

RECEIPT NUMBER

503182

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Ex-3

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EIGHT MILE STYLE, LLC, and  
MARTIN AFFILIATED, LLC,

Plaintiffs,

JUDGE : Taylor, Anna Diggs  
DECK : S. Division Civil Deck  
FILE DATE : 02/20/2004 @ 16:05:19  
CASE NO : 2:04CV70651

vs.

APPLE COMPUTER, INC., TBWA/CHIAT/DAY,  
MTV NETWORKS, INC., and  
VIACOM INTERNATIONAL, INC.,

Defendants.

Hertz, Schram & Saretsky, P.C.  
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**COMPLAINT AND DEMAND FOR TRIAL BY JURY**

Now come the plaintiffs, Eight Mile Style, LLC ("Eight Mile Style") and Martin Affiliated, LLC ("Martin"), (collectively "Plaintiffs"), by and through their attorneys, Hertz, Schram & Saretsky, P.C., and Jaffe, Raitt, Heuer & Weiss, P.C., respectively, and for their causes of action against the above-named defendants, state as follows:

**INTRODUCTION**

1. This case involves the blatant and unauthorized use by the above-named

Defendants of a popular musical composition in Apple Computer, Inc.'s commercial advertisements for iTunes.

### JURISDICTION AND VENUE

2. This is an action for copyright infringement arising under the Copyright Act of 1976, 17 U.S.C. §§101, *et seq.* (the "Copyright Act"), False Endorsement under the Lanham Act, 15 U.S.C. §§1051 *et seq.* (the "Lanham Act") and other related causes of action.

3. This court has exclusive jurisdiction over this action pursuant to 28 U.S.C. §1338(a) (copyright) and original jurisdiction under 28 U.S.C. §1331 (federal question). This court also has jurisdiction pursuant to 28 U.S.C. §1332 (diversity), 28 U.S.C. §1338(b) (unfair competition), and under its supplemental jurisdiction over pendent claims.

4. Venue is proper pursuant to 28 U.S.C. §1391(a) and §1400.

### PARTIES

5. Plaintiff Eight Mile Style is a Michigan limited liability company with its principal place of business in the State of Michigan.

6. Plaintiff Martin is a Michigan limited liability company with its principal place of business in the State of Michigan.

7. Defendant, Apple Computer, Inc. ("Apple") is one of the largest computer companies in the world, and was at all pertinent times, a California corporation with its principal place of business in the State of California.

8. Defendant, MTV Networks, Inc., ("MTV") is, and was at all pertinent times, a Delaware corporation with its principal place of business in the State of New York.

9. Defendant, Viacom International, Inc., ("Viacom") is, and was at all pertinent times, a Delaware corporation with its principal place of business in the State of New York, and is, and was at all pertinent times, the owner of MTV Networks.

10. Defendant, TBWA/Chiat/Day ("Chiat/Day") is a California advertising agency, and was at all pertinent times, a Delaware corporation with its principal place of business in the State of New York.

11. Eight Mile Style and Martin are collectively referred to herein as "Plaintiffs."

12. Apple, Viacom, MTV and Chiat/Day are collectively referred to herein as "Defendants".

#### **BACKGROUND AND FACTS**

13. Plaintiffs are engaged in the business of creating, composing, producing, distributing, publishing and marketing music.

14. Plaintiffs are the copyright proprietors of a musical composition titled "Lose Yourself" written by Marshall Mathers III ("Mathers" or "Eminem"), Jeffrey Bass ("Bass") and Louis Resto ("Resto") (the "Composition") and an application on FORM PA has been filed with and was registered by the United States Copyright Office as PA#1-152-688. A copy of the registration certificate is attached as Exhibit "1". The Composition is extremely well known and is performed by Marshall Mathers III, professionally known as "Eminem", one of the most popular recording artists in the world today.

15. As part of an exclusive recording agreement, Plaintiff Eight Mile Style has the exclusive right throughout the world to use and publish and permit others to use and publish the professional name EMINEM with respect to Eminem's compositions.

16. Upon information and belief, in early 2003 Apple and Chiat/Day, either directly or through third parties, approached Eminem regarding his endorsement of Apple and/or iTunes.

17. Eminem has never nationally endorsed any commercial products and therefore he indicated, through his manager, that even if he were interested in endorsing a product any endorsement deal would require a significant amount of money, possibly in excess of \$10 Million.

18. Simultaneously, upon present information and belief, Apple hired Chiat/Day to produce a national advertising campaign for iTunes, an on-line music resource store offering downloadable music to the public.

19. Chiat/Day's proposed campaign for iTunes was intended to consist of approximately five (5) broadcast spots, featuring popular songs from nationally known artists such as Pink, Michael Jackson and The Who being sung a capella by "everyday" people while listening to headphones. Exhibit "2".

20. Apple and Chiat/Day approached Plaintiffs for authorization to use "Lose Yourself" as the prominent spot in their commercial campaign, thereby impliedly having Eminem endorse the iPod and iTunes products of Apple. "Lose Yourself" is one of the most popular musical compositions in contemporary music and Eminem and "Lose Yourself" have both achieved iconic stature among the very consumers Apple/Chiat/Day is targeting in its iTunes marketing campaign.

21. Unbeknownst to Plaintiffs, Chiat/Day prepared the commercial (the "Commercial") and posted it on Apple's website without Plaintiffs' approval.

22. Plaintiffs discovered the Commercial on Apple's website. It was shown to

Eminem who disapproved of the use of the Composition in that manner. Plaintiffs then immediately notified the appropriate parties to have the posting ceased and indicated that they would not permit the Composition to be used in the Commercial.

23. In fact, in an e-mail dated May 7, 2003, Andrew Schafer (an employee of Chiat/Day) acknowledged to Joel Martin his understanding that Plaintiffs had refused to license the Composition when he stated "[s]o to confirm, you guys are a definite 'no' for the campaign as it is (The young boy rapping "Lose Yourself")." Exhibit "3".

24. After learning that Eminem would not allow use of "Lose Yourself" in the commercial, Chiat/Day raised the possibility of using another Eminem song, "The Real Slim Shady," as a substitute for the Composition in an advertisement. Plaintiffs' representatives agreed to review the newly-proposed commercial and, if the commercial was ultimately approved, Plaintiffs would consider permitting the use of "The Real Slim Shady" for the price of \$300,000.

25. Chiat/Day then prepared a second commercial using the song "The Real Slim Shady" instead of the Composition.

26. Before Plaintiffs were given the opportunity to review the second commercial, Steven Jobs ("Jobs"), Apple's CEO, called Joel Martin, a representative of Plaintiffs, and said, in essence, that Apple was too far into its original campaign to make any changes Jobs requested Martin and Eminem "rethink" their position and permit Apple to use "Lose Yourself" in the television commercials or Apple would "scrap" the entire ad campaign.

27. After Plaintiffs relayed Jobs' position to Eminem, Eminem instructed Plaintiffs to end all discussions regarding the use of any of his compositions in Apple's

ad campaigns, Plaintiffs decided against granting permission to use either the Composition "Lose Yourself" or "The Real Slim Shady".

28. Recently, despite having no permission to proceed, it has come to the attention of Plaintiffs that, in addition to other copyright violations, a commercial for iTunes containing a performance of the Composition "Lose Yourself" was publicly performed on MTV Networks, and perhaps other broadcast and/or cable cast outlets.

29. As early as July, 2003, and as late as October 2003, the Commercial containing "Lose Yourself" appeared numerous times on MTV and possibly other stations or networks. In addition, the Commercial containing "Lose Yourself" also appeared on Apple's internet website for months.

30. At no time did Apple, Chiat/Day or MTV receive authorization or permission to record, reproduce, perform, transmit, copy, use or otherwise exploit the Composition for any purpose.

31. Each of the unauthorized broadcasts and actions is an act of copyright infringement, in violation of the Copyright Act, as amended, including but not limited to, 17 U.S.C. §106, and therefore is unlawful.

32. Moreover, each such unauthorized broadcast and action was committed willfully.

33. These actions have served to usurp Plaintiffs' exclusive right to determine whether, when, and under what terms the Composition would be used for commercial endorsements and advertising.

34. In addition, the unlawful actions have materially diminished the future value of the Composition should Plaintiffs wish to make it available for future

commercial advertising opportunities.

**COUNT I - FEDERAL COPYRIGHT INFRINGEMENT (17 U.S.C. §§101 et. seq.)**

35. Plaintiffs incorporate by reference paragraphs 1 through 34 of this complaint as if fully realleged and restated herein.

36. Plaintiffs are the lawful and sole proprietors of the copyright to the Composition, pursuant to agreements with Eminem.

37. Defendants have not been granted a license to reproduce, distribute, publicly perform or in any way use, compile or exploit the Composition by Plaintiffs.

38. As alleged above, Defendants have had access to, and have illegally copied substantial portions of the Composition; moreover, Defendants have distributed, publicly performed, made available, and placed into the stream of commerce commercials which contain said illegal copies of the Composition.

39. Plaintiffs are entitled to an injunction restraining Defendants, their agents and employees, and all persons acting in concert with them, from engaging in any further acts in violation of the copyright laws and infringements of Plaintiffs' rights thereunder.

40. Defendants' direct and willful acts of infringement have and will cause irreparable harm to Plaintiffs unless such conduct is preliminarily and permanently enjoined, since the reproduction and distribution of a previously unlicensed musical Composition has a special and unique value in the music industry.

41. Plaintiffs are further entitled to recover from Defendants, the damages, including attorneys' fees, sustained and which will be sustained, and any gains, profits

and advantages obtained by Defendants as a result of Defendants' acts of infringement alleged above. At present, the amount of such damages, gains, profits and advantages cannot be fully ascertained by Plaintiffs, but are reasonably believed to exceed \$75,000.

42. Plaintiffs have no adequate remedy at law for Defendants' wrongful conduct in that (i) Plaintiffs' copyrights are unique and valuable property which have no readily determinable market value; (ii) the infringement by Defendants constitutes an interference with Plaintiffs' good will and contractual relationships; and (iii) Defendants' wrongful conduct, and the damages resulting to Plaintiffs therefrom, is continuing. Defendants' acts of copyright infringement have caused Plaintiffs irreparable injury and Defendants have the ability to continue to commit these acts. Accordingly, Plaintiffs are entitled to damages as well as to injunctive relief pursuant to 17 U.S.C. §502, and to an order under 17 U.S.C. §503 that the infringing products be impounded.

**COUNT II – FALSE ENDORSEMENT**  
**(15 U.S.C. § 1125(a) (Section 43(a) of the Lanham Act)**

43. Plaintiffs repeat and reallege all allegations in Paragraphs 1-42 as though fully set forth herein.

44. At all times pertinent hereto, Plaintiff Eight Mile Style has had the right throughout the world to use and publish and permit others to publish the professional name EMINEM.

45. At all times pertinent hereto, Plaintiff Eight Mile Style's rights have included the right to control the publication of Eminem's compositions, and the use of the name and image of EMINEM relative to publication.



46. Defendants have not been granted a license to reproduce, distribute, publicly perform or in any way use, compile or exploit the Composition by Plaintiff Eight Mile Style.

47. Neither Plaintiff Eight Mile Style nor Eminem have agreed to be affiliated with or endorse the goods or services of the Defendants.

48. Defendants, by including portions of the Composition, which is uniquely identified with the author, in their advertisements, have created the false impression that Eminem, and Plaintiff Eight Mile Style, have endorsed Defendant Apple's iTunes product.

49. Defendants' conduct, as aforesaid, is willful, deliberate, fraudulent, and intentional, and was made with the knowledge that such violation would damage Plaintiff Eight Mile Style.

50. As a direct result of Defendants' violations, as aforesaid, Plaintiff Eight Mile Style has suffered substantial harm including, but not limited to, irreparable harm which cannot be remedied unless Defendants are enjoined from further use because the Defendants have taken from Plaintiff Eight Mile Style the right to determine whether, to whom, and under what terms, such endorsement will be given.

### **COUNT III - UNFAIR COMPETITION**

51. The Plaintiffs incorporate by reference paragraphs 1 through 50 of this complaint as if fully realleged and restated herein.

52. Defendants' wrongful acts of unfair competition consist of utilizing the Composition for the specific purpose of creating the false impression that Eminem, and

Plaintiff Eight Mile Style, have endorsed Defendant Apple's iTunes product.

53. Defendants, by imitation or unfair device, have induced the general public to believe that they had the right to distribute and use the Composition in commercials and that Plaintiff Eight Mile Style and Eminem commercially endorse their products.

54. Defendants have received and obtained substantial gains, profits, advantages and benefits which Plaintiff Eight Mile Style rightfully deserve, by reason of their wrongful acts of unfair competition.

55. Defendants, by way of the wrongful acts of unfair competition, have appropriated to themselves the value of the reputation which the Plaintiff Eight Mile Style has acquired by way of its creation, production and publication of the Composition.

56. A natural, probable and foreseeable consequence of the Defendants' wrongful acts of unfair competition resulted in substantial deception to the general public.

57. The Defendants' wrongful acts constitute unfair competition under the laws of the State of Michigan.

58. Plaintiff Eight Mile Style is entitled to recover from the Defendants the monetary damages suffered by them as a result of Defendants' wrongful acts of unfair competition.

59. Plaintiff Eight Mile Style is further entitled to recover from the Defendants the gains, profits, advantages and benefits Defendants have received and obtained as a result of the unfair acts of unfair competition.

60. Defendants have acted intentionally, recklessly, willfully and in bad faith, and Plaintiff Eight Mile Style is therefore entitled to exemplary damages by reason of

the Defendants' wrongful acts of unfair competition.

**COUNT III - UNJUST ENRICHMENT/QUANTUM MERIUT**

61. Plaintiffs incorporate by reference paragraphs 1 through 60 of this complaint as if fully realleged and restated herein.

62. Defendants have received and obtained substantial gains, advantages and benefits by creating the false impression that Eminem, and Plaintiff Eight Mile Style, have endorsed Defendant Apple's iTunes product.

63. It is inequitable and unjust for the Defendants to retain those gains, advantages and benefits.

64. Defendants have enriched themselves at the expense and to the detriment of the Plaintiff Eight Mile Style.

65. To the extent Defendants inferred a false endorsement of their goods and services by Eminem, Plaintiff Eight Mile Style has conferred a benefit upon Defendants.

66. To the extent Defendants exploit the Commercial as noted above, Defendants have retained such benefit without adequately compensating Plaintiff Eight Mile Style therefor.

67. Defendants should not in equity and good conscience be permitted to retain the benefit bestowed upon them by Plaintiff Eight Mile Style.

68. As a result of the retention of such benefit, Defendants have been unjustly enriched and are jointly and severally liable to Plaintiff Eight Mile Style.

69. As a result of the unjust enrichment of Defendants, Plaintiff Eight Mile Style has incurred damages in an amount to be determined at trial, plus applicable

interest, attorneys fees and costs.

70. Plaintiff Eight Mile Style is entitled to receive and obtain from the Defendants the reasonable value of an endorsement by Plaintiff Eight Mile Style and Eminem.

### **PRAYER FOR RELIEF**

Wherefore, the Plaintiffs Eight Mile Style, LLC, and Martin Affiliated, LLC, respectfully pray that this Court enter a final judgment in their favor and against the Defendants, jointly and severally, as follows:

A. That the Court find that Defendants have infringed on Plaintiffs' copyright in the Composition.

B. That Defendants, their agents, employees, and all other persons in active concert or privity or in participation with them, be enjoined from directly or indirectly infringing Plaintiffs' copyright in the Composition or from continuing to market, offer, sell, dispose of, license, lease, transfer, display, advertise, reproduce, develop or manufacture any works derived, copied and/or sampled from the Composition, in whatever medium, or to participate or assist in any such activity.

C. That this Court order Defendants, and all their representatives, agents, servants, employees, officers, directors, partners, attorneys, subsidiaries, and all persons under their control or acting in active concert or participation with them to immediately post a notice on their web site stating that the prior use of the Composition was unauthorized and illegal.

D. That this Court order that Defendants, their affiliates and licensees

immediately cease and desist from any further recording, reproduction, distribution, transmission or other use of the Composition.

E. That Defendants be enjoined and ordered to deliver upon oath, to be impounded during the pendency of this action and destroyed pursuant to judgment herein, all originals, copies or duplicates of any work shown by the evidence to infringe any copyright in the Composition, including any and all copies of the commercials.

F. That judgment be entered for Plaintiffs and against Defendants for Plaintiffs' actual damages and for any profits attributable to infringements of Plaintiffs' copyright in the Composition, pursuant to the Copyright Act of 1976, 17 U.S.C. §§ 101, *et seq.*

G. That judgment be entered for Plaintiffs and against Defendants for statutory damages based upon Defendants' acts of infringement, pursuant to the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*, including 17 U.S.C. § 504(C)(1) and (2).

H. That judgment be entered for Plaintiff Eight Mile Style and against Defendants for Plaintiff's actual damages and for any profits attributable to infringements of Plaintiff's rights, pursuant to the Lanham Act, 15 U.S.C. §§ 1111, *et seq.*, including attorneys fees.

I. That all gains, profits and advantages derived by Defendants from their acts of infringement and other violations of law be deemed to be held in constructive trust for the benefit of Plaintiffs.

J. That Defendants be ordered to furnish to Plaintiffs a complete and accurate accounting of all profits earned in connection with their use of the Composition.


K. That Plaintiffs have judgment against Defendants for Plaintiffs' costs, disbursements and attorneys' fees pursuant to the Copyright Act of 1976, 17 U.S.C. §§101 *et seq.*

L. That the Court grant such other, further and different relief as the Court deems just, proper and equitable under the circumstances.

Respectfully submitted,

HERTZ, SCHRAM & SARETSKY, P.C.

JAFFE, RAITT, HEUER & WEISS, P.C.

By: Howard Hertz  P27169

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201 S. Main St., Suite 300  
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(734) 222-4776

Dated: February 20, 2004

**DEMAND FOR TRIAL BY JURY**

Now come the plaintiffs, Eight Mile Style, LLC, and Martin Affiliated, LLC, by and through their attorneys, Hertz, Schram & Saretsky, P.C., and Jaffe, Raitt, Heuer & Weiss, P.C., and hereby demand a trial by jury in the above entitled action.

HERTZ, SCHRAM & SARETSKY, P.C.

JAFFE, RAITT, HEUER & WEISS, P.C.

By: Howard Hertz by [Signature]  
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By: [Signature]  
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Ann Arbor, Michigan 48104  
(734) 222-4776

Dated: February 20, 2004

JS 44 11/99 **CIVIL COVER SHEET** COUNTY IN WHICH THIS ACTION AROSE: Oakland

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet.

**I. (a) PLAINTIFFS**

Eight Mile Style, LLC and  
 Martin Affiliated, LLC

(b) County of Residence of First Listed: 26125

**DEFENDANTS**

Apple Computer, Inc., TBWA/Chiat/Day,  
 MTV Networks, Inc., and Viacom  
 International, Inc.

County of Residence of First Listed \_\_\_\_\_  
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
 LAND INVOLVED.

(c) Attorneys (Name, Address and Telephone Number)  
 Jeffrey C. Heuer (P14925, Lawrence R. Jordan  
 (P27169) and Joseph H. Heckendorn (P66623)  
 Attorneys for Plaintiff Martin Affiliated  
 One Woodward, Ste. 2400, Detroit, MI 48226

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff  
 3 Federal Question (U.S. Government Not a Party)  
 2 U.S. Government Defendant  
 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State: PLA  1 DEF  1  
 Incorporated or Principal of Business In This State: PLA  4 DEF  4  
 Citizen of Another:  2 PLA  2 DEF  2  
 Incorporated and Principal of Business In Another State:  5 PLA  5 DEF  5  
 Citizen or Subject of Foreign Country:  3 PLA  3 DEF  3  
 Foreign Nation:  6 PLA  6 DEF  6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel And Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21: 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7809	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding  
 2 Removed from State Court  
 3 Remanded from Appellate Court  
 4 Reinstated or Reopened  
 5 Transferred from another district (specify) \_\_\_\_\_  
 6 Multidistrict Litigation  
 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

15 U.S.C. Sections 1051, et. seq. and 17 U.S.C. Sections 101, et. seq.

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  DEMAND

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 2/20/04

SIGNATURE OF ATTORNEY OF RECORD

x Joseph Heckendorn (AH)



# PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

- Yes  
 No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

- Yes  
 No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Notes:  
\_\_\_\_\_