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Marion County Circuit Court

8 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**
9 **FOR THE COUNTY OF MARION**

11 **VOLTAGE PICTURES, LLC**

12 **Plaintiff,**

13 **v.**

14 **DOES 1 - 50**

15 **Defendants.**

Case No.: **14C13823**

COMPLAINT

ORS 647.105 – State Trademark

This matter is NOT subject to
Mandatory Court Arbitration

Equitable Relief Only

18
19 Plaintiff Voltage Pictures, LLC, complains and alleges as follows:

20 **JURISDICTION AND VENUE**

21 1. This is a suit for trademark infringement under ORS 647.105.

22 2. Jurisdiction and venue before this Court is proper as based pre-filing investigations it is

23 believed that several defendants reside in Marion County and all defendants reside in the State of
24 Oregon.
25

26 ///

1 PARTIES

2 THE PLAINTIFF

3 3. Plaintiff Voltage Pictures, LLC (“Voltage” / “Plaintiff”) is a limited liability company
4 with principal offices in Los Angeles, California that produces, markets and distributes motion
5 pictures including the subject work in this matter, a motion picture titled *Dallas Buyers Club*.
6

7 The Rights of the Plaintiff

8 4. Plaintiff is a producer of the motion picture titled *Dallas Buyers Club*, released in 2013.
9 *Dallas Buyers Club* is an acclaimed motion picture nominated for six Academy Awards
10 (Oscars), winning Best Actor, Best Supporting Actor and Best Makeup. Plaintiff’s motion
11 picture also won numerous Screen Actors Guild Awards, Golden Globes and other awards.

12 5. In the marketing of plaintiff’s motion picture, plaintiff has branded the motion picture
13 with its distinctive and registered trademark, VOLTAGE PICTURES, which identifies the
14 motion picture as being associated with plaintiff.
15

16 6. Plaintiff has sole and exclusive rights to use the mark VOLTAGE PICTURES in
17 association with its goods and services both within the State of Oregon and nationwide.

18 7. The VOLTAGE PICTURES mark is unique, distinctive, and clearly visible in the
19 presentation and the viewing of plaintiff’s motion picture.

20 8. The VOLTAGE PICTURES mark is valuable, well known and famous as it is associated
21 with numerous award winning motion pictures in addition to *Dallas Buyers Club*.
22

23 9. The mark VOLTAGE PICTURES has been registered with the State of Oregon pursuant
24 to ORS 647.015, Registry Number 42677.
25
26

1 10. Pursuant to ORS 647.095, a person who without the consent of Voltage Pictures, uses the
2 VOLTAGE PICTURES mark in connection with the distribution of a reproduction, counterfeit
3 or copy of a motion picture is liable for the equitable remedies provided in ORS 647.105.

4 11. Pursuant to ORS 647.105, "The owner of a mark registered under this chapter may
5 proceed in a civil action to seek an injunction against the ... use, display or sale of a counterfeit
6 or imitation of the mark."
7

8 12. Plaintiff comes to this court seeking the equitable remedies provided by ORS Chapter
9 647, namely an injunction against those who have and would, without authorization, copy,
10 reproduce and distribute motion pictures that bear its registered trademark.

11 THE DEFENDANTS

12 13. Defendants are participants in a peer-to-peer file sharing network.

13 14. The defendants have been identified as Does in the instant case and are each indicated
14 in the attached Exhibit 1 by a specific internet protocol ("IP") address used at a specific time to
15 copy, reproduce and distribute a copy, counterfeit or reproduction of plaintiff's motion picture
16 bearing plaintiff's registered mark without authorization.
17

18 15. The defendants and each of them have improperly and without authorization from
19 plaintiff copied, downloaded, shared and uploaded plaintiff's motion picture using a peer-to-peer
20 network.
21

22 16. The defendants have infringed plaintiff's State Trademark Rights.

23 17. The defendants and their conduct are more specifically described below.
24

25 ///

26 ///

1 JOINDER

2 18. Plaintiff acknowledges that joinder in this action under ORCP 28 (A) is permissive in that
3 plaintiff's claims arise out of the same occurrences or transactions, or series of occurrences or
4 transactions and that there are questions of law and fact common to each of the defendants.

5 19. All defendants have collectively acted through the BitTorrent protocol to download and
6 distribute plaintiff's motion picture bearing plaintiff's registered trademark.
7

8 20. All of the defendants, in a near contemporaneous time frame, were distributing the exact
9 same file through Bit-Torrent, potentially with each other and jointly to third parties.

10 21. All defendants have acted through the BitTorrent protocol to jointly contribute to the
11 functionality of the BitTorrent network by copying, reproducing and distributing plaintiff's
12 motion picture bearing plaintiff's registered trademark.

13 22. As such, plaintiff's rights to relief, as stated below, ultimately arise out of the same series
14 of transactions and occurrences.

15 23. This action also raises substantial questions of law and fact common to all defendants.

16 24. Permissive joinder in the instant case permits a more efficient management of the claims
17 of plaintiff against the several defendants and reduces the costs to plaintiff and defendants and
18 the costs and burdens on the Court.
19

20 25. Notice is provided that on being specifically identified and on request from an identified
21 infringing defendant, with leave of the Court, plaintiff agrees to sever any defendant that claims
22 prejudice in being joined in this matter and to proceed against each such defendant individually.
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BACKGROUND

26. In the production of a motion picture there are countless expenses and labors, many of which are not evident in the final project, including writers, staff persons, construction workers and others.

27. Indeed, the final product produced, which may be less than two hours long is often sourced from countless hours of preparation, filming, post-production and promotion to bring the final product to viewers.

28. The end product that many consumers see is a few hours in a theater or a DVD product that once production is complete has a nominal cost on a per-viewing experience. However, this is misleading to the true costs of the motion picture as the costs to view a completed motion picture or produce a single DVD are nominal compared to what is often years of work by many of people leading up to the end product.

29. Added to this is that most people seen related to the end product, movie stars, directors and other persons of note, are generally perceived as highly compensated. This leads to the common misunderstanding that people involved in motion pictures are already wealthy.

30. When the perception is that those affiliated with a motion picture are already wealthy and the end product, such as a DVD, costs little to make, a reality disconnect often builds in the minds of much of the public, namely that those associated with a motion picture do not need any more money.

31. When this reality disconnect meets with the ready availability of pirated copies of motion pictures and the ease with which they can be pirated and downloaded at an almost anonymous level, many people feel justified in their pirating or theft of motion pictures.

1 32. The result is that despite the industry's efforts to capitalize on internet technology and
2 reduce costs to end viewers through legitimate and legal means of online viewing options such as
3 through Netflix™, Hulu™, and Amazon Prime™, there are still those that use technology to
4 steal motion pictures and undermine the efforts of creators through piracy and unauthorized
5 distribution of motion pictures.
6

7 33. As noted by Senator Levin in Congressional hearings on peer-to-peer internet piracy,
8 "taking someone's intellectual property is a serious offense, punishable by large fines. In the real
9 world, violations of copyright law over the Internet are so widespread and easy to accomplish
10 that many participants seem to consider it equivalent to jaywalking – illegal but no big deal. But
11 it is a big deal. Under U.S. law, *stealing intellectual property is just that – stealing. It hurts*
12 *artists, the music industry, the movie industry, and others involved in creative work. And it is*
13 *unfortunate that the software being used – called 'file sharing' as if it were simply enabling*
14 *friends to share recipes, is helping create a generation of Americans who don't see the harm."*

15
16 (emphasis added)

17 34. In recognition of the growing problems and challenges with counterfeiting and piracy,
18 The Oregon House of Representatives passed House Memorial 2 in 2013, which made the
19 following findings:

20 Whereas the United States and other nations share **the challenge of combating intellectual**
21 **piracy and the counterfeiting of intellectual property such as ... films...** and technologies
that affect the quality of life; and

22 Whereas **intellectual piracy and counterfeiting have a significant impact on Oregon's**
23 **economy**, and the economies of other states and of nations around the world, which results in job
and earnings losses, reduced tax revenues and increased threats to public health and safety; and

24 **Whereas protecting and enforcing intellectual property rights is crucial to the**
25 **future of our innovation-based economy;** and

26 Whereas industries that use intellectual property extensively generate nearly \$7.7 trillion in
gross output and account for more than 60 percent of total exports from our nation; and

1 Whereas industries that use intellectual property extensively ... employ more than 19 million
2 Americans, whose salaries average about 60 percent higher than salaries in industries that do not
3 make extensive use of intellectual property; and

4 Whereas intellectual property infringement can undermine the nation's economic security;
5 and

6 Whereas violations of intellectual property rights, ambiguities in the law and a lack of
7 enforcement create uncertainty in the marketplace and in the legal system and undermine
8 consumer trust; and

9 Whereas **intellectual property, including trademarks, [are] essential ...**; and

10 Whereas **failing to adequately protect and enforce intellectual property rights will
11 increase counterfeiting and illicit trade;**

12 (emphasis added)

13 35. As such it is clear that giving effect to ORS Chapter 647, and the enforcement of
14 intellectual property rights, and in particular the fight against counterfeiting and piracy are
15 critical issue of importance to both the United States of America and the State of Oregon.

16 PEER-TO-PEER INTERNET PIRACY

17 36. Peer-to-peer networks, at least in their most common form, are computer systems that
18 enable internet users to: 1) make files (including motion pictures) stored on each user's computer
19 available for copying by other users or peers; 2) search for files stored on other users' computers;
20 and 3) transfer ("share") exact copies of files between computers via the Internet.

21 37. The particular peer-to-peer protocol at issue in this suit is the BitTorrent protocol.

22 38. To use BitTorrent, a user intentionally downloads a program that they then install on their
23 computer called a "client." The BitTorrent client is the user's interface during the
24 downloading/uploading process. The client may be free, supported by advertising, offer
25 upgrades or add on services for a fee, or a combination of several options.

26 39. Users then intentionally visit a "torrent site" or network site to find media or content
available for download, often using a standard web browser.

1 40. A torrent site is often an advertising revenue or subscription supported index of media or
2 content being made available by other users on the network and maintains a listing of movies and
3 television programs among other protected content.

4 41. A user then uses the torrent site to connect with other users and exchange or "share"
5 content though the BitTorrent protocol often with many users at the same time.

6 42. Internet piracy, and in particular BitTorrent piracy, though known as peer-to-peer file
7 sharing, is often a for-profit business as many software clients, torrent sites and networks
8 generate millions of dollars in revenue through sales and advertising.

9 43. To increase the value of the advertising and sometimes subscription access sold by
10 torrent sites, many torrent sites work to expand the pool of available titles and speed of
11 downloads through increasing the number of member peers and thus the desirability of their
12 clients and networks. To accomplish this they reward participants who contribute by giving
13 them faster download speeds, greater access, or other benefits.

14 44. A significant element of the BitTorrent model is that those who participate and download
15 movies not only share and upload movies with others, but participants are often rewarded
16 through various means based on the volume and availability of content participants in turn
17 provide the network. In sum, there is a feedback incentive for participants as they obtain not
18 only the benefit of their pirated copy of a movie, but they obtain other benefits by increasing the
19 availability of pirated content to others.

20 45. As such there are a growing number of users that participate in peer-to-peer networks and
21 receive personal gain or compensation in that the networks they use reward those who provide
22 large numbers of files for upload to others.

1 46. On information and belief, many defendants in Exhibit 1 have been compensated through
2 benefits received for their participation in expanding the availability of pirated content to others
3 through BitTorrent networks, including works that bear plaintiff's mark.

4 47. The use of BitTorrent does more than cause harm through the theft of intellectual
5 property. The BitTorrent distribution of pirated files is a model of business that profits from theft
6 through sales and advertising and a system of rewards and compensation to the participants, each
7 of whom contribute to and further the enterprise.

8 48. Each of the defendants is a participant in the BitTorrent distribution of pirated files
9 furthering a model of business that profits from theft of intellectual property including plaintiff's
10 motion picture.

11 IP Addresses

12 49. An Internet Service Provider, ("ISP"), grants access to the Internet and the ability to send
13 and receive information, whether in the form of an email, photo or motion picture. To connect to
14 the Internet a user must contract with an ISP and create an account for service either directly, or
15 through an intermediary such as a subscriber.

16 50. The ISP then generally assigns each subscriber a unique IP address. An IP address is like
17 the address used on an envelope. It is the identifier each defendant used to tell the world not
18 only where they were sending data from, but the location to where any requested data should be
19 sent.

20 51. The defendants have been identified as Does in the instant case and are indicated in the
21 attached Exhibit 1 by a specific IP address, used at a specific time to exchange plaintiff's motion
22 picture through the BitTorrent peer-to-peer network.

1 52. Under the BitTorrent protocol each file has a unique "hash" (a file identifier generated by
2 an algorithm) tied to a specific file. In the instant case, the hash identified on Exhibit 1 has been
3 confirmed as being for an unauthorized copy of plaintiff's motion picture bearing plaintiff's
4 registered mark.

5 53. Plaintiff has, to a reasonable degree of scientific certainty, learned the ISP used by each
6 defendant, the torrent file copied and distributed by each defendant, the BitTorrent client
7 application utilized by each defendant, and the likely location of each defendant, at least down to
8 the state level, if not the county level at the time of infringement as determined by geolocation
9 technology. Relevant information related to each defendant's IP address, and the time of
10 infringement is provided in Exhibit 1, filed herewith.

11 54. Plaintiff's investigator has further established a direct peer-to-peer link with each
12 defendant, confirming not only the apparent IP address used by each defendant, but also
13 confirming the actual IP address overcoming any concerns with forging or "spoofing" an IP
14 address.

15 55. Plaintiff's investigator has further monitored each defendant's IP address to the extent
16 practical, confirming each IP address is not an incidental or transitory participant in BitTorrent,
17 but observed as associated with persistent and prolonged BitTorrent activity. As such each IP
18 address is likely to go to a specific authorized user and persistent infringer as opposed to an
19 occasional guest or visitor or party without authorized and secure access to the specific IP
20 address.

21 56. Despite the best available investigative techniques, it is impossible for plaintiff to identify
22 defendants by name at this time. Thus plaintiff must sue defendants as Does 1 - 50.
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25
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1 57. Plaintiff believes the defendants' ISP, Comcast, has information identifying the
subscribers who are either defendants or who are parties with information needed to identify the
3 defendants as defendants acted through the accounts of subscribers who were assigned the IP
4 addresses of Exhibit 1. Plaintiff intends to issue subpoenas to the Comcast to identify
5 subscribers and any subsequent intermediary in order to learn the identity of the Does.
6

7 Conduct of Defendants

8 58. Plaintiff has recorded each defendant identified herein as copying and publishing
9 plaintiff's motion picture via BitTorrent as plaintiff's investigator has been able to download a
10 portion of plaintiff's motion picture from each defendant identified herein, and collectively, from
11 the identified defendants and others, plaintiff has been able to download a complete copy of
12 plaintiff's motion picture obtaining an integral portion from each defendant.
13

14 59. On information and belief, defendants' conduct was unauthorized and in violation of the
15 license and terms of access to the Internet through their ISP, Comcast.

16 60. Upon information and belief, each defendant was a willing and knowing participant in the
17 infringing of plaintiff's trademark rights.

18 61. Each defendant's conduct is effectively part of a collective enterprise constituting
19 substantially similar or identical facts.

20 62. Upon information and belief, many defendants also obtained compensation or personal
21 benefit through making plaintiff's motion picture available to others.

22 63. Each IP address in Exhibit 1 has further been observed as associated with other infringing
23 conduct and as such it is believed that each defendant's conduct is not an isolated incident, but is
24 part of a persistent and continuing pattern of infringing activity and until enjoined will continue
25
26

1 to infringe on plaintiff's rights in both plaintiff's motion picture and possibly other motion
2 pictures.

3 Exemplar Defendant

4 64. While it would be an undue and unnecessary burden to outline each defendant's conduct,
5 an exemplar is provided to facilitate understanding of plaintiff's claims.

6
7 65. Exemplar user Doe No. 1 of 50, known at this time only by the IP address of
8 98.246.58.231, and believed to reside in Salem, as either a subscriber or acting through an
9 account established by a subscriber, initiated his or her infringing conduct by first intentionally
10 logging into the one of many BitTorrent client repositories known for their large index of
11 copyrighted and trademarked movies, television shows and software. Doe No. 1 then
12 intentionally obtained a torrent file identified by a "hash" or SHA1:
13 F18A60DB02EC3B55C18924F47955DE766DACC537 in this specific instance which is for
14 plaintiff's motion picture from the index and intentionally loaded that torrent file into a computer
15 program or client designed to read such files.

16
17 66. With the torrent file intentionally loaded by Doe No. 1, his or her BitTorrent client used
18 the BitTorrent protocol to initiate connections with potentially hundreds of other users
19 possessing and uploading or sharing copies of the digital media described in that same hash,
20 namely, plaintiff's motion picture. As the motion picture was copied to Doe No. 1's computer
21 piece by piece, these downloaded pieces of plaintiff's motion picture were then published and
22 made available for upload to others from Doe No. 1's computer.

23
24 67. Each of Does 1 - 50 performed the same acts as those described for Doe No. 1, above.
25 Each of these defendants also became an uploader, meaning that each downloaded file or file
26 segment was then available to other users seeking to obtain the file without degradation in sound

1 or picture quality. Thus, each defendant was an uploader or publisher and also a downloader or
2 copier of plaintiff's motion picture.

3 68. With Doe No. 1, as with all other Does, there is other observed activity associated with
4 the defendant's IP address, as such it is unlikely the defendants' activity is isolated or a one time
5 occurrence, but is likely part of a pattern of regular and continuing conduct causing harm to
6 plaintiff and others.
7

8 69. Attached hereto as Exhibit 2 is a partial listing of some of the other activity observed
9 associated with Doe No. 1's IP address.

10 70. As can be seen from the data observed with Doe No. 1's IP address, the BitTorrent piracy
11 at issue is unlikely to be that of an occasional visitor or guest as the activity is persistent over
12 time.

13 71. As can be seen from the data observed with Doe No. 1's IP address, the BitTorrent piracy
14 at issue is unlikely to be from a young child or "innocent" as content does not reflect the type of
15 content that might be associated from a young child.
16

17 72. Additional data observed associated with Doe No. 1's IP address indicates the defendant
18 is likely a mature adult with specific viewing habits.

19 73. 100 files are presented as observed associated with Doe No. 1's IP address, but this is just
20 a small portion of observed activity associated with Doe No. 1 and the various defendants as
21 each and every Doe defendant IP address in Exhibit 1 is observed as associated with dozens of
22 different BitTorrent files in addition to plaintiff's motion picture, many observed associated with
23 several hundred BitTorrent files (500+). As such the conduct associated with the defendants
24 represents notable economic harm not only to plaintiff but also to the people of the State of
25 Oregon.
26

1 74. The defendants and each of them are prolific proponents of the BitTorrent distribution
2 system advancing the BitTorrent economy of piracy causing injury to plaintiff.

3 75. Some of the titles observed associated with Doe No. 1's IP address indicate association
4 with the BitTorrent site TORRENTING.COM as seen in items 26, and 47.

5 76. TORRENTING.COM is torrent index site that profits from piracy of content, including
6 plaintiff's motion picture through requesting "donations" as can be seen in Exhibit 3.

7 77. TORRENTING.COM actively promotes the download and distribution of plaintiff's
8 motion picture as can be seen from a printout of the web page shown on Exhibit 4.

9 78. As such it is likely Doe No. 1 was involved with the promotion of TORRENTING.COM,
10 at least to an incidental degree.

11 79. Co-opting and distributing pirated content for the promotion and benefit of third parties is
12 regularly observed in the conduct associated with the several Doe defendants.

13 80. While it may or may not be that any one defendant in this case is personally and directly
14 generating revenue or benefit from their conduct, defendants' conduct as a whole furthers such
15 efforts on behalf of others as they persistently download and then re-published works, including
16 plaintiff's motion picture for the benefit third parties.

17
18
19 CLAIM FOR RELIEF

20 ORS 647.105 – State Trademark

21 81. Defendants, and each of them, without the authorization or consent of plaintiff, used,
22 copied and / or distributed a reproduction, counterfeit and copy of plaintiff's motion picture
23 bearing plaintiff's registered trademark VOLTAGE PICTURES.

24 82. Defendants, and each of them have acted with knowledge and in bad faith in their
25 infringement of plaintiff's rights.
26

1 83. Plaintiff is entitled to an order of from this Court enjoining defendants from infringing
2 plaintiff's rights and directing defendants to delete all unauthorized copies of plaintiff's motion
3 pictures.
4

5
6 PRAYER FOR RELIEF

7 WHEREFORE, plaintiff prays for judgment against each defendant as follows:

- 8 A. For entry of permanent injunction enjoining each defendant from infringing
9 plaintiff's rights in plaintiff's mark, including without limitation by using the Internet to
10 reproduce, copy or distribute any motion picture which bears plaintiff's mark except
11 pursuant to a lawful license or with the express authority of plaintiff. And further directing
12 each defendant to destroy all unauthorized copies of plaintiff's motion pictures.
13
14 B. For plaintiff's reasonable costs and attorney fees pursuant to ORS 647.105(2).
15
16 C. For such other and further relief as the Court deems proper.

17 DATED: April 3, 2014.

18 Respectfully submitted,

19 CROWELL LAW

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