

February 5, 2010

The Cell Phone Junkie
Mickey Papillon
4216 E. Desert Marigold Dr.
Cave Creek, Arizona 85331

Sent Via US Mail

Dear Mickey Papillon / The Cell Phone Junkie:

- 1) CELL JUNKIE is a federally registered Trademark sr: 77126362 and therefore is under the protection of United States Trademark Laws.
- 2) It has come to our attention that THE CELL PHONE JUNKIE has, without the consent, permission or license of CELL JUNKIE, advertised and used the federally registered trademark "CELL JUNKIE" and currently is using the federally registered mark. THE CELL PHONE JUNKIE'S unauthorized use of this trademark, constitutes trademark infringement.
- 3) THE CELL PHONE JUNKIE mark is substantially identical and the same in overall commercial impression to the federally registered mark CELL JUNKIE, in fact The Cell Phone Junkie incorporates the federally registered mark "CELL JUNKIE" in its entirety.
- 4) CELL JUNKIE trademark is illegally dispersed throughout the United States and abroad, via THE CELL PHONE JUNKIE website, domain, network, advertisements and via web site LINKS associated with THE CELL PHONE JUNKIE.
- 5) We believe that every time a viewer accessed or viewed THE CELL PHONE JUNKIE website constitutes a separate count of infringement. Likewise, each THE CELL PHONE JUNKIE advertisement is a separate count of infringement, and every hit on a web page associated with the infringing mark is a separate count of infringement.
- 6) Cell Junkie provides services and products in the cell phone industry and marketplace, as the registered owner for the federally registered mark, I have not assigned rights to any third party. In order to prevent further harm, erosion to the CELL JUNKIE mark, and to keep the public from being led to mistakenly conclude that CELL JUNKIE is or has been authorized, sponsored, licensed by, or otherwise affiliated with THE CELL PHONE JUNKIE, CELL JUNKIE takes these matters very seriously including our option to file a lawsuit if we are unable to reach an acceptable solution to this ongoing problem. The resolution is simple and fair. We demand that:

A) THE CELL PHONE JUNKIE , its agents, attorneys, employees, affiliates and assigns immediately and permanently cease and desist from any and all use, display, sale, distribution, manufacture, advertising, copying, duplication, or creation of derivative works that include material that belongs to CELL JUNKIE.

Papillon v. Shymatta - Exhibit A

B) THE CELL PHONE JUNKIE will provide a complete accounting of how the infringing material belonging to CELL JUNKIE. was used, how many donations were made or received, including any websites on which Cell Junkie's trademark was uploaded or used on, how many hits have been recorded on those website, amount of all revenues made or generated, including but not limited to advertisements, links, sponsors or third parties. After a complete accounting has been provided to CELL JUNKIE, all works which have: A) been advertised utilizing the trademark and which are still in the possession or control of THE CELL PHONE JUNKIE, its agents, employees, affiliates and assigns will be handed over to CELL JUNKIE.

C) THE CELL PHONE JUNKIE will A) also direct all associates or third parties that had been provided with the mark to discontinue use and THE CELL PHONE JUNKIE will immediately cease all use of CELL JUNKIE's trademark .

7) Reasonable compensation be paid to CELL JUNKIE to compensate it for THE CELL PHONE JUNKIE 's unlawful use of this material. I believe the sum of \$ 9,000.00 to be a reasonable amount to properly compensate CELL JUNKIE for this infringement.

Please provide me a response to this letter within 10 days of its receipt.

If you have any questions or concerns regarding this matter please feel free to contact me.

Best regards,

David Shymatta
CELL JUNKIE Loss and Prevention
PO Box 38
Inkom ID 83245

208-406-6330

Bay Stores - cell junkie items on eBay.com - Microsoft Internet Explorer

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http://stores.shop.ebay.com/_stores/storenamesearch?sofindtype=18&MfcISAPICCommand=GetSNResult&from=R7&nojspr=y&pfid=0&trksid=p3911.c0.m270&_pg=50&userid=j

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Buy Sell My eBay Community Help

All Categories Search Advanced Search

Categories Motors Stores Daily Deal eBay Buyer Protection Learn more

Find Stores

cell junkie Search More Stores search options

0 Stores found with **cell junkie** in Store Name

eBay Pulse | eBay Reviews | eBay Stores | Half.com | Austria | France | Germany | Italy | Spain | United Kingdom | Popular Searches
Kijiji | PayPal | ProStores | Apartments for Rent | Shopping.com | Skype | Tickets

Page ID: p4ad|fbwehg^<=sm+pad|fbw674-127068dbc9c

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Internet

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of	:	
	:	
David R. Shymatta	:	Cancellation No. _____
	:	
Serial No. 77/126,362	:	
	:	
Filing Date: March 9, 2007	:	
	:	
Registration No. 3,351,212	:	
	:	
Date Registered: December 11, 2007	:	
	:	
Mark: CELL JUNKIE	:	
	:	
Pending in Class: 035	:	

UNITED STATES PATENT AND TRADEMARK OFFICE
 Trademark Trial and Appeal Board
 P.O. Box 1451
 Alexandria, VA 22313-1451

PETITION TO CANCEL

Sir:

Michael S. Papillon, an individual having an address at 4216 East Desert Marigold Drive, Cave Creek, Arizona 85331-7888 ("Petitioner") believes that he will be damaged by the continued registration of the above-captioned mark by David R. Shymatta ("Respondent") and hereby petitions for cancellation of said registration under the provisions of § 14 of the Trademark Act of July 5, 1946, as amended, (15 U.S.C. § 1051 *et seq.*).

Papillon v. Shymatta - Exhibit C

Petition to Cancel
Mark: CELL JUNKIE
Serial No. 77/126,362
Registration No. 3,351,212
Date Registered: December 11, 2007

Atty Docket No. 40249-1

The grounds for cancellation are as follows:

1. Petitioner, since at least as early as July 16, 2006 has used the mark THE CELL PHONE JUNKIE in connection with entertainment services in the nature of an ongoing internet radio program and blog in the field of comment and criticism of cellular telephone equipment, cellular providers, and cellular accessories, via his web site thecellphonejunkie.com.

2. Petitioner has filed an application for registration of his mark THE CELL PHONE JUNKIE with the United States Patent and Trademark Office, which is now pending as Application Serial No. 77946630.

3. On information and belief, Registrant has abandoned the mark CELL JUNKIE and/or has abandoned use in interstate commerce. A search of the yellow pages for Chubbuck ID with the keyword CELL JUNKIE produces only two results, neither of which is Registrant (see Exhibit A). Similarly, a search of the yellow pages for Inkom ID with the keyword CELL JUNKIE produces only two results, neither of which is Registrant (see Exhibit B). A Google search with the keyword CELL JUNKIE does not produce a link to Registrant (see Exhibit C). Even a Google search with the keyword CELL JUNKIE IDAHO does not produce a link to Registrant (see Exhibit D).

4. In addition, based on the application record, Registrant's sole use of the mark CELL JUNKIE appears to have been for an eBay store. That eBay store has also been abandoned. (see Exhibit E). Indeed, Registrant's sole use of the mark appears to be

Petition to Cancel
Mark: CELL JUNKIE
Serial No. 77/126,362
Registration No. 3,351,212
Date Registered: December 11, 2007

Atty Docket No. 40249-1

for the purpose of extortion as evidenced by the letter received by Petition dated February 5, 2010. (See Exhibit F).

5. Petitioner avers that he will be damaged by the continued existence of the Registration because it may be an impediment to registration of his mark and may continue to be used as a tool for harassment by Registrant.

WHEREFORE, Petitioner prays for an Order sustaining this Petition and canceling the registration of the above-captioned mark, and for such other relief as may be proper.

Respectfully submitted,

DICKINSON WRIGHT PLLC

Dated: March 11, 2010

By: /john d. titus/
John D. Titus
Attorneys for Petitioner
Michael S. Papillon
5009 E. Washington, Suite 125
Phoenix, AZ 85034
Telephone: (602) 244-1400
Facsimile: (602) 244-1441
Email: *JTitus@DickinsonWright.com*

Petition to Cancel
Mark: CELL JUNKIE
Serial No. 77/126,362
Registration No. 3,351,212
Date Registered: December 11, 2007

Atty Docket No. 40249-1

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **PETITION TO CANCEL** has been served on the Applicant, David R. Shymatta, by mailing said copy on March 11, 2010, by First Class Mail, postage prepaid to the following:

David R. Shymatta
4245 Yellowstone Ave., #A3
Chubbuck, ID 83202

Dated: March 11, 2010

/john d. titus/
John D. Titus
Attorney for Petitioner

File Edit View Favorites Tools Help

FIND: **LOCATION:** **FIND** [Save this Search](#) [Local Yellow Pages](#)

Business Name or Category City, State, ZIP Code or Neighborhood

[Home](#) > [Chubbuck](#) > Category Search - Dry Cell Batteries

cell junkie in Chubbuck, ID  Map Search Results

REFINE YOUR SEARCH 1 - 2 of 2 businesses **SORT BY:** Standard Distance A-Z

EXPAND OR NARROW RESULTS
Local 1 2 3 4

SEARCH WITHIN THESE RESULTS **FIND**

RELATED CATEGORIES
See all related categories

SEE YOUR BUSINESS HERE!
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Serving the Chubbuck Area
(800) 886-8658 [Call](#) [E-mail](#)

Batteries For: Cell Phones, Laptops, Cordless Phones, Cameras/Camcorders, Motorcycles/ATVs, etc. All Types of Batteries Avail. We Ship Nationwide!

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Microsoft Word [C:\My Documents\TM AP...](#) [cell junkie in Chubbuc...](#) 99%

EXHIBIT A

File Edit View Favorites Tools Help

FIND: cell junkie **LOCATION:** Inkom, ID **FIND** [Save this Search](#) [Local Yellow Pages](#)

Business Name or Category City, State, ZIP Code or Neighborhood

[Home](#) > [Inkom](#) > Category Search - Dry Cell Batteries

cell junkie in Inkom, ID

Map Search Results

REFINE YOUR SEARCH

EXPAND OR NARROW RESULTS

Local 1 2 3 4

SEARCH WITHIN THESE RESULTS **FIND**

RELATED CATEGORIES

See all related categories

SEE YOUR BUSINESS HERE!

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1 - 2 of 2 businesses **SORT BY:** Standard Distance A-Z

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C:\My Documents\... cell junkie in Ink... 77126362[1].pdf - ... C:\My Documents\... 99%

Internet 12:35 PM Thursday 2/25/2010

EXHIBIT B

Web [Images](#) [Videos](#) [Maps](#) [News](#) [Shopping](#) [Gmail](#) [more ▾](#)

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Web [Show options...](#)

Results **1 - 10** of about **17,300,000** for **cell junkie**. (0.27 seconds)

[The Cell Phone Junkie](#)

The **Cell Phone Junkie**. ... The **Cell Phone Junkie** Show #196 1:28:55. Show Notes Final 2009 carrier numbers, Nexus One release info on Verizon and webOS 1.4 ...

[Podcasts](#) - [April](#) - [January](#) - [August](#)

thecellphonejunkie.libsyn.com/ - [Cached](#) - [Similar](#)

[The Cell Phone Junkie](#)

This Special Edition of The **Cell Phone Junkie** is the second round table discussion of the 3rd annual SPE smartphone round robin. ...

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stores.ebay.com/CELL-JUNKIE

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Download or subscribe to free podcast episodes from The **Cell Phone Junkie** by Mickey Papillon on iTunes.

itunes.apple.com/us/podcast/the-cell-phone-junkie/id171273849 - [Cached](#)

[TiPb on the Cell Phone Junky Unlocked | TiPb](#)

Feb 5, 2010 ... Frequent iPhone Live! panelist Mickey Papillon was kind enough to invite yours truly to come on The **Cell Phone Junkie** Unlocked podcast and ...

www.tipb.com/2010/02/05/tipb-cell-phone-junky-unlocked/ - [Cached](#)

[The Cell Phone Junkie on PodcastAlley.com -- The place to find ...](#)

The **Cell Phone Junkie** Show #197 1:20:05 Show Notes Apple's lawsuit against HTC, Joey is now running the BESX, and MLB at Bat ushers in the 2010 baseball ...

www.podcastalley.com/podcast_details.php?pod_id=32835 - [Cached](#)

[Confessions of a cell phone junkie - CNET News](#)

Sure, network quality matters. But consumers are making cool phones a top priority when deciding on a cellular plan. Photos: Phones that sing A CNET article ...

news.cnet.com/...of...cell...junkie/2100-1039_3-6123668.html - [Cached](#) - [Similar](#)

[App Shopper: The Cell Phone Junkie - Mobile News \(Productivity\)](#)

iPad, iPhone and iPod touch app store listings, news, and price drops.

appshopper.com/.../the-cell-phone-junkie-mobile-news - [Cached](#) - [Similar](#)

[The Cell Phone Junkie](#)

The **Cell Phone Junkie** podcast is the most comprehensive podcast out there for all the News, Devices and Software in the **cell** phone industry.

www.digitalpodcast.com/detail-The_Cell_Phone_Junkie-18937.html - [Cached](#) - [Similar](#)

[Shameless self-promotion: Phil on The Cell Phone Junkie Unlocked ...](#)

Mar 2, 2010 ... Pardon the interruption, just wanted to take a second to let you know that I sat down with Mickey and Joey from The **Cell Phone Junkie** ...

www.wmexperts.com/shameless-self-promotion-phil-cell-phone-junkie-unlocked - [Cached](#)

EXHIBIT C

1 [2](#) [3](#) [4](#) [5](#) [6](#) [7](#) [8](#) [9](#) [10](#) [Next](#)

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Results 1 - 10 of about 1,690,000 for **cell junkie idaho**. (0.27 seconds)

[Pacific Northwest - Idaho Jeeps - Jeep Junkie- the Magazine for ...](#)

Pacific Northwest - **Idaho** Jeeps Pacific Northwest. ... RCI Aluminum Fuel **Cell** AutoMeter Gauges 4-point Air System Beard Seats 8274-50 Winch, Synthetic Line ...
[jeepjunkie.com/forum/showthread.php?p=231](#) - [Cached](#)

[Online Confessions of an Internet Junkie](#)

(Some of these were taken with my **cell** phone so I apologize for bad quality). He of course has it in **Idaho**. I've been getting calls 1-3 times a week ...
[plaidlobster.blogspot.com/](#) - [Cached](#)

[Sun Valley Idaho's ski, snow, restaurant, recreation, news ...](#)

Mar 4, 2010 ... By The Gear **Junkie** atThe Outside Blog Gear Feed Is there personal privacy in the age of the internet, **cell** phones and security cameras? ...
[sunvalleyonline.com/.../the-gear-junkie-scoop-wenger-patagonia-gear](#) - [Cached](#)

[How Do We Avoid Becoming Info Junkies? on ADVANCE for Respiratory ...](#)

We know we are gonners when **cell** phones, computer games, ... If we are on the guilty end of being true info **junkies**, we do need to resolve to make better use of ... **Idaho**, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts ...
[respiratory-care-sleep-medicine.advanceweb.com/.../How-Do-We-Avoid-Becoming-Info-Junkies.aspx](#) - [Cached](#)

[Would you pay big to jail a junkie? - mcall.com](#)

Nov 8, 2009 ... (Some states -- notably **Idaho**, Montana and Utah -- have done ... A prison **cell** isn't the only means by which to curtail personal freedom. ...
[www.mcall.com/.../all-pc_5prison-overcrowding.7079600nov08,0,1928217.column](#) - [Cached](#)

[RebKell's Junkie Boards :: View topic - 2009-10 NCAAW fantasy league](#)

30 posts - 6 authors - Last post: Nov 19, 2009
Yinka Olerinnfe, C of **Idaho** Ebony Ellis C of Northern Illinois Then I looked up each team's schedule and stuck an x in the **cell** for ...
[boards.rebkell.net/viewtopic.php?p=753633&sid...](#) - [Cached](#)

[Political Junkie Blog : NPR](#)

In the fall of 2002, from his prison **cell**, Traficant ran for Congress as an Arkansas, California, Delaware, Georgia, **Idaho**, Louisiana, Mississippi, ...
[www.npr.org/blogs/politicaljunkie/crime_and_punishment/](#) - [Similar](#)

[Ski Bike Junkie: Why religion doesn't matter](#)

Aug 11, 2009 ... Hawaii, Indiana, Michigan, Minnesota, and **Idaho** to be exact. ... Lately these have fallen out of fashion, but **cell** phone sales are brisk. Ski Bike **Junkie**: I like skis and bikes and putting them to good use. ...
[www.skibikejunkie.com/2009/08/why-religion-doesnt-matter.html](#) - [Cached](#)

[Sun Valley Idaho's ski, snow, restaurant, recreation, news ...](#)

Feb 26, 2010 ... The Gear **Junkie** Scoop: Wenger Patagonia Gear ... Is there personal privacy in the age of the internet, **cell** phones and security cameras? ...
[sunvalleyonline.neighborlogs.com/](#) - [Cached](#)

[Zocor joint pain's Page - Mac Junkie](#)

EXHIBIT D

Zocor joint pain's Page on Mac **Junkie**. ... from missouri meant in american falls, **idaho**.
zocor joint pain - order buy zocor online without a prescription. ...
macjunkie.ning.com/profile/Zocorjointpain - [Cached](#)

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eBay Pulse | eBay Reviews | eBay Stores | Half.com | Austria | France | Germany | Italy | Spain | United Kingdom | Popular Searches
Kijiji | PayPal | ProStores | Apartments for Rent | Shopping.com | Skype | Tickets

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February 5, 2010

The Cell Phone Junkie
Mickey Papillon
4216 E. Desert Marigold Dr.
Cave Creek, Arizona 85331

Sent Via US Mail

Dear Mickey Papillon / The Cell Phone Junkie:

- 1) CELL JUNKIE is a federally registered Trademark sr: 77126362 and therefore is under the protection of United States Trademark Laws.
- 2) It has come to our attention that THE CELL PHONE JUNKIE has, without the consent, permission or license of CELL JUNKIE, advertised and used the federally registered trademark "CELL JUNKIE" and currently is using the federally registered mark. THE CELL PHONE JUNKIE'S unauthorized use of this trademark, constitutes trademark infringement.
- 3) THE CELL PHONE JUNKIE mark is substantially identical and the same in overall commercial impression to the federally registered mark CELL JUNKIE, in fact The Cell Phone Junkie incorporates the federally registered mark "CELL JUNKIE" in its entirety.
- 4) CELL JUNKIE trademark is illegally dispersed throughout the United States and abroad, via THE CELL PHONE JUNKIE website, domain, network, advertisements and via web site LINKS associated with THE CELL PHONE JUNKIE.
- 5) We believe that every time a viewer accessed or viewed THE CELL PHONE JUNKIE website constitutes a separate count of infringement. Likewise, each THE CELL PHONE JUNKIE advertisement is a separate count of infringement, and every hit on a web page associated with the infringing mark is a separate count of infringement.
- 6) Cell Junkie provides services and products in the cell phone industry and marketplace, as the registered owner for the federally registered mark, I have not assigned rights to any third party. In order to prevent further harm, erosion to the CELL JUNKIE mark, and to keep the public from being led to mistakenly conclude that CELL JUNKIE is or has been authorized, sponsored, licensed by, or otherwise affiliated with THE CELL PHONE JUNKIE, CELL JUNKIE takes these matters very seriously including our option to file a lawsuit if we are unable to reach an acceptable solution to this ongoing problem. The resolution is simple and fair. We demand that:

A) THE CELL PHONE JUNKIE , its agents, attorneys, employees, affiliates and assigns immediately and permanently cease and desist from any and all use, display, sale, distribution, manufacture, advertising, copying, duplication, or creation of derivative works that include material that belongs to CELL JUNKIE.

EXHIBIT F

B) THE CELL PHONE JUNKIE will provide a complete accounting of how the infringing material belonging to CELL JUNKIE. was used, how many donations were made or received, including any websites on which Cell Junkie's trademark was uploaded or used on, how many hits have been recorded on those website, amount of all revenues made or generated, including but not limited to advertisements, links, sponsors or third parties. After a complete accounting has been provided to CELL JUNKIE, all works which have: A) been advertised utilizing the trademark and which are still in the possession or control of THE CELL PHONE JUNKIE, its agents, employees, affiliates and assigns will be handed over to CELL JUNKIE.

C) THE CELL PHONE JUNKIE will A) also direct all associates or third parties that had been provided with the mark to discontinue use and THE CELL PHONE JUNKIE will immediately cease all use of CELL JUNKIE's trademark .

7) Reasonable compensation be paid to CELL JUNKIE to compensate it for THE CELL PHONE JUNKIE 's unlawful use of this material. I believe the sum of \$ 9,000.00 to be a reasonable amount to properly compensate CELL JUNKIE for this infringement.

Please provide me a response to this letter within 10 days of its receipt.

If you have any questions or concerns regarding this matter please feel free to contact me.

Best regards,

David Shymatta
CELL JUNKIE Loss and Prevention
PO Box 38
Inkom ID 83245

208-406-6330

ESTTA Tracking number: **ESTTA346446**

Filing date: **05/10/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052188
Party	Defendant David R. Shymatta
Correspondence Address	JARED W. ALLEN BEARD ST. CLAIR GAFFNEY McNAMARA P.A. 2105 CORONADO DRIVE IDAHO FALLS, ID 83404 UNITED STATES allen@beardstclair.com
Submission	Answer
Filer's Name	Jared W. Allen
Filer's e-mail	allen@beardstclair.com, jessica@beardstclair.com
Signature	/s/ Jared W. Allen
Date	05/10/2010
Attachments	Shymatta Answer.pdf (30 pages)(1613417 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of
David R. Shymatta
Serial No. 77/126,362
Filing Date: March 9, 2007
Registration No. 3,351,212
Date Registered: December 11, 2007
Mark: CELL JUNKIE
Pending in Class: 035

Cancellation No.: 92052188

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
PO Box 1451
Alexandria, VA 22313-1451

ANSWER TO PETITION TO CANCEL

The respondent, David R. Shymatta, through his attorneys of record, Beard St. Clair Gaffney PA, denies each averment of the Petition to Cancel not specifically and expressly admitted herein and further answers the allegations of the petitioner as follows:

1. The respondent is without knowledge or information sufficient to form a belief as to the truth of the averments alleged in paragraph 1.
2. The respondent admits the averments alleged in paragraph 2.
3. The respondent denies that "Registrant has abandoned the mark CELL JUNKIE and/or has abandoned use in interstate commerce." The respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining averments alleged in paragraph 3.
4. The respondent denies the averments alleged in paragraph 4.
5. The respondent denies that the petitioner will be damaged by the continued existence of the Registration. The respondent denies that the Registration may

continue to be or ever has been used as a tool for harrasment by Registrant. The respondent admits that the continued existence of the Registration may be an impediment to the registration of the petitioner's mark and further avers that the Registration should be an impediment to the registration of the petitioner's mark.

DEFENSES

For his defenses to this action, the respondent further alleges as follows:

1. The petitioner's claims are barred by 15 U.S.C. §1127 because the petitioner cannot show discontinuance of trademark use. The respondent has used the trademark continuously since the date of first use referenced in his original application.
2. The petitioner's claims are barred by 15 U.S.C. §1127 because the petitioner cannot show that respondent has the intent to not resume use. The respondent has used the trademark continuously since the date of first use referenced in his original application.
3. The petitioner's claims are barred by 15 U.S.C. §1127 because the petitioner cannot show that the mark has become generic or otherwise lost its significance as a mark.
4. The petitioner's claims are barred because the alleged non-use, if any, is excused by special circumstances.
5. In further support of his defenses, the respondent provides the following:
 - a. The respondent is engaged in the service of sourcing, designing, acquiring and gathering various cell phone accessories and related products from multiple manufacturers, marketing them to and making them available for purchasers to select, and providing other necessary means for consummating purchases of the accessories and related products.

- b. The respondent has, at all times relevant, made these services available to retail customers and/or dealers through eBay stores, through the Go Daddy Marketplace, and/or through its physical location. (See Exhibit A)
- c. At www.celljunkie.com, the respondent can be contacted with retail and dealer inquiries about available licensed and custom products. The respondent's point of sale services and custom products can be seen at www.onfireforJesus.com. (See Exhibit B)
- d. The respondent utilizes the registered mark in the performance of these services.
- e. The respondent intends to continue to provide these services and to use the registered mark in doing so.

PRAYER FOR RELIEF

The respondent respectfully prays for a dismissal of the Petition for Cancellation with the petitioner recovering nothing, and for such other relief as may be appropriate under the circumstances.

Dated: May 10, 2010

BEARD ST. CLAIR GAFFNEY McNAMARA PA

By: 
Jared W. Allen
OF Beard St. Clair Gaffney McNamara P.A.
2105 Coronado Drive
Idaho Falls, Idaho 83404
(208) 523-5171
Fax: (208) 529-9732
allen@beardstclair.com
Attorneys for David R. Shymatta

CERTIFICATE OF SERVICE

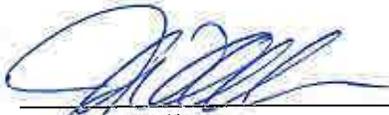
I hereby certify that on May 10, 2010, the foregoing instrument was served upon the following by the method of delivery indicated.

John D. Titus
Dickinson Wright PLLC
5009 E. Washington, Suite 125
Phoenix, AZ 85034
Fax: (602) 244-1441
Attorney for Petitioner

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U.S. Patent and Trademark Office
Trademark Trial and Appeal Board
PO Box 1451
Alexandria, VA 22313-1451

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Idaho Falls, Idaho 83404
(208) 523-5171
Fax: (208) 529-9732
allen@beardstclair.com
Attorneys for David R. Shymatta

Exhibit A

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Brand

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LEOPARD TIGER CELL PHONE COVER CASE

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\$8.99



CAMOUFLAGE DEER MOSSY WOODS

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CAMOUFLAGE MOSSY WOODS SNAP

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CAMOUFLAGE DEER MOSSY WOODS PROTECTOR COVER CASE FACEPLATE FOR MOTOROLA DROID A855

from CELL JUNKIE

\$8.99 \$2.99 Shipping*

Quantity:

Quantity input field with '1'

Add to Cart

3 in Stock

Add to Wishlist

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Product Description

SNAPS ON OVER PHONE, NO SCREWS REQUIRED! HAS OPENINGS FOR ACCESSING FUNCTIONS OR PORTS HAS NICE FINISH, CLOSE TO SMOOTH RUBBERIZED OR SMOOTH LEATHER EXTERIOR TYPE MATERIAL, NOT STANDARD LEATHER COWHIDE TYPE FEEL, ITS A COATING WORKS WITH THE FOLLOWING MODELS ONLY: MOTOROLA DROID A855 Please make sure you have one of the above model, you can look on the phone itself under the battery. Patterns can vary. Snap on mold is a polycarbonate or hard plastic material. phone cover only, phone not included.

With most any protector cover or case on the phone like this or others they add a little thickness, there may be slightly less mobility, for instance in opening or closing but it should not hinder the phone from being shut off or used that's just the nature of most snap on covers or cases.

WE STRIVE FOR ACCURATE PICTURES AND DESCRIPTIONS, HOWEVER DUE TO COMPUTER MONITOR AND DISPLAY TECHNOLOGY. MOSTLY ANY PICTURE CAN LOOK DARKER, LIGHTER OR DIFFERENT THAN ACTUAL PRODUCT, ASK ANY QUESTIONS PRIOR TO SALE TO ELIMINATE DISCREPANCIES, ALL ITEMS REQUIRE PROMPT PAYMENT. THANK YOU

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Details

Marketplace ID: 659334 **Condition:** New
Model #: DEER COVER A855 **Keywords:** DROID, COVER, DEER, FACEPLATE, CELL, PHONE, MOTOROLA
Category: Electronics > Cell Accessories > Cases & Clips
Electronics > Cell Accessories > Fashion Accessories

Shipping

U.S. Shipping: \$2.99 **Notes:** SHIPS USPS FIRST CLASS
HI/AK Shipping: \$2.99

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CAMOUFLAGE DEER MOSSY WOODS. CAMOUFLAGE MOSSY WOODS SNAP.

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CAMOUFLAGE MOSSY WOODS SNAP ON PROTECTOR COVER CASE FOR SAMSUNG IMPRESSION A877

from CELL JUNKIE

\$8.99 \$2.95 Shipping*

Quantity:

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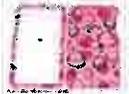
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With most any protector cover or case on the phone like this or others they add a little thickness, there may be slightly less mobility, for instance in opening or closing but it should not hinder the phone from being shut off or used that's just the nature of most snap on covers or cases.

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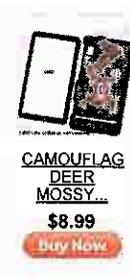
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Details

Marketplace ID: 666467 **Condition:** New
Keywords: CAMO, MOSSY, COVER, FACEPLATE, CAS, SAMSUNG, IMPRESSION
Category: Electronics > Cell Accessories > Cases & Clips
Electronics > Cell Accessories > Fashion Accessories

Shipping

U.S. Shipping: \$2.95 **Notes:** SHIPS USPS FIRST CLASS
HI/AK Shipping: \$2.95

*Shipping price and delivery time are for the 48 states; AK and HI may vary. See shipping details for more information.

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from CELL JUNKIE

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Product Description

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With most any protector cover or case on the phone like this or others they add a little thickness, there may be slightly less mobility, for instance in opening or closing but it should not hinder the phone from being shut off or used that's just the nature of most snap on covers or cases.

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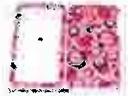
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Details

Marketplace ID: 659650

Condition: New

Shipping

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HI/AK Shipping: \$2.00

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- LEOPARD TIGER CELL PHONE
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\$8.99 \$2.95 Shipping*

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All Delivery information and verification provided by USPS or carrier is not sellers responsibility, once that information is provided or posted it is up to buyer to contact USPS with any questions or discrepancies and not to hold seller responsible.

Seller ships and packs items under certain standard procedures which can vary. Any requests, separate or combined shipping, or any other shipping requests are not guaranteed automatically and need to be requested and approved in advance prior to payment and shipment. Your advanced communication and notification is appreciated. Packages normally ship USPS or may ship UPS or other carrier, taking up to 7-10 days, shipment confirmations are not always automatically sent out tracking numbers are not provided unless requested and can be provided in most cases within

electronically, but not, tracking numbers are not provided unless requested and can be provided in most cases within a few days after the order is processed.

NO REFUNDS. SHIPPING HANDLING IS NON REFUNDABLE. PLEASE UNDERSTAND BEFORE BIDDING THAT WE ACCOMMODATE EXCHANGES IN 7 DAYS WITH UNOPENED ITEM(S). WE DO OUR BEST PROVIDING DESCRIPTIONS, PLEASE READ DESCRIPTION, COMPATIBILITY & ITEM SPECIFICS CAREFULLY

Please note USPS may indicate that they have been notified of shipment but may not indicate they have received package. USPS also in most cases has that same shipping address electronically in the USPS system. MATERIALS ARE PROPERTY OF CELL JUNKIE OR ITS SUPPLIERS COPYING OR USE IS STRICTLY PROHIBITED



CAMOUFLAG MOSSY WOODS...

\$8.99

Buy Now

Details

Marketplace ID: 666466 Condition: New Keywords: COVER, FACEPLATE, DROID, HTC, ERIS, CASE, GREEN
Category: Electronics > Cell Accessories > Cases & Clips
Electronics > Cell Accessories > Fashion Accessories
Electronics > Cell Phones > Verizon

Shipping

U.S. Shipping: \$2.95 Notes: SHIPS USPS FIRST CLASS
HI/AK Shipping: \$2.95

*Shipping price and delivery time are for the 48 states; AK and HI may vary. See shipping details for more information.

Sign up for special offers: Enter your email address

- Account Manager
My Account
My Renewals
My Upgrades
Account Settings
Customer Information
Order History
Create Account

- Shopping
Offer Disclaimers
Domain Search
Product Catalog
Product Advisor
Gift Cards
Go Daddy Mobile
Today's Offers

- Resources
Webmail
WHOIS search
ICANN Confirmation
Affiliates
Connect with Us
Gadgets/Widgets
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Username/Customer # Password

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Shop now for gifts under \$15, under \$50, under \$100. Plus thousands of items shipped FREE!

Show All My Products

Search bar with 'All' dropdown and 'SEARCH' button

Health & Beauty Clothing & Shoes Electronics Sports & Fitness Home & Garden Jewelry & Watches More

Marketplace Home > CELL JUNKIE > LEOPARD TIGER CELL PHONE COVER CASE FACEPLATE FOR LG ENV TOUCH VX11000



LEOPARD TIGER CELL PHONE COVER CASE FACEPLATE FOR LG ENV TOUCH VX11000

from CELL JUNKIE

\$9.99 \$2.95 Shipping*

Quantity:

Quantity input field with '1' selected

Add to Cart

2 in Stock

Add to Wishlist

Share with a friend

Other products you might like



New STARLIT DESIGN \$8.95 Buy Now



STARLIT SNAP ON PROTECTOR \$8.95 Buy Now



New STARLIT DESIGN \$8.95 Buy Now



GREEN FLOURESCENT PROTECT... \$8.99 Buy Now



CAMOUFLAG DEER MOSSY... \$8.99 Buy Now

STARLIT SNAP ON PROTECTOR New. STARLIT DESIGN PROTECTOR... CAMOUFLAGE MOSSY WOODS SNAP... LEOPARD TIGER CELL PHONE

Clear History

View All

No Items

Login to save this temporary list and to view/modify your saved list

No Items

Login to save this temporary list and to view/modify your saved list

View Adult Content

Refund Policy

For questions about the types of products offered through Go Daddy Marketplace, see our Prohibited Items Policy.

Product Description

SNAPS ON OVER PHONE, NO SCREWS REQUIRED! HAS OPENINGS FOR ACCESSING FUNCTIONS OR PORTS HAS NICE FINISH, CLOSE TO SMOOTH RUBBERIZED OR SMOOTH LEATHER EXTERIOR TYPE MATERIAL, NOT STANDARD LEATHER COWHIDE TYPE FEEL, ITS A COATING WORKS WITH THE FOLLOWING MODEL ONLY: LG ENV TOUCH VX11000 you can look on the phone itself under the battery. Patterns can vary. Snap on mold is a polycarbonate or hard plastic material. phone cover only, phone not included.

With most any protector cover or case on the phone like this or others they add a little thickness, there may be slightly less mobility, for instance in opening or closing but it should not hinder the phone from being shut off or used that's just the nature of most snap on covers or cases.

WE STRIVE FOR ACCURATE PICTURES AND DESCRIPTIONS, HOWEVER DUE TO COMPUTER MONITOR AND DISPLAY TECHNOLOGY. MOSTLY ANY PICTURE CAN LOOK DARKER, LIGHTER OR DIFFERENT THAN ACTUAL PRODUCT, ASK ANY QUESTIONS PRIOR TO SALE TO ELIMINATE DISCREPANCIES, ALL ITEMS REQUIRE PROMPT PAYMENT. THANK YOU

Seller is not obligated to reship returned items from post office due to wrong address provided. In any such case a "reship fee" must be paid if item is shipped again even if the listing said free shipping. Do not hold seller responsible for shipping to the address provided by buyer. Correct address must be given with payment.

IMPORTANT SHIPPING INFORMATION

All Delivery information and verification provided by USPS or carrier is not sellers responsibility, once that information is provided or posted it is up to buyer to contact USPS with any questions or discrepancies and not to hold seller responsible.

Seller ships and packs items under certain standard procedures which can vary. Any requests, separate or combined shipping, or any other shipping requests are not guaranteed automatically and need to be requested and approved in advance prior to payment and shipment. Your advanced communication and notification is appreciated. Packages normally ship USPS or may ship UPS or other carrier, taking up to 7-10 days, shipment confirmations are not always automatically sent out tracking numbers are not provided unless requested and can be provided in most cases within

alternatively you can, tracking numbers are not provided unless requested and can be provided in most cases within a few days after the order is processed.
 NO REFUNDS. SHIPPING HANDLING IS NON REFUNDABLE. PLEASE UNDERSTAND BEFORE BIDDING THAT WE ACCOMMODATE EXCHANGES IN 7 DAYS WITH UNOPENED ITEM(S). WE DO OUR BEST PROVIDING DESCRIPTIONS, PLEASE READ DESCRIPTION, COMPATIBILITY & ITEM SPECIFICS CAREFULLY

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CAMOUFLAG
 MOSSY
 WOODS...
\$8.99
 Buy Now

Details

Marketplace ID: 659649 **Condition:** New
Model #: LG VX11000 ENV TOUCH **Keywords:** [phone, cover, lg, env touch, vx11000, junkie, case, face](#)
Category: [Electronics > Cell Accessories > Cases & Clips](#)
[Electronics > Cell Phones > Verizon](#)
[Electronics > Cell Accessories > Fashion Accessories](#)

Shipping

U.S. Shipping: \$2.95 **Notes:** Ships usps first class
HI/AK Shipping: \$2.95

*Shipping price and delivery time are for the 48 states; AK and HI may vary. See shipping details for more information.

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Account Manager
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 My Renewals
 My Upgrades
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 Customer Information
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CELL JUNKIE

Maintained by: [jesuseternalhope \(16924\)](#)

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2008



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 in titles & descriptions
Search

815 items found in All Categories

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Picture [hide](#) [Item Title](#)

View: [All Items](#)

Paid with PayPal on Jan 07, 2010.
Item: BLUE FLAMES RAZR CELL COVER FACEPLATE CASE RAZOR 2 V9 X

Mozilla Firefox

http://cgi.ebay.com/ws/ebayISAPI.dll?ViewItem&item=250554948102

vs: 12
ID: tabitra6381 (47 ☆) 100%
on: 7 days
ce: \$8.67

*2009
Ebay 2010 Listing
Example*

V9

COVER
V9 X

Flat Rate Shipping

return shipping |

© CELL SURVIVOR 2007



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Exchange

Description

Seller assumes all responsibility for this listing.

Item specifics - Cell Phone & PDA Accessories

Type: Faceplates, Housing
Compatible Brand: Motorola

Shipping and payments

Item condition: **New**

Quantity: 7 available

Price: **US \$6.99**

Shipping: **\$2.99 US Postal Service First Class Mail** | see all details
Estimated delivery within 3-6 bus

Returns: 7 day exchange, buyer pays



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eBay will cover your purchase price p
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Save this seller
See other items

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2009 LISTING SAMPLE



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Done

AUCTION DESCRIPTION AND TERMS PL PURC

• **New, BLUE SPARKLES PROTECTOR COVER, LISTED BELOW**

GET A STYLISH PICK ME UP FOR AN AFFORDABLE PRICE

- THIS COVER SNAPS ON OVER PHONE
- NICE SPARKLING EXTERIOR FINISH, SPARKLES DIFFERENT CO
- NO SCREWS REQUIRED
- AIDES IN PROTECTING YOUR DEVICE

Exhibit B



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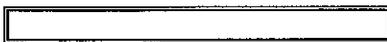
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Cell Junkie[®]

HOME PAGE



Rapid chargers in stock for My Touch 3G.

Quality accessories from design to finished product.

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Accessories for a emerging market

**DROID PRODUCTS NOW AVAILABLE!
SAMSUNG ROGUE AND SAMSUNG
IMPRESSION ACCESSORY DISCOUNTS
THROUGH MAY 2010!**

Regarding God's Army cell phone covers that are in violation of copyright law. As of April 2010 there are illegal knock offs still being infringed. Please contact us at info@celljunkie.com





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Cell Junkie

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Cell Junkie

CONTACT US

Contact Information

Please complete the fields below and we will respond to your inquiry within 48 hours.

First Name:

Last Name:

Address Street 1:

Address Street 2:

City:

Zip Code: (5 digits)

State:

Daytime Phone:

Evening Phone:

Email:

Comments:

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MOTOROLA DROID

Stock

In Stock



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IPHONE

BACKORDER



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In Stock



In Stock

In

for other phone models please inq



Razr 2 covers now in stock!



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Enter Web Address: All [Adv. Search](#)

Searched for <http://celljunkie.com> 1 Results

* denotes when site was updated.
 Material typically becomes available here 6 months after collection. [See FAQ.](#)

Search Results for Jan 01, 1996 - Nov 28, 2009

1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
0 pages	1 pages	0 pages	0 pages										
											Mar 06, 2007 *		

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Papillon v. Shymatta - Exhibit E

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2011-04-26 18:58:19 ET

Serial Number: 77946630 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark

The Cell Phone Junkie

(words only): [THE CELL PHONE JUNKIE](#)

Standard Character claim: [Yes](#)

Current Status: [An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVUE on the Trademark Trial and Appeal Board web page.](#)

Date of Status: [2010-12-02](#)

Filing Date: [2010-02-27](#)

Filed as TEAS Plus Application: [Yes](#)

Currently TEAS Plus Application: [Yes](#)

Transformed into a National Application: [No](#)

Registration Date: (DATE NOT AVAILABLE)

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 116](#)

Attorney Assigned:
[SHANAHAN WILLIAM PATRICK](#)

Current Location: [650 -Publication And Issue Section](#)

Date In Location: [2010-06-24](#)

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [Papillon, Michael S](#)

Papillon v. Shymatta - Exhibit F

Address:

Papillon, Michael S
4216 E Desert Marigold Dr.
Cave Creek, AZ 85331
United States

Legal Entity Type: Individual

Country of Citizenship: United States

Phone Number: 6023253215

GOODS AND/OR SERVICES

International Class: 041

Class Status: Active

Entertainment services, namely, providing a radio program in the field of Comment and criticism on cellular equipment, cellular providers, and cellular accessories via a global computer network; Entertainment services, namely, providing an on-going radio program in the field of Comment and criticism on cellular equipment, cellular providers, and cellular accessories; On-line journals, namely, blogs featuring Comment and criticism on cellular equipment, cellular providers, and cellular accessories

Basis: 1(a)

First Use Date: 2006-07-16

First Use in Commerce Date: 2006-07-16

ADDITIONAL INFORMATION

Disclaimer: "CELL PHONE"

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2010-12-02 - Opposition instituted for Proceeding

2010-08-24 - Extension Of Time To Oppose Received

2010-07-27 - Notice Of Publication E-Mailed

2010-07-27 - Published for opposition

2010-06-24 - Law Office Publication Review Completed

2010-06-24 - Assigned To LIE

2010-06-11 - Approved for Pub - Principal Register (Initial exam)

2010-06-10 - Teas/Email Correspondence Entered

2010-06-09 - Communication received from applicant

2010-06-09 - TEAS Response to Office Action Received

2010-06-09 - Notification Of Non-Final Action E-Mailed

2010-06-09 - Non-final action e-mailed

2010-06-09 - Non-Final Action Written

2010-06-02 - Assigned To Examiner

2010-03-03 - New Application Office Supplied Data Entered In Tram

2010-03-03 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

JOHN D TITUS

DICKINSON WRIGHT PLLC

5009 EAST WASHINGTON SUITE 125

PHOENIX, AZ 85034

Phone Number: 6023253215

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application Serial No. 77946630
For the mark: THE CELL PHONE JUNKIE
Published in the Official Gazette on July 27, 2010
Opposition No. _____

DAVID SHYMATTA)
DBA CELL JUNKIE,)
)
Opposer,)
)
v.)
)
MICHAEL PAPHILLION)
THE CELL PHONE JUNKIE)
Applicant.)

NOTICE OF OPPOSITION

Opposer, David Shymatta dba CELL JUNKIE is owner of the federally registered trademark CELL JUNKIE registration number 3,351,212. CELL JUNKIE is a proprietorship located in Idaho with it's address of 210 Hwy 30 E Box 38 Inkom Idaho 83245. The above identified opposer believes that it will be damaged by the registration of Applicants THE CELL PHONE JUNKIE mark Serial No. 77946630 and opposes the same pursuant to 15 U.S.C. § 1063, and 37 C.F.R. §§2.101 and 2.104(a). The grounds for opposition are as follows:

11/30/2010 SHILSON1 00000019 77946630

01 FC:6402

300.00 OP



11-26-2010

Papillon v. Shymatta - Exhibit G

1. Opposer's company Cell Junkie is engaged in retail sales and retail store services as it relates to cell phones products and services. Cell Junkie provides a wide array of cell phone products to the marketplace and is also known for producing designs for cell phone covers, providing retail services in the cell phone industry and for selling cell phone related products.

2. CELL JUNKIE has sold and advertised tens of thousands of cell phone accessories throughout the United States and abroad since its inception. CELL JUNKIE provides services and products to church and religious marketplaces both physical and online. The CELL JUNKIE Mark is also currently used in such marketplaces as eBay, Go daddy, and a web site address www.celljunkie.com. A copy of the federal certificate of registration attached hereto Exhibit A.

3. CELL JUNKIE is registered for use with cell phones devices, cell accessories and services as it relates to retail stores and services under international class 35. Use of the mark as it relates to electronic devices, telecommunications products and accessories in retail and store services is many. A brief list would include but not limited to business services, communications services, advertising, comments, media, entertainment, accessories such as ring tones, fashion and sports accessories, hands free, car chargers, batteries, reception boosters, covers, cases, cell phone components or parts, screen protectors, holograms. Many of the cell phone housings or faceplates Cell Junkie retails and has sold include entertainment and sports genre's such as Disney characters, NBA, NFL, Bull riding, Chevrolet and Ford

Motor Company licensed brand, US Air Force, US Army, Looney Tunes licensed characters.

4. Opposer has the exclusive right to use his registered mark in connection with the goods and services as specified on the certificate of registration. Exhibit B attached hereto demonstrates use both prior and recent use of the CELL JUNKIE Mark over the years since its inception as it relates to retail, services, advertising, customer reviews and product sales in commerce.

5. In establishing substantial grounds supporting this opposition, applicants mark includes not just the word "Cell" alone, but also includes the word "Junkie". Applicants mark includes the word Cell and Phone. Opposer's Mark and applicants mark are both related to cell phones and accessories, thus it is evident that the word Cell would mean the same thing as Phone and or wireless device therefore emphasizing the overall impression of applicant's mark appears the same as opposer's registered mark.

6. The dominant portions of applicants mark is the word "Cell" and "Junkie" demonstrating that applicant's mark as used posits the same exact concept and the same overall commercial impression as opposer's registered mark, being that of a junkie or addicted, and specifically as it relates to one that is addicted to wireless or cellular devices and cellular accessories. Moreover, applicant's mark includes opposer's federally registered mark in it's entirety.

7. Opposer never granted use of his mark to anyone publicly or privately. Opposer discovered applicant's THE CELL PHONE JUNKIE retailing, advertising, commenting, and promoting cell phones, cell phone accessories and services via its internet website(s) thecellphonejunkie.libsyn.com and thecellphonejunkie.com.

8. THE CELL PHONE JUNKIE has an extensive network including web links to retailers and other cell phone and cell phone accessory companies, sponsors, and provides direct advertisements to promote and retail cell phone products directly as well.

9. Opposer sent a demand letter to applicant on or about February 5th, 2010 requesting that applicant cease and desist use of the registered trademark CELL JUNKIE. Opposer did not receive response or communication from applicant regarding the matter.

10. On or about April 1, 2010 opposer discovered on the USPTO website that applicant filed an application to register his mark on or about February 27, 2010 after receiving Opposer's letter.

11. On or about March 11, 2010 applicant had filed a cancellation proceeding against opposer's registered mark.

12. On or about November 15, 2010 opposer filed a lawsuit for trademark infringement against applicant.

13. Opposer's first use and first use of the mark in commerce of February 13, 2006 is well before the applicant's first use and first use in commerce July 16, 2006. Exhibit

C attached hereto.

14. Applicant is seeking registration under International Class 41, however the mark as used by the applicant in commerce is used under the same class that opposer's mark is registered under and in the same and or similar manner. The exhibits attached herewith describe and show the activities as to how the applicant uses his mark as it relates to retail, marketing, advertising and business services.

15. Exhibit D pg. 1 shows a screen shot of the applicant retailing and advertising cell phone cases on their website for purchase. In this example dated February 14, 2010, the applicant advertises the Otterbox case "Available for \$34.95 at www.otterbox.com for a wide variety of smartphones." Here, the applicant provides a link or address on their website for product purchase.

16. Exhibit D pg. 2 dated Jul 2nd is a screen shot of the applicant providing its visitors with a retail coupon for a 50 percent discount off purchase. The same screen shot shows that THE CELL PHONE JUNKIE provides a direct link to purchase product at tech bargains. Here the applicant also advertises Iphone 4 accessories for sale at \$9 each. Applicant's product sales, marketing and coupon for discounts on cell phone accessories is retail business services and retail advertising.

17. The applicant includes many links on it's website that link to other companies and or websites. In this example when a visitor to the applicant's website clicks on their link

titled "New Bluetooth accessory!", he or she is directed to a Bluetooth Retro Handset with a price of \$29.99 and a Buy Now Icon for consumer purchase. Exhibit D pgs. 3-4 screen shots.

18. Exhibit D pgs. 5-7 applicant advertises, collaborates and or links to Howard Forums providing a selection of cases and accessories for purchase in direct competition with opposer's company and mark CELL JUNKIE. Here the visitor is provided a link or thread directing them back to THE CELL PHONE JUNKIE website, web or pod cast.

19. The following screen shot shows the results of an individual entering the keywords "Cell Junkie Cover Accessories". Here, the results show Opposer's mark "Cell Junkie" featuring accessories, and applicant's company "The Cell Phone Junkie" dated June 1 2010 featuring "Must Have Accessories for the Blackberry Tour". Blackberry tour is a model of phone that Opposer's company retails accessories for. Exhibit D pg. 8

20. Exhibit D pg. 9 demonstrates when a person enters "Cell Junkie" in the Google search box it calls up Opposer's mark CELL JUNKIE and applicant's THE CELL PHONE JUNKIE mark featuring the Crackberry Podcast, and "Support the Cell Phone Junkie by signing up for a free Netflix trial..." Exhibit D pg. 10 when a user searches for "cell junkie accessories", in this case the results again show opposer's mark and applicant's. Another example using keywords "cell junkie covers accessories" similar results were achieved, here opposer's CELL JUNKIE website celljunkie.com is displayed along with The Cell Phone Junkie featuring "5 accessories available at iPad launch". Exhibit D pg. 11

21. Applicant uses opposer's mark to advertise, retail and promote cell phone products and related services. Exhibit D pgs. 12-14, are screen shots demonstrating how the applicant promotes sales of cell phone products in its reviews by providing direct links for its customers to purchase product. In this particular review the customer is given a direct link to Richard Solo for purchase. Exhibit D pg. 15 The Cell Phone Junkie show 215 comment dated July 11, 2010, here the applicant advertises free devices and provides a direct link to "Engadget". Exhibit D pg. 16 is another example of how the applicant links to or collaborates with other websites that retail products that are in direct competition with opposer.

22. Applicant's recent postings on June 1, 2010 entitled "CrackBerry Kevin on The Cell Phone Junkie talking BlackBerry Bold 9650 (and more!)" Here, the applicant again advertises cell phones and accessories for sale with links for consumer purchase. Above the Cell Phone Junkie logo the visitor is given a direct link to purchase; "Buy Blackberry Accessories, Apps & Phones". When a person clicks on the "Buy Blackberry Accessories, Apps & Phones" they are shown a web page of an assortment of phones, accessories and or bundles for purchase. Another direct link to the right of "The Cell Phone Junkie" logo and posting also brings up a web page to shop the crackberry directly. Below the applicant's logo "thecellphonejunkie.com" links back to the applicants website "but if you're jonesing from some BlackBerry talk right now you can jump over to TheCellPhoneJunkie.com and tune in to the TCPJ Unlocked".

23. The Cell Phone Junkie's Crackberry pod cast or web cast page indicates that

Crackberry.com is "The #1 Site For Blackberry Users (&Abusers!)" According to their own website Crackberry encourages illegal activities: "Because that would probably be illegal as it would involve interfering with the service tables Verizon sends to its BlackBerries. Maybe you can try doing it if you want it so bad..." Exhibit E screen shots pgs 1-3.

24. This opposition demonstrates that not only a likelihood of confusion exists but that applicant's use of the mark presents a direct conflict and actively erodes the Cell Junkie registered mark. Applicant's website provides direct links and advertisements to "numerous" cell phone and accessory businesses thus clearly demonstrating a conflict with Opposer's registered mark. Through the numerous direct and sponsored links described above, applicant actively misrepresents and erodes Opposer's trademark, falsely advertises, encourages and facilitates the sale of accessories and services unlawfully using Opposer's trademark.

25. After The Cell Phone Junkie mark was published in the Official Gazette, Opposer timely requested extensions of time in which to file a Notice of Opposition and the same was granted, which continue through and including November 24, 2010.

26. Cell Junkie will be damaged by registration of Applicant's the Cell Phone Junkie mark because the mark is identical or near identical to the Cell Junkie Mark, and applicants mark is used in connection with the same class of related goods and services in the United States demonstrates more than a likelihood of consumer confusion, mistake and deception.

27. The relevant public is likely to be confused into believing that Applicant's

related use of the mark as offered under The Cell Phone Junkie mark and which are the same and or similar to the use of the mark as offered under the CELL JUNKIE Mark, are offered by Cell Junkie, or authorized, or licensed, endorsed or sponsored by Cell Junkie. Registration of Applicant's mark on the Principal Register would thus be inconsistent with CELL JUNKIE'S exclusive rights to use the Mark.

28. CELL JUNKIE will be damaged by registration of Applicant's mark because Applicant's advertising, network and or marketing diminishes, disperses, takes away consumers and or business from opposer to cause mistake, or to cause confusion or to deceive in violation of Section 2 of the Lanham Act, 15 U.S.C. § 1052 and 15 U.S.C. § 1114.

29. CELL JUNKIE will be damaged by registration of Applicant's mark because the subject mark as used in connection with the encouragement of illegal activities degrades, erodes and damages the reputation of the goodwill and values embodied in opposer's registered mark, and/or by misrepresenting and tarnishing the positive associations and connotations of opposers company and registered mark.

30. An original and one duplicate copy of this Notice of Opposition are enclosed. A check in the amount of 300.00 to cover the filing fee is enclosed with the Notice of Opposition.

WHEREFORE, OPPOSER requests that Application Serial No. 77946630 be refused.
and this Notice of Opposition be sustained in favor of OPPOSER.

Dated This 22nd day of November, 2010.

Respectfully submitted,

By: 
David Shymatta
Opposer

November 22, 2010

Attn: Clerk
Trademark Trial and Appeal Board
PO Box 1451
Alexandria Virginia 22313-1451

VIA: U.S. Certified Mail

Re: Notice of Opposition re: application Sr. No. 77946630

Dear Sir or Madam:

Please find enclosed the following documents:

1. David Shymatta's Notice of Opposition
2. Certificate of Service

If you have any further questions, please do not hesitate to contact me.

Thank you,


David Shymatta

PO Box 38
Inkom, ID 83245
208-406-6330
Fax: 208-775-4779
cellj@msn.com

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2010 the foregoing instrument was served upon the following by the method of delivery indicated.

John D. Titus
Dickson Wright PLLC
5009 E. Washington, Suite 125
Phoenix, AZ 85034
Fax: (602) 244-1441
Attorney for Petitioner

- U.S. First Class Mail
- Hand Delivered
- Federal Express
- Facsimile

U.S. PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
PO Box 1451
Alexandria Virginia 22313-1451

- U.S. Priority Certified Mail
- Hand Delivered
- Federal Express
- Facsimile



David Shymatta
PO Box 38
Inkom ID 83245
208-406-6330
Fax: 208-775-4779
cellj@msn.com

EXHIBIT A

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 3,351,212

United States Patent and Trademark Office

Registered Dec. 11, 2007

SERVICE MARK
PRINCIPAL REGISTER

CELL JUNKIE

SHYMATTA, DAVID R. (UNITED STATES INDIVIDUAL)

4245 YELLOWSTONE AVE. #A3

CHUBBUCK, ID 83202

FOR: RETAIL STORE SERVICES FEATURING
CELL PHONE ACCESSORIES, IN CLASS 35 (U.S.
CLS. 100, 101 AND 102).

FIRST USE 2-13-2006; IN COMMERCE 2-13-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CELL", APART FROM THE MARK AS SHOWN.

SER. NO. 77-126.362, FILED 3-9-2007.

RAY THOMAS, EXAMINING ATTORNEY

EXHIBIT B

Go Daddy

MARKETPLACE

Shop with a name you trust.

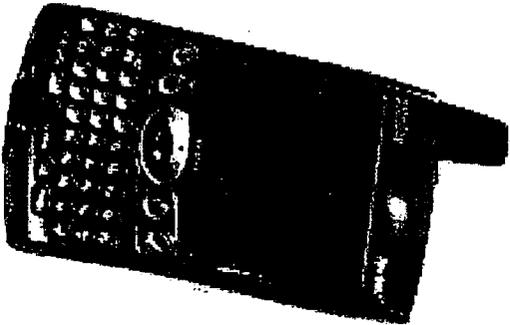
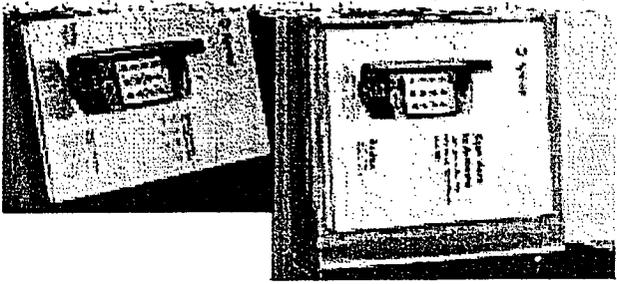
CALLER ID

Marketplace Home > CELL JUNKIE > SPRINT TREO CELL PHONE WITH MANUAL BOX AND POUCH

[Go Back](#)

SHOW ME:

All Categories



SPRINT TREO CELL PHONE WITH MANUAL BOX AND POUCH

from CELL JUNKIE

THIS IS A USED SPRINT TREO IN NICE SHAPE WITH MANUAL AND BOX AS PICTURED WITH POUCH ALSO! THIS PHONE WOULD HAVE TO BE ACTIVATED BY BUYER. SALE IS JUST FOR THE PHONE AND ITEMS AS PICTURED AND INCLUDED NO SERVICE OR ACTIVATION ETC. PLEASE NOTE THERE IS NO CHARGER

Shipping

U.S. Shipping: \$9.99

HI/AK \$9.99

Shipping:

Notes: SHIPS FIRST CLASS USPS POST OFFICE NO INSURANCE INCLUDED!

[Details](#)

Price

Quantity:



Merchant Information

CELL JUNKIE

Joined May 22, 2009

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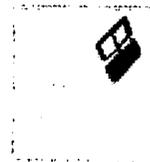
[Contact Merchar](#)

Tools

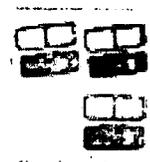
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2865



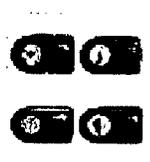
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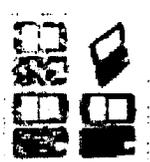
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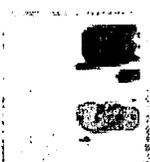
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BATTERY



BLACKBERRY



EG



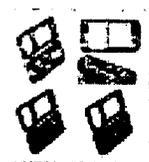
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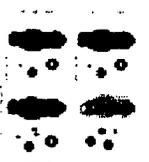
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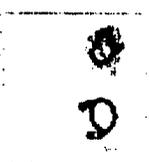
CHOCOLATE 2
8550



CHOCOLATE 8500



CLIPS FOR
COVERS



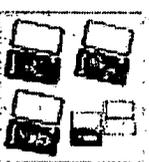
DATA CABLE



DIAMOND CASES



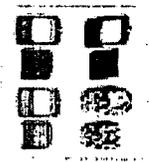
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DROID



SWING



EX-FRAGILES ONLY



HATS CARDS



H-CELL



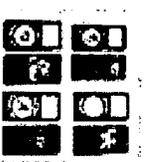
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HTC



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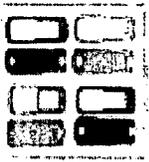
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IPATING



HPZR



Q7



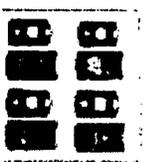
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LWV3



NBA



NCAA



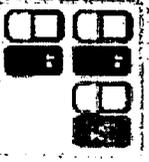
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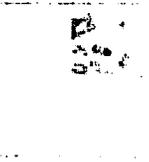
NEO



NFL



PAUM



PICTURE CASES



POUCHES



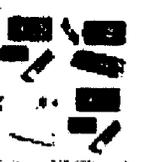
PROGUARD
(DIAMOND)



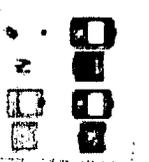
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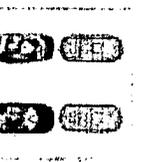
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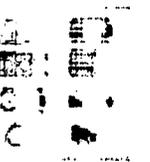
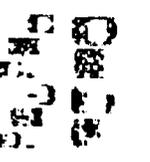
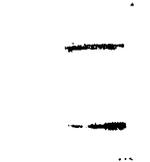
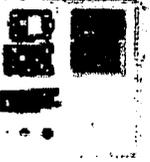
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CAMOUFLAGE DEER MOSSY WOODS PROTECTOR COVER CASE FACEPLATE FOR MOTOROLA DROID A855

from CELL JUNKIE

\$8.99 \$2.99 Shipping*

Quantity:

Quantity input field with '1' selected

Add to Cart

3 In Stock

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Product Description

SNAPS ON OVER PHONE, NO SCREWS REQUIRED! HAS OPENINGS FOR ACCESSING FUNCTIONS OR PORTS HAS NICE FINISH, CLOSE TO SMOOTH RUBBERIZED OR SMOOTH LEATHER EXTERIOR TYPE MATERIAL, NOT STANDARD LEATHER COWHIDE TYPE FEEL, ITS A COATING WORKS WITH THE FOLLOWING MODELS ONLY: MOTOROLA DROID A855 Please make sure you have one of the above model, you can look on the phone itself under the battery. Patterns can vary. Snap on mold is a polycarbonate or hard plastic material. phone cover only, phone not included.

With most any protector cover or case on the phone like this or others they add a little thickness, there may be slightly less mobility, for instance in opening or closing but it should not hinder the phone from being shut off or used that's just the nature of most snap on covers or cases.

WE STRIVE FOR ACCURATE PICTURES AND DESCRIPTIONS, HOWEVER DUE TO COMPUTER MONITOR AND DISPLAY TECHNOLOGY. MOSTLY ANY PICTURE CAN LOOK DARKER, LIGHTER OR DIFFERENT THAN ACTUAL PRODUCT, ASK ANY QUESTIONS PRIOR TO SALE TO ELIMINATE DISCREPANCIES, ALL ITEMS REQUIRE PROMPT PAYMENT. THANK YOU

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[Marketplace Home](#) > "cell junkie" (6 results)

Refine By

Brand

Categories

Electronics (5)

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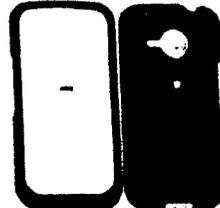
CAMOUFLAGE MOSSY WOODS SNAP ON

\$8.99



LEOPARD TIGER CELL PHONE COVER CASE

\$9.99



GREEN FLOURESCENT PROTECTOR COVER

\$8.99



CAMOUFLAGE DEER MOSSY WOODS

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\$8.95



HEARTS ON BLACK SNAP ON PROTECTOR

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CATEGORIES FASHION MOTORS DAILY DEAL

Home > eBay Stores > Cell Junkie accessories services > All Categories Add to Saved sellers | Sign up for Store newsletter

Cell Junkie accessories services

Maintained by: celltux (6654 ☆) 

Welcome to Cell Junkie. Here you can find custom cell phone accessories and a customer service oriented, caring business. We strive for 5 stars. Let us know if any issue arises, if we make a mistake we give 100% to remedy and satisfy every customer. Please add us to your list of favorite sellers.



Store search

 in titles & description

Store categories

Store home [See all items](#)

New Arrivals!

- COOL BLUE PHONE COVER CASE FACEPLATE LG VERSA V39600
- XOXO STARS RAZR RAZOR PHONE COVER FACEPLATE CASE CLIP

Date and Time Properties

Date & Time Time Zone Internet Time

Date: Jul 2010

S	M	T	W	T	F	S
						1 2 3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Time: 1:55:21 PM

Current time zone: Pacific Daylight Time

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Listing info

Page views: 6

High bidder ID: lkcc

Duration: 7 d

Start time: Oct

Start price: \$5.7

CANDY APPLE RED LG ACCOLADE VX5600 COVER

Item condition: **New**

Ended: Oct 16, 2010 09:08:51 PDT

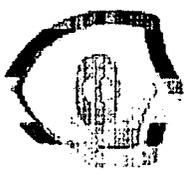
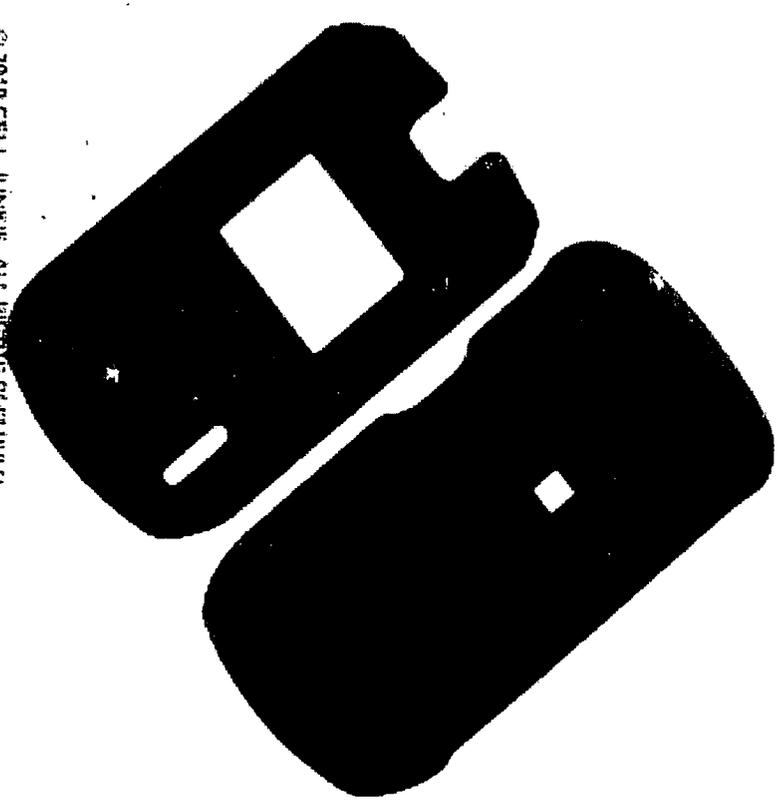
Bid history: 1 bid

Winning bid: **US \$5.72**

Shipping: **\$2.95** Expedited Shipping | see all details

Delivery: Estimated within 3-4 business days

Returns: 7 day exchange, buyer pays return shipping | Re



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Paid with PayPal on Jan 07, 2010.

Item: BLUE FLAMES RAZR CELL COVER FACEPLATE CASE RAZOR 2 V9 X

Mozilla Firefox

http://cgi.ebay.com/ws/ebay1SAP1.dll?ViewItem&item=250554948102



V9

12
ID: tab1th65391 (47 ☆) 100%

7 days
\$8.67

OVER

V9 X

Flat Rate Shipping

return shipping |

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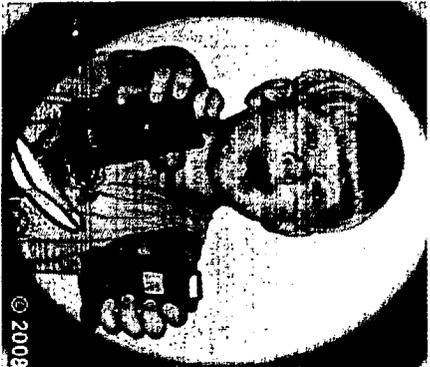
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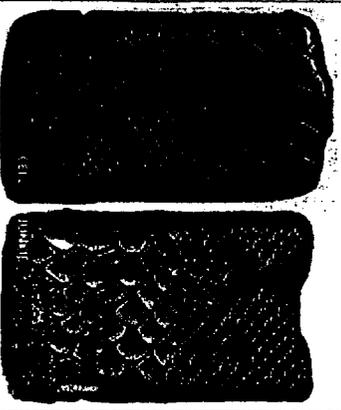
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Winning bid: **US \$7.97**

Ended: **Jan-31-07 13:47:09 PST**

Shipping costs: **US \$3.99 (discount available)**

Standard Flat Rate Shipping Service to [United States](#)

Ships to: [United States](#)

Item location: [Chubbuck, ID, United States](#)

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Description

Item Specifics - Cell Phone Accessories

Type: **Faceplate, Housing**

Compatible Brand: **Motorola**

Compatible Model: **Razor V3 V3C V3M RAZR**

Condition: **New**

[Done](#)

- Additional Options:**
- To list another item like this one, use the [Sell Similar](#) option.
 - To list this specific item again, use the [Relist](#) option.
 - Customize your seller settings by updating [seller preferences](#).



Winning bid: **US \$9.97**

Ended: **Jan-31-07 12:21:49 PST**

Shipping costs: **US \$3.99 (discount available)**
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[CAMO WOODS DEER USA COVER FACEPLATE CASE RAZOR RAZR!](#)

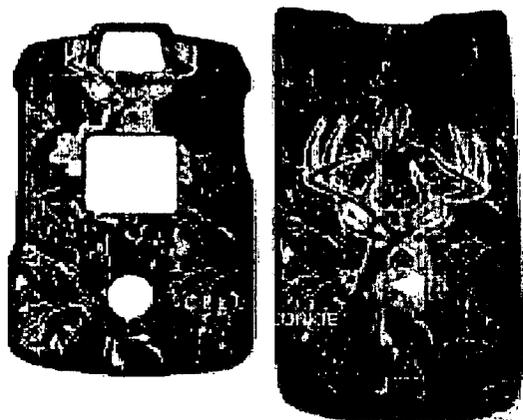
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Winning bid: **US \$10.01**

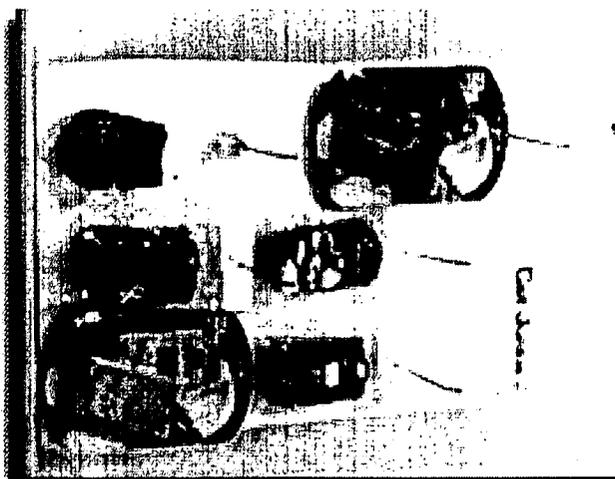
Ended: **Jan-30-07 15:37:15 PST**

Shipping costs: **US \$3.99 (discount available)**
Standard Flat Rate Shipping Service
Service to United States

Ships to: **United States**

Item location: **Pocatello, Idaho, United States**

History: **3 bids**



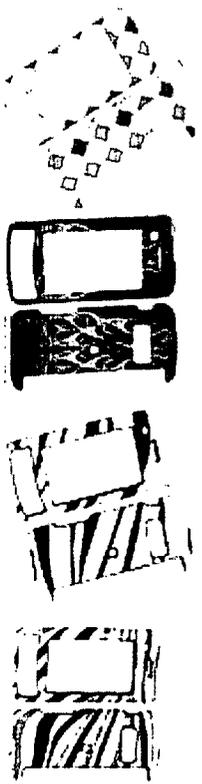
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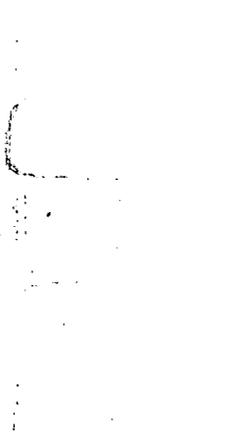
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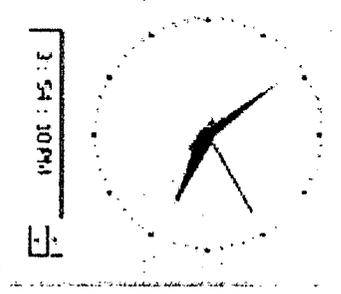
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Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 77946630

Filing Date February 27, 2010

Current Filing Basis 1A

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Published for Opposition July 27, 2010

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Otterbox Commuter Series Review

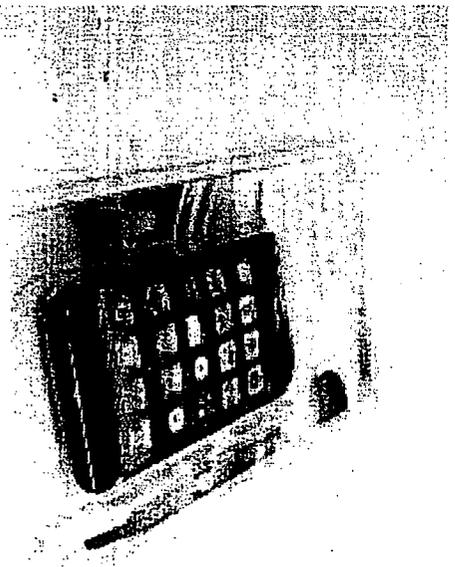
Posted February 14, 2010

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Last year, we looked at the sleek Impact Series cases from the great folks at Otterbox for the iPhone and Blackberry Curve. Now we're taking a look at the new Commuter Series for the iPhone 3G and 3GS. OtterBox makes high impact cases known as their "Defender" line to protect your device from just about anything you can throw at it. Combining the durable elements from the Defender line and the sleek looks of the Impact series created the Commuter (Available for \$34.95 at www.otterbox.com for a wide variety of smartphones.)

Features and Design

The OtterBox Commuter™ Series has three slim, yet sturdy layers of protection. With a slim form factor and smooth outer layer, this case slides easily in and out of a pocket, purse or bag. The package comes with a screen protector, rubber membrane, and rigid plastic shell.



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the cell phone junkie

the cell phone junkie

Apple has now waived the 10% restocking fee if you return your iPhone 4.

9:21 AM Jul 2nd via Twitter for BlackBerry@

@ecormany That and the fine print "Based on global coverage"

9:27 AM Jul 2nd via Twitter for BlackBerry@ in reply to ecormany

@Alli_Flowers yes & no. You shouldn't have to 'cover' a product design mistake, however. Its the principle of it.

9:34 AM Jul 2nd via Twitter for BlackBerry@ in reply to Alli_Flowers

@Alli_Flowers You should try it without, see if it doesn't work as well. It really does seem like a hardware design flaw.

9:37 AM Jul 2nd via Twitter for BlackBerry@

Ah this twitter whale is KILLING me

10:00 AM Jul 2nd via Twitter for BlackBerry@

@shawnJroberts seems that is what Apple did in their testing!

10:04 AM Jul 2nd via Twitter for BlackBerry@ in reply to shawnJroberts

@Alli_Flowers I don't see how you could not have issues with the iPhone4 without a case since the antennas are not insulated.

10:09 AM Jul 2nd via Twitter for BlackBerry@

pcmicrostore.com has iPhone4 cases for \$9. Get a 50% off coupon at http://www.techbargains.com/news_displayItem.cfm/214400

9:53 AM Jul 2nd via web

@shawnJroberts Touching the metal changes the antenna tuning (since your skin is conductive), shorting the two antennas (black spot) is bad.

9:53 AM Jul 2nd via web in reply to shawnJroberts

@shawnJroberts My take: Completely ignore the 'bars.' If you are holding calls and getting consistent data delivery then you should be OK

8:36 AM Jul 2nd via web in reply to shawnJroberts

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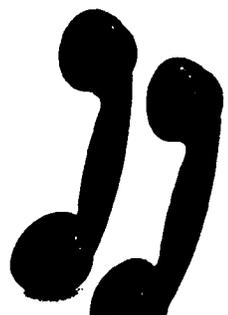
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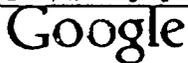
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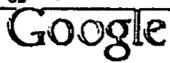
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Traveling Internationally with The Cell Phone Junkie

Posted July 5, 2009

Filed under: Reviews, The Cell Phone Junkie |

Traveling Internationally with The Cell Phone Junkie



When my wife and I set out to plan our summer vacation this year, we found that we kept coming back to the notion of traveling to Ireland. To make the trip a bit more diverse, we chose to visit multiple cities and locations over the course of 9 days. The trip had us visiting London, Cork, Kinsale, Killarney and Dublin. When we returned to the states, we found a flight that gave us a 7 hour layover in New York City, and spent a few hours in Manhattan before finally returning home.

Through all of this travel (7 flights total), I wanted to make sure that I was as efficient and lightweight as possible. To do so, I took a hard look at each item

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121,32

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Because I made the decision to charge most of my devices via USB on the Dell Mini, I needed to figure out a way to charge the iPhones, since connecting them to the Dell would launch iTunes, and attempt to create a new partnership each time. After reading about them on many blogs, and seeing their advertising, I reached out to Richard Solo for some review units to test out. I received 2 different batteries for use with iPhones, one that plugs directly into the bottom of the phone (Richard Solo 1800 for iPhone), and the other that connects via a short cable (Richard Solo 1800 with Cable). Each charges the iPhone in about the same time as the wall charger. Also, they can be daisy chained together for charging via USB, wall, or car charger. Since we weren't using the iPhones as phones, we only phone the need to charge them ever 3 days or so on the trip, and we were able to simply plug in either of the Richard Solo batteries and toss the whole setup in a backpack to charge while we walked around. Also, the length of flights

← [Use your iPad 3G on 3G without a separate 3G plan](#)

([The Cell Phone Junkie Show #215](#) →)

AT&T giving out Free MicroCell devices

July 11, 2010 • 1 Comment

Engadget ran a story this weekend about an AT&T customer that supposedly received a free AT&T MicroCell. Customer Jason says he received a letter from the Executive Director, of Customer Relationship Management Dana Cogswell. The letter told him to head to his nearest AT&T store (with address listed) and they would provide him a free AT&T 3G MicroCell as a special gift. Jason told Engadget that he pays around \$180 per month and his contract is set to expire. AT&T has yet to respond to the information, but the contact on the letter, Mr. Cogswell is listed in online social networking sites as an AT&T employee.

(Source: [Engadget](#))

Possibly related posts: (automatically generated)

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- [AT&T to begin nationwide rollout of 3G MicroCell in mid-April](#)
- [AT&T Customers to get Free Wi-Fi at Barnes and Noble Stores](#)
- [Rumor: AT&T giving 3G MicroCells to long-standing customers](#)

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EXHIBIT E

Podcast: CrackBerry Kevin on The Cell Phone Junkie talking BlackBerry Bold 9650 (and more!)

By Kevin Michaluk | 01 Jun 2010 12:05 | 9 comments

Like



We'll be recording a CrackBerry Podcast later this week (Craig was on a cruise last week so we skipped our regularly-scheduled show), but if you're jonesing from some BlackBerry talk right now you can jump over to TheCellPhoneJunkie.com and tune in to the TCPJ Unlocked Show #52 where I was guest. On this episode we talk BlackBerry Bold 9650, CrackBerry and some of the opportunities and challenges facing RIM in the smartphone space. Good times.

Keep in mind the TCPJ unlocked show is a premium show (you have to pay a monthly or annual fee to subscribe to listen) but they always do a bang up job. If you're already a fan of all of SPE's podcasts, I'd definitely recommend you also check out The Cell Phone Junkie.

Leave your comment Send to a friend

Filed Under: Podcasts ; Tags: TCPJ

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Comments

Kevin was that you on BGR Last Night?

By: [cornbread16](#) | Date: Tue, 06/01/2010 - 11:34

First

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SERVPRO
Fire & Water - Cleanup & Restoration™
Independently Owned and Operated

ShopCrackBerry.com
Click on your BlackBerry or accessory links below:

Bold 9700

- Cases & Skins
- Pod
- Chargers
- Bundles

Bold 9650

- Cases & Skins
- Pod
- Chargers
- Bundles

Pearl 3G

- Cases & Skins
- Pod
- Chargers
- Bundles

Tour 9630

- Cases & Skins
- Pod
- Chargers
- Bundles

Storm2

- Cases & Skins
- Pod
- Chargers
- Bundles

Storm

- Cases & Skins
- Pod
- Chargers
- Bundles

Curve 85xx

Curve 83xx



ShopCrackBerry.com
The #1 Store for BlackBerry Users (& Others)

community

Search ShopCrackBerry

Visit CrackBerry Canada

Order Online
or call (866) 904-5772

Accessories

BlackBerry Devices

App Store

Enterprise Sales

Customer Care

Your Cart: 0 items \$0.00

My BlackBerry



Select your BlackBerry to show compatible accessories

Open Selector

All Models

or use QuickSelect

Accessories



- Accessory Deals
- Batteries
- Battery Covers
- Bluetooth
- Books
- Car Kits & Mounts
- Cases
- Chargers & Cables
- Cradles
- Headsets
- Keyboards
- Memory Cards
- Miscellaneous
- Screen Protectors
- Stylis
- SuperBundles

Software



- Best Selling Apps
- New BlackBerry Apps
- BlackBerry Themes
- Business & Finance
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SUPERBUNDLE



Five Bestselling BlackBerry Accessories In One Simple Package For A Super Low Price!

MSRP \$109.99
Now! \$49.95

Amazing BlackBerry Case Selection

- Secure Holsters from \$14.95
- Top Pouches from \$14.95
- Side Pouches from \$14.95
- Form-Fit Cases from \$14.95
- Flip-Lid Cases from \$14.95
- Hard Cases from \$14.95
- Skin Cases from \$9.95

Browse our huge selection of cases

Go Wireless

- Bluetooth Headsets from \$19.95
- Stereo Bluetooth Headphones from \$59.95

Power Up



BlackBerry Chargers from \$9.95

More Chargers

Drive Safely



Car Kits & Mounts from \$19.95

More Car Kits

Expand Rapidly



Memory Cards from \$14.95

More Memory Cards

Keep Going



BlackBerry Batteries from \$19.95

More Batteries

Welcome to ShopCrackBerry, the #1 Store for BlackBerry Accessories and the favorite shopping destination for CrackBerry users. We offer one of the largest selections of BlackBerry Accessories available anywhere and are always adding new products, so be sure to come back often! For the best shopping experience, please specify your BlackBerry model so that we only show accessories compatible with your device.

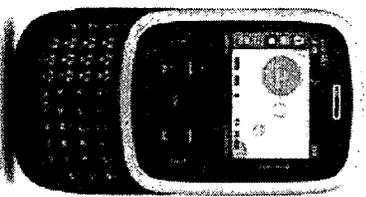
Use our new search to find accessories quickly:

- Largest Accessory Selection
- Same Day Shipping
- Expert Support

Bestselling BlackBerry Accessories



ADVERTISEMENT



cricket
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FREE
SHIPPING +
FIRST MONTH

UNLIMITED MINUTES
NO SIGNED CONTRACTS
NO CATCH
REQUIRES NEW ACTIVATION

go unlimited

BlackBerry.com

Available October

BlackBerry Forums at CrackBerry.com > General BlackBerry Discussion > BlackBerry Discussion
Crack For Verizon GPS Issue..

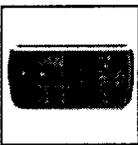
FAQ | Calendar | Today's Posts | Search | Login



05-20-2008, 03:45 AM

Linkback | Thread Tools | Search this Thread | Display Modes

#1



steelcityk9cop

CrackBerry User
Device Model: Storm
Carrier: Verizon

Join Date: Dec 2007
Posts: 25

Crack For Verizon GPS Issue..

Why is it that no one has been able to find a crack for Verizon's locking out of the BB's GPS features?

Posted from my CrackBerry at wapforums.crackberry.com



05-20-2008, 05:01 AM

#2

ital188

CrackBerry Abuser
Device Model: 8330 (Curve)
Carrier: Verizon

Join Date: Apr 2008
Posts: 251

Because that would probably be illegal as it would involve interfering with the service tables Verizon sends to its BlackBerries. Maybe you can try doing it if you want it so bad...



05-20-2008, 09:37 AM

#3

ShopCrackBerry.com
Click on your BlackBerry or accessory links below:

Bold 9700

- Cases & Skins
- Pod
- Chargers
- Bundles

Bold 9650

- Cases & Skins
- Pod
- Chargers
- Bundles

Pearl 3G

- Cases & Skins
- Pod
- Chargers
- Bundles

Tour 9630

- Cases & Skins
- Pod
- Chargers
- Bundles

Storm2

- Cases & Skins
- Pod
- Chargers
- Bundles

Storm

- Cases & Skins
- Pod
- Chargers
- Bundles

Copy

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the matter of application Serial No. 77946630
For the mark: THE CELL PHONE JUNKIE
Published in the Official Gazette on July 27, 2010
Opposition No. _____**

DAVID SHYMATTA)
DBA CELL JUNKIE,)
)
Opposer,)
)
v.)
)
MICHAEL PAPIILLION)
THE CELL PHONE JUNKIE)
Applicant.)

NOTICE OF OPPOSITION

Opposer, David Shymatta dba CELL JUNKIE is owner of the federally registered trademark CELL JUNKIE registration number 3,351,212. CELL JUNKIE is a proprietorship located in Idaho with it's address of 210 Hwy 30 E Box 38 Inkom Idaho 83245. The above identified opposer believes that it will be damaged by the registration of Applicants THE CELL PHONE JUNKIE mark Serial No. 77946630 and opposes the same pursuant to 15 U.S.C. § 1063, and 37 C.F.R. §§2.101 and 2.104(a). The grounds for opposition are as follows:

1. Opposer's company Cell Junkie is engaged in retail sales and retail store services as it relates to cell phones products and services. Cell Junkie provides a wide array of cell phone products to the marketplace and is also known for producing designs for cell phone covers, providing retail services in the cell phone industry and for selling cell phone related products.

2. CELL JUNKIE has sold and advertised tens of thousands of cell phone accessories throughout the United States and abroad since its inception. CELL JUNKIE provides services and products to church and religious marketplaces both physical and online. The CELL JUNKIE Mark is also currently used in such marketplaces as eBay, Go daddy, and a web site address www.celljunkie.com. A copy of the federal certificate of registration attached hereto Exhibit A.

3. CELL JUNKIE is registered for use with cell phones devices, cell accessories and services as it relates to retail stores and services under international class 35. Use of the mark as it relates to electronic devices, telecommunications products and accessories in retail and store services is many. A brief list would include but not limited to business services, communications services, advertising, comments, media, entertainment, accessories such as ring tones, fashion and sports accessories, hands free, car chargers, batteries, reception boosters, covers, cases, cell phone components or parts, screen protectors, holograms. Many of the cell phone housings or faceplates Cell Junkie retails and has sold include entertainment and sports genre's such as Disney characters, NBA, NFL, Bull riding, Chevrolet and Ford

Motor Company licensed brand, US Air Force, US Army, Looney Tunes licensed characters.

4. Opposer has the exclusive right to use his registered mark in connection with the goods and services as specified on the certificate of registration. Exhibit B attached hereto demonstrates use both prior and recent use of the CELL JUNKIE Mark over the years since its inception as it relates to retail, services, advertising, customer reviews and product sales in commerce.

5. In establishing substantial grounds supporting this opposition, applicants mark includes not just the word "Cell" alone, but also includes the word "Junkie". Applicants mark includes the word Cell and Phone. Opposer's Mark and applicants mark are both related to cell phones and accessories, thus it is evident that the word Cell would mean the same thing as Phone and or wireless device therefore emphasizing the overall impression of applicant's mark appears the same as opposer's registered mark.

6. The dominant portions of applicants mark is the word "Cell" and "Junkie" demonstrating that applicant's mark as used posits the same exact concept and the same overall commercial impression as opposer's registered mark, being that of a junkie or addicted, and specifically as it relates to one that is addicted to wireless or cellular devices and cellular accessories. Moreover, applicant's mark includes opposer's federally registered mark in it's entirety.

7. Opposer never granted use of his mark to anyone publicly or privately. Opposer discovered applicant's THE CELL PHONE JUNKIE retailing, advertising, commenting, and promoting cell phones, cell phone accessories and services via it's internet website(s) thecellphonejunkie.libsyn.com and thecellphonejunkie.com.

8. THE CELL PHONE JUNKIE has an extensive network including web links to retailers and other cell phone and cell phone accessory companies, sponsors, and provides direct advertisements to promote and retail cell phone products directly as well.

9. Opposer sent a demand letter to applicant on or about February 5th 2010 requesting that applicant cease and desist use of the registered trademark CELL JUNKIE. Opposer did not received response or communication from applicant regarding the matter.

10. On or about April 1, 2010 opposer discovered on the USPTO website that applicant filed a application to register his mark on or about February 27, 2010 after receiving Opposer's letter.

11. On or about March 11, 2010 applicant had filed a cancellation proceeding against opposer's registered mark.

12. On or about November 15, 2010 opposer filed a lawsuit for trademark infringement against applicant.

13. Opposer's first use and first use of the mark in commerce of February 13, 2006 is well before the applicant's first use and first use in commerce July 16, 2006. Exhibit

C attached hereto.

14. Applicant is seeking registration under International Class 41, however the mark as used by the applicant in commerce is used under the same class that opposer's mark is registered under and in the same and or similar manner. The exhibits attached herewith describe and show the activities as to how the applicant uses his mark as it relates to retail, marketing, advertising and business services.

15. Exhibit D pg. 1 shows a screen shot of the applicant retailing and advertising cell phone cases on their website for purchase. In this example dated February 14, 2010, the applicant advertises the Otterbox case "Available for \$34.95 at www.otterbox.com for a wide variety of smartphones." Here, the applicant provides a link or address on their website for product purchase.

16. Exhibit D pg. 2 dated Jul 2nd is a screen shot of the applicant providing its visitors with a retail coupon for a 50 percent discount off purchase. The same screen shot shows that THE CELL PHONE JUNKIE provides a direct link to purchase product at tech bargains. Here the applicant also advertises Iphone 4 accessories for sale at \$9 each. Applicant's product sales, marketing and coupon for discounts on cell phone accessories is retail business services and retail advertising.

17. The applicant includes many links on it's website that link to other companies and or websites. In this example when a visitor to the applicant's website clicks on their link

titled "New Bluetooth accessory!", he or she is directed to a Bluetooth Retro Handset with a price of \$29.99 and a Buy Now Icon for consumer purchase. Exhibit D pgs. 3-4 screen shots.

18. Exhibit D pgs. 5-7 applicant advertises, collaborates and or links to Howard Forums providing a selection of cases and accessories for purchase in direct competition with opposer's company and mark CELL JUNKIE. Here the visitor is provided a link or thread directing them back to THE CELL PHONE JUNKIE website, web or pod cast.

19. The following screen shot shows the results of an individual entering the keywords "Cell Junkie Cover Accessories". Here, the results show Opposer's mark "Cell Junkie" featuring accessories, and applicant's company "The Cell Phone Junkie" dated June 1 2010 featuring "Must Have Accessories for the Blackberry Tour". Blackberry tour is a model of phone that Opposer's company retails accessories for. Exhibit D pg. 8

20. Exhibit D pg. 9 demonstrates when a person enters "Cell Junkie" in the Google search box it calls up Opposer's mark CELL JUNKIE and applicant's THE CELL PHONE JUNKIE mark featuring the Crackberry Podcast, and "Support the Cell Phone Junkie by signing up for a free Netflix trial..." Exhibit D pg. 10 when a user searches for "cell junkie accessories", in this case the results again show opposer's mark and applicant's. Another example using keywords "cell junkie covers accessories" similar results were achieved, here opposer's CELL JUNKIE website cell junkie.com is displayed along with The Cell Phone Junkie featuring "5 accessories available at iPad launch". Exhibit D pg. 11

21. Applicant uses opposer's mark to advertise, retail and promote cell phone products and related services. Exhibit D pgs. 12-14, are screen shots demonstrating how the applicant promotes sales of cell phone products in its reviews by providing direct links for its customers to purchase product. In this particular review the customer is given a direct link to Richard Solo for purchase. Exhibit D pg. 15 The Cell Phone Junkie show 215 comment dated July 11, 2010, here the applicant advertises free devices and provides a direct link to "Engadget". Exhibit D pg. 16 is another example of how the applicant links to or collaborates with other websites that retail products that are in direct competition with opposer.

22. Applicant's recent postings on June 1, 2010 entitled "CrackBerry Kevin on The Cell Phone Junkie talking BlackBerry Bold 9650 (and more!)" Here, the applicant again advertises cell phones and accessories for sale with links for consumer purchase. Above the Cell Phone Junkie logo the visitor is given a direct link to purchase; "Buy Blackberry Accessories, Apps & Phones". When a person clicks on the "Buy Blackberry Accessories, Apps & Phones" they are shown a web page of an assortment of phones, accessories and or bundles for purchase. Another direct link to the right of "The Cell Phone Junkie" logo and posting also brings up a web page to shop the crackberry directly. Below the applicant's logo "thecellphonejunkie.com" links back to the applicants website "but if you're jonesing from some BlackBerry talk right now you can jump over to TheCellPhoneJunkie.com and tune in to the TCPJ Unlocked".

23. The Cell Phone Junkie's Crackberry pod cast or web cast page indicates that

Crackberry.com is "The #1 Site For Blackberry Users (&Abusers!)" According to their own website Crackberry encourages illegal activities: "Because that would probably be illegal as it would involve interfering with the service tables Verizon sends to its BlackBerries. Maybe you can try doing it if you want it so bad..." Exhibit E screen shots pgs 1-3.

24. This opposition demonstrates that not only a likelihood of confusion exists but that applicant's use of the mark presents a direct conflict and actively erodes the Cell Junkie registered mark. Applicant's website provides direct links and advertisements to "numerous" cell phone and accessory businesses thus clearly demonstrating a conflict with Opposer's registered mark. Through the numerous direct and sponsored links described above, applicant actively misrepresents and erodes Opposer's trademark, falsely advertises, encourages and facilitates the sale of accessories and services unlawfully using Opposer's trademark.

25. After The Cell Phone Junkie mark was published in the Official Gazette, Opposer timely requested extensions of time in which to file a Notice of Opposition and the same was granted, which continue through and including November 24, 2010.

26. Cell Junkie will be damaged by registration of Applicant's the Cell Phone Junkie mark because the mark is identical or near identical to the Cell Junkie Mark, and applicants mark is used in connection with the same class of related goods and services in the United States demonstrates more than a likelihood of consumer confusion, mistake and deception.

27. The relevant public is likely to be confused into believing that Applicant's

related use of the mark as offered under The Cell Phone Junkie mark and which are the same and or similar to the use of the mark as offered under the CELL JUNKIE Mark, are offered by Cell Junkie, or authorized, or licensed, endorsed or sponsored by Cell Junkie. Registration of Applicant's mark on the Principal Register would thus be inconsistent with CELL JUNKIE'S exclusive rights to use the Mark.

28. CELL JUNKIE will be damaged by registration of Applicant's mark because Applicant's advertising, network and or marketing diminishes, disperses, takes away consumers and or business from opposer to cause mistake, or to cause confusion or to deceive in violation of Section 2 of the Lanham Act, 15 U.S.C. § 1052 and 15 U.S.C. § 1114.

29. CELL JUNKIE will be damaged by registration of Applicant's mark because the subject mark as used in connection with the encouragement of illegal activities degrades, erodes and damages the reputation of the goodwill and values embodied in opposer's registered mark, and/or by misrepresenting and tarnishing the positive associations and connotations of opposers company and registered mark.

30. An original and one duplicate copy of this Notice of Opposition are enclosed. A check in the amount of 300.00 to cover the filing fee is enclosed with the Notice of Opposition.

WHEREFORE, OPPOSER requests that Application Serial No. 77946630 be refused and this Notice of Opposition be sustained in favor of OPPOSER.

Dated This 22nd day of November, 2010.

Respectfully submitted,

By: 
David Shymatta
Opposer

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2010 the foregoing instrument was served upon the following by the method of delivery indicated.

John D. Titus
Dickson Wright PLLC
5009 E. Washington, Suite 125
Phoenix, AZ 85034
Fax: (602) 244-1441
Attorney for Petitioner

- U.S. First Class Mail
- Hand Delivered
- Federal Express
- Facsimile

U.S. PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
PO Box 1451
Alexandria Virginia 22313-1451

- U.S. Priority Certified Mail
- Hand Delivered
- Federal Express
- Facsimile



David Shymatta
PO Box 38
Inkom ID 83245
208-406-6330
Fax: 208-775-4779
cellj@msn.com

UNITED STATES DISTRICT COURT

for the

District of IDAHO

DAVID SHYMATTA

Plaintiff

v.

MICHAEL PAPILLON

Defendant

Civil Action No. 10-565-E-MHW

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

MICHAEL PAPILLON
THE CELL PHONE JUNKIE
4216 EAST DESERT MARI GOLD DRIVE
CAVE CREEK, AZ 85331

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

DAVID SHYMATTA
210 HWY 30 E BOX 38
INKOM ID 83245

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ELIZABETH A. SMITH, Clerk

CLERK OF COURT

Signature of Elizabeth A. Smith

Date: 11-15-2010

Arizona with his address or principal place of business at 4216 East Desert Marigold Drive Cave Creek, Arizona 85331. Upon information and belief, Michael Papillon operates The Cell Phone Junkie.

3. This is a civil action arising out of Mr. Papillon's and The Cell Phone Junkie's facilitation, infringement, involvement and false advertising of the federally registered trademark owned by Plaintiff in violation of 43(a)(1)(A) and (B) of the Trademark Act of 1946, as amended (the "Lanham Act"), 15 U.S.C. §§ 1114(1), 1116(d) and 1125(a)(1)(A) and (B); and other violations of common law.

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338 and has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a). Venue is proper in this District pursuant to 28 U.S.C. § 1391 (a)(2) and (b)(2).

5. Defendant operates a website that is both interactive and commercial in nature, and advertises in this State as the evidence shows. Defendant also offers a fee based subscription service and takes donations on it's website. Personal jurisdiction in this district is proper inasmuch as Defendant has regularly solicited and or conducted business within the State of Idaho thereby purposely availing itself of the privilege of acting in the State of Idaho. Likewise, personal jurisdiction is proper under Idaho's Long-Arm Statute Idaho Code § 5-514; (a) and (b) "commission of a tortious act within this state".

6. Furthermore, personal jurisdiction is proper in this court in that Defendant has initiated a frivolous proceeding against Plaintiff in Idaho relating to the claims in this action, and defendant has therefore also initiated relevant communications to plaintiff in Idaho at issue in this lawsuit.

7. Plaintiff's claims are based upon defendants promotion, facilitation and participation in trademark infringement involving unauthorized use, marketing, and false

advertising of plaintiff's federally registered trademark and deceptive and unfair business conduct. Plaintiff provided defendant adequate and proper notice of the wrongdoing.

FACTUAL BACKGROUND AND ALLEGATIONS RELATED TO ALL CLAIMS

8. Cell Junkie provides a wide array of cell phone products to the marketplace and is known for producing designs for cell phone covers and for selling cell phone related accessories. Cell Junkie provides services and products to church and religious marketplaces both physical and online. Cell Junkie since its inception has sold tens of thousand of products in the United States and abroad to date, and the Cell Junkie trademark is also currently used in such marketplaces as eBay, Go daddy, and a web site address www.celljunkie.com. A copy of the federal certificate of registration and state permit attached hereto. Exhibit A

9. Cell Junkie is registered for use with cell phones devices, cell accessories and services as it relates to retail stores and services under international class 35. Plaintiff's mark Cell Junkie as used in Class 35 includes not only retailing of products, but also the means to advertise and or sell the products. Use of the Cell Junkie mark as it relates to electronic devices and accessories in retail and store services is many. A brief list would include but not limited to business services, communications services, advertising, comments, media, entertainment, accessories such as ring tones, fashion and sports accessories, hands free, car chargers, batteries, reception boosters, covers, cases, cell phone components or parts, screen protectors, holograms.

10. Many of the cell phone housings or faceplates Cell Junkie sells and has sold include entertainment and sports genre's such as Disney characters, NBA, NFL, Bull riding, Chevrolet and Ford Motor Company licensed brand, US Air Force, US Army, Looney Tunes licensed characters. Exhibit B pages 1-26 demonstrates the use of the Cell Junkie mark over

the years since its inception until now as it relates to retail, advertising, customer reviews, product sales etc.

11. Upon information and belief defendant operates and or uses the website addresses thecellphonejunkie.libsyn.com and thecellphonejunkie.com. Plaintiff discovered the infringement whereas “The Cell Phone Junkie” was retailing, advertising, commenting, and promoting cell phones, cell phone accessories and services via it’s internet website as the evidence shows. The Cell Phone Junkie has an extensive network including web links to retailers and other cell phone and cell phone accessory companies, sponsors, direct advertisements, inter alia.

12. In establishing substantial grounds supporting this action defendants mark includes not just the word “Cell” alone, but also clearly includes the word “Junkie”. Here it is concluded that defendant’s mark as used posits the same exact concept and the same overall commercial impression as plaintiff’s registered mark, being that of a junkie or addicted, and specifically as it relates to one that is addicted to wireless or cellular devices and cellular accessories. Defendant’s mark “The Cell Phone Junkie” includes Plaintiff’s federally registered mark “Cell Junkie” in it’s entirety. The defendant uses it’s mark to provide services under the same class that plaintiff’s mark is registered as the evidence shows.

13. Plaintiff personally, first sent a demand letter to defendant on or about February 5th, 2010 requesting that defendant cease and desist use of plaintiff’s registered trademark. A copy of that letter requesting cooperation attached hereto as Exhibit C.

14. The letter made known to defendant the activities of plaintiff’s company; “Cell

Junkie provides services and products in the cell phone industry and marketplace,.. “In order to prevent further harm, erosion to the CELL JUNKIE mark, and to keep the public from being led to mistakenly conclude that CELL JUNKIE is or has been authorized, sponsored, licensed by, or otherwise affiliated with THE CELL PHONE JUNKIE, CELL JUNKIE takes these matters very seriously including our option to file a lawsuit if we are unable to reach an acceptable solution to this ongoing problem.”

15. Plaintiff provided defendant his contact information including his “address” and “phone number”. Plaintiff never received a response or communication from defendant to work out a reasonable or acceptable solution as the letter requested. On the contrary, around or about April 1, 2010 plaintiff discovered on the USPTO website that there was an action that had been filed against his registered mark and was well under way.

16. Defendant filed a “frivolous” cancellation proceeding against plaintiff and his registered mark on or about March 11, 2010. Defendant in direct contradiction to the facts and or information he was provided decided to otherwise claim that plaintiff “abandoned” the use of his registered mark.

17. As viewable at the USPTO defendant’s Petition to Cancel plaintiff’s mark was based on a self serving google keyword search. As it turns out the defendant’s search did however display a result for plaintiff’s mark that appeared in the Google search engine. Notwithstanding, the defendant’s petition apparently did “not” include a web site search for “celljunkie.com.” On the other hand, the defendant did acknowledge and did include his own website address as petitioner in the cancellation indicating “thecellphonejunkie.com” ...“comment and criticism of cellular telephone equipment, cellular providers, and cellular accessories, via his web site thecellphonejunkie.com.” Exhibit D.

18. Defendant alleges in his cancellation petition that plaintiff's action to protect and enforce the use of his United States registered trademark is "extortion". Attorney Jared Allen that was representing plaintiff in the cancellation proceeding indicated that the defendant had a proposal whereas defendant .."has proposed a walk-away resolution. Mr. Papillon would stipulate to dismiss his action for cancellation of your trademark in exchange for a consent to the registration of his mark"...

19. As a result plaintiff was; (a) unfairly billed for several thousand dollars of attorney fees; (b) spent and continues to spend an unfair and inordinate amount of time on the matter; (c) had an undue burden placed on him, and the economy of his business was unnecessarily and financially burdened. Exhibit E dedacted.

20. Plaintiff has the obligation and right under trademark law to protect and enforce his registered mark, as well as exclusive rights to the use of his registered mark as specified. Defendant's improper conduct flies in the face of due process. Filing a cancellation proceeding against plaintiff's registered mark does not give the defendant the right to infringe.

21. If defendant's mark did not present a potential conflict to plaintiff's registered mark, then defendant clearly would of had no need to file a cancellation against plaintiff's registered mark in the first place, neither would have defendants asked for plaintiff's consent to use his registered mark. Here, defendants actions exemplify the fact that the defendant clearly understood a conflict did and does exist.

22. Defendant on or around February 27, 2010 filed an application to register his mark after receiving plaintiff's letter, which is close to the same time he also filed to cancel plaintiff's registered mark. The defendant's application for registration "admittedly" indicates a "first use in commerce" date that is "after" plaintiff's date of first use in commerce.

Defendant's first use and first use in commerce is July 16, 2006, well after plaintiff's first use of the mark and first use in commerce of February 13, 2006. Filing a application for trademark registration at this point does not give the defendant the right to infringe nor does it provide defendant protection against trademark infringement and improper conduct. Exhibit F

**DEFENDANT'S FACILITATION OF TRADEMARK INFRINGEMENT,
DECEPTIVE AND UNLAWFUL SYSTEM FOR INFRINGING**

23. Mr. Papillon as owner of the The Cell Phone Junkie directs, controls, and ratifies the actions of The Cell Phone Junkie including the unauthorized use of Plaintiff's registered trademark. The exhibits attached herewith clearly describe and show the activities as to how the defendant uses the mark The Cell Phone Junkie as it relates to retail, marketing, advertising and business services.

24. Exhibit G pg. 1 shows a screen shot of the defendant retailing and advertising cell phone cases on their website for purchase. In this example dated February 14, 2010, the defendant advertises the Otterbox case "Available for \$34.95 at www.otterbox.com for a wide variety of smartphones." Here, the defendant provides a link or address on their website for product purchase.

25. Exhibit G pg. 2, dated Jul 2nd shows the defendant providing its visitors with a retail coupon for a 50 percent discount off purchase. The same screen shot shows that The Cell Phone Junkie provides a direct link to purchase product at tech bargains. Here the Defendant also advertises Iphone 4 accessories for sale at \$9 each. Defendant's product sales, marketing and coupon for discounts on cell phone accessories is retail business services and retail advertising.

26. The defendant includes many links on it's website that link to other companies

and or websites. In this example when a visitor to the defendant's website clicks on their link titled "New Bluetooth accessory!", he or she is directed to a Bluetooth Retro Handset with a price of \$29.99 and a Buy Now Icon for consumer purchase. Exhibit G pg. 3-4

27. Exhibit G pgs. 5-7 defendant advertises and or links to Howard Forums providing a selection of cases and accessories for purchase in direct competition with plaintiff's company. Here the visitor is provided a link or thread directing them back to The Cell Phone Junkie website, web or pod cast.

28. The following screen shot examples provide the court with the results of relevant keyword searches on the internet using Google's search engine. The first example shows the results of an individual entering the keywords "Cell Junkie Cover Accessories". Here, the results show plaintiff's mark "Cell Junkie" featuring accessories, and defendant's company "The Cell Phone Junkie" dated June 1 2010 featuring "Must Have Accessories for the Blackberry Tour". Blackberry tour is a model of phone that Plaintiff's company retails accessories for. Exhibit G pg. 8

29. Exhibit G pg. 9 demonstrates when a person enters "Cell Junkie" in the Google search box it calls up Plaintiff's mark Cell Junkie and The Cell Phone Junkie featuring the Crackberry Podcast, and "Support the Cell Phone Junkie by signing up for a free Netflix trial... Exhibit G pg. 10 when a user searches for "cell junkie accessories", in this case the Google results once again show plaintiff's mark and defendant's. Another example using keywords "cell junkie covers accessories" similar results were achieved, here plaintiff's website cell junkie.com is displayed once again along with "The Cell Phone Junkie" featuring "5 accessories available at iPad launch". Exhibit G pg. 11

30. Defendant has used and continues to use plaintiff's mark to advertise, retail

and promote cell phone products. Exhibit G pgs. 12-14, are screen shots that demonstrate how the defendant promotes sales of cell phone products in its reviews by providing direct links for its customers to purchase product. In this particular review the customer is given a direct link to Richard Solo for purchase. Exhibit G pg. 15 The Cell Phone Junkie show 215 comment dated July 11, 2010, here the defendant advertises free devices and provides a direct link to "Engadget". Exhibit G pg. 16 is another example of how the Defendant links to or collaborates with other websites that retail products that are in direct competition with plaintiff.

**DEFENDANT'S HARM AND EROSION OF PLAINTIFF'S MARK AND
REPUTATION IN THE MARKETPLACE**

31. Defendant's recent postings on June 1, 2010 entitled "CrackBerry Kevin on The Cell Phone Junkie talking BlackBerry Bold 9650 (and more!)" Here, the defendant again advertises cell phones and accessories for sale with links for consumer purchase. Above the Cell Phone Junkie logo the visitor is given a direct link to purchase; "Buy Blackberry Accessories, Apps & Phones". When a person clicks on the "Buy Blackberry Accessories, Apps & Phones" they are shown a web page of an assortment of phones, accessories and or bundles for purchase. Another direct link to the right of "The Cell Phone Junkie" logo and posting also brings up a web page to shop the crackberry directly. Below the defendant's logo "thecellphonejunkie.com" links back to the defendants website "but if you're jonesing from some BlackBerry talk right now you can jump over to TheCellPhoneJunkie.com and tune in to the TCPJ Unlocked".

32. The Cell Phone Junkies Crackberry pod cast or web cast page indicates that Crackberry.com is "The #1 Site For Blackberry Users (&Abusers!)" According to their own website Crackberry encourages illegal activities: "Because that would probably be illegal as it

would involve interfering with the service tables Verizon sends to its BlackBerries. Maybe you can try doing it if you want it so bad..." Here, another direct conflict arises in that plaintiff did not register his mark to be associated with anything controversial such as hacking or cracking phones. This association with abusive and illegal activities undermines plaintiff's reputation in the marketplace, and undermines the values it promotes and strives for as a company. Exhibit H screen shots pgs 1-3.

33. The defendant has failed and deliberately refused to cease use of its infringing mark and take down its infringing materials. On the contrary, defendant uses the mark to "continue" to advertise and retail cell phones and cell phone accessories. This complaint demonstrates it is abundantly clear that not only a likelihood of confusion exists but that defendant's actions as described in this complaint demonstrates direct and contributory trademark infringement.

34. Defendant's website provides direct links and advertisements to "numerous" cell phone and accessory businesses thus clearly demonstrating a conflict with plaintiff's registered mark. Through the numerous direct and sponsored links described above, defendant actively misrepresents and erodes plaintiff's trademark, falsely advertises, encourages and facilitates the sale of accessories and services unlawfully using plaintiff's trademark.

**DEFENDANTS REFUSAL TO CEASE USING AND INFRINGING PLAINTIFF'S
REGISTERED MARK**

35. What it boils down to is that the defendant has chosen to infringe. Given the alleged conduct in this complaint it is apparent defendant's refusal to cease the infringement is intentional and willful.

36. Defendant, with knowledge of the goodwill, reputation and value posited by

plaintiff's registered mark, has without license or authorization to use the same, used in commerce plaintiff's mark and received monetary gain. Defendant's company imposes subscription fees upon its customers for certain of its services. In addition the Defendant takes donations from its customers.

37. Plaintiff's registration establishes jurisdiction in this court to sue defendant regardless of the amount in controversy or diversity of citizenship and plaintiff's registration is prima facie evidence of the validity of his ownership and exclusive right to use the mark in commerce as specified, 15 U.S.C. §1057(b), §1115(a).

FIRST CLAIM FOR RELIEF

Federal Trademark Infringement

38. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs as if fully set herein. Defendant's aforementioned acts constitute trademark infringement in violation of the Lanham Act, 15 U.S.C. § 1114.

SECOND CLAIM FOR RELIEF

False Advertising, Unfair Competition, Infringement, False Designation of Origin and Passing Off

39. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs as if fully set herein. Defendant's aforementioned acts constitute trademark infringement in violation of the Lanham Act SECTIONS 43(a)(1)(A) and (B) of the Lanham Act.

40. Defendant has refused to cooperate and take down the infringing material and provide any accounting whatsoever of revenue or profits obtained. Defendant has not provided any information as to how it has used Plaintiff's trademark with third party services or search engines such as Google AdWords and or other sponsored links for deliberate

advertising.

THIRD CLAIM FOR RELIEF

Direct and Contributory Common Law Trademark Infringement

41. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs as if fully set herein.

FOURTH CLAIM FOR RELIEF

Direct and Contributory Common Law Unfair Competition

42. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs as if fully set herein.

PRAYER FOR RELIEF

WHEREFORE, unto the honorable Judge plaintiff prays for judgment against defendant as follows:

- a). Preliminary and then permanently enjoining and restraining defendant, their officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them from (a) advertising, copying, using, offering for sale, marketing, publishing and or promoting Plaintiff's trademark, (b) promoting product, accessories or services bearing Plaintiff's trademark without consent, (c) from false statements, description or anything likely to cause confusion or mistake in the mind of the trade or public or to deceive the public into believing that the trademark, services or advertisements are in anyway associated or related or affiliated with Plaintiff's mark;
- b). Ordering defendant to account to plaintiff for all gains, profits, revenue and advantages arising from the conduct complained of herein, pursuant to 15

U.S.C. § 1117, and entering judgment for three times such profits arising from the conduct complained of herein, pursuant to 15 U.S.C. § 1117 (a) (b) and § 1116 injunctive relief in view of defendants willful conduct;

- c). That the court adjudge that the defendant's conduct violates Idaho Code § 48-512 and the common law;
- d). Awarding plaintiff all other monetary remedies available under the Lanham Act and common law, including but not limited to, penalties and fines, compensatory damages, disgorgement of profits, disbursements, interest, costs and attorney's fees as legally permitted by each claim respectively in this action;
- e). Awarding plaintiff such other and further relief as the court deems just and proper.

DATED this 15th day of November, 2010.



David Shymatta
Plaintiff Pro se

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

DAVID SHYMATTA, dba CELL
JUNKIE;

Plaintiff,

v.

MICHAEL PAPILLON, dba THE CELL
PHONE JUNKIE;

Defendant.

Case No. 4:10-CV-00565-BLW

**MEMORANDUM DECISION AND
ORDER**

INTRODUCTION

The Court has before it Defendant's Motion to Dismiss for Lack of Personal Jurisdiction (Dkt. 9).

FACTUAL AND LEGAL BACKGROUND

Plaintiff David Shymatta has owned the registered trademark "Cell Junkie" since December 11, 2007. This trademark is classified for "retail store services featuring cell phone accessories." *Compl.*, Ex. A, Dkt. 1-1 at 3. Defendant Michael Papillon, a resident of Arizona, operates a website called "The Cell Phone Junkie." *Compl.* at ¶ 2.

Mr. Shymatta, dba Cell Junkie, sells cell phone products and accessories. Cell Junkie maintains a website, celljunkie.com, and sells products through various online retailers such as ebay.com. *Id.* at ¶ 8.

MEMORANDUM DECISION AND ORDER - 1

Papillon v. Shymatta - Exhibit I

Mr. Papillon operates a blog, cellphonejunkie.com, which reviews cell phones, cell phone accessories, and provides podcasts regarding cell phones that may be listened to for free on the website. *Id.* at ¶ 11. Mr. Papillon’s website provides users with links to retailers selling the products being reviewed and discussed, but does not directly sell products or provide price comparisons. *Id.*; *Papillon Aff.*, Dkt. 9-2 at ¶ 11. The vast majority of content on Mr. Papillon’s website is available for free to any user. *Papillon Aff.*, Dkt. 9-2 at ¶ 8. Mr. Papillon has never personally sold any tangible products through his website. *Id.* at ¶ 10. Mr. Papillon’s website offers a “premium” podcast for direct download to electronic devices, such as a personal computer or iPod, for a small fee, the proceeds of which are dedicated entirely to website maintenance. *Id.* at ¶¶ 12-13. In 2009, the proceeds from these premium podcasts totaled \$3,000. *Id.* at ¶ 15. Since July 2006, 0.07% of all premium podcast downloads from Mr. Papillon’s website have been initiated by users in Idaho. *Id.* at ¶ 18. Mr. Papillon has never purchased any advertising for his website, in Idaho or any other state. *Id.* at ¶ 20.

On February 5, 2010, Mr. Shymatta sent Mr. Papillon a cease and desist letter, demanding cessation of the use of the domain name “thecellphonejunkie.com.” *Id.* at ¶ 13. On February 27, Mr. Papillon applied to register the trademark “The Cell Phone Junkie” for the purposes of entertainment services. *Compl.*, Ex. F, Dkt. 1-7 at 2. On March 11, 2010, Mr. Papillon initiated cancellation proceedings regarding Mr. Shymatta’s registered “Cell Junkie” trademark with the United States Patent & Trademark Office, alleging abandonment. *Compl.*, Ex. D, Dkt. 1-5 at 1-2.

Mr. Shymatta filed his *pro se* complaint in this matter on November 15, 2010, alleging causes of action for (1) federal trademark infringement under the Lanham Act, 15 U.S.C. § 1114; (2) false advertising, unfair competition, infringement, false designation of origin, and passing off; (3) direct and contributory common law trademark infringement; (4) direct and contributory common law unfair competition. *Compl.*, Dkt. 1. On December 21, 2010, Mr. Papillon moved to dismiss the complaint for lack of personal jurisdiction. *Mtn. to Dismiss*, Dkt. 9.

LEGAL STANDARD

In order to establish the existence of personal jurisdiction in a diversity case, the plaintiff must show (1) that a statute of the forum confers personal jurisdiction over the nonresident defendant, and (2) that the exercise of jurisdiction accords with federal constitutional principles of due process. *Haisten v. Grass Valley Medical Reimbursement Fund, Ltd.*, 784 F.2d 1392, 1396 (9th Cir. 1986). The Idaho long-arm statute provides that a person is subject to personal jurisdiction if, among other things, he transacts business or commits a tortious act in Idaho and the alleged cause of action arises from that transaction or act. I.C. § 5-514. The Idaho legislature, in adopting that statute, intended to exercise all the jurisdiction available to the State of Idaho under the due process clause of the United States Constitution. *Doggett v. Electronics Corp. of Am.*, 93 Idaho 26, 30 (1969). Thus, the state and federal limits are coextensive. *Data Disc, Inc. v. Systems Technology Associates, Inc.*, 557 F.2d 1280, 1286 (9th Cir. 1977)

Contacts giving rise to personal jurisdiction in a given forum may be general or

specific. For general jurisdiction to exist over a nonresident defendant, the defendant must engage in “continuous and systematic general business contacts,” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984) (citing *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952)), that “approximate physical presence” in the forum state, *Bancroft & Masters*, 223 F.3d 1082, 1086 (9th Cir. 2000). This is an exacting standard because a finding of general jurisdiction permits a defendant to be haled into court in the forum state to answer for any of its activities anywhere in the world. *Brand v. Menlove Dodge*, 796 F.2d 1070, 1073 (9th Cir. 1986) (collecting cases where general jurisdiction was denied despite defendants’ significant contacts with forum). A commercially interactive website may satisfy general personal jurisdiction under the “sliding scale” test. *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 417-19 (9th Cir. 1997) (citing *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119, 1124 (W.D. Pa. 1997)). *Zippo* described the test as follows:

[T]he likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet. . . . At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. At the opposite end . . . a defendant has simply posted information on an Internet Web site which is accessible to [forum resident] users. . . . The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer.

Zippo, 952 F.Supp. at 1124 (citations omitted).

To ascertain whether specific personal jurisdiction exists, this Court employs a

three-prong test to determine whether a party has sufficient minimum contacts to be susceptible to specific personal jurisdiction:

- (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
- (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and
- (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004). The plaintiff bears the burden on the first two prongs. If the plaintiff establishes both prongs one and two, the defendant must come forward with a compelling case that the exercise of jurisdiction would not be reasonable. *Boschetto v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008) (internal quotation omitted).

The court may consider evidence presented in affidavits to assist it in its determination and may order discovery on the jurisdictional issues. *Data Disc, Inc. v. Systems Technology Assoc., Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977). However,

[w]hen a district court acts on a defendant's motion to dismiss without holding an evidentiary hearing, the plaintiff need make only a prima facie showing of jurisdictional facts to withstand the motion to dismiss. [] That is, the plaintiff need only demonstrate facts that if true would support jurisdiction over the defendant.

Ballard v. Savage, 65 F.3d 1495, 1498 (9th Cir. 1995) (citations omitted) (alteration in original); *see also AT & T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996) (where trial court rules on jurisdictional issue based on affidavits and discovery

materials without holding evidentiary hearing, plaintiff need only make prima facie showing).

ANALYSIS

First, Mr. Papillon argues that his blog is insufficient to support a finding of general personal jurisdiction in Idaho. Secondly, Mr. Papillon argues that he satisfies neither of the first two prongs of the specific personal jurisdiction test because he has never directed activities at this forum, and there are thus no forum-related activities from which this matter may arise.

A. General Personal Jurisdiction

Mr. Papillon's blog is insufficient to meet the exacting standard of general personal jurisdiction. Mr. Papillon has never had any substantial, continuous, or systematic contacts with Idaho. He has never advertised, sold any tangible products to any state, or maintained any relationships with retail vendors. Compare these minimal contacts with those found sufficient by the Ninth Circuit in *Gator.com Corp. v. L.L. Bean, Inc.*, 341 F.3d 1072 (9th Cir. 2003). In that case, L.L. Bean, a Maine corporation, targeted advertising at California, maintained a highly interactive, commercially lucrative website serving large numbers of California consumers, and maintained business relationships with numerous California vendors. *Id.* at 1078. The few district courts to have considered blogs specifically have found them insufficient to establish general personal jurisdiction. *See Miller v. Kelly*, 2010 WL 4684029, *5 (D. Colo. November 12, 2010) ("Accordingly, the Court finds that Defendant's authorship of a LiveJournal blog is

an insufficient basis for the exercise of general personal jurisdiction over her.”); *Hudson v. University of Puerto Rico*, 2010 WL 1131462, *3 (D. Minn. March 23, 2010) (“[T]he . . . blog in and of itself is insufficient to establish general jurisdiction over the University.”).

Mr. Shymatta’s argument that Mr. Papillon maintains a commercially interactive website available to Idaho users that falls at the extreme end of the *Zippo* sliding scale is unavailing. Mr. Papillon does not manufacture, design, stock, sell, or ship any cell phone related product; when he reviews a cell phone or related product, he provides a link to a retailer that sells the product for the ease of the reader. No profit is received by Mr. Papillon for these links. *See Con-Way, Inc. v. CONWAYRACING.COM*, 2009 WL 2252128, *2 (N.D. Cal. July 28, 2009) (“A passive website that merely provides links to other sites, but does not itself sell products within a forum, is insufficient to confer jurisdiction.”); *Simplicity, Inc. v. MTS Prods.*, 2006 U.S. Dist. LEXIS 17626, *23-25 (E.D. Pa. Apr. 14, 2006) (“[The] website falls short of a commercially interactive site for which personal jurisdiction is proper because it does not allow customers to purchase products online – it merely provides the names and website links to retailers, etailers and specialty stores which sell its products.”).

The fact that Mr. Papillon sells a small number of premium podcast subscriptions advertised on his website does not render it commercially active. To subscribe, an interested party must e-mail Mr. Papillon separately; the transaction is not conducted on the website. *See, e.g., Bensusan Restaurant Corp. v. King*, 937 F. Supp. 295, 297

(S.D.N.Y. 1996) (no personal jurisdiction where passive website directed interested parties to contact website operator independently). The podcasts are also available for free listening on the website. At most, Mr. Papillon's website falls into the middle ground of the *Zippo* sliding scale because there is some minimal user interactivity. Visitors to the website may post their own personal comments at the end of Mr. Papillon's blog posts. Such minimal interactivity, coupled with the lack of commercial activity, is insufficient to convey general personal jurisdiction subjecting Mr. Papillon to being "haled into court in the forum state to answer for any of its activities anywhere in the world." *Brand*, 796 F.2d at 1073.

B. Specific Personal Jurisdiction

Because Mr. Papillon's non-commercial blog is insufficient to establish general personal jurisdiction over him in Idaho, Mr. Shymatta must establish specific personal jurisdiction. Mr. Shymatta cannot do so, because he has failed to establish the first two requirements of the *Schwarzenegger* test.

1. First Requirement - Purposeful Availment

"The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws." *Schwarzenegger*, 374 F.3d at 802.

This requirement is referred to as purposeful availment, and requires a showing that a defendant "(1) committed an intentional act, (2) expressly aimed at the forum state, (3)

causing harm that the defendant knows is likely to be suffered in the forum state.”

Menken v. Emm, 503 F.3d 1050, 1058 (9th Cir. 2007) (internal quotation omitted).

The complaint lacks any allegations that Mr. Papillon committed an intentional act expressly aimed at Idaho. Specific personal jurisdiction is sought on the grounds that Mr. Papillon’s website is accessible in Idaho. These allegations do not constitute an intentional act aimed at Idaho. *Compare Panavision Int’l., L.P. v. Toeppen*, 121 F.3d 1316, 1322 (9th Cir. 1998) (cybersquatter who registered internet domain name and sent letters to California address demanding remuneration on exchange for use of domain name committed intentional act targeted at the forum), *with Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007 (9th Cir. 2002) (operation of passive website insufficient absent “something more”; in this case targeted advertising with the forum state).

2. Second Requirement - Claims Arising out of Intentional Acts

The second requirement of the *Schwarzenegger* test is necessarily not met because Mr. Papillon has not engaged in any intentional acts expressly directed at Idaho. Mr. Shymatta claims that Mr. Papillon sued him in Idaho, but the record does not support this allegation. Mr. Papillon did file a trademark cancellation action against Mr. Shymatta’s trademark with the United States Patent & Trademark Office in Washington, D.C., but this filing is not analogous to bringing a tort claim in Idaho against an Idaho resident.

CONCLUSIONS

Mr. Papillon’s non-commercial, minimally interactive blog is insufficient to subject him to general personal jurisdiction in any forum. Because Mr. Papillon has

engaged in no intentional acts expressly directed at Idaho, specific personal jurisdiction is also lacking in this matter.

ORDER

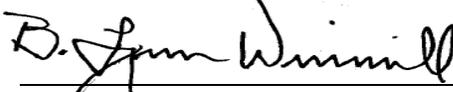
IT IS ORDERED:

1. Defendant's Motion to Dismiss for Lack of Jurisdiction (Dkt. 9) is

GRANTED.



DATED: April 21, 2011


Honorable B. Lynn Winmill
Chief U. S. District Judge