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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT**

**DISTRICT OF ARIZONA**

**XCENTRIC VENTURES, L.L.C.**  
an Arizona limited liability company,

**Plaintiff,**

vs.

**OPINION CORP. d/b/a PISSED  
CONSUMER,**  
a New York corporation;  
**FORTRESS ITX, L.L.C,**  
a New Jersey corporation;  
**DOES 1–10, inclusive,**

**Defendants.**

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

**VERIFIED COMPLAINT**

For its complaint against Defendants, Plaintiff alleges:

**JURISDICTION AND VENUE**

1. This is a civil action seeking monetary damages and injunctive relief for various acts of copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 *et seq.*) and for various acts of trademark infringement in violation of the Lanham Act, 15 U.S.C. § 1051, *et seq.*, and related state law claims.

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2. This Court has jurisdiction under 15 U.S.C. § 1121 (trademark); 17 U.S.C. § 101 *et seq.* (copyright); 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright). This Court has supplemental jurisdiction over state and common law claims pursuant to 28 U.S.C. § 1367(a).

3. Venue in this District is proper under 28 U.S.C. §§ 1391(b) and (c), and/or 28 U.S.C. § 1400(a). A substantial part of the acts of infringement complained of occurred in this District, and certain corporate defendants are subject to personal jurisdiction in this District.

4. Personal jurisdiction in this District is proper because each defendant, engaged in acts of copyright infringement within the District of Arizona, and/or intentionally directed tortious conduct at Plaintiff knowing such conduct would cause harm within this District.

**PARTIES**

5. Plaintiff XCENTRIC VENTURES, L.L.C. (“Plaintiff”) is and at all relevant times was an Arizona limited liability company located in Phoenix, Arizona.

6. Plaintiff is the operator of a consumer complaint and free speech forum known as the Rip-off Report located at [www.RipoffReport.com](http://www.RipoffReport.com) (the “Rip-off Report site”). The Rip-off Report is widely used by consumers, and works closely with government agencies, attorneys general, federal, state, and local law enforcement, and the news media to help report, identify and prevent consumer fraud and similar conduct.

7. Defendant OPINION CORP., INC. (“OCI”) is, and at all relevant times has been, a New York corporation doing business as Pissed Consumer with a website located at [www.PissedConsumer.com](http://www.PissedConsumer.com) (the “Pissed Consumer” site) which caused the events herein described to occur with knowledge that they would cause harm within the State of Arizona. Upon information and belief, OCI also has engaged in continuous, systematic and substantial contacts with the State of Arizona sufficient to confer general and specific personal jurisdiction over it in this District.

1 8. Defendant FORTRESS ITX, INC. (“FORTRESS”) is, and at all relevant  
2 times has been, a New Jersey corporation doing business as www.FortressITX.com  
3 which caused the events herein described to occur with knowledge that they would  
4 cause harm within the State of Arizona. Upon information and belief, FORTRESS also  
5 has engaged in continuous, systematic and substantial contacts with the State of Arizona  
6 sufficient to confer general and specific personal jurisdiction over it in this District.

7 9. The Court has in rem jurisdiction over the domain name rip-off-  
8 report.pissedconsumer.com as the domain registrar is located in Arizona.

9 **PLAINTIFF’S COPYRIGHTS/TRADEMARKS**

10 10. Plaintiff is and at all relevant times has been the lawful owner of the mark  
11 “RIP-OFF REPORT” which has been registered with the United States Patent and  
12 Trademark Office and assigned registration #2958949.

13 11. Since February 1998 through the filing of this action, Plaintiff has  
14 continuously used the mark “RIP-OFF REPORT” in commerce to identify and  
15 distinguish Plaintiff’s business from other businesses in the same field.

16 12. Plaintiff’s ownership of the “RIP-OFF REPORT” mark is incontestable as  
17 a matter of law pursuant to 15 U.S.C. § 1065.

18 13. Plaintiff is the owner of various copyrights relating to content appearing  
19 on the Rip-off Report website.

20 14. Plaintiff is the owner of the federal copyright issued by the United States  
21 Copyright Office Certificate of Registration No. TXu1-574-438 entitled “Rip-off Report  
22 Content” dated March 25, 2008.

23 15. Plaintiff is the owner of a federal copyright issued by the United States  
24 Copyright Office Certificate of Registration No. TXu1-371-920 entitled “Group  
25 Database Registration for Automated Database Entitled ‘Rip-off Report Database.’  
26 Unpublished updates from March 5, 2008 – May 5, 2008” dated May 20, 2008.  
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**DEFENDANTS' ACTIVITIES**

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16. Since at least October 2007 through the present, FORTRESS has provided internet hosting services to OCI and its website www.PissedConsumer.com.

17. The Pissed Consumer site generally purports to be a forum for consumers to post and review complaints about businesses and bad business practices, among other things.

18. OCI and the Pissed Consumer site are direct competitors of Plaintiff and the Rip-off Report site.

19. In late 2007 Plaintiff learned that OCI had copied certain copyrighted works directly from the Rip-off Report site and that OCI was publishing these works on the Pissed Consumer site without Plaintiff's consent.

20. On or about October 25, 2007 Plaintiff, through counsel, sent written notice pursuant to the Digital Millennium Copyright Act (the "DMCA"), 17 U.S.C. §§ 512, *et seq.*, to FORTRESS notifying it that OCI was infringing Plaintiff's rights and demanding, among other things, that FORTRESS immediately remove certain infringing material from the Pissed Consumer site.

21. OCI complied with the October 25, 2007 notice from Plaintiff.

22. In December 2007, Plaintiff again learned that OCI had copied large quantities of copyrighted works directly from the Rip-off Report site and that OCI was publishing these works on the Pissed Consumer site without Plaintiff's consent.

23. On or about December 21, 2007 Plaintiff, through counsel, sent a second DMCA notice to FORTRESS notifying it that OCI was infringing Plaintiff's rights and demanding, among other things, that FORTRESS immediately remove certain infringing material from the Pissed Consumer site.

24. OCI complied with the December 21, 2007 notice from Plaintiff.

1           25. In January 2008, Plaintiff again learned that OCI was continuing to copy  
2 large quantities of copyrighted works from the Rip-off Report site and that OCI was  
3 publishing these works on the Pissed Consumer site without Plaintiff's consent.

4           26. On or about January 24, 2008 Plaintiff, through counsel, sent a third  
5 DMCA notice to FORTRESS notifying it that OCI was infringing Plaintiff's rights and  
6 demanding, among other things, that FORTRESS immediately remove certain infringing  
7 material from the Pissed Consumer site.

8           27. The third DMCA notice also demanded that FORTRESS immediately  
9 terminate providing any/all services to OCI because OCI was known to FORTRESS as a  
10 repeat copyright infringer who was using FORTRESS' services to continue engaging in  
11 widespread acts of infringement.

12           28. FORTRESS removed the material identified in Plaintiff's third DMCA  
13 notice but FORTRESS did not terminate its business relationship with OCI nor did  
14 FORTRESS take any action to prevent OCI from infringing Plaintiff's rights.

15           29. Since January 24, 2008, OCI has copied and continues to copy large  
16 quantities of copyrighted works from the Rip-off Report site without Plaintiff's  
17 permission or consent.

18           30. Without Plaintiff's permission and without any lawful right to do so, OCI  
19 has created a sub-domain entitled <http://rip-off-report.pissedconsumer.com> which  
20 incorporates Plaintiff's registered trademark RIP-OFF REPORT.

21           31. OCI's domain name is likely to cause confusion as to source or  
22 sponsorship.

23           32. Without Plaintiff's permission and without any lawful right to do so, OCI  
24 has created metatags which incorporate Plaintiff's registered trademark in the mark  
25 "RIP-OFF REPORT" for the purposes of misleading consumers who are attempting to  
26 locate Plaintiff's website by causing them to be directed to the Pissed Consumer site.  
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33. OCI's unlawful use of Plaintiff's trademarks and copyrighted works has caused substantial actual confusion among consumers who have been misled into believing that Plaintiff is the owner and/or operator of the Pissed Consumer site when, in fact, this is not true. *See, e.g.*, <http://www.fabulousflashcast.com/parent.html> (visited September 5, 2008) (stating, "It appears that RipOffReport.com's Ed Magedson allegedly has a new extortion scheme going ... pissedconsumer.com BEWARE!")

**COUNT 1**  
**INFRINGEMENT OF COPYRIGHT — 17 U.S.C. §§ 106, 501(a)**  
**(Against Defendant OCI)**

34. Plaintiff incorporates herein by reference each and every allegation contained above.

35. Defendant OCI has violated Plaintiff's exclusive rights under 17 U.S.C. § 106(1) (direct copying) by copying Plaintiff's works without permission.

36. Defendant OCI has violated Plaintiff's exclusive rights under 17 U.S.C. § 106(3) (distribution) by distributing Plaintiff's works without permission

37. Defendant OCI has violated Plaintiff's rights under 17 U.S.C. § 106(5) (display) by publicly displaying Plaintiff's works without permission.

38. Plaintiff is informed and believes that the foregoing acts of infringement have been willful, intentional, and in disregard of and with indifference to the rights of Plaintiff.

39. Defendant OCI's infringing activities were not authorized by Plaintiff and were performed without Plaintiff's knowledge, consent, or permission.

40. Defendant OCI's infringing activities was and is done for Defendant's financial gain.

41. Defendant OCI's infringing activities have caused Plaintiff to incur actual damages of not less than \$150,000.

1 42. As the result of Defendant OCI's infringement of Plaintiff's exclusive  
2 rights, Plaintiff is entitled to recover from Defendant OCI its actual damages pursuant to  
3 17 U.S.C. § 504(b) or statutory damages pursuant to 17 U.S.C. § 504(c), whichever is  
4 greater.

5 43. As the result of Defendant OCI's infringement of Plaintiff's exclusive  
6 rights, Plaintiff further is entitled to attorneys' fees and costs pursuant to 17 U.S.C. §  
7 505.

8 **COUNT 2**  
9 **VICARIOUS INFRINGEMENT OF COPYRIGHT — 17 U.S.C. §§ 106, 501(a)**  
10 **(Against FORTRESS)**

11 44. Plaintiff incorporates herein by reference each and every allegation  
12 contained above.

13 45. Defendant OCI has engaged in multiple acts of direct infringement of  
14 Plaintiff's exclusive rights granted under the Copyright Act.

15 46. Defendant FORTRESS has profited directly from the infringing activity of  
16 OCI.

17 47. Defendant FORTRESS had the right and ability to control the infringing  
18 activity of OCI.

19 48. Despite having actual knowledge of OCI's unlawful actions, Defendant  
20 FORTRESS failed to exercise its right and ability to control OCI's conduct. As a result,  
21 FORTRESS is liable to Plaintiff for vicarious infringement of Plaintiff's copyrights.

22 49. Defendant FORTRESS is not entitled to immunity pursuant to 17 U.S.C. §  
23 512(c)(1) because FORTRESS had actual knowledge of the infringement, was aware of  
24 facts and circumstances from which OCI's infringing activity was apparent, and because  
25 FORTRESS has failed to adopt and reasonably implement a policy as required by 17  
26 U.S.C. § 512(i)(1)(A) that provides for the termination in appropriate circumstances of  
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1 services to subscribers and account holders who are repeat infringers such as OCI. *See*  
2 *Perfect 10, Inc. v. CC Bill, L.L.C.*, 488 F.3d 1102, 1109 (9<sup>th</sup> Cir. 2007).

3 50. As the result of Defendant FORTRESS’ vicarious infringement of  
4 Plaintiff’s exclusive rights, Plaintiff is entitled to recover actual damages pursuant to 17  
5 U.S.C. § 504(b) or statutory damages pursuant to 17 U.S.C. § 504(c), whichever is  
6 greater, for each worked infringed. Plaintiff is further is entitled to attorneys' fees and  
7 costs pursuant to 17 U.S.C. § 505.

8  
9 **COUNT 4**  
10 **TRADEMARK INFRINGEMENT — 15 U.S.C. § 1114**  
11 **(Against OCI)**

12 51. Plaintiff incorporates herein by reference each and every allegation  
13 contained above.

14 52. “RIP-OFF REPORT” is a valid, protectable trademark.

15 53. Plaintiff owns “RIP-OFF REPORT” as its trademark.

16 54. Defendant OCI used the RIP-OFF REPORT mark, or a mark confusingly  
17 similar thereto, without the consent of Plaintiff in a manner that is likely to cause  
18 confusion among ordinary consumers as to the source of the services offered by Plaintiff  
19 and by OCI.

20 **COUNT 5**  
21 **CYBERPIRACY**  
22 **15 U.S.C. § 1125(d)**

23 55. Plaintiff incorporates herein by reference each and every allegation  
24 contained above.

25 56. OCI, with a bad faith intent to profit from the RIP-OFF REPORT mark,  
26 registered and uses a domain name that is confusingly similar to the RIP-OFF REPORT  
27 mark.  
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1 57. Plaintiff has been damaged by OCI's unlawful registration and use of such  
2 domain name(s) in an amount to be proven at trial.

3 **COUNT 6**  
4 **UNFAIR COMPETITION/INITIAL INTEREST CONFUSION**  
5 **TRADEMARK INFRINGEMENT — 15 U.S.C. § 1114**  
6 **(Against OCI)**

7 58. Plaintiff incorporates herein by reference each and every allegation  
8 contained above.

9 59. "RIP-OFF REPORT" is a valid, protectable trademark.

10 60. Plaintiff owns "RIP-OFF REPORT" as its trademark.

11 61. By using the "RIP-OFF REPORT" mark in both its domain name and in  
12 metatags associated with the Pissed Consumer site, Defendant OCI has infringed  
13 Plaintiff's trademark without the consent of Plaintiff in a manner calculated to capture  
14 initial consumer attention and to direct such attention to the Pissed Consumer site at the  
15 expense of viewers looking for the Rip-off Report site.

16 62. OCI's conducts constitutes unfair competition and initial interest  
17 confusion in violation of Plaintiff's rights under the Lanham Act and under the common  
18 law.

19 **COUNT 7**  
20 **INJUNCTIVE RELIEF — 17 U.S.C. § 502(a)**  
21 **(Against All Defendants)**

22 63. Plaintiff incorporates herein by reference each and every allegation  
23 contained above.

24 64. The conduct of each Defendant is causing and, unless enjoined and  
25 restrained by this Court, will continue to cause Plaintiff great and irreparable injury that  
26 cannot fully be compensated or measured in money.

27 65. Plaintiff has no adequate remedy at law.  
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66. Pursuant to 17 U.S.C. §§ 502(a) and 503, Plaintiff is entitled to preliminary and permanent injunctive relief prohibiting each Defendant from further infringing Plaintiff's copyrighted works.

**JURY TRIAL DEMAND**

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury on all issues so triable.

**WHEREFORE**, Plaintiff prays for judgment against each Defendant as follows:

1. For Plaintiff's actual damages and Defendants' profits, or statutory damages, as Plaintiff may elect, for infringement of each copyrighted work pursuant to 17 U.S.C. § 504;
2. For statutory and/or treble damages pursuant to 15 U.S.C. § 1117;
3. For injunctive relief pursuant to 17 U.S.C. §§ 502(a) and 503;
4. For Plaintiff's costs in this action pursuant to 17 U.S.C. § 504 and/or 15 U.S.C. § 1117(a);
5. For Plaintiff's reasonable attorneys' fees incurred pursuant to 17 U.S.C. § 504 and/or 15 U.S.C. § 1117(a);
6. For forfeiture or cancellation of the domain name or the transfer of the domain name rip-off-report.pissedconsumer.com to Plaintiff;
7. For such other and further relief as the Court may deem just and proper.

**RESPECTFULLY SUBMITTED** this 7<sup>th</sup> day of October, 2008.

**JABURG & WILK, P.C.**

s/Maria Crimi Speth

Maria Crimi Speth, Esq.  
Attorneys for Plaintiff

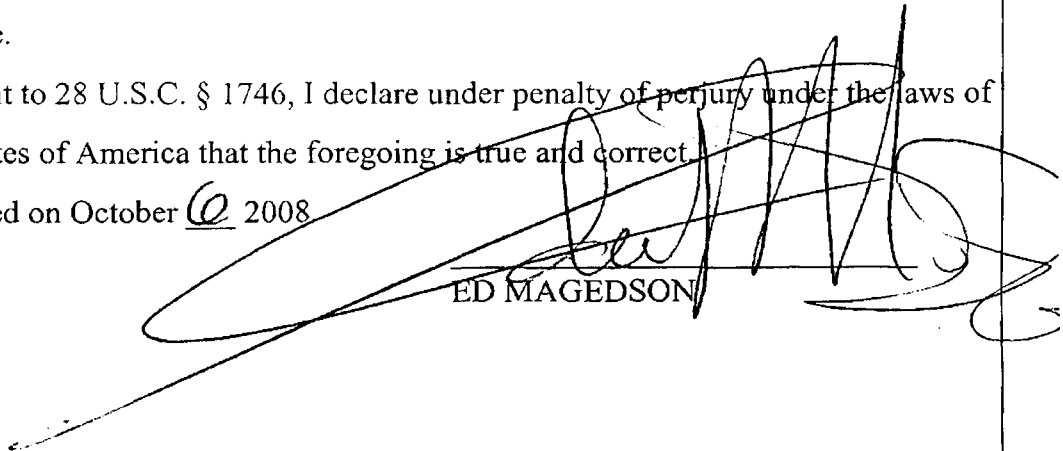
VERIFICATION

ED MAGEDSON, deposes and says he is the Manager of Xcentric Ventures, L.L.C. which is the Plaintiff in the within action; he has read the foregoing and knows the contents thereof, and the same are true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes them to be true.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 6 2008

ED MAGEDSON



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