

1 FREUND & BRACKEY LLP
2 JONATHAN D. FREUND, ESQ. (SBN 157357)
3 THOMAS A. BRACKEY II, ESQ. (SBN 162279)
4 NATHAN P. GABLE, ESQ. (SBN 188610)
5 427 North Camden Drive
6 Beverly Hills, CA 90210
7 (310) 247-2155

ORIGINAL

5 Attorneys for Plaintiffs,
6 SETH SWIRSKY d/b/a JULIAN'S DAD and WARRYN CAMPBELL
7 d/b/a NYRRAW MUSIC.

8 UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 SETH SWIRSKY, an individual)
11 d/b/a JULIAN'S DAD; WARRYN)
12 CAMPBELL, an individual d/b/a)
13 NYRRAW MUSIC.)

13 Plaintiffs)

14 vs.)

16 MARIAH CAREY, an individual;)
17 JAMES HARRIS III, an)
18 individual; TERRY LEWIS, an)
19 individual; FLYTE TYME)
20 PRODUCTIONS, INC., an entity)
21 of unknown designation; FLYTE)
22 TYME TUNES, an entity of)
23 unknown designation; ATV)
24 SONGS LLC, an entity of)
25 unknown designation; RYE)
26 SONGS, an entity of unknown)
27 designation; COLUMBIA RECORDS)
28 an entity of unknown)
designa- tion: SONY MUSIC)
ENTERTAINMENT, an entity of)
unknown designation; and EMI)
APRIL MUSIC, INC., an entity)
of unknown designation; and)
DOES 1 through 10 inclusive.)

Defendants.

CASE NO. CV 00-9926 CAS(Ex)
FIRST AMENDED COMPLAINT FOR:

1. Violation of 17 U.S.C. §101 et seq. (Copyright Infringement);
2. False Designation of Origin Under the Lanham Act, §43(a);
3. Reverse Passing Off Under the Lanham Act, §43(a);
4. Unfair Competition (Violation of Business and Professions Code §17200 et seq.);
5. Unjust Enrichment;
6. Demand for Accounting;
7. Constructive Trust;
8. Permanent Injunction.

DEMAND FOR JURY TRIAL

ENTERED 12/28/00
DEC 28 2000

5

1 Plaintiffs, SETH SWIRSKY d/b/a JULIAN'S DAD and WARRYN
2 CAMPBELL d/b/a NYRRAW MUSIC, by their attorneys Freund & Brackey
3 LLP, hereby complain and allege as follows:
4

5 **THE PARTIES**

6 1. Plaintiff SETH SWIRSKY d/b/a JULIAN'S DAD ("SWIRSKY")
7 is an individual, a well-known writer and composer of music, a
8 resident of Los Angeles County, in the State of California and a
9 legal and beneficial owner of the Original Composition "One of
10 Those Love Songs" (hereinafter "Original Composition") by virtue
11 of authorship.

12 2. Plaintiff WARRYN CAMPBELL d/b/a NYRRAW MUSIC
13 ("CAMPBELL") is an individual, a well-known writer and composer
14 of music, a resident of Los Angeles County, in the State of
15 California, and a legal and beneficial owner of the Original
16 Composition by virtue of authorship.

17 3. Defendant MARIAH CAREY ("CAREY") is an individual, a
18 well-known singer and performer that conducts business in Los
19 Angeles County, in the State of California. Plaintiff is
20 informed and believes that CAREY is violating Plaintiffs'
21 copyright by virtue of performing, claiming ownership in, and
22 sharing in the revenue stream from the Infringing Song, "Thank
23 God I Found You" (hereinafter "Infringing Song").

24 4. Defendant JAMES HARRIS III ("HARRIS") is an individual
25 who conducts business in Los Angeles County, in the State of
26 California. Plaintiff is informed and believes that HARRIS is
27
28

1 claiming authorship of the Infringing Song, and participating in
2 the revenue stream of the Infringing Song.

3 5. Defendant TERRY LEWIS ("LEWIS") is an individual who
4 conducts business in Los Angeles County, in the State of
5 California. Plaintiffs are informed and believe that LEWIS is
6 claiming authorship and participating in the revenue stream of
7 the Infringing Song.

8 6. Defendant COLUMBIA RECORDS ("COLUMBIA") is an entity of
9 unknown designation conducting business in Los Angeles County.
10 Plaintiffs are informed and believe that COLUMBIA is
11 manufacturing the Infringing Song and participating in the
12 revenue stream of the Infringing Song. Additionally, Plaintiffs
13 are informed and believe that COLUMBIA claims an ownership
14 interest in the sound recording of the Original Composition and
15 thereby participates in the revenue stream of the Original
16 Composition as well.

17 7. Plaintiffs are informed and believe that Defendant SONY
18 MUSIC ENTERTAINMENT ("SONY") is a corporation organized and
19 existing under the laws of the State of Delaware with, upon
20 information and belief, its principle place of business in Los
21 Angeles, California. Plaintiffs are informed and believe that
22 SONY is publishing and distributing the Infringing Song as well
23 as participating in the revenue stream therefrom. Additionally,
24 Plaintiffs are informed and believe that SONY claims an
25 ownership interest in the sound recording of the Original
26 Composition and thereby participates in the revenue stream of
27 the Original Composition as well.
28

1 8. Defendant FLYTE TYPE PRODUCTIONS, INC. ("FTP") is an
2 entity of unknown designation that Plaintiffs are informed and
3 believe conducts business in Los Angeles County. Plaintiffs are
4 informed and believe that FTP is claiming both authorship of and
5 an ownership interest in the Infringing Song as well as
6 participating in the revenue stream therefrom.

7 9. Defendant ATV SONGS LLC ("ATV") is an entity of
8 unknown designation that Plaintiffs are informed and believe
9 conducts business in Los Angeles County. Plaintiffs are
10 informed and believe that ATV is claiming an ownership interest
11 in, and participating in the revenue stream from, the Infringing
12 Song.

13 10. Defendant RYE SONGS ("RYE") is an entity of unknown
14 designation that Plaintiffs are informed and believe conducts
15 business in Los Angeles County. Plaintiffs are informed and
16 believe that RYE is claiming an ownership interest in, and
17 participating in the revenue stream from, the Infringing Song.

18 11. Defendant FLYTE TYPE TUNES ("FTT") is an entity of
19 unknown designation that Plaintiffs are informed and believe
20 conducts business in Los Angeles County. Plaintiffs are
21 informed and believe that FTT is claiming an ownership interest
22 in, and participating in the revenue stream of, the Infringing
23 Song.

24 12. Defendant EMI APRIL MUSIC, INC. ("APRIL MUSIC") is an
25 entity of unknown designation that Plaintiffs are informed and
26 believe conducts business in Los Angeles County. Plaintiffs are
27 informed and believe that APRIL MUSIC is claiming an interest
28

1 in, and participating in the revenue stream of, the Infringing
2 Song.

3 13. Plaintiffs are unaware of the names and true
4 capacities of Defendants, whether individual, corporate and/or
5 partnership entities, named herein as DOES 1 through 10,
6 inclusive, and therefore sue them by their fictitious names.
7 Plaintiffs will seek leave to amend this complaint when their
8 true names and capacities are ascertained.

9 14. Plaintiffs are informed and believe, and based thereon
10 allege, that said Defendants and DOES 1 through 10, inclusive,
11 are in some manner responsible for the wrongs alleged herein,
12 and that at all times referenced each was the agent and servant
13 of the other Defendants, whom obtained financial benefit from
14 the those Defendants acts and omissions, and each was acting
15 within the course and scope of said agency and employment.

16 15. Plaintiffs are informed and believe, and based thereon
17 allege, that at all relevant times herein, Defendants and DOES 1
18 through 10, inclusive, did aid, abet, participate in, contribute
19 to, or benefit from the acts and behavior alleged herein and the
20 damages caused thereby, and by their inaction ratified and
21 encouraged such acts and behavior.

22 16. Plaintiffs further allege that Defendants and DOES 1
23 through 10, inclusive, had a non-delegable duty to prevent or
24 cure such acts and the behavior described herein, which duty
25 Defendants and DOES 1 through 10, inclusive, failed and/or
26 refused to perform.

JURISDICTION AND VENUE

1 17. This is a civil action arising under the United
2 States' Copyright Act. This Court has federal question
3 jurisdiction over this action pursuant to 15 U.S.C. §1121, 17
4 U.S.C. § 501, 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a) as well
5 as pendant jurisdiction over all state claims.

6 18. This action also arises under the trademark laws of
7 the United States. This court has federal question jurisdiction
8 over this action pursuant to 15 U.S.C. §1121; 28 U.S.C. §1331,
9 and 28 U.S.C. §1338(a), as well as pendent jurisdiction over any
10 state law claims asserted herein.

11 19. Venue is proper in this district under 28 U.S.C. §1391
12 and 28 U.S.C. §1400(a).

FACTUAL BACKGROUND

13
14
15 20. SWIRSKY is a songwriter and composer of international
16 renown. During the course of his fifteen-year career as a
17 commercial songwriter his work has appeared on over forty
18 albums, includes number one and top ten hits, and has been
19 performed by famous artists including, but not limited to, the
20 following: Tina Turner, Al Green, Faith Evans, Olivia Newton
21 John, Air Supply, Celine Dion, Brenda K. Starr, Taylor Dayne,
22 and Trey Lorenz. His work has been awarded over twenty-one gold
23 and platinum album awards, as well as a number of ASCAP
24 songwriting awards and his works sold millions of copies.

25 21. CAMPBELL is a songwriter and composer of international
26 renown. During the course of his six-year career as a
27 commercial songwriter and producer his work has appeared on over
28

1 thirty albums. His work has been awarded numerous gold and
2 platinum album awards including a Grammy awarded for
3 songwriting, and have sold in excess of sixteen million copies.

4 22. SWIRSKY and CAMPBELL (collectively referred to as
5 "Plaintiffs") jointly authored the words and music of the
6 Original Composition entitled "One of Those Love Songs" (the
7 "Original Composition"). Plaintiffs are legal and beneficial
8 owners of the copyright for the Original Composition.

9 23. Plaintiff CAMPBELL delivered the Original Composition
10 to APRIL MUSIC in or around October of 1997 under a co-
11 publishing agreement between CAMPBELL and APRIL MUSIC.

12 24. Plaintiff SWIRSKY delivered the Original Composition
13 to APRIL MUSIC in or around December of 1999 under a co-
14 publishing agreement between SWIRSKY and APRIL MUSIC.

15 25. Plaintiffs are informed and believe that in or around
16 1998 APRIL MUSIC entered into a Mechanical License Agreement
17 with SoSo Def Recordings for the permission to record the
18 Original Composition with the musical group "Xscape"
19 ("Mechanical License").

20 26. On May 26, 1998 the musical group Xscape released an
21 album entitled "Traces of My Lipstick" ("Xscape Album") which
22 featured the Original Composition for which the Mechanical
23 License was granted. A true and correct copy of the compact disc
24 version of the Xscape Album, purchased in Los Angeles,
25 California on or about 2000, is attached hereto as Exhibit "A."

26 27. The Xscape Album was released by SONY in 1998.
27 Plaintiffs are informed and believe that SONY claims an
28 ownership interest in the copyright in the sound recording.

1 28. The Xscape Album was manufactured and distributed by
2 COLUMBIA. Plaintiffs are informed and believe that COLUMBIA
3 claims and ownership interest in copyright of the sound
4 recording.

5 29. On or about 1999, CAREY released an album entitled
6 "Rainbow" (the "Rainbow Album") on SONY, that was manufactured
7 and distributed by COLUMBIA. The Rainbow Album featured a song
8 entitled "Thank God I Found You" (the "Infringing Song"). A true
9 and correct copy of the compact disc version of the CAREY ALBUM
10 is attached hereto as Exhibit "B."

11 30. Both the Original Composition and the subsequently
12 released Infringing Song were mastered by Bob Ludwig at Gateway
13 Mastering.

14 31. Both the Xscape Album, on which the Original
15 Composition appears, and the subsequently released Rainbow
16 Album, on which the Infringing Song appears, were produced by
17 SONY.

18 32. Both the Xscape Album and the subsequently released
19 Rainbow Album were distributed by COLUMBIA.

20 33. The Rainbow Album credits as writers LEWIS, HARRIS and
21 CAREY for the Infringing Song.

22 34. Both the Xscape Album and the subsequently released
23 Rainbow Album notice an interest in APRIL MUSIC.

24 35. Producer Jermaine Dupri acted as the Executive
25 Producer and Producer on the Xscape Album and the Original
26 Composition.

27 36. Producer Jermaine Dupri acted as Producer and Co-
28 Producer of numerous singles from the Rainbow Album.

1 43. As a direct result of Defendants' willful acts of
2 copyright infringement as described herein, Plaintiffs have
3 suffered substantial damage, in an amount to be proven at trial.

4 44. Defendants' acts of copyright infringement have also
5 caused Plaintiffs irreparable, ongoing injury of a nature that
6 may not be compensable by monetary damages alone, and plaintiffs
7 are therefore entitled to injunctive relief.

8 45. Furthermore, by engaging willingly in the wrongful
9 conduct described herein, Defendants have acted maliciously,
10 fraudulently and oppressively, in conscious disregard of
11 plaintiffs' rights. Consequently, Plaintiffs are entitled to
12 punitive damages in an amount sufficient to punish Defendants
13 according to proof at trial.

14 **SECOND CAUSE OF ACTION**

15 **[False Designation of Origin Under the Lanham Act §43(a),**
16 **15 U.S.C. §1125(a)]**
17 **(Against all Defendants)**

18 46. Plaintiffs reallege and incorporate by reference each
19 and every allegation set forth in paragraphs 1 through 43,
20 inclusive.

21 47. By distributing, marketing and otherwise exploiting
22 the Infringing Song in interstate commerce while giving
23 themselves credit for Plaintiffs' work, Defendants have falsely
24 represented to the public that Defendants have independently
25 created, and are authors of, the Infringing Song.

26 48. As a result, members of the public will reasonably be
27 deceived and/or confused into believing that the Infringing Song
28 is the independent creation of Defendants. Plaintiffs are
seriously injured by such deception, in that it negatively

1 impacts their ability to distribute, market and otherwise
2 exploit their Original Composition. This deception also has a
3 negative impact on Plaintiffs' careers because they are not
4 receiving the credit due for the successful Infringing Song.

5 49. By engaging in the wrongful conduct described herein
6 and above, Defendants have violated section 43(a) of the Lanham
7 Act, 15 U.S.C. §1125(a) for False Designation of Origin.
8 Because Defendants have engaged in the conduct described herein
9 with fraudulent intent, and with the actual knowledge of the
10 harm being caused to Plaintiffs by such wrongful conduct/acts,
11 this is an exceptional case which merits an award of treble
12 damages and attorneys' fees against Defendants.

13 50. Defendants' acts and conduct have caused and will
14 continue to cause Plaintiffs great and irreparable injury that
15 cannot be adequately compensated or measured in damages.
16 Plaintiffs have no adequate remedy at law and will suffer
17 immediate and irreparable loss, damage and injury unless
18 Defendants are restrained and enjoined from continuing to engage
19 in such wrongful conduct.

20 **THIRD CAUSE OF ACTION**

21 ["Reverse Passing Off" Under the Lanham Act §43(a), 15 U.S.C.
22 §1125(a)]
23 (Against All Defendants)

24 51. Plaintiffs reallege and incorporate by reference each
25 and every allegation set forth in paragraphs 1 through 48,
26 inclusive.

27 52. Defendants have bodily appropriated and copied the
28 original expression of Plaintiffs' Original Composition, without

1 consent, credit or compensation, by writing, performing and
2 recording the Infringing Song.

3 53. As a result, members of the public will reasonably be
4 deceived and/or confused into believing that the Infringing Song
5 is the independent creation of Defendants. Plaintiffs are
6 seriously injured by such deception and misattribution, in that
7 it negatively impacts their ability to distribute, market and
8 otherwise exploit their Original Composition. Additionally, if
9 Plaintiffs do not receive credit for their work, they are
10 perceived as less successful and therefore cannot demand the
11 rightful value for their compositions in the future.

12 54. By engaging in the wrongful conduct described herein
13 and above, Defendants have violated section 43(a) of the Lanham
14 Act, 15 U.S.C. §1125(a) for Reverse Passing Off. Because
15 Defendants have engaged in the conduct described herein with
16 fraudulent intent, and with the actual knowledge of the harm
17 being caused to Plaintiffs by such wrongful conduct/acts, this
18 is an exceptional case which merits an award of treble damages
19 and attorneys' fees against Defendants.

20 55. Defendants' acts and conduct have caused and will
21 continue to cause Plaintiffs great and irreparable injury that
22 cannot be adequately compensated or measured in damages.
23 Plaintiffs have no adequate remedy at law and will suffer
24 immediate and irreparable loss, damage and injury unless
25 Defendants are restrained and enjoined from continuing to engage
26 in such wrongful conduct.
27
28

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

FOURTH CAUSE OF ACTION
[Unfair Competition: Violation of Business and Professions Code
§ 17200 et seq.]
(Against All Defendants)

56. Plaintiffs reallege and incorporate by reference each and every allegation set forth in paragraphs 1 through 53, inclusive.

57. As described above, Defendants' acts of promoting, advertising and selling the Infringing Song have resulted in consumer confusion by causing the public to believe that the Infringing Song was created by persons other than Plaintiffs. This constitutes violations of both state and federal statutes. Accordingly, Defendants have violated Cal. Bus. and Prof. Code section 17200, et seq., which prohibits acts of unfair competition and unfair business practices.

58. Defendants' acts and conduct in violation of Cal. Bus. and Prof. Code section 17200, et seq., have caused and will continue to cause Plaintiffs great and irreparable injury. The harm sustained as a result of Defendants' wrongful act cannot be adequately compensated or measured in damages. Plaintiffs have no adequate remedy at law and will suffer immediate and irreparable loss, damage and injury unless Defendants are restrained and enjoined from continuing to engage in such wrongful conduct.

59. By reason of the foregoing, Plaintiffs are entitled to an injunction to restrain Defendants from engaging in such further unlawful conduct. Plaintiffs are also entitled to restitution from Defendants to compensate Plaintiffs for injury sustained as a result of Defendants' unlawful acts.

1
2 **FIFTH CAUSE OF ACTION**
3 **[Unjust Enrichment]**
4 **(Against All Defendants)**

5 60. Plaintiffs reallege and incorporate by reference each
6 and every allegation set forth in paragraphs 1 through 57.
7 inclusive.

8 61. By reason of the foregoing facts, Defendants, and each
9 of them, have become unjustly enriched at the expense of
10 Plaintiffs by failing to license the right use Plaintiffs
11 Original Composition and by realizing monetary gain from their
12 unauthorized use of Plaintiffs Original Composition.

13 62. Defendants, and each of them, have been unjustly
14 enriched in an amount which cannot be precisely ascertained at
15 this time, but will be ascertained according to proof at trial.

16 **SIXTH CAUSE OF ACTION**
17 **[Demand for Accounting]**
18 **(Against All Defendants)**

19 63. Plaintiffs reallege and incorporate by reference each
20 and every allegation set forth in paragraphs 1 through 60,
21 inclusive.

22 64. As seen above, Plaintiffs have an interest in all of
23 the money that is generated from the distribution and
24 exploitation of the Infringing Song in that they are copyright
25 owners of the Original Composition.

26 65. Plaintiffs are informed and believe that Defendants
27 have generated an undetermined, yet substantial amount of money,
28 due to the commercial success of the Infringing Song and the
Rainbow Album through sales, distribution, promotion,

1 circulation, and other exploitation of Plaintiffs' Original
2 Composition on the Rainbow Album, and as contained on other
3 compilations and fixations.

4 66. The amount of money due from Defendants is unknown to
5 Plaintiffs and cannot be ascertained without an accounting of
6 all of the Defendants' financial records related to the
7 Infringing Song.

8 67. As a result of Defendants' actions, or lack thereof,
9 Plaintiffs have been damaged in an amount to be proven after an
10 accounting has been conducted. Accordingly, Plaintiffs hereby
11 request that the Court order an accounting of all of Defendants'
12 financial records related to the Infringing Song in order to
13 determine the sums rightfully due to Plaintiffs. Furthermore,
14 Plaintiffs demand that those sums be paid to them.

15 **SEVENTH CAUSE OF ACTION**
16 **[Constructive Trust]**
(Against All Defendants)

17 68. Plaintiffs reallege and incorporate by reference each
18 and every allegation set forth in paragraphs 1 through 65,
19 inclusive.

20 69. Plaintiffs are informed and believe Defendants have
21 generated an undetermined, yet substantial amount of money due
22 to the commercial success of the Infringing Song through sales,
23 distribution, promotion, circulation, and other exploitation of
24 the Infringing Song.

25 70. As seen above, Plaintiffs are entitled to all of the
26 money that is generated from the nonconsensual exploitation of
27 their Song in that they are entitled to receive all profits and
28

1 a licensing fee. Plaintiffs have not given their consent for
2 Defendants to utilize their Original Composition to create the
3 Infringing Song; therefore, Plaintiffs have not been paid any
4 licensing fee conferring such privilege on Defendants.

5 71. By failing to provide Plaintiffs with the licensing
6 fee required to create the Infringing Song, Defendants have
7 violated Plaintiffs' rights and have been unjustly enriched in
8 an amount to be determined at trial.

9
10 **EIGHTH CAUSE OF ACTION**
11 **[Permanent Injunction]**
12 **(Against All Defendants)**

13 72. Plaintiffs reallege and incorporate by reference each
14 and every allegation set forth in paragraphs 1 through 69,
15 inclusive.

16 73. In or about 1999 and continuing until the present,
17 Defendants, and each of them, have promoted, advertised and sold
18 the Infringing Song, or caused the Infringing Song to be
19 promoted, advertised and sold, without Plaintiffs' consent,
20 without payment, and without accurate credit to Plaintiffs'
21 Original Composition contained therein.

22 74. These actions on behalf of Defendants are wrongful and
23 should be enjoined in that they have caused, and continue to
24 cause, Plaintiffs great and irreparable injury.

25 75. Plaintiffs have no other plain, speedy or adequate
26 remedy at law, and the injunctive relief prayed for below is
27 necessary and appropriate at this time to prevent irreparable
28 loss to Plaintiffs' interests.

PRAYER FOR RELIEF

1 WHEREFORE, Plaintiffs pray for judgment against Defendants,
2 and each of them, as follows:

ON THE FIRST CAUSE OF ACTION

3 1. That the Court adjudge and decree that the Defendants
4 have willfully infringed plaintiffs' exclusive rights under the
5 Copyright Act;

6 2. That the Defendants, and those acting in concert with
7 them, be permanently enjoined from engaging in further acts of
8 infringement;

9 3. That Plaintiffs be awarded, at Plaintiffs' election,
10 statutory damages and/or actual damages in an amount to be
11 proven at trial;

12 4. That Defendants disgorge all profits derived from
13 their wrongful conduct;

14 5. Interest at the maximum legal rate;

15 6. All reasonable attorney's fees and costs incurred
16 herein;

17 7. For punitive damages according to proof at trial;

18 8. That the Court grants such other, further, and
19 different relief as the Court deems just and proper under the
20 circumstances.
21

ON THE SECOND AND THIRD CAUSES OF ACTION

22 1. That the Court adjudge and decree that the Defendants
23 have willfully infringed Plaintiffs' exclusive rights under the
24 Lanham Act;

25 2. That the Defendants, and those acting in concert with
26 them, be permanently enjoined from engaging in further acts of
27
28

1 infringement by making, promoting, distributing, or selling the
2 Infringing Song in its current state, until Plaintiffs have been
3 properly credited for their creation of the Original Composition
4 from which it was copied.

5 3. That Plaintiffs be awarded, Defendants' profits,
6 damages in an amount to be proven at trial, and costs of
7 bringing this action;

8 4. That the Court awards Treble Damages under 28 U.S.C.
9 §1117 et seq.

10 5. All reasonable attorney's fees and costs incurred
11 herein;

12 6. That Defendants be ordered to account for and recall
13 from distribution channels any and all copies of the Infringing
14 Song so as to permanently remove them from the stream of
15 commerce;

16 7. For exemplary or punitive damages in an amount
17 appropriate to punish or make an example of Defendants,
18 according to proof at trial;

19 8. Interest at the maximum legal rate; and

20 9. That the Court grants such other, further, and
21 different relief as the Court deems just and proper under the
22 circumstances.

23 ON THE FOURTH CAUSE OF ACTION

24 1. That the Court issue a permanent injunction
25 prohibiting Defendants from engaging in future exploitation of
26 Plaintiffs' Original Composition in connection with the
27 promotion, advertisement, sale and distribution of the
28 Infringing Song, and requiring Defendants to properly credit

1 Plaintiffs for their Original Composition from which the
2 Infringing Song was copied in all future promotion,
3 advertisement, sale and distribution of the Infringing Song.

4 2. For an award of restitution in an amount according to
5 proof;

6 3. For an accounting of all financial records relating to
7 the Infringing Song;

8 4. For reasonable attorney's fees and costs associated
9 with this action;

10 5. For interest at the maximum legal rate; and

11 6. That the Court grants such other, further, and
12 different relief as the Court deems just and proper under the
13 circumstances.

14 ON THE FIFTH CAUSE OF ACTION

15 1. That Plaintiffs be awarded the monies gained by
16 Defendants at Plaintiffs' expense through the unauthorized use
17 of the Original Composition.

18 2. That the Defendants, and those acting in concert with
19 them, be permanently enjoined from engaging in further acts of
20 infringement by making, promoting, distributing, or selling the
21 Infringing Song in its current state, until Plaintiffs have been
22 properly credited for the use of the Original Composition from
23 which the Infringing Song was copied.

24 3. Interest at the maximum legal rate from the date the
25 Infringing Song was released to the public.

26 4. All reasonable attorney's fees and costs incurred
27 herein;

28

1 5. That Defendants be ordered to account for and recall
2 from distribution channels any and all copies of the Infringing
3 Song so as to permanently remove them from the stream of
4 commerce; and

5 6. That the Court grants such other, further, and
6 different relief as the Court deems just and proper under the
7 circumstances.

8 ON THE SIXTH CAUSE OF ACTION

9 1. That the Court order an independent accountant to
10 conduct an accounting of all Defendants' financial records
11 relating to the Infringing Song in order to determine the sums
12 of money owed to Plaintiffs;

13 2. Upon a determination of sums due to Plaintiffs, demand
14 is made that those sums be paid to Plaintiffs;

15 3. Interest at the maximum legal rate from the date said
16 sums were due;

17 4. All reasonable attorney's fees and costs incurred
18 herein; and

19 5. Any other relief deemed by the Court to be just and
20 reasonable.

21 ON THE SEVENTH CAUSE OF ACTION

22 1. That the Court imposes an actual or constructive trust
23 upon Defendants in favor of Plaintiffs with respect to all
24 income received by them from exploitation of the Infringing
25 Song.

26 2. An award of restitution in an amount greater than or
27 equal to Defendants' unjust enrichment, the value of which is to
28 be determined by proof at trial;

1 3. Interest at the maximum legal rate from the date of
2 public distribution of the Infringing Song;

3 4. All reasonable attorney's fees and costs incurred
4 herein; and

5 5. Any other relief deemed by the Court to be just and
6 reasonable.

7 ON THE EIGHTH CAUSE OF ACTION

8 1. For a permanent injunction prohibiting Defendants, and
9 those acting in concert with them, from engaging in further acts
10 of infringement by making, promoting, distributing, or selling
11 the Infringing Song in its current state, until Plaintiffs have
12 been properly credited for their Original Composition from which
13 the Infringing Song was copied.

14 2. Further that Defendants be ordered to account for and
15 recall from distribution channels any and all copies of the
16 Infringing Song so as to permanently remove them from the stream
17 of commerce;

18 3. All reasonable attorney's fees and costs incurred
19 herein; and

20 4. That the Court grants such other, further, and
21 different relief as the Court deems just and proper under the
22 circumstances.

23
24 October 26, 2000

FREUND & BRADKEY, LLP

By 

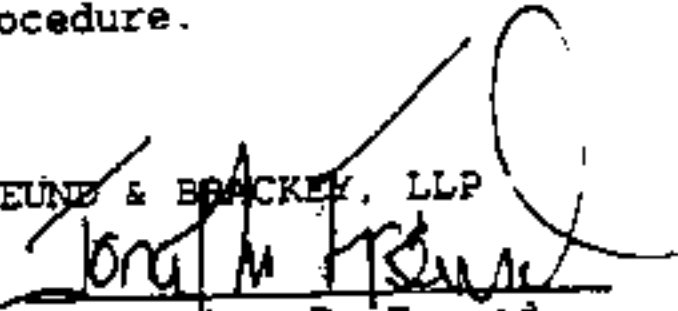
Jonathan D. Freund,
Attorney for Plaintiffs
SETH SWIRSKY and WARRYN
CAMPBELL.

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

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

November 12, 2000

FREUND & BRADLEY, LLP
By 
Jonathan D. Freund,
Attorney for Plaintiffs
SETH SWIRSKY and WARRYN
CAMPBELL.