

1 Maria Crimi Speth (012574)  
 2 Laura A. Rogal (025159)  
 3 **JABURG & WILK, P.C.**  
 4 3200 N. Central Avenue, Suite 2000  
 5 Phoenix, Arizona 85012  
 6 mcs@jaburgwilk.com  
 7 lar@jaburgwilk.com  
 8 (602) 248-1000

Attorneys for Plaintiff

9 **UNITED STATES DISTRICT COURT**  
 10 **DISTRICT OF ARIZONA**

11 XCENTRIC VENTURES, L.L.C., an  
Arizona Limited Liability Corporation,

12 Plaintiff,

13 v.

14 ELIZABETH ARDEN d/b/a  
 15 COMPLAINTSBOARD.COM;  
 16 MELBOURNE IT DBS, INC., a Delaware  
 17 corporation; INTERNET NAMES  
 18 WORLDWIDE, INC., a Delaware  
 19 corporation; DOES 1-10, inclusive,

Defendants.

Case No.

**COMPLAINT**

Jaburg & Wilk, P.C.  
 Attorneys At Law  
 3200 N. Central Avenue, Suite 2000  
 Phoenix, Arizona 85012  
 (602) 248-1000

20 Plaintiff Xcentric Ventures, L.L.C. alleges:

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

25 2. This Court has jurisdiction under 15 U.S.C. § 1121 (trademark); 17 U.S.C. §  
 26 101 *et seq.* (copyright); 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a)  
 27 (copyright). This Court has supplemental jurisdiction over state and common law claims  
 28 pursuant to 28 U.S.C. § 1367(a).

1           3.       Venue in this District is proper under 28 U.S.C. §§ 1391(b) and (c), and/or  
2 28 U.S.C. § 1400(a). A substantial part of the acts of infringement complained of  
3 occurred in this District, and certain corporate defendants are subject to personal  
4 jurisdiction in this District.

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

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

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

16           7.       Defendant ELIZABETH ARDEN d/b/a COMPLAINTSBOARD.COM  
17 (“Complaints Board”) is, and at all relevant times has been, a corporation of unknown  
18 origin doing business as Complaints Board on the website [www.complaintsboard.com](http://www.complaintsboard.com)  
19 which caused the events herein described to occur with knowledge that they would cause  
20 harm within the State of Arizona. Upon information and belief, Complaints Board also  
21 has engaged in continuous, systematic and substantial contacts with the State of Arizona  
22 sufficient to confer general and specific personal jurisdiction over it in this District.

23           8.       Defendant MELBOURNE IT DBS, INC (“Melbourne”) is, and at all  
24 relevant times has been, a Delaware corporation doing business as “My Private  
25 Registration” and [www.melbourneit.com.au](http://www.melbourneit.com.au) which caused the events herein described to  
26 occur with knowledge that they would cause harm within the State of Arizona. Upon  
27 information and belief, Melbourne also has engaged in continuous, systematic and  
28 substantial contacts with the State of Arizona sufficient to confer general and specific  
personal jurisdiction over it in this District.



**DEFENDANTS' ACTIVITIES**

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2           16.     Since at least June 2006 through the present, MELBOURNE and/or  
3 INTERNET NAMES have provided internet hosting services to Elizabeth Arden and the  
4 website www.complaintsboard.com.

5           17.     Since at least June 2006 through the present, MELBOURNE and/or  
6 INTERNET NAMES has provided private registration services to Elizabeth Arden and  
7 the Complaints Board site under the name “My Private Registration.”

8           18.     According to the MELBOURNE and INTERNET NAMES website, “My  
9 Private Registration” is a service offered to “shield [ ] contact information from abuse.”  
10 The My Private Registration service replaces the actual contact information displayed in  
11 the public WHOIS database for the website with the details of MELBOURNE.

12           19.     The Complaints Board site generally purports to be a forum for consumers  
13 to post and review complaints about businesses and bad business practices, among other  
14 things.

15           20.     Elizabeth Arden and the Complaints Board site are direct competitors of  
16 Plaintiff and the Rip-off Report site.

17           21.     Since at least November, 2008, Elizabeth Arden has copied and continues to  
18 copy large quantities of copyrighted works from the Rip-off Report site without Plaintiff’s  
19 permission or consent.

20           22.     The Complaint Board site’s use of copyrighted works from the Rip-off  
21 Report site is likely to cause confusion as to source or sponsorship.

22           23.     Without Plaintiff’s permission and without any lawful right to do so,  
23 Elizabeth Arden has created metatags which incorporate Plaintiff’s registered trademark  
24 in the mark “RIP-OFF REPORT” for the purposes of misleading consumers who are  
25 attempting to locate Plaintiff’s website by causing them to be directed to the Complaints  
26 Board site.

27           24.     Without Plaintiff’s permission and without any lawful right to do so,  
28 Elizabeth Arden has copied verbatim the Terms of Service from the Rip-off Report Site,

1 and failed to change at least one reference to Plaintiff from the Terms of Service. See  
2 printout from Complaints Board Privacy Policy, attached hereto as **Exhibit “A.”**

3 25. Elizabeth Arden’s unlawful use of Plaintiff’s trademarks and copyrighted  
4 works has caused substantial actual confusion among consumers who have been misled  
5 into believing that Plaintiff is the owner and/or operator of the Complaints Board site  
6 when, in fact, this is not true. See, e.g., takedown demand letter from Michael K. Grace,  
7 mistakenly believing Plaintiff owned and operated the Complaints Board, attached hereto  
8 as **Exhibit “B.”**

9  
10 **COUNT 1**  
**INFRINGEMENT OF COPYRIGHT — 17 U.S.C. §§ 106, 501(a)**  
**(Against Defendant Elizabeth Arden)**

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

13 27. Defendant Elizabeth Arden has violated Plaintiff’s exclusive rights under 17  
14 U.S.C. § 106(1) (direct copying) by copying Plaintiff’s works without permission.

15 28. Defendant Elizabeth Arden has violated Plaintiff’s exclusive rights under 17  
16 U.S.C. § 106(3) (distribution) by distributing Plaintiff’s works without permission

17 29. Defendant Elizabeth Arden has violated Plaintiff’s rights under 17 U.S.C. §  
18 106(5) (display) by publicly displaying Plaintiff’s works without permission.

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

22 31. Defendant Elizabeth Arden’s infringing activities were not authorized by  
23 Plaintiff and were performed without Plaintiff’s knowledge, consent, or permission.

24 32. Defendant Elizabeth Arden’s infringing activities was and is done for  
25 Defendant’s financial gain.

26 33. Defendant Elizabeth Arden’s infringing activities have caused Plaintiff to  
27 incur actual damages of not less than \$150,000.

28



1 facts and circumstances from which Elizabeth Arden’s infringing activity was apparent,  
2 and because MELBOURNE and INTERNET NAMES have failed to adopt and  
3 reasonably implement a policy as required by 17 U.S.C. § 512(i)(1)(A) that provides for  
4 the termination in appropriate circumstances of services to subscribers and account  
5 holders who are repeat infringers such as Elizabeth Arden. *See Perfect 10, Inc. v. CC Bill,*  
6 *L.L.C.*, 488 F.3d 1102, 1109 (9<sup>th</sup> Cir. 2007).

7 43. As the result of Defendants MELBOURNE’S and INTERNET NAMES’  
8 vicarious infringement of Plaintiff’s exclusive rights, Plaintiff is entitled to recover actual  
9 damages pursuant to 17 U.S.C. § 504(b) or statutory damages pursuant to 17 U.S.C. §  
10 504(c), whichever is greater, for each worked infringed. Plaintiff is further is entitled to  
11 attorneys' fees and costs pursuant to 17 U.S.C. § 505.

12 **COUNT 3**  
13 **TRADEMARK INFRINGEMENT — 15 U.S.C. § 1114**  
14 **(Against Elizabeth Arden)**

15 44. Plaintiff incorporates herein by reference each and every allegation  
16 contained herein.

17 45. “RIP-OFF REPORT” is a valid, protectable trademark.

18 46. Plaintiff owns “RIP-OFF REPORT” as its trademark.

19 47. Defendant Elizabeth Arden used the RIP-OFF REPORT mark, or a mark  
20 confusingly similar thereto, without the consent of Plaintiff in a manner that is likely to  
21 cause confusion among ordinary consumers as to the source of the services offered by  
22 Plaintiff and by Elizabeth Arden.

23 **COUNT 4**  
24 **UNFAIR COMPETITION/INITIAL INTEREST CONFUSION**  
25 **TRADEMARK INFRINGEMENT — 15 U.S.C. § 1114**  
26 **(Against Elizabeth Arden)**

27 48. Plaintiff incorporates herein by reference each and every allegation  
28 contained herein.

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



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**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 such other and further relief as the Court may deem just and proper.

DATED this 17<sup>th</sup> day of December, 2008.

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

s/Maria Crimi Speth  
Maria Crimi Speth, Esq.  
Laura A. Rogal  
Attorneys for Plaintiff