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JAMES N. HATTEN, Clerk
By *[Signature]*
Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

LANDLORDSOFTWARE.COM, LLC,)
a Georgia Limited Liability Company)

Plaintiff,)

v.)

JOEL GRASMEYER, an individual,)

and)

WASATCH DIGITAL MEDIA INC., a)
Utah Corporation, d/b/a RealEstateTools)
and d/b/a PropertyTracker.com and d/b/a)
REAL ESTATE TOOLS, INC. and d/b/a)
PROPERTYTRACKER.COM, INC.,)

and)

APPLE, INC., a California Corporation)

Defendants.)

VERIFIED COMPLAINT

FILE NO.:

1:11-CV-0802

**VERIFIED COMPLAINT FOR DAMAGES AND INJUNCTION WITH
DEMAND FOR JURY TRIAL**

COMES NOW, Plaintiff LANDLORDSOFTWARE.COM, LLC, by
and through its undersigned counsel, and for its Verified Complaint for Damages

and Injunction with Demand for Jury Trial against the Defendants, respectfully shows this Court as follows:

NATURE OF THE ACTION

1. Plaintiff LANDLORDSOFTWARE.COM, LLC, (“Landlord Software”) brings this action against JOEL GRASMEYER, an individual; WASATCH DIGITAL MEDIA INC. , a Utah Corporation, d/b/a Real Estate Tools and d/b/a PropertyTracker.com and d/b/a Real Estate Tools, Inc. and d/b/a PropertyTracker.com, Inc.; and APPLE, INC, a California Corporation (referred to collectively as the “Defendants”) seeking injunctive relief under 15 U.S.C. § 1116, and damages for the Defendants willful infringement of Landlord Software’s federally registered FLIPPER’S[®] trademark in violation of 15 U.S.C. § 1114 based on the Defendants’ use of “Property Flipper” as a brand name for computer software for calculation and analysis of real estate cash flow. Additionally, Landlord Software brings this action against the Defendants for false designation of origin and unfair competition in violation of 15 U.S.C. § 1125(a), for dilution of Landlord Software’s federally registered FLIPPER’S[®] trademark in violation of 15 U.S.C. § 1125(c), for false advertising in violation of 15 U.S.C. § 1125(a), for Georgia common law trademark infringement, for unfair competition under

Georgia common law, for unfair and deceptive trade practices in violation of 15 U.S.C. § 45(a), for trademark dilution in violation of O.C.G.A. § 10-1-451(b), false advertising under O.C.G.A. § 10-1-421, for unjust enrichment, for unfair competition in violation of O.C.G.A. § 23-2-55, and for deceptive trade practices in violation of O.C.G.A. § 10-1-372(a).

PARTIES, JURISDICTION AND VENUE

2. This is an action for trademark infringement, dilution, unfair competition, false designation of origin arising under the Trademark Act of 1946, 15 U.S.C. § 1051 et seq. (the “Lanham Act”), and for trademark infringement, unfair competition, unjust enrichment, and deceptive trade practices under the laws of the State of Georgia.

3. Plaintiff, Landlord Software, at all times relevant herein was, and still is, a Georgia limited liability company, having its principal office address at 375 Rockbridge Road, Suite 172, Lilburn, Georgia, 30047.

4. Plaintiff, Landlord Software, at all times relevant herein was, and still is the owner of U.S. Trademark Registration Number 3,089,816 having its Registration Date as May 9, 2006 for the mark FLIPPER’S®.

5. Upon information and belief, Defendant Joel Grasmeyer, at all times relevant herein was, and still is, a citizen or resident of the State of Utah and

resides at 970 E 2800 N, #E, Ogden, UT 84414, and is responsible for all or some of the conducts complained herein and for all or some of the injuries sustained by Landlord Software, and is subject to the jurisdiction of this Court.

6. Upon information and belief, Defendant Joel Grasmeyer, at all times relevant herein was, and still is, the owner, partner, shareholder, manager, officer, director or employee of Defendant Wasatch Digital Media Inc.

7. Upon information and belief, Defendant Wasatch Digital Media Inc. d/b/a Real Estate Tools and d/b/a PropertyTracker.com and d/b/a Real Estate Tools, Inc. and d/b/a PropertyTracker.com, Inc. (“Defendant Wasatch”), was, and still is, a Utah corporation and is subject to the jurisdiction of this Court. Defendant Wasatch, may be served through its registered agent Defendant Joel Grasmeyer at address 2637 N 400 E, #114 Ogden UT 84414 or at its principal place of business at 2637 N 400 E, #114 Ogden UT 84414.

8. Upon information and belief, Real Estate Tools, Inc., is not a corporation¹, but rather is a DBA of Defendant Wasatch. Real Estate Tools, Inc. lists a registered agent through which it may be served as Hunter Corporate Services, LLC at address 299 South Main Street, Suite 1710, Salt Lake City, Utah

¹ Defendant Real Estate Tools, Inc. is listed as a corporation on the “About” page of the website with the domain name “*realestatetools.com*, but appears in the Utah business records as a DBA. See Exhibit M.

84111. See Exhibit M. Real Estate Tools, Inc. lists its principal place of business at 2637 N 400 E, #114, Ogden, Utah 84414. See Exhibit M.

9. Upon information and belief, PropertyTracker.com, Inc. is not a corporation² but rather is a DBA of Defendant Wasatch. PropertyTracker.com, Inc. lists a registered agent through which it may be served as Hunter Corporate Services, LLC at address 331 S. Rio Grande, Ste 302, Salt Lake City, Utah 84101. See Exhibit N. PropertyTracker.com, Inc. lists its principal place of business at 2637 N 400 E, #114, Ogden, Utah 84414. See Exhibit N.

10. Upon information and belief, Defendant Apple, Inc., at all times relevant herein was, and still is, a California corporation and is subject to the jurisdiction of this Court. Defendant Apple, Inc., may be served through its registered agent, CT Corporation System at address 818 W 7th St., Los Angeles, California 90017, or at its principal place of business at 1 Infinite Loop, Cupertino, California 95014. Further, Apple, Inc. is a registered foreign corporation with the Secretary of State of Georgia and lists its agent for service of process in Georgia as CT Corporation System/Shakinah Edwards, 1201 Peachtree Street NE, Atlanta GA 30361.

² Defendant PropertyTracker.com, Inc. is listed as a corporation on the WhoIs listings for the domain name “*realestatetools.com* and *propertytracker.com*, but appears in the Utah business records as a DBA. See Exhibits H, I and N.

11. Upon information and belief, the Defendants engaged in the wrongful acts alleged herein in the State of Georgia and elsewhere or caused the wrongful acts herein to occur in the State of Georgia and elsewhere, and are subject to the jurisdiction of this Court.

12. This Court has original jurisdiction pursuant to 15 U.S.C. §§ 1116 (injunctive relief) and 1121 (federal trademark), 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338(a) and (b) (trademark act and unfair competition), and under 28 U.S.C. § 1332 (diversity) because Plaintiff and Defendants are of diverse citizenship and the amount in controversy exceeds \$75,000.00, exclusive of interest, fees and costs. Under an alternative basis of jurisdiction, this Court has jurisdiction pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction) over Plaintiff's claims for trademark infringement, unfair competition, and unjust enrichment under the state and common laws of the State of Georgia, as such claims are related to the federal claims and form the same case or controversy under Article III of the United States Constitution.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391 as a substantial part of the events or omissions giving rise to the claims hereunder occurred in this District.

14. This Court has personal jurisdiction over the Defendants in that they do business in the State of Georgia, committed illegal acts intended to, and that did cause, harm to Plaintiff in the State of Georgia. Upon information and belief, Defendants maintain systematic and continuous contacts with the State of Georgia. Defendants are also subject to jurisdiction pursuant to, *inter alia*, the Georgia Long-arm Statute (O.C.G.A. § 9-10-91) and the principles set forth in Calder v. Jones, 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed. 2d 804 (1984).

FACTUAL BACKGROUND

15. Landlord Software is a nationally recognized company, specializing in computer software for calculation and analysis of real estate cash flow.

16. Landlord Software is recognized as a superior real estate cash flow software company and has been in business, including predecessors, for eighteen years.

17. Landlord Software operates websites under the domain names *www.rentalsoftware.com* and *www.landlordsoftware.com*.

18. Landlord Software's rights in its FLIPPER'S® trademark with the United States Trademark Office (U.S. Trademark Reg. No 3,089,816) were diligently registered, and said trademark is utilized in interstate commerce in connection with the promotion and marketing of Landlord Software's computer

software for calculation and analysis of real estate cash flow. A true and correct copy of this registration is attached hereto as Exhibit A.

19. The FLIPPER'S[®] trademark has been utilized since January 23, 2004 and utilized in interstate commerce since January 23, 2004 and has become famous.

20. Defendant Wasatch's d/b/a Real Estate Tools, Inc. is listed as addressee under the mailing address on the "About" page of the website with the domain name "*realestatetools.com*," which exhibits on the front webpage of said website an iPhone software application under the "Property Flipper" mark for use in calculation and analysis of real estate cash flow. True and accurate printout copies of the "About" page and the front webpage of *realestatetools.com*, as obtained from <http://www.realestatetools.com> on March 1, 2011, are attached hereto as Exhibits G and B, respectively.

21. The registrant of the domain *realestatetools.com* is listed as Defendant Wasatch's d/b/a/ PropertyTracker.com, Inc. and the administrative contact for *realestatetools.com* is listed as Defendant Joel Grasmeyer. A true and accurate printout copy of the WhoIs registrant information for *realestatetools.com* as obtained from <http://www.who.is/whois/realestatetools.com/> on March 1, 2011 is attached hereto as Exhibit H.

22. On the front webpage of *realestatetools.com* there is a link tab to “Property Flipper” that links to the webpage <http://www.realestatetools.com/propertyflipper/>. A true and accurate printout copy of the webpage at <http://www.realestatetools.com/propertyflipper/>, as obtained from <http://www.realestatetools.com> on March 1, 2011, is attached hereto as Exhibit C.

23. On the webpage <http://www.realestatetools.com/propertyflipper/> there are two link buttons, one linking to Defendant Apple, Inc.’s iTunes store at <http://itunes.apple.com/us/app/property-flipper/id335518879?mt=8> for purchase of an iPhone application for Property Flipper selling between \$1.99 and \$19.99 for different versions, and the other the other link button linking to Defendant Apple, Inc.’s iTunes store at <http://itunes.apple.com/us/app/property-flipper-for-ipad/id372066393?mt=8> for an iPad application for Property Flipper selling between \$4.99 and \$39.99 for different versions. True and accurate printout copies of the website pages at as obtained from <http://itunes.apple.com/us/app/property-flipper/id335518879?mt=8> and <http://itunes.apple.com/us/app/property-flipper-for-ipad/id372066393?mt=8> on March 1, 2011, are attached hereto as Exhibits D and E, respectively.

24. Furthermore, Defendant Wasatch d/b/a PropertyTracker.com, Inc. is the registrant and, upon information and belief, operator of a website with the domain name "*propertytracker.com*", and the administrative contact for *propertytracker.com* is listed as Defendant Joel Grasmeyer. The Whois registration information for *propertytracker.com*, as obtained from <http://www.who.is/whois/propertytracker.com> on March 1, 2011, is attached hereto as Exhibit I.

25. The site at *propertytracker.com* exhibits on the front webpage of said website a link button for an iPhone App, which in turn links to the front webpage at *realestatetools.com* referenced hereinabove and attached hereto as Exhibit B. A true and accurate printout copy of this front webpage of *propertytracker.com*, as obtained from <http://www.propertytracker.com> on March 1, 2011, is attached hereto as Exhibit F.

26. On January 7, 2011, Landlord Software mailed a cease and desist letter request to the Defendants Joel Grasmeyer and Defendant Wasatch's d/b/a Real Estate Tools, Inc., identifying Landlord Software's rights in the above-referenced FLIPPER'S[®] registered trademark and the infringing activities of Defendants and requesting that the Defendants cease all of their infringing

activities. A true and correct copy of the cease and desist letter and is attached hereto as Exhibit J.

27. Also on January 7, 2011, Landlord Software sent a letter to Defendant Apple, Inc. via email to copyrightagent@apple.com and appletm@apple.com identifying Landlord Software's rights in the above-referenced FLIPPER'S® registered trademark and the infringing activities of Defendant Wasatch's d/b/a PropertyTracker.com, including providing a copy of the aforementioned letter to Joel Grasmeyer and Defendant Wasatch's d/b/a Real Estate Tools, Inc. and requesting removal of the infringing product from Apple's online store. A true and correct copy of the letter to Apple, Inc. is attached hereto as Exhibit K.

28. On or about January 17, 2011, Apple, Inc. replied via email indicating that it had contacted the developer of the Property Flipper application listed as Defendant Wasatch's d/b/a PropertyTracker.com and provider Defendant Grasmeyer. A true and correct copy of the email from Apple, Inc. is attached hereto as Exhibit O.

29. Notwithstanding notice, Defendant Apple, Inc. has not removed the Property Flipper application from sale at Apple, Inc.'s iTunes store.

30. On or about January 19, 2011, Defendant Grasmeyer and Defendant Wasatch's d/b/a Real Estate Tools, Inc. responded, refusing to remove their

infringing product from sale or remove the infringing mark on his product. A true and correct copy of the response letter from Defendant Grasmeyer and Defendant Wasatch's d/b/a Real Estate Tools, Inc. is attached hereto as Exhibit L.

31. On or about February 25, 2011, Defendant Wasatch filed a Cancellation proceeding number 92053680 at the U.S. Patent & Trademark Office as Wasatch Digital Media, Inc. dba Real Estate Tools in which it alleges as its grounds that Landlord Software's registered trademark is "merely descriptive" and requesting cancellation of the registration of same.

32. Landlord Software and Defendants Grasmeyer and Wasatch are competitors.

33. On information and belief, the software products of the Defendants are marketed to the same or similar prospective consumers as those of Landlord Software.

34. Actual confusion of consumers has occurred with some consumers contacting Landlord Software to complain about product failures in the belief that they were contacting the provider of the Property Flipper software.

35. Upon information and belief, the Defendants were fully aware of Landlord Software's federally protected FLIPPER'S[®] trademark when the

Defendants began intentionally infringing and using in commerce the Property Flipper mark.

36. Upon information and belief, the Defendants Wasatch and Grasmeyer have acted both as a corporation and individually to promote, advertise, distribute and market computer software products in commerce, which products intentionally utilize, without permission, marks confusingly similar to the FLIPPER'S® trademark.

37. Upon information and belief, the Defendants first used the marks confusingly similar to FLIPPER'S® trademark for computer software products in or about late 2010. Accordingly, Landlord Software began utilization of their FLIPPER'S® trademark over six years prior to Defendants' misappropriation of the FLIPPER'S® trademark.

38. On or about March 25, 2004, Defendant Grasmeyer purchased a copy of Landlord Software's computer software product sold under the name of the *Landlord's Cash Flow Analyzer*®. A true and correct copy of the invoice to Defendant Grasmeyer is attached hereto as Exhibit P.

39. In the letter of January 19, 2011, Defendant Grasmeyer and Defendant Wasatch's d/b/a Real Estate Tools, Inc. refer to Landlord Software's book entitled *The Complete Guide to Real Estate Cash Flow Analysis*, wherein reference is

made to the FLIPPER'S trademarked software, showing Defendants Grasmeyer's and Wasatch's prior knowledge of Landlord Software's mark.

40. Landlord Software has not licensed, authorized, sold or otherwise granted permission to Defendants to copy its trademark FLIPPER'S® or any mark similar thereto.

FIRST CLAIM FOR RELIEF

Trademark Infringement - 15 U.S.C. § 1114

41. Plaintiff repeats and realleges each and every allegation of the aforementioned paragraphs as though fully set forth herein.

42. On information and belief, the Defendants Grasmeyer and Wasatch, without permission, intentionally advertise and offer for sale their computer software products under the name Property Flipper on their website *realestatetools.com* and *propertytracker.com*.

43. On information and belief, Defendants Grasmeyer and Wasatch without permission, intentionally advertise and sell their infringing products through Defendant Apple, Inc.'s iTunes store.

44. On information and belief, Defendant Apple, Inc. without permission or consent, intentionally sells or facilitates the sale of Defendants Grasmeyer's and Wasatch's infringing products through Defendant Apple, Inc.'s iTunes store.

45. Upon information and belief, the Defendants Grasmeyer and Wasatch, without permission or consent, intentionally imitated Landlord Software's federally registered FLIPPER'S[®] trademark on their infringing website.

46. The Defendants unauthorized actual and intended use of the Property Flipper mark is confusingly similar to Landlord Software's federally registered FLIPPER'S[®] trademark.

47. The close similarity between Landlord Software's federally registered FLIPPER'S[®] trademark and "Property Flipper" is likely to create a mental association in the minds of consumers and is thus likely to cause confusion as to the source of the goods sold under these marks.

48. In view of the similarities in text and connotation between the two marks, the identical goods with which both marks are used, and the identical trade channels and intended consumers, the Defendants' use of the mark "Property Flipper" has caused, and is likely to continue to cause, confusion, mistake, or deception with respect to Landlord Software's federally registered FLIPPER'S[®] trademark.

49. In fact, consumers have experienced actual confusion in buying goods believing they are endorsed, produced by, or affiliated with, Landlord Software.

50. Upon information and belief, the Defendants are willfully using a mark confusingly similar to Landlord Software's FLIPPER'S[®] trademark to market the same goods to a similar audience.

51. Landlord Software has demanded that the Defendants cease and desist from their unlawful activity. However, the Defendants knowingly, willfully and deliberately continue to infringe on Landlord Software's rights associated with their FLIPPER'S[®] trademark.

52. The Defendants unauthorized actual and intended uses of the "Property Flipper" mark on their infringing website are confusingly similar to FLIPPER'S[®] trademark and in violation of 15 U.S.C. § 1114.

53. Upon information and belief, the aforesaid acts were undertaken by the Defendants willfully and with the intention of causing confusion, mistake or deception, and with the intention of profiting upon the goodwill associated with Landlord Software's federally protected FLIPPER'S[®] trademark, and, as such, the Defendants' use justifies the assessment of increased damages against the Defendants, jointly and severally.

54. The willful and intentional nature and/or the reckless disregard of the most basic level of diligence by Defendants makes this trademark infringement an exceptional case pursuant to 15 U.S.C. § 1117(a).

55. Defendants have engaged in direct and contributory infringement of Landlord Software's FLIPPER'S[®] mark. Defendants Grasmeyer and Wasatch have engaged in induced infringement of Landlord Software's FLIPPER'S[®] mark.

56. The natural, probable and foreseeable result of Defendants' acts has been, and will continue to be, to injure and deprive Landlord Software of the goodwill of its business as symbolized by its federally registered trademark and to injure Landlord Software's relationship with present and prospective customers. Accordingly, Landlord Software has sustained irreparable injuries as a result of Defendants' wrongful acts.

57. As a result of Defendants' trademark infringement, Landlord Software has suffered damages in an amount to be determined at trial.

58. Landlord Software is entitled to recover from Defendants, jointly and severally pursuant to 15 U.S.C. § 1117, statutory damages, or damages it has sustained and will sustain, together with any gains, profits and advantages obtained by Defendants as a result of Defendants' acts alleged.

59. By reason of the Defendants' acts as alleged herein, Landlord Software has suffered, is suffering, and will continue to suffer, irreparable harm unless the Defendants are restrained from continuing their wrongful and intentional acts of infringement pursuant to 15 U.S.C. §§ 1114 and 1116.

60. Landlord Software has no adequate remedy at law.

SECOND CLAIM FOR RELIEF

False Designation of Origin and Unfair Competition - 15 U.S.C. § 1125(a)

61. Plaintiff repeats and realleges each and every allegation of the aforementioned paragraphs as though fully set forth herein.

62. Upon information and belief, the Defendants have used the designation Property Flipper in connection with computer software for calculation and analysis of real estate cash flow goods in interstate commerce. Said use of the designation Property Flipper is a false designation of origin, a false or misleading description and representation of fact which is likely to cause confusion and to cause mistake, and to deceive as to the affiliation, connection or association of the Defendants with Landlord Software and as to the origin, sponsorship, or approval of the Defendants' computer software goods by Landlord Software.

63. The aforesaid acts of the Defendants in using in commerce marks confusingly similar to Landlord Software's federally protected FLIPPER'S[®] trademark, are likely to cause confusion, mistake or deception among the relevant public, including Landlord Software's current and prospective consumers.

64. Defendants' use of marks confusingly similar to Landlord Software's federally protected FLIPPER'S[®] trademark.

65. Landlord Software has not consented to Defendants' use of its trademark or marks similar thereto.

66. Upon information and belief, the Defendants have engaged in the aforesaid acts in order to capitalize on the success of Landlord Software's federally registered trademark.

67. The Defendants' actions constitute false designation of origin and unfair competition in violation of 15 U.S.C. § 1125(a).

68. In committing said wrongful acts, each of the Defendants has been guilty of malice, oppression, fraud and willful disregard of Landlord Software's rights so as to justify the assessment of increased damages against the Defendants, jointly and severally.

69. As a result of Defendants' trademark infringement, Landlord Software has suffered damages in an amount to be determined at trial.

70. Landlord Software is further entitled to recover from Defendants, jointly and severally, statutory damages, or damages it has sustained and will sustain, together with any gains, profits and advantages obtained by Defendants as a result of Defendants' acts alleged above under 15 U.S.C. § 1117.

71. The willful and intentional nature and/or the reckless disregard of the most basic level of diligence by Defendants makes this trademark infringement an exceptional case pursuant to 15 U.S.C. § 1117(a).

72. By reason of the acts of the Defendants as alleged herein, Landlord Software has suffered, is suffering, and will continue to suffer irreparable injury to the goodwill in its Landlord Software's trademark unless the Defendants are restrained under 15 U.S.C. § 1116 from continuing their wrongful acts as alleged herein, and required to destroy all infringing materials pursuant to 15 U.S.C. § 1118.

73. Landlord Software has no adequate remedy at law.

THIRD CLAIM FOR RELIEF

Dilution of Famous Marks - 15 U.S.C. § 1125(c)

74. Plaintiff repeats and realleges each and every allegation of the aforementioned paragraphs as though fully set forth herein.

75. By virtue of Landlord Software's extensive use of the FLIPPER'S® trademark in commerce since 2004, the extensive advertising of the FLIPPER'S® registered trademark in connection with their computer software for calculation and analysis of real estate cash flow goods and the extensive success of the

FLIPPER'S[®] registered trademark, the FLIPPER'S[®] registered trademark has become famous for purposes of 15 U.S.C. § 1125(c).

76. Subsequent to the FLIPPER'S[®] registered trademark becoming famous within the meaning of 15 U.S.C. § 1125(c), the Defendants intentionally utilized confusingly similar marks in order to promote their computer software goods.

77. The Defendants are making commercial use of the confusingly similar marks in interstate commerce.

78. The Defendants' actual use of confusingly similar marks has caused actual dilution, in the form of tarnishment or blurring, of Landlord Software's famous and distinctive FLIPPER'S[®] trademark and has deprived Landlord Software of the goodwill of their business associated with their registered trademark in violation of 15 U.S.C. § 1125(c).

79. In committing said wrongful acts, each of the Defendants has been guilty of malice, oppression, fraud and willful disregard of Landlord Software's rights so as to justify the assessment of increased damages against the Defendants, jointly and severally.

80. Landlord Software is further entitled to recover from the Defendants, jointly and severally, statutory damages, or damages it has sustained and will

sustain together with any gains, profits and advantages obtained by Defendants as a result of Defendants' acts alleged above pursuant to 15 U.S.C. § 1117.

81. By reason of the acts of the Defendants as alleged herein, Landlord Software has suffered, is suffering, and will continue to suffer irreparable harm unless the Defendants are restrained under 15 U.S.C. § 1116 from continuing their wrongful acts as alleged herein and required to destroy all infringing materials pursuant to 15 U.S.C. § 1118.

82. Landlord Software has no adequate remedy at law.

FOURTH CLAIM FOR RELIEF

False Advertising –15 U.S.C. § 1125(a)

83. Plaintiff repeats and realleges each and every allegation of the aforementioned paragraphs as though fully set forth herein.

84. Upon information and belief, the advertising and promotional materials disseminated by the Defendants, without Landlord Software's approval, affiliation or endorsement of said services, in connection with Defendants' computer software goods contain false and misleading representations of fact or descriptions of fact which misrepresent the nature, characteristics, qualities, or origin of the Defendants' services. Specifically, the Defendants' advertising and promotion materials misleadingly contain similar wording to Landlord Software's

federally registered FLIPPER'S[®] trademark, in order to confusingly mislead the relevant public regarding the origin of Defendants' software goods.

85. Landlord Software believes that it will be, and has been, damaged by said false and misleading advertising, promotion and marketing acts by Defendants.

86. Said false and misleading advertising, promotion and marketing acts by Defendants took place in interstate commerce.

87. Upon information and belief, said false and misleading advertising, promotion and marketing by Defendants were made for the purposes of influencing consumers to buy Defendants' services.

88. The Defendants are in direct commercial competition with Landlord Software.

89. In committing said wrongful acts, each of the Defendants has been guilty of malice, oppression, fraud and willful disregard of Landlord Software's rights so as to justify the assessment of increased damages against the Defendants, jointly and severally.

90. Landlord Software is further entitled to recover from Defendants, jointly and severally, statutory damages, or damages it has sustained and will

sustain together with any gains, profits and advantages obtained by Defendants as a result of Defendants' acts alleged above pursuant to 15. U.S.C. § 1117 and § 1118.

91. By reason of the acts of the Defendants as alleged herein, Landlord Software has suffered, is suffering, and will continue to suffer, irreparable harm unless the Defendants are restrained from continuing their wrongful acts pursuant to 15 U.S.C. § 1116.

92. Landlord Software has no adequate remedy at law.

FIFTH CLAIM FOR RELIEF

Common Law Trademark Infringement

93. Plaintiff repeats and realleges each and every allegation of the aforementioned paragraphs as though fully set forth herein.

94. The Defendants' unauthorized use of marks confusingly similar to FLIPPER'S[®] trademark in commerce to promote Defendants' software goods, infringes upon Landlord Software's common law rights in its FLIPPER'S[®] registered trademark and deprives Landlord Software of goodwill of its business symbolized by the marks.

95. Landlord Software is entitled to collect damages from the Defendants, and to an order preliminarily and permanently enjoining the Defendants from using

the FLIPPER'S[®] and/or any other name or mark or designation that is confusingly similar to the FLIPPER'S[®] registered trademark.

SIXTH CLAIM FOR RELIEF

Unfair or Deceptive Trade Practices – 15 U.S.C. § 45(a)

96. Plaintiff repeats and realleges each and every allegation of the aforementioned paragraphs as though fully set forth herein.

97. The Defendants' conduct complained of herein is affecting commerce.

98. The Defendants' unauthorized use of marks confusingly similar to Landlord Software's federally registered FLIPPER'S[®] trademark to identify and market their software goods is likely to cause confusion or misunderstanding as to the source, sponsorship, approval, or certification of services, or as to affiliation, connection, or association with or certification by another, and therefore constitutes unfair and deceptive trade practices pursuant to 15 U.S.C. § 45(a).

99. As a result of such acts, Landlord Software is entitled to costs, injunctive relief and attorney fees pursuant to 15 U.S.C. § 45(a).

SEVENTH CLAIM FOR RELIEF

Georgia Trademark Dilution – O.C.G.A. § 10-1-451(b)

100. Plaintiff repeats and realleges each and every allegation of the aforementioned paragraphs as though fully set forth herein.

101. Landlord Software's trademark FLIPPER'S[®] constitutes a famous mark in the State of Georgia, pursuant to O.C.G.A. § 10-1-451(b), wherein Landlord Software's trademark became famous prior to the commencement of the Defendants' activities as alleged herein.

102. Upon information and belief, the Defendants' conduct described herein dilutes the distinctive qualities of the Landlord Software's trademark and has caused, and is continuing to cause, a likelihood of injury to the business reputation of Landlord Software and/or dilution of the distinctive quality of Landlord Software's FLIPPER'S[®] registered trademark, thereby diluting the distinctiveness, value and goodwill associated with Landlord Software's registered trademark in violation of O.C.G.A. § 10-1-451(b) and Georgia common law.

103. Landlord Software is entitled to recover damages and profits from the Defendants pursuant to O.C.G.A. § 10-1-451(b).

104. Defendants' actions complained of herein have caused, and unless preliminarily and permanently enjoined by the Court, will continue to cause irreparable injury and other damages to Landlord Software and to its business, reputation and goodwill in its FLIPPER'S[®] trademark. Landlord Software is entitled to injunctive relief pursuant to O.C.G.A. § 10-1-451(b).

105. Landlord Software has no adequate remedy at law.

EIGHTH CAUSE OF ACTION

Unjust Enrichment

106. Plaintiff repeats and realleges each and every allegation of the aforementioned paragraphs as though fully set forth herein.

107. The Defendants have received profits from their unauthorized reproduction, distribution and marketing of products identified by marks confusingly similar to Landlord Software's federally registered FLIPPER'S® trademark.

108. Landlord Software has had its profits reduced by Defendants' advertising.

109. But for the Defendants' infringing advertising, the Defendants' profits would have gone to Landlord Software.

110. The Defendants have no right to utilize Landlord Software's trademark.

111. The foregoing conducts by Defendants have resulted in unjust enrichment under Georgia common law.

112. Landlord Software is entitled to recover damages from each Defendant, jointly and severally.

113. Landlord Software has no adequate remedy at law.

NINTH CAUSE OF ACTION

Georgia Unfair Competition - O.C.G.A § 23-2-55

114. Plaintiff repeats and realleges each and every allegation of the aforementioned paragraphs as though fully set forth herein.

115. The Defendants intended, unauthorized and infringing use of the marks confusingly similar to Landlord Software's FLIPPER'S[®] trademark were fraudulently utilized to deceive and mislead the public to believe that the Defendants' software goods were affiliated with Landlord Software's software goods.

116. The Defendants' infringing activities create a likelihood of confusion as to the source or sponsorship of the Defendants' software goods and misappropriate the fine reputation and goodwill of Landlord Software's business.

117. The Defendants' unlawful, intentional activities constitute unfair competition as proscribed by O.C.G.A § 23-2-55.

118. The Defendants' acts of unfair competition have caused Landlord Software to sustain monetary damages, loss and injury in an amount to be determined at the time of trial.

119. The Defendants have engaged, and continue to knowingly and willingly engage, in this infringing activity, so as to justify the assessment of enhanced damages against the Defendants, jointly and severally.

120. The Defendants' acts of fraud, unless enjoined by this Court, will continue to cause Landlord Software to sustain irreparable injury, for which Landlord Software has no adequate remedy at law.

TENTH CAUSE OF ACTION

Georgia Deceptive Trade Practices - O.C.G.A. § 10-1-372(a)

121. Plaintiff repeats and realleges each and every allegation of the aforementioned paragraphs as though fully set forth herein.

122. The Defendants have violated, and continue to violate, the Georgia Uniform Deceptive Trade Practices Act, O.C.G.A. § 10-1-372(a)(1), (2), (3) (5) and (12) by:

(a) utilizing marks confusingly similar to the FLIPPER'S[®] registered trademark without permission;

(b) causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval with or certification by Landlord Software;

(c) causing likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, Landlord Software;

(d) causing an appearance of approval or affiliation as to sponsorship by Landlord Software; and

(e) passing of their software goods as those of Landlord Software.

123. The Defendants' deceptive trade practices have caused, and are continuing to cause, substantial injury to Landlord Software and Landlord Software's current and prospective customers.

124. Landlord Software is further entitled to cost and attorney's fees under O.C.G.A. § 10-1-373(b), awarded in this Court's discretion, for Defendants' willful infringement and said deceptive trade practices.

125. By reason of the foregoing, Landlord Software is entitled to injunctive relief against Defendants' deceptive trade practices pursuant to O.C.G.A. § 10-1-373(a).

126. The actions of the Defendants were in bad faith, constitute stubborn litigiousness and/or have put Landlord Software to unnecessary trouble and expense, such that Plaintiff is entitled to recover from Defendants for its cost of litigation including reasonable attorney's fees, pursuant to O.C.G.A. § 13-6-11.

ELEVENTH CAUSE OF ACTION

Preliminary and Permanent Injunction

127. Plaintiff repeats and realleges each and every allegation of the aforementioned paragraphs as though fully set forth herein.

128. The damages and injuries caused to Landlord Software by reason of the Defendants' violations of 15 U.S.C. § 1114, § 1125(a), § 1125(c) and § 1125(d), O.C.G.A. § 10-1-370 *et seq.*, § 23-2-55, §10-1-372(a), § 10-1-420 *et seq.*, and the common law constitute damages and injuries which are ongoing and for which there is not an adequate remedy at law.

129. The Defendants' violations of 15 U.S.C. § 1114, § 1125(a), § 1125(c) and § 1125(d), O.C.G.A. § 10-1-370 *et seq.*, § 23-2-55, §10-1-372(a), § 10-1-420 *et seq.*, and the common law are likely to continue to cause confusion and mistake among members of the relevant public if the Defendants are not preliminarily and permanently enjoined from infringing Landlord Software's trademark and copyrights. By reason of the foregoing, Landlord Software is entitled to an order prohibiting the Defendants from:

(a) using Landlord Software's FLIPPER'S[®] registered trademark or any other names or designations that are confusingly similar to the FLIPPER'S[®] registered trademark to identify any of the Defendants' software goods;

(b) copying Landlord Software's computer software code; and

(c) packaging Defendants' advertisement materials and marketing their software goods in a confusingly similar fashion to the packaging and marketing used by Landlord Software.

130. By reason of the Defendants' acts as alleged herein, Landlord Software has suffered, is suffering, and will continue to suffer, irreparable harm unless the Defendants are restrained from continuing their wrongful and intentional acts of infringement pursuant to 15 U.S.C. §§ 1114 and 1116.

131. Landlord Software has no adequate remedy at law.

TWELFTH CAUSE OF ACTION

Accounting

132. Plaintiff repeats and realleges each and every allegation of the aforementioned paragraphs as though fully set forth herein.

133. The Defendants have engaged in acts and practices, as described herein, which constitute the use of the Landlord Software's registered trademark and copyrights and the Defendants have acted in an unlawful, unfair and fraudulent manner which is likely to confuse the public.

134. As a result, the Defendants owe restitution and the disgorgement of profits, if any, in an amount unknown to Landlord Software, and which amount

cannot be ascertained without an accounting of the receipts and disbursement, profit and loss statements, and other financial materials, statement and books of the Defendants.

DEMAND FOR RELIEF

WHEREFORE, for the foregoing reasons, Landlord Software prays that:

1. The Defendants, their officers, agents, representatives, employees, and attorneys, and those persons acting in concert or in participation with the Defendants, be preliminarily and permanently enjoined pursuant to 15 U.S.C. §§ 1114 and 1116 from:

(a) using the FLIPPER'S[®] registered trademark and any other mark or designation that is so similar to the FLIPPER'S[®] registered trademark that is likely to cause confusion or mistake, or to deceive the public;

(b) using the same packaging that Landlord Software uses to sell the Defendants' software goods, and/or any packaging that is so similar to Landlord Software as to be likely to cause confusion or mistake or to deceive the public; and

(c) any other conduct which would cause or is likely to cause confusion, mistake or misunderstanding in the minds of the public with regard to Landlord Software's federally protected trademark;

2. The Defendants be ordered to pay to Landlord Software all damages suffered as a result of their infringing, willful and unlawful activities.

3. The Defendants be ordered to pay to Landlord Software all profits made by Defendants as a result of their infringing, willful and unlawful activities.

4. The Defendants be ordered to pay Landlord Software all statutory damages as provided by law, including but not limited to, statutory damages at the maximum limit allowable by law.

5. The Defendants be ordered to pay to Landlord Software all punitive, treble or exemplary damages as provided by law, including treble damages and treble profits pursuant to 15 U.S.C. § 1117.

6. The Defendants be ordered to recall pursuant to 15 U.S.C. § 1118, at Defendants' cost, all materials distributed or caused to be manufactured, distributed or sold by the Defendants which utilize any mark confusingly similar to the FLIPPER'S registered trademark, and to destroy all said products and materials.

7. The Defendants be ordered to pay Landlord Software its costs, including reasonable attorneys' fees.

8. That Defendants, jointly and severally, be required to account for all gains, profits and advantages derived from their acts of infringement and for their other violations of law.

9. That all profits derived by each Defendant from its act of infringement and other violations of law be deemed to be held in constructive trust for the benefit of Landlord Software.

10. That Landlord Software be granted a preliminary and permanent injunction, as provided under O.C.G.A. § 10-1-373(a), against Defendants' deceptive trade practices under the principles of equity and on terms that this Court considers reasonable.

11. That the United States Patent & Trademark Office be ordered to terminate the Cancellation proceeding number 92053680 and to continue the registration of Landlord Software's FLIPPER'S[®] trademark, Reg. No 3,089,816.

12. The Court grant such other and further relief as may be just and proper.

JURY DEMAND

Landlord Software hereby demands trial by jury of all issues so triable.

Respectfully submitted,

Dated: Atlanta, Georgia
March 15, 2011

WILLIAMSON INTELLECTUAL PROPERTY LAW, LLC



Thomas R. Williamson III, Esq.
Georgia Bar No. 765506
Counsel for Plaintiff

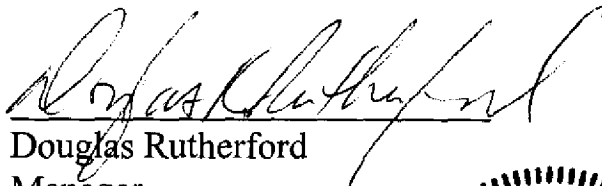
Williamson Intellectual Property Law, LLC
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VERIFICATION

PERSONALLY APPEARED before me, the undersigned officer duly authorized by law to administer oaths, Douglas Rutherford who after first being duly sworn, deposes and states that he is the elected Manager of the Plaintiff herein: and that he has read the foregoing Complaint and knows the contents thereof and the same are true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters, he believes them to be true. With respect to matters of law, he has relied upon the advice of counsel.

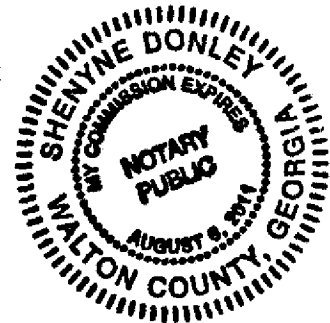
FURTHER AFFIANT SAYETH NAUGHT:

Dated March 14th, 2011


Douglas Rutherford
Manager
Landlord Software, LLC

Sworn to and subscribed before me on this 14th day of March, 2011

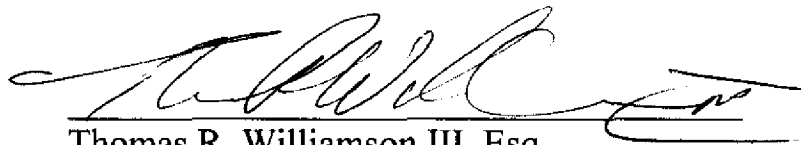
Notary Public Shenynne Donley
My commission expires: August 6, 2011



CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies the foregoing document has been prepared in Times New Roman, 14 point font in accordance with Local Rules 5.1 (C) and 7.1 (D).

Respectfully submitted this the 15th day of March, 2011.



Thomas R. Williamson III, Esq.
Georgia Bar No. 765506
Counsel for Plaintiff

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