTY SUPERIOR COURT

Irwin v. The Fisher Pen Company of Nevada, No. GIC775740, Central. Linda Boelhauf Quinn. Settlement Date: 9/17/2002.

For Searches and Subscriptions, call (800) 365-0379

Final Reports

SETTLEMENT RESULT: \$50,000

Plaintiff The Writers Edge: \$10,000; defendant Digital Stock: \$40,000; defendants Fisher: Confidential.

COUNSEL

Plaintiff: Robert C. O'Brien, Friedemann, O'Brien, Goldberg Zarian, LLP, Los Angeles. Wendy Fors Jerdon, Friedemann, O'Brien, Goldberg & Zarian, LLP, Los Angeles.

Defendant: R. Patrick McCullogh, Popov & McCullogh, LLP, Jolla. David Green, Senior Corporate Counsel for Digital Stock, Inc., Bellevue, WA. Jon Van de Grift, Souhrada & Silk, San Diego.

FACTS/CONTENTIONS

According to plaintiff: The widow of an Apollo astronaut used a pen company for using her husband's likeness for advertising purposes without her permission. The plaintiff is Mary Irwin, a 65-year-old consultant for a non-profit organization. The defendants were The Fisher Pen Company Nevada; Paul C. Fisher dba Fisher Space Pen Company; The Writers Edge; and Digital Stock, Inc. In 1971, Apollo XV astronaut Col. James Irwin, earned the distinction of being one of only 12 men to walk on the surface of the moon. Col. Irwin died in 1991. Plaintiff, Col. Irwin's widow, discovered at The Fisher Pen Company of Nevada and its agents were using a famous image of Col. Irwin on the moon in connection with the advertising and sale of Fisher Space Pen products. Neither Col. Irwin nor plaintiff had authorized defendants to use the image, likeness, or identity of Col. Irwin. The image used in defendants' products, packing, and advertisements portrayed Irwin on the surface of the moon, holding the American flag, with the Lunar Module and the Lunar Roving Vehicle in the background. Plaintiff filed suit, alleging causes of action for unfair competition [15 U.S.C. § 125(a)], post-mortem right of publicity [Cal. Civ. Code § 3344.1], unfair business practices, and unjust enrichment. Defendants The Fisher Pen Company of Nevada and Paul C. Fisher dba Fisher Space Pen Company contended that the photograph used in their products and advertising portrayed a generic astronaut rather than the identifiable image of Col. Irwin. They contended that Col. Irwin was not recognizable in a space suit. The Fisher defendants also claimed that they received a license to use Col. Irwin's image from Digital Stock. Digital Stock denied this allegation.

CLAIMED INJURIES

None

CLAIMED DAMAGES

Not reported.

SETTLEMENT DISCUSSIONS

Not reported.

EXPERTS

Plaintiff: Lisa Marie Cannon, attorney/celebrity licensing, Santa Monica (310) 458-4717. Patrick Lauerman, attorney/celebrity licensing, Heat Licensing, Sequim, WA (360) 681-0563. James R. Perez, attorney/damages specialist, Pimenti & Brinker, LLP, Petaluma (707) 664-8001.

Defendant: Not reported.

COMMENTS

According to plaintiff: Travelers Property Group was the insurance carrier for The Writers Edge.

R. Patrick McCullogh represented the Fisher defendants. Jon Van de Grift represented The Writers Edge. David Green represented Digital Stock, Inc.

3 TD 6th 12

Driver admits liability for rear-end—disputes causation of injuries

VEHICLE NEGLIGENCE

Motor Vehicle v. Motor Vehicle : Rear-End

LOS ANGELES COUNTY SUPERIOR COURT

Confidential v. Confidential, No. VC033358, Norwalk. James M. Sutton, Jr. Jury trial: 4 days. Verdict/Judgment: 6/3/2002.

VERDICT/JUDGMENT: \$63,337

Plaintiff one: \$12,337, plus costs of \$1,759. Plaintiff two: \$51,000, plus costs of \$15,538. Vote: Not reported. Deliberations: 5 hours.

TRIAL COUNSEL

Plaintiff: Michael J. Shilub, Law Offices of Michael J. Shilub, Los Angeles.

Defendant: Christopher M. Gardener, Law Offices of Robert A. Kroll, Torrance.

FACTS/CONTENTIONS

According to plaintiff: A driver admitted liability for an accident that injured two parties in another vehicle. The names of the parties were confidential. Plaintiffs' Ford Explorer was stopped in heavy traffic on the Santa Ana Freeway. Defendant driver, who admitted to traveling approximately 50 miles per hour just prior to the impact, rear-ended plaintiffs' vehicle, forcing it forward. Anticipating the impact and attempting to avoid a collision with the vehicle in front of her, plaintiff number one turned the wheels to the left, causing her vehicle to be forced into the center divider. Liability was not contested, but defendant disputed causation as to the rotator cuff injuries.