

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

2007 AUG -2 P 3:37

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

AVITECTURE, INC.
1 Export Drive
Sterling, Virginia 20164

Plaintiff,

v.

AVTECTURE, LLC
8785 West Hayward Avenue
Glendale, AZ 85305

Serve: Ron Birkla, Member
A/V TECTURE, LLC
8785 West Hayward Avenue
Glendale, AZ 85305

and

RON BIRKLA
8785 West Hayward Avenue
Glendale, AZ 85305
and
15740 N 83rd Ave #2024
Phoenix, AZ 85382

Serve: Ron Birkla
8785 West Hayward Avenue
Glendale, AZ 85305

Defendants.

CIVIL ACTION NO.: 1:07 CV 764
LMB/TCB

COMPLAINT

COMES NOW AVITECTURE, INC., by counsel, and moves this Court for the entry of judgment against Defendant AVTecture, LLC and Defendant Ron Birkla setting forth the following:

PARTIES

1. Avitecture, Inc. (hereinafter "Avitecture") is a Virginia corporation with its principal place of business located in Virginia. Avitecture is in the business of developing and implementing audiovisual systems for commercial entities, federal, state, and local government agencies, educational and cultural institutions, and not-for-profit organizations.

2. Upon information and belief, Defendant AVTecture, LLC ("AVTecture") is an Arizona limited liability company with its principal place of business located in Glendale, Arizona. Upon information and belief Defendant solicits and does business in the Commonwealth of Virginia with consumers in the Commonwealth of Virginia. Defendant operates a website at www.avitecture.com

3. Upon information and belief, Defendant Ron Birkla ("Birkla") is the principal architect and perpetrator of the actions of AVTecture, as alleged herein. Birkla holds himself out as an Owner and Member of AVTecture, LLC which, upon information and belief, solicits and does business in the Commonwealth of Virginia with consumers in the Commonwealth of Virginia.

4. Upon information and belief, each of the individual Defendants was empowered to act as the agent, servant and/or employee of each of the other Defendants. Upon information and belief, with respect to the acts alleged herein, all of the acts alleged herein to have been done by each Defendant were authorized, approved and/or ratified by each of the other Defendants.

JURISDICTION AND VENUE

5. This case is a civil action arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.* and for unfair competition. This Court has jurisdiction under 15 U.S.C. § 1121, 28 U.S.C. § 1331, 28 U.S.C. § 1338(a) and 28 U.S.C. § 1338(b).

6. This Court has supplemental jurisdiction of all other state law claims herein pursuant to 28 U.S.C. § 1367(a) in that such claims and the trademark claims originate from a common nucleus of operative fact and form a part of the same case or controversy.

7. Defendants are subject to personal jurisdiction pursuant to Va. Code §§ 8.01-328.1 in that in that this cause of action arises out of Defendants' actions in soliciting and transacting business in the Commonwealth of Virginia.

8. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(a). The acts of infringement that are the subject of this litigation occurred and are occurring in the Eastern District of Virginia; the claims alleged in this action arose in the Eastern District of Virginia; and victims of the Defendants infringing activities may be found in the Eastern District of Virginia.

FACTS COMMON TO ALL COUNTS

9. Avitecture is engaged in, *inter alia*, the business of providing consulting services to consumers and services regarding specification, development, construction, installation, maintenance and training related to audio/visual systems ("Avitecture Services").

10. Avitecture is well-known and famous as a recognized leader in its business and its industry.

11. Avitecture has provided the Avitecture Services to consumers long before the occurrences of the acts complained of herein.

12. Avitecture's provision of the Avitecture Services has been ongoing for four decades.

13. Avitecture is the owner of, among others, the trademark AVITECTURE and the "avitecture.com" domain name and mark.

14. Avitecture's use of the trademark AVITECTURE began at least as early as December 2001.

15. Avitecture's use of the "avitecture.com" domain name and mark began at least as early as April 2002.

16. Avitecture owns a multitude of marks and registrations for AVITECTURE and has registered "avitecture.com" (collectively, the "AVITECTURE Marks") for use in conjunction with marketing and delivering the Avitecture Services.

17. From the date of first use of the AVITECTURE Marks, Avitecture, by itself and by virtue of its predecessors in interest, has used the AVITECTURE Marks continuously and extensively in interstate commerce to indicate the source of Avitecture Services.

18. The principal market for Avitecture Services is consumers interested in or requiring Avitecture Services and includes corporate entities, federal, state, and local government agencies, educational and cultural institutions, and not-for-profit organizations.

19. Avitecture is the owner of a United States Trademark Registration for the "AVITECTURE" mark in the United States Patent and Trademark Office (Registration Number 2,803,166) for "installation and maintenance of electronics systems namely audio, video, audiovisual, teleconferencing, display, control and computer interface equipment, excluding computer software, for presentation, communication and control in government, corporate and home applications, and consulting services offered therewith" ("Registration Number '166"). A true and correct copy of Registration Number '166 is attached as Exhibit A and is incorporated by reference.

20. Avitecture is the owner of a United States Trademark Registration for the "AVITECTURE" mark in the United States Patent and Trademark Office (Registration Number

2,803,165) for “computer software design and development services for others in the fields of electronics systems namely audio, video, audiovisual, teleconferencing, display, control and computer interface equipment for presentation, communication and control in government, corporate and home applications, and consulting services provided therewith; design for others of electronics systems namely audio, video, audiovisual, teleconferencing, display, control, and computer interface equipment for presentation, communication and control in government, corporate and home applications, and consulting services provided therewith” (“Registration Number ‘165”). A true and correct copy of Registration Number ‘165 is attached as Exhibit B and is incorporated by reference.

21. Avitecture is the owner of a United States Trademark Registration for the “AVITECTURE” mark in the United States Patent and Trademark Office (Registration Number 2,882,308) for “training in the fields of electronics systems namely audio, video, audiovisual, teleconferencing, display, control and computer interface equipment for presentation, communication and control in government, corporate and home applications” (“Registration Number ‘308”). A true and correct copy of Registration Number ‘308 is attached as Exhibit C and is incorporated by reference.

22. Avitecture is the owner of a United States Trademark Registration for the “AVITECTURE” mark in the United States Patent and Trademark Office (Registration Number 2,830,520) for “retail store services in the fields of electronics systems and furniture” (“Registration Number ‘520”). A true and correct copy of Registration Number ‘520 is attached as Exhibit D and is incorporated by reference.

23. Avitecture is the owner of a United States Trademark Registration for the “AVITECTURE” mark in the United States Patent and Trademark Office (Registration Number

2,901,297) for “audio equipment, namely, microphones” (“Registration Number ‘297”). A true and correct copy of Registration Number ‘297 is attached as Exhibit E and is incorporated by reference.

24. As federal trademark registrations, Registration Numbers ‘166, ‘165, ‘308, ‘520 and ‘297 (“the Registrations”) provide Avitecture with the *prima facie* exclusive right to use the registered trademarks in the United States.

25. As federal trademark registrations, the Registrations constitute *prima facie* evidence of the validity of the AVITECTURE Marks.

26. As federal trademark registrations, the Registrations constitute *prima facie* evidence of Avitecture’s ownership of the AVITECTURE Marks.

27. As federal trademark registrations, the Registrations grant Avitecture nationwide rights in the AVITECTURE Marks.

28. As federal trademark registrations, the Registrations provide others with constructive notice of those rights as of the date of filing of each of the applications for registration.

29. Avitecture has continuously and without interruption used the “AVITECTURE” mark in connection with Avitecture Services as such were introduced in commerce throughout the United States since at least as early as December 1, 2001 and with a first use since at least as early as December 1, 2001.

30. Avitecture has continuously and without interruption used the “AVITECTURE.COM” mark in connection with Avitecture Services as such were introduced in commerce throughout the United States and operates its website at <http://www.avitecture.com>. It has used the “AVITECTURE.COM” mark in commerce throughout the United States since at least as early as April 18, 2002 and with a first use of even date.

31. Avitecture has published the AVITECTURE Marks in conformity with the relevant laws of the United States.

32. Avitecture, by itself and with its affiliates and related companies, is currently, and has been at all other relevant times, the sole proprietor of all right, title and interest in and to the marks at issue in this litigation.

33. Avitecture has expended substantial amounts in the advertising of goods and services under its AVITECTURE Marks throughout the United States, including Virginia.

34. The AVITECTURE Marks are recognized among individuals that are within the potential marketplace for consulting services and services regarding specification, development, construction, installation, maintenance and training related to audio/visual systems. The AVITECTURE Marks designate these services which have been originated, developed and/or offered by Avitecture.

35. The AVITECTURE Marks designate the origin of consulting services and services regarding specification, development, construction, installation, maintenance and training related to audio/visual systems in a single originating source.

36. The AVITECTURE Marks designate the origin of consulting services and services regarding specification, development, construction, installation, maintenance and training related to audio/visual systems in Avitecture.

37. The AVITECTURE Marks are distinctive as related to consulting services and services regarding specification, development, construction, installation, maintenance and training related to audio/visual systems and relevant consumers. To the extent the AVITECTURE Marks were not initially distinctive, the AVITECTURE Marks have acquired distinctiveness for consulting services and services

regarding specification, development, construction, installation, maintenance and training related to audio/visual systems and among the relevant consumers.

38. As a result of this long term use of the AVITECTURE Marks, these marks have become well known to the trade and the general public throughout the United States, and Avitecture has established extensive goodwill and public recognition in and to the distinctive trademarks as exclusive identifications of the goods and services of Avitecture.

DEFENDANTS IMPROPER AND UNLAWFUL CONDUCT

39. Defendants AVTecture and Birkla are also engaged in the business of services related to audio/visual systems.

40. Avitecture, the AVITECTURE Marks and the business of Avitecture are well known to Defendants.

41. Defendants have improperly and illegally adopted the use of the "AVTecture" and "A/V Tecture" names and marks and the "avtecture.com" domain name as a trade name, service mark and/or trademark ("the Infringing Marks") for its services and products.

42. AVTecture adopted the corporate name AVTecture, LLC as of April 28, 2004.

43. AVTecture adopted the domain name avtecture.com as of May 18, 2004.

44. Upon information and belief, Defendants' date of adoption of the Infringing Marks was no earlier than late April 2004.

45. Avitecture notified the Defendants by a certified letter that their past, current and future use of the AVITECTURE Marks, including without limitation the Infringing Marks, constituted infringement of the AVITECTURE Marks.

46. The Defendants failed to claim the certified letter sent on April 20, 2007.

47. The Defendants were later sent the same letter by Federal Express courier delivery on May 30, 2007.

48. This letter was accepted by the Defendants on May 31, 2007 as evidenced by the receipt indicating its delivery which attached as Exhibit F and incorporated by this reference.

49. These letters asked Defendants to inform Avitecture of the changes that it would make to cease infringement.

50. Avitecture's Chief Executive contacted Defendants by telephone and personally spoke with Birkla with regard to the infringing nature of the use of the AVITECTURE Marks, including without limitation the Infringing Marks to no avail.

51. No changes in the use of the AVITECTURE Marks, including without limitation the Infringing Marks, has been made by the Defendants after the receipt and review of the letters or the telephone conference.

52. The Infringing Marks are virtually identical in appearance, sound and meaning to the AVITECTURE Marks.

53. The most prominent feature of the Infringing Marks, "AVTECTURE" and "A/V TECTURE", is virtually identical in appearance, sound and meaning to the AVITECTURE Marks.

54. Defendants use the Infringing Marks on services related to audio/visual systems and/or in association with distribution of audio/visual systems which are closely related and often identical to the Avitecture Services.

55. Upon information and belief, the products and services currently distributed by Defendants which are promoted through the use of the Infringing Marks are closely related to the Avitecture Services.

56. Upon information and belief, the products and services currently distributed by Defendants which are promoted through the use of the Infringing Marks are often identical to the Avitecture Services.

57. Upon information and belief, the products and services currently distributed by Defendants which are promoted through the use of the Infringing Marks, are, in significant proportion, perceived to be inferior in quality to the products and services provided by Avitecture under the AVITECTURE Marks.

58. Defendants have responded, and continues to respond, to inquiries generated from use of the Infringing Marks in various marketing efforts.

59. Defendants, in violation of the law, (i) continue to use the AVITECTURE Marks along with those confusingly similar, including without limitation the Infringing Marks, in association with its business and (ii) persists in its efforts to distribute, supply and offer audio/visual systems and services related to and identical to the Avitecture Services using the AVITECTURE Marks along with those confusingly similar, including without limitation the Infringing Marks.

60. At all times, the use of the AVITECTURE Marks along with those confusingly similar by Defendants and the actions of Defendants, as described herein, have caused actual confusion and/or are likely to cause confusion, deception and/or mistake in the marketplace, the relevant industry and all channels of trade for the Avitecture Services.

61. At all times, the use of the AVITECTURE Marks along with those confusingly similar by Defendants and the actions of the Defendants, as described herein, have been (and continues to be) deliberate, willful and with wanton disregard of the rights of Avitecture and has been (and continues to be) motivated by an intention of taking full business advantage of and trading off of the reputation of Avitecture.

62. Avitecture has sustained and will continue to sustain damages as a result of the aforementioned wrongful conduct.

63. As a direct and proximate result of the aforementioned acts of the Defendants, Avitecture has already suffered irreparable harm and damage and will continue to do so. Avitecture has no adequate remedy at law to redress all of the injuries that the Defendants have caused and intend to cause by their conduct. Avitecture will continue to suffer irreparable harm and damage and to sustain lost profits until the Defendants' aforementioned actions are enjoined by this Court.

64. Avitecture has sustained and will sustain damages as a result of the Defendants' aforementioned wrongful conduct and in the event that Defendants take further advantage of the fruits of their actions, Defendants' future marketing of infringing products and services.

65. As a result of the foregoing, Defendants have been and will continue to derive direct and significant economic advantages from use of the trademarks of Avitecture, deprive Avitecture of business, deprive Avitecture of its goodwill, and will impose substantial expenses on Avitecture for the sole purpose of counteracting the aforementioned conduct.

66. Defendants have been unjustly enriched by their copying and use of the AVITECTURE Marks and will be so unjustly enriched by virtue of distribution of goods and services bearing the

AVITECTURE Marks; Defendants have been and will continue to derive direct and significant economic advantage from using the AVITECTURE Marks.

COUNT I
TRADEMARK INFRINGEMENT
Violation of § 32(1) of The Lanham Act

67. Avitecture repeats and realleges each of the allegations set forth in Paragraphs 1 through 66, inclusive, and by reference incorporates each as though fully set forth herein.

68. Defendants have used in commerce reproductions, counterfeits, copies and/or colorable imitations of the AVITECTURE Marks in connection with the sale, distribution, and/or advertising of their services and products.

69. This reproduction, counterfeiting, copying, imitation and unauthorized use of the AVITECTURE Marks in connection with such services and products has caused actual confusion and/or is likely to cause confusion, to cause mistake, and/or to deceive and constitutes trademark infringement.

70. The actions described herein were done by Defendants with the knowledge that use of the registered AVITECTURE Marks was copying and imitation, with the intent to copy and imitate, and with the intent to damage Avitecture, and such acts by Defendants are willful, malicious and in wanton disregard of the rights of Avitecture.

71. As a result of the actions described herein, Defendants have caused and will continue to cause actual confusion and/or a likelihood of confusion, mistake and/or deception among consumers by the creation of the erroneous impression that their services and products have an affiliation, connection or association with Avitecture and by the creation of the erroneous impression that the services and products of Defendants originate from a source common or related to the source of the Avitecture Services.

72. As a result of the actions described herein, Defendants have been and will continue to be unjustly enriched, and Avitecture has lost (and will continue to lose) sales and suffer injury to business reputation.

73. As a result of the foregoing, Defendants have been able to and will continue to (i) derive direct and significant economic advantages from the appropriation of the AVITECTURE Marks, (ii) deprive Avitecture of business, (iii) deprive Avitecture of the goodwill associated with the AVITECTURE Marks, and (iv) impose significant expenses on Avitecture which are solely incurred as a result of its efforts to counteract the aforementioned conduct.

74. As a result of the foregoing, Avitecture has been and will continue to be (i) subjected to direct and significant economic disadvantages from the appropriation of the AVITECTURE Marks, (ii) deprived of business, (iii) deprived of the goodwill associated with the AVITECTURE Marks, and (iv) subjected to significant expenses which are solely incurred as a result of its efforts to counteract the aforementioned conduct.

75. Avitecture has sustained and will continue to sustain damages as a result of Defendants' aforementioned wrongful conduct.

76. As a direct and proximate result of the aforementioned acts, Avitecture has suffered irreparable harm and damage and will continue to do so. Avitecture has no adequate remedy at law to redress all of the injuries that Defendants have caused and intend to cause by such conduct. Avitecture will continue to suffer irreparable harm and damage and to sustain lost profits until the aforementioned actions are enjoined by this Court.

77. By reason of the foregoing, Defendants have violated § 32(1) of The Lanham Act (15 U.S.C. § 1114(1)).

WHEREFORE, in consideration of the foregoing, Avitecture respectfully requests that this Court enter an Order granting it the following relief:

- a. Preliminarily and permanently enjoining AVTecture and Birkla, jointly and severally, and each of their agents, employees, servants, officers, directors, successors in interest, heirs, assigns and all persons, firms or corporations, acting by or under their authority, in active concert or privity or in participation with them, from using the registered AVITECTURE Marks in any way and any word, words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake or deception therewith, including without limitation the Infringing Marks, in connection with or in the marketing, offering, selling, disposing of, licensing, leasing, transferring, displaying, advertising, reproducing, developing or manufacturing of their business, services and products;
- b. Preliminarily and permanently enjoining AVTecture and Birkla, jointly and severally, to recall from all their offices and all others, whether persons, firms or corporations, acting by or under their authority, in active concert or privity or in participation with them, any material containing the registered AVITECTURE Marks in any way and any word, words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake and/or deception therewith, including without limitation the Infringing Marks, in connection with or in the marketing, offering, selling, disposing of, licensing, leasing, transferring, displaying, advertising, reproducing, developing or manufacturing of their business, services and products;
- c. Preliminarily and permanently enjoining AVTecture and Birkla, jointly and severally, their officers, agents, employees, and all persons acting in concert with them, from infringing the registered AVITECTURE Marks and/or engaging in further such unlawful acts and from reaping any additional commercial advantage from their misappropriation of the rights of Avitecture and all affiliated

and related companies of Avitecture in the registered AVITECTURE Marks and the registrations for the AVITECTURE Marks;

d. Requiring AVTecture and Birkla, jointly and severally, to account for the profits resulting from the infringement of the rights of Avitecture and all affiliated and related companies of Avitecture in the registered AVITECTURE Marks, and to award judgment to Avitecture against AVTecture and Birkla in that amount, trebled pursuant to 15 U.S.C. § 1117;

e. Awarding judgment to Avitecture against AVTecture and Birkla for the actual damages sustained by Avitecture resulting from the infringement of its rights by AVTecture and Birkla, including attorneys' fees, and royalties based on a percentage of their gross revenues, in amounts to be determined by the Court, trebled pursuant to 15 U.S.C. § 1117;

f. Requiring AVTecture and Birkla to destroy, at their sole and exclusive cost, all materials in their possession or under their control which contain infringements of the registered AVITECTURE Marks;

g. Requiring AVTecture and Birkla to produce, disseminate and display corrective advertising necessary to remediate the confusion resulting from the infringement of the rights of Avitecture and all affiliated and related companies of Avitecture in the registered AVITECTURE Marks;

h. Requiring AVTecture and Birkla to cancel all trade name and trademark registrations and/or applications in their names and/or control for the registered AVITECTURE Marks and any word, words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake, and/or deception therewith, including without limitation the Infringing Marks or transfer them to Avitecture.

i. Awarding Avitecture its attorneys' fees and prejudgment interest in this proceeding pursuant to 15 U.S.C. § 1117;

- j. Awarding Avitecture its costs;
- k. Awarding Avitecture post-judgment interest on its judgment in accordance with 28 U.S.C. § 1961;
- l. Awarding and granting Avitecture such additional, other, further and different relief as the Court deems proper, just and equitable under the circumstances.

COUNT II
TRADEMARK INFRINGEMENT, UNFAIR COMPETITION, FALSE
DESIGNATION OF ORIGIN AND FALSE DESCRIPTION

Violation of § 43(a) of The Lanham Act

78. Avitecture repeats and realleges each of the allegations set forth in Paragraphs 1 through 77, inclusive, and by reference incorporates each as though fully set forth herein.

79. Defendants have caused services and products to enter into commerce in connection with a false or misleading designation of origin which is likely to cause confusion, or cause mistake, or deceive as to the affiliation, connection, or association of AVTecture with Avitecture or as to the origin, sponsorship, or approval of products, services, or commercial activities of Defendants by Avitecture.

80. As a result of the willful, malicious and wanton actions of Defendants described herein, Defendants have unfairly competed with Avitecture.

81. As a result of their actions described herein, Defendants have caused irreparable injury to Avitecture, including injury to the business reputation of Avitecture and dilution of the distinctive quality of the AVITECTURE Marks which will continue until enjoined by the Court. Avitecture's remedies at law are not adequate to compensate for the future injury that will be incurred and the future profit Defendants will gain.

82. By reason of the foregoing, Defendants have violated § 43(a) of The Lanham Act (15 U.S.C. § 1125(a)).

WHEREFORE, in consideration of the foregoing, AVTecture respectfully requests that this Court enter an Order granting it the following relief:

a. Preliminarily and permanently enjoining AVTecture and Birkla, jointly and severally, and each of their agents, employees, servants, officers, directors, successors in interest, heirs, assigns and all persons, firms or corporations, acting by or under their authority, in active concert or privity or in participation with them, from using the AVITECTURE Marks in any way and any word, words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake or deception therewith, including without limitation the Infringing Marks, in connection with or in the marketing, offering, selling, disposing of, licensing, leasing, transferring, displaying, advertising, reproducing, developing or manufacturing of their business, services and products;

b. Preliminarily and permanently enjoining AVTecture and Birkla, jointly and severally, to recall from all their offices and all others, whether persons, firms or corporations, acting by or under their authority, in active concert or privity or in participation with them, any material containing the AVITECTURE Marks in any way and any word, words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake and/or deception therewith, including without limitation the Infringing Marks, in connection with or in the marketing, offering, selling, disposing of, licensing, leasing, transferring, displaying, advertising, reproducing, developing or manufacturing of their business, services and products;

c. Preliminarily and permanently enjoining AVTecture and Birkla, jointly and severally, their officers, agents, employees, and all persons acting in concert with them, from infringing the

AVITECTURE Marks and engaging in further such unlawful acts and from reaping any additional commercial advantage from their misappropriation of the rights of Avitecture and all affiliated and related companies of Avitecture in the AVITECTURE Marks and the registrations of the AVITECTURE Marks;

d. Requiring AVTecture and Birkla, jointly and severally, to account for the profits resulting from the infringement of the rights of Avitecture and all affiliated and related companies of Avitecture in the AVITECTURE Marks, and to award judgment to Avitecture against AVTecture and Birkla in that amount, trebled pursuant to 15 U.S.C. § 1117;

e. Awarding judgment to Avitecture against AVTecture and Birkla for the actual damages sustained by Avitecture resulting from the infringement of its rights by AVTecture and Birkla, including attorneys' fees, and royalties based on a percentage of their gross revenues, in amounts to be determined by the Court, trebled pursuant to 15 U.S.C. § 1117;

f. Requiring AVTecture and Birkla to destroy, at their sole and exclusive cost, all materials in their possession or under their control which contain infringements of the AVITECTURE Marks;

g. Requiring AVTecture and Birkla to produce, disseminate and display corrective advertising necessary to remediate the confusion resulting from the infringement of the rights of Avitecture and all affiliated and related companies of Avitecture in the AVITECTURE Marks;

h. Requiring AVTecture and Birkla to cancel all trade name and trademark registrations and/or applications in their names and/or control for the AVITECTURE Marks and any word, words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake, and/or deception therewith, including without limitation the Infringing Marks or transfer them to Avitecture.

i. Awarding judgment to Avitecture against AVTecture and Birkla, jointly and severally, for

the damages Avitecture has sustained and for the gains, profits and advantages AVTecture and Birkla have obtained as a result of their wrongful and willful actions constituting unfair, unlawful and fraudulent business practices;

j. Awarding judgment to Avitecture against AVTecture and Birkla, jointly and severally, for punitive damages arising from their wrongful and willful actions constituting unfair, unlawful and fraudulent business practices;

k. Awarding Avitecture its attorneys' fees and prejudgment interest in this proceeding pursuant to 15 U.S.C. § 1117;

l. Awarding Avitecture its costs;

m. Awarding Avitecture post-judgment interest on its judgment in accordance with 28 U.S.C. § 1961;

n. Awarding and granting Avitecture such additional, other, further and different relief as the Court deems proper, just and equitable under the circumstances.

COUNT III
TRADEMARK DILUTION
Violation of § 43(c) of The Lanham Act

83. Avitecture repeats and realleges each of the allegations set forth in Paragraphs 1 through 82, inclusive, and by reference incorporates each as though fully set forth herein.

84. The AVITECTURE Marks are famous marks pursuant to § 43(c) of the Lanham Act.

85. Defendants have used the AVITECTURE Marks in commerce after those marks became famous in their channels of trade. The use of the AVITECTURE Marks by Defendants causes a dilution of the distinctive quality of those marks.

86. As a result of their actions described herein, Defendants willfully intended to trade on the reputation of Avitecture and/or willfully intended to cause dilution of the AVITECTURE Marks.

87. As a result of their actions described herein, Defendants have become unjustly enriched and Avitecture will lose sales and suffer injury to business reputation and has lost sales and suffered injury to business reputation.

88. As a result of their actions described herein, Defendants have caused irreparable injury to Avitecture including injury to the business reputation of Avitecture and dilution of the distinctive quality of the AVITECTURE Marks which will continue until enjoined by the Court. Avitecture's remedies at law are not adequate to compensate for the future injury Avitecture will incur and the future profit Defendants will gain.

89. By reason of the foregoing, Defendants have violated § 43(c) of The Lanham Act (15 U.S.C. § 1125(c)).

WHEREFORE, in consideration of the foregoing, Avitecture respectfully requests that this Court enter an Order granting it the following relief:

a. Preliminarily and permanently enjoining AVTecture and Birkla, jointly and severally, and each of their agents, employees, servants, officers, directors, successors in interest, heirs, assigns and all persons, firms or corporations, acting by or under their authority, in active concert or privity or in participation with them, from diluting the AVITECTURE Marks and/or using the AVITECTURE Marks in any way and any word, words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake or deception therewith, including without limitation the Infringing Marks, in connection with or in the marketing, offering, selling, disposing of, licensing, leasing, transferring, displaying, advertising, reproducing, developing or manufacturing of their business, services and

products;

b. Preliminarily and permanently enjoining AVTecture and Birkla, jointly and severally, to recall from all their offices and all others, whether persons, firms or corporations, acting by or under their authority, in active concert or privity or in participation with them, any material containing the AVITECTURE Marks in any way and any word, words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake and/or deception therewith, including without limitation the Infringing Marks, in connection with or in the marketing, offering, selling, disposing of, licensing, leasing, transferring, displaying, advertising, reproducing, developing or manufacturing of their business, services and products;

c. Preliminarily and permanently enjoining AVTecture and Birkla, jointly and severally, their officers, agents, employees, and all persons acting in concert with them, from diluting the AVITECTURE Marks and engaging in further such unlawful acts and from reaping any additional commercial advantage from their misappropriation of the rights of Avitecture and all affiliated and related companies of Avitecture in the AVITECTURE Marks and/or the registrations for the AVITECTURE Marks;

d. Requiring AVTecture and Birkla, jointly and severally, to account for the profits resulting from the dilution of the rights of Avitecture and all affiliated and related companies of Avitecture in the AVITECTURE Marks, and to award judgment to Avitecture against AVTecture and Birkla in that amount, trebled pursuant to 15 U.S.C. § 1117;

e. Awarding judgment to Avitecture against AVTecture and Birkla for the actual damages sustained by Avitecture and resulting from the dilution of its rights by AVTecture and Birkla, including attorneys' fees, and royalties based on a percentage of their gross revenues, in amounts to be determined

by the Court, trebled pursuant to 15 U.S.C. § 1117;

f. Requiring AVTecture and Birkla to destroy, at their sole and exclusive cost, all materials in their possession or under their control which cause a dilution of the AVITECTURE Marks;

g. Requiring AVTecture and Birkla to produce, disseminate and display corrective advertising necessary to remediate the confusion resulting from the dilution of the rights of Avitecture and all affiliated and related companies of Avitecture in the AVITECTURE Marks;

h. Requiring AVTecture and Birkla to cancel all trade name and trademark registrations and/or applications in their names and/or control for the AVITECTURE Marks and any word, words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake, and/or deception therewith, including without limitation the Infringing Marks or transfer them to Avitecture.

i. Awarding Avitecture its attorneys' fees and prejudgment interest in this proceeding pursuant to 15 U.S.C. § 1117;

j. Awarding Avitecture its costs;

k. Awarding Avitecture post-judgment interest on its judgment in accordance with 28 U.S.C. § 1961;

l. Awarding and granting Avitecture such additional, other, further and different relief as the Court deems proper, just and equitable under the circumstances.

COUNT IV
UNFAIR COMPETITION

90. Avitecture repeats and realleges each of the allegations set forth in Paragraphs 1 through 89, inclusive, and by reference incorporates each as though fully set forth herein.

91. The aforesaid conduct by Defendants, including without limitation their acts in using the AVITECTURE Marks without authorization from Avitecture, with knowledge of the rights of Avitecture in the AVITECTURE Marks and in intending to trade on Avitecture's goodwill, was willful, malicious and in wanton disregard of Avitecture's rights and constitutes unfair, unlawful and fraudulent business practices.

92. These wrongful acts have proximately caused and will continue to cause Avitecture substantial injury, including loss of customers, dilution of goodwill, confusion of potential customers, injury to reputation, and diminution in the value of property.

93. As a result of their actions described herein, Defendants willfully intended to trade on the reputation of Avitecture and/or willfully intended to cause infringement and dilution of the AVITECTURE Marks.

94. As a result of their actions described herein, Defendants have become and/or are likely to become unjustly enriched and Avitecture will lose sales and suffer injury to business reputation and/or has lost sales and suffered injury to business reputation.

95. As a result of their actions described herein, Defendants have caused irreparable injury to Avitecture including injury to the business reputation of Avitecture, infringement of the AVITECTURE Marks and dilution of the distinctive quality of the AVITECTURE Marks which may continue until enjoined by the Court. Avitecture's remedies at law are not adequate to compensate for the future injury Avitecture will incur and the future profit Defendants will gain.

WHEREFORE, in consideration of the foregoing, Avitecture respectfully requests that this Court enter an Order granting it the following relief:

- a. Preliminarily and permanently enjoining AVTecture and Birkla, jointly and severally, and

each of their agents, employees, servants, officers, directors, successors in interest, heirs, assigns and all persons, firms or corporations, acting by or under their authority, in active concert or privity or in participation with them, from diluting the AVITECTURE Marks and/or using the AVITECTURE Marks in any way and any word, words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake or deception therewith including without limitation the Infringing Marks, in connection with or in the marketing, offering, selling, disposing of, licensing, leasing, transferring, displaying, advertising, reproducing, developing or manufacturing of their business, services and products;

b. Preliminarily and permanently enjoining AVTecture and Birkla, jointly and severally, to recall from all their offices and all others, whether persons, firms or corporations, acting by or under their authority, in active concert or privity or in participation with them, any material containing the AVITECTURE Marks in any way and any word, words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake and/or deception therewith, including without limitation the Infringing Marks, in connection with or in the marketing, offering, selling, disposing of, licensing, leasing, transferring, displaying, advertising, reproducing, developing or manufacturing of their business, services and products;

c. Preliminarily and permanently enjoining AVTecture and Birkla, jointly and severally, their officers, agents, employees, and all persons acting in concert with them, from diluting and infringing the AVITECTURE Marks and/or engaging in further such unlawful acts and from reaping any additional commercial advantage from their misappropriation of the rights of Avitecture and all affiliated and related companies of Avitecture in the AVITECTURE Marks and/or the registrations of the AVITECTURE Marks;

- d. Requiring AVTecture and Birkla, jointly and severally, to account for the profits resulting from the dilution and infringement of the rights of Avitecture and all affiliated and related companies of Avitecture in the AVITECTURE Marks, and to award judgment to Avitecture against AVTecture and Birkla in that amount, trebled pursuant to 15 U.S.C. § 1117;
- e. Awarding judgment to Avitecture against AVTecture and Birkla for the actual damages sustained by Avitecture resulting from the dilution and infringement of its rights by AVTecture and Birkla, including attorneys' fees, and royalties based on a percentage of their gross revenues, in amounts to be determined by the Court, trebled pursuant to 15 U.S.C. § 1117;
- f. Requiring AVTecture and Birkla to destroy, at their sole and exclusive cost, all materials in their possession or under their control which contain infringements of the AVITECTURE Marks or which cause a dilution of the AVITECTURE Marks;
- g. Requiring AVTecture and Birkla to produce, disseminate and display corrective advertising necessary to remediate the confusion resulting from the dilution and infringement of the rights of Avitecture and all affiliated and related companies of Avitecture in the AVITECTURE Marks;
- h. Requiring AVTecture and Birkla to cancel all trade name and trademark registrations and/or applications in their names and/or control for the AVITECTURE Marks and any word, words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake, and/or deception therewith, including without limitation the Infringing Marks or transfer them to Avitecture.
- i. Awarding judgment to Avitecture against AVTecture and Birkla for the damages Avitecture has sustained and for the gains, profits and advantages AVTecture and Birkla have obtained as a result of their wrongful and willful actions constituting unfair, unlawful and fraudulent business practices;

j. Awarding judgment to Avitecture against AVTecture and Birkla for punitive damages arising from their wrongful and willful actions constituting unfair, unlawful and fraudulent business practices;

k. Awarding Avitecture its attorneys' fees and prejudgment interest in this proceeding pursuant to 15 U.S.C. § 1117;

l. Awarding Avitecture its costs;

m. Awarding Avitecture post-judgment interest on its judgment in accordance with 28 U.S.C. § 1961;

n. Awarding and granting Avitecture such additional, other, further and different relief as the Court deems proper, just and equitable under the circumstances.

COUNT V
CYBERSQUATTING

Violation of § 43(d) of The Lanham Act

96. Avitecture repeats and realleges each of the allegation set forth in Paragraphs 1 through 95, inclusive, and by reference incorporates each as though fully set forth herein.

97. On information and belief, either AVTecture or Birkla is the registrant and owner of the Internet domain name "avitecture.com" and has registered this domain name with ABR Products d/b/a Misk.com or Nicin Corporation d/b/a Misk.com without the prior knowledge, permission or consent of Avitecture.

98. On information and belief, either AVTecture or Birkla is the administrative contact, technical contact and billing contact for the domain name "avitecture.com".

99. Avitecture is a distinctive mark, and was a distinctive mark at the time the domain name "avitecture.com" was registered with ABR Products d/b/a Misk.com, and at all other times relevant

hereto, pursuant to the Anticybersquatting Consumer Protection Act of 1999, 15 U.S.C. §1125(d) (hereinafter the "ACPA"), and specifically Section 3002(a) thereof, 15 U.S.C. §1125(d)(1).

100. On information and belief, AVTecture and Birkla have acted and are continuing to act as an agent for each other, are a participant and joint tortfeasor in the scheme to register and preclude and withhold use of the domain name "avtecture.com" by Avitecture and benefit financially from a scheme to sell the domain name "avtecture.com" for a profit or preclude and withhold use of the domain name "avtecture.com" by Avitecture.

101. On information and belief, the Defendants have had, and continue to have, a bad faith intent to profit from the name "avtecture.com", which is protected as a distinctive mark under Section 3002(a) of the ACPA, 15 U.S.C. §1125(d)(1).

102. The Defendants' actions constitute a violation of Section 3002(a) of the Anticybersquatting Act, 15 U.S.C. 1125 §§(d)(1)(A)(ii)(I), (II); (d)(1)(B)(i)(II), (VI) and (d)(1)(E).

103. Avitecture is therefore entitled to a judgment from this Court compelling the Defendants to transfer all ownership in the domain name "avtecture.com" to Avitecture, or in the alternative for cancellation of the domain name, pursuant to Section 3002(a) of the Anticybersquatting Act, 15 U.S.C. §1125(d)(1)(C).

104. Avitecture is further entitled to a Preliminary and Permanent Injunction enjoining the Defendants from any use of the domain name "avtecture.com" pursuant to Section 3003 of the Anticybersquatting Act, 15 U.S.C. §1116(a).

105. Avitecture is further entitled to a judgment from this Court awarding Avitecture all actual damages proximately caused by the Defendants or, in the alternative, statutory damages of not less than

§1,000 and not more than \$100,000, as the Court considers just, pursuant to Section 3003(b) of the Anticybersquatting Act, 15 U.S.C. §1117(a) and (d).

WHEREFORE, in consideration of the foregoing, Avitecture respectfully requests that this Court enter an Order granting it the following relief:

a. Preliminarily and permanently enjoining AVTecture and Birkla, jointly and severally, and each of their agents, employees, servants, officers, directors, successors in interest, heirs, assigns and all persons, firms or corporations, acting by or under their authority, in active concert or privity or in participation with them, from using the "avitecture.com" domain name in any way and any word, words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake or deception with the "avitecture.com" domain name in connection with or in the marketing, offering, selling, disposing of, licensing, leasing, transferring, displaying, advertising, reproducing, developing or manufacturing of their business, services and products;

b. Preliminarily and permanently enjoining AVTecture and Birkla, jointly and severally, to recall from all their offices and all others, whether persons, firms or corporations, acting by or under their authority, in active concert or privity or in participation with them, any material containing the "avitecture.com" domain name in any way and any word, words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake and/or deception with the "avitecture.com" domain name in connection with or in the marketing, offering, selling, disposing of, licensing, leasing, transferring, displaying, advertising, reproducing, developing or manufacturing of their business, services and products;

c. Preliminarily and permanently enjoining AVTecture and Birkla, jointly and severally, their officers, agents, employees, and all persons acting in concert with them, from diluting and

infringing the “avitecture.com” domain name and/or engaging in further such unlawful acts and from reaping any additional commercial advantage from their misappropriation of the rights of Avitecture and all affiliated and related companies of Avitecture in the “avitecture.com” domain name;

d. Requiring AVTecture and Birkla, jointly and severally, to account for the profits resulting from the infringement of the rights of Avitecture and all affiliated and related companies of Avitecture in the “avitecture.com” domain name, and to award judgment to Avitecture against AVTecture and Birkla in that amount, trebled pursuant to 15 U.S.C. § 1117;

e. Awarding judgment to Avitecture against AVTecture and Birkla for the actual damages sustained by Avitecture resulting from the infringement of its rights by AVTecture and Birkla, including attorneys’ fees, and royalties based on a percentage of their gross revenues, in amounts to be determined by the Court, trebled pursuant to 15 U.S.C. § 1117;

f. Awarding judgment to Avitecture against AVTecture and Birkla for statutory damages based upon each Defendants’ acts of infringement, in amounts to be determined by the Court, trebled pursuant to 15 U.S.C. § 1117;

g. Requiring AVTecture and Birkla to destroy, at their sole and exclusive cost, all materials in their possession or under their control which contain infringements of the “avitecture.com” domain name;

h. Requiring AVTecture and Birkla to produce, disseminate and display corrective advertising necessary to remediate the confusion resulting from the infringement of the rights of Avitecture and all affiliated and related companies of Avitecture in the “avitecture.com” domain name;

i. Requiring AVTecture and Birkla to cancel all trade name and trademark registrations and/or applications in their names and/or control for the “avitecture.com” domain name and any word,

words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake, and/or deception therewith, including without limitation the “avtecture.com” domain name or transfer them to Avitecture pursuant to 15 U.S.C. §1125(d)(1)(C);

j. Awarding judgment to Avitecture against AVTecture and Birkla for the damages Avitecture has sustained and for the gains, profits and advantages AVTecture and Birkla have obtained as a result of their wrongful and willful actions constituting unfair, unlawful and fraudulent business practices;

k. Awarding judgment to Avitecture against AVTecture and Birkla for punitive damages arising from their wrongful and willful actions constituting unfair, unlawful and fraudulent business practices;

l. Awarding Avitecture its attorneys’ fees and prejudgment interest in this proceeding pursuant to 15 U.S.C. § 1117;

m. Awarding Avitecture its costs;

n. Awarding Avitecture post-judgment interest on its judgment in accordance with 28 U.S.C. § 1961;

o. Awarding and granting Avitecture such additional, other, further and different relief as the Court deems proper, just and equitable under the circumstances.

COUNT VI
FALSE ADVERTISING UNDER VIRGINIA LAW
(Va. Code § 18.2-216)

106. Avitecture repeats and realleges each of the allegations set forth in Paragraphs 1 through 105, inclusive, and by reference incorporates each as though fully set forth herein.

107. Defendants are publicly disseminating advertisements containing promises, assertions, representations or statements of fact that are untrue, deceptive or misleading, or using other methods, devices or practices which are fraudulent, deceptive or misleading to induce the public to enter into an obligation.

108. The facts alleged herein, including Defendants' infringement of the AVITECTURE Marks with the intent to deceive and defraud the public into believing that Defendants' products and services were established by, approved by, sponsored by, or affiliated with Avitecture, constitute false advertising in the conduct of trade or commerce in violation of Va. Code § 18.2-216.

109. As a direct and proximate result of Defendants' false advertising and unfair trade practices, Avitecture has been injured and damaged, and is entitled to injunctive relief and to recover actual damages, costs and reasonable attorneys' fees.

WHEREFORE, in consideration of the foregoing, Avitecture respectfully requests that this Court enter an Order granting it the following relief:

a. Preliminarily and permanently enjoining AVTecture and Birkla, jointly and severally, and each of their agents, employees, servants, officers, directors, successors in interest, heirs, assigns and all persons, firms or corporations, acting by or under their authority, in active concert or privity or in participation with them, from diluting the AVITECTURE Marks and/or using the AVITECTURE Marks in any way and any word, words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake or deception therewith including without limitation the Infringing Marks, in connection with or in the marketing, offering, selling, disposing of, licensing, leasing, transferring, displaying, advertising, reproducing, developing or manufacturing of their business, services and products;

b. Preliminarily and permanently enjoining AVTecture and Birkla, jointly and severally, to recall from all their offices and all others, whether persons, firms or corporations, acting by or under their authority, in active concert or privity or in participation with them, any material containing the AVITECTURE Marks in any way and any word, words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake and/or deception therewith, including without limitation the Infringing Marks, in connection with or in the marketing, offering, selling, disposing of, licensing, leasing, transferring, displaying, advertising, reproducing, developing or manufacturing of their business, services and products;

c. Preliminarily and permanently enjoining AVTecture and Birkla, jointly and severally, their officers, agents, employees, and all persons acting in concert with them, from diluting and infringing the AVITECTURE Marks and/or engaging in further such unlawful acts and from reaping any additional commercial advantage from their misappropriation of the rights of Avitecture and all affiliated and related companies of Avitecture in the AVITECTURE Marks and/or the registrations of the AVITECTURE Marks;

d. Requiring AVTecture and Birkla, jointly and severally, to account for the profits resulting from the dilution and infringement of the rights of Avitecture and all affiliated and related companies of Avitecture in the AVITECTURE Marks, and to award judgment to Avitecture against AVTecture and Birkla in that amount;

e. Awarding judgment to Avitecture against AVTecture and Birkla for the actual damages sustained by Avitecture resulting from the dilution and infringement of its rights by AVTecture and Birkla, including attorneys' fees, and royalties based on a percentage of their gross revenues, in amounts to be determined by the Court;

- f. Requiring AVTecture and Birkla to destroy, at their sole and exclusive cost, all materials in their possession or under their control which contain infringements of the AVITECTURE Marks or which cause a dilution of the AVITECTURE Marks;
- g. Requiring AVTecture and Birkla to produce, disseminate and display corrective advertising necessary to remediate the confusion resulting from the dilution and infringement of the rights of Avitecture and all affiliated and related companies of Avitecture in the AVITECTURE Marks;
- h. Requiring AVTecture and Birkla to cancel all trade name and trademark registrations and/or applications in their names and/or control for the AVITECTURE Marks and any word, words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake, and/or deception therewith, including without limitation the Infringing Marks or transfer them to Avitecture;
- i. Awarding judgment to Avitecture against AVTecture and Birkla for the damages Avitecture has sustained and for the gains, profits and advantages AVTecture and Birkla have obtained as a result of their wrongful and willful actions constituting unfair, unlawful and fraudulent business practices;
- j. Awarding judgment to Avitecture against AVTecture and Birkla for punitive damages arising from their wrongful and willful actions constituting unfair, unlawful and fraudulent business practices;
- k. Awarding judgment to Avitecture against AVTecture and Birkla for punitive and exemplary damages against AVTecture and Birkla arising from their intentional or reckless disregard for Avitecture's rights and the rights of those defrauded;
- k. Awarding Avitecture its attorneys' fees and prejudgment interest in this proceeding pursuant to 15 U.S.C. § 1117;

- l. Awarding Avitecture its costs;
- m. Awarding Avitecture post-judgment interest on its judgment in accordance with 28 U.S.C. § 1961;
- n. Awarding and granting Avitecture such additional, other, further and different relief as the Court deems proper, just and equitable under the circumstances.

Respectfully submitted,

Avitecture, Inc.
By Counsel



Kevin T. Oliveira, Esquire
VSB No. 36129
Jonathan D. Frieden
VSB No. 41452
Counsel for Plaintiff

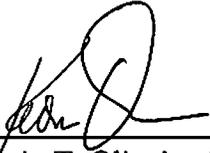
ODIN, FELDMAN & PITTLEMAN, P.C.
9302 Lee Highway, Suite 1100
Fairfax, Virginia 22031
(703) 218-2100

DEMAND FOR JURY TRIAL

Avitecture, Inc. hereby demands a trial by jury of all issues triable by a jury.

Respectfully Submitted,

Avitecture, Inc.
By counsel



Kévin T. Oliveira, Esquire
VSB No. 36129
Jonathan D. Frieden
VSB No. 41452
Counsel for Plaintiff

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