

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CYCLOPIAN MUSIC, INC., JERRY CAIAFA
p/k/a JERRY ONLY and JOHN CAFIERO

Plaintiffs,

Civil Action No. 08-202

-VS-

Electronically Filed

DOUG CUSTER, a/k/a DOUG EVIL,

JURY TRIAL DEMANDED

Defendant.

FIRST AMENDED COMPLAINT

Plaintiffs Cyclopien Music, Inc. ("Cyclopien"), Jerry Caiafa, p/k/a Jerry Only and John Cafiero (collectively "Plaintiffs"), by and through their undersigned counsel, respectfully submit this First Amended Complaint against Defendant Doug Custer a/k/a Doug Evil ("Defendant").

NATURE OF THE ACTION

1. This is an action for copyright infringement in violation of the Copyright Act of the United States, 17 U.S.C. § 101 *et seq.* (the "Copyright Act"), misrepresentation in violation of the Digital Millennium Copyright Act, 17 U.S.C. § 512(f) ("DMCA"), and trademark infringement and unfair competition in violation of the Lanham Act, 15 U.S.C. 1051 *et seq.*, defamation, and false light arising from Defendant's: (a) willful exploitation, reproduction, public display and digital uploading of Mr. Cafiero's and Mr. Caiafa's copyrighted works (including, but not limited to, audiovisual works, musical compositions and sound recordings); (b) knowing misrepresentation to YouTube.com that Defendant was the owner of Mr. Cafiero's copyrighted audiovisual work entitled "Misfits Re-Animated;" (c) willful infringement and exploitation of Cyclopien's federally registered "MISFITS" trademarks; and (d) knowingly false and malicious statements regarding the ownership of Plaintiffs' intellectual property rights and

Plaintiffs generally that have defamed and placed Plaintiffs in a false light, causing irreparable harm to Plaintiffs' professional reputation in the entertainment industry.

2. Beginning in or around late-2005, Defendant launched an unprovoked attack on Mr. Cafiero's personal and professional credibility by posting on the Internet numerous false, harassing and defamatory statements about Mr. Cafiero.

3. Specifically, Defendant began his attack by falsely accusing Mr. Cafiero of "erasing" Defendant's name and copyright notice from certain video footage, stealing Defendant's alleged copyrighted material, using that material for Mr. Cafiero's own gain, supposedly "enjoy[ing] the fruits of [Defendant's] labor," and generally claiming that Mr. Cafiero "ripped" him off. All of these statements are patently false.

4. Upon information and belief, Defendant continued his assault on Mr. Cafiero's business credibility by posting false and defamatory statements on Internet message boards under various aliases, including Doug Evil, Travis Crabtree and Wayne Sneigal. The false and defamatory statements again included claims that Mr. Cafiero stole Defendant's copyrighted material and that Mr. Cafiero plagiarized Defendant's work.

5. Upon information and belief, Defendant escalated his harassing conduct towards Mr. Cafiero by attacking him personally through more false statements. Among other things, Defendant posted numerous homosexual slurs referring to Mr. Cafiero, who is not a homosexual, outright fraudulent quotes that Defendant attributed to Mr. Cafiero and derogatory and vulgar comments regarding Mr. Cafiero's band, OSAKA POPSTAR. In many of these same internet postings, Defendant made and/or posted similar derogatory and vulgar comments and images of Mr. Caiafa.

6. Defendant's harassing conduct and cyber-stalking has continued to intensify and expanded to include the copyright infringement and false and defamatory statements alleged herein.

7. Defendant's infringement of Messrs. Cafiero and Caiafa's copyrighted works and Cyclopien's federally-registered marks is a continuation and latest tactic in furtherance of Defendant's pattern of abusive and harassing misconduct against Plaintiffs. Defendant has willfully and maliciously exploited Messrs. Cafiero and Caiafa's copyrighted works and Cyclopien's federally-registered marks to attempt to gain attention, particularly among the passionate fans of THE MISFITS, for his long-running grudge and character assassination against Plaintiffs.

8. As a result of Defendant's willful infringement of Plaintiffs' intellectual property and defamatory statements about Plaintiffs, Plaintiffs have been and will continue to be irreparably harmed.

THE PARTIES

9. Plaintiff Cyclopien Music, Inc. is a New Jersey corporation having its principal place of business in Vernon, New Jersey.

10. Plaintiff Jerry Caiafa is a founding member of the seminal punk rock band, THE MISFITS and the only constant member of the band throughout its existence spanning nearly three decades. Over that time, Mr. Caiafa has become a legendary persona in punk rock music. Mr. Caiafa also is the principal of Cyclopien, which owns the exclusive right to publicly perform and record as THE MISFITS. In that connection, Cyclopien owns numerous federally-registered

trademarks in THE MISFITS in a myriad of classes of goods and services. Mr. Caiafa is a resident of the State of New Jersey.

11. Plaintiff John Cafiero is, and for over a decade has been, a successful artist, musician, producer, director and businessman in the entertainment industry. Among other things, Mr. Cafiero has directed films and videos that have ranked at the top of the Billboard charts and received gold and platinum certification from the Recording Industry Association of America. Since in or around 2000, Mr. Cafiero has managed THE MISFITS. From in or around 1997 through 2000, Mr. Cafiero was the creative director of THE MISFITS. Currently, Mr. Cafiero serves on the board of directors of, and co-manages, the RAMONES—an icon in punk rock music and member of the Rock and Roll Hall of Fame. Mr. Cafiero also manages the estate of the RAMONES' legendary guitarist, Johnny Ramone. In addition to his work with THE MISFITS, the RAMONES, and other high-profile entertainment properties, Mr. Cafiero currently is the creator and lead singer of Warner Bros. recording artist, OSAKA POPSTAR. Mr. Cafiero is a resident of the State of New York.

12. Defendant Doug Custer, a/k/a Doug Evil, is, upon information and belief, an individual residing at 293 Main St., Osterburg, Pennsylvania 16667.

JURISDICTION AND VENUE

13. This Court has personal jurisdiction over Defendant because, upon information and belief, Defendant resides in this judicial district. In addition, Defendant consented to this Court's jurisdiction under Section 512(g)(3)(D) of the DMCA.

14. This Court has original jurisdiction over the subject matter of the claims herein under the Copyright Act, 17 U.S.C. § 101 *et seq.*, the DMCA, 17 U.S.C. § 512, and the Lanham Act, 15 U.S.C. § 1051 *et seq.*, pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. § 1367.

15. Venue is properly founded in this judicial district pursuant to, *inter alia*, 28 U.S.C. § 1391(b)(1).

FACTUAL BACKGROUND

A. Cyclopien's Intellectual Property Rights

16. Cyclopien has the exclusive, world-wide right to publicly perform and record as the MISFITS.

17. For more than a decade, Cyclopien has exercised this right both domestically and internationally through the release of numerous music albums and singles and the promotion of live concert tours globally.

18. At the same time, Cyclopien has developed an extensive MISFITS merchandise licensing program ancillary to the MISFITS' popularity and success as an active musical group.

19. In connection with these MISFITS-related activities, Cyclopien is the exclusive owner of numerous common law and federally-registered trademark rights in the MISFITS name and related designs, logos, and artwork, including, but not limited to, U.S. Registration No. 2,634,215, for the word mark "MISFITS" for, among other things, musical sound recordings,

and musical entertainment services, and U.S. Registration No. 2,735,848 for the design mark



for, among other things, musical sound recordings and prerecorded audio and video tapes (collectively, the “MISFITS Marks”). Cyclopien’s registrations for the MISFITS Marks are valid and subsisting.

20. Cyclopien has and continues to actively exploit its rights in the MISFITS Marks through myriad types of goods and services including, but not limited to, live performances and musical entertainment programs for television and internet and through the sale of numerous categories of merchandise including, but not limited to, pre-recorded audiotapes and videotapes, apparel, accessories, footwear, skate boards, jewelry, books, and magazines.

21. As a result of Cyclopien’s long, extensive and widespread use, advertising and promotion of its MISFITS Marks, including in connection with musical entertainment services and goods, the MISFITS Marks have become uniquely and exclusively associated with Cyclopien and THE MISFITS and have become indelibly linked in the public’s mind in exclusive association with and in exclusive sponsorship by Cyclopien and THE MISFITS

22. The goodwill, popularity, and recognition of the MISFITS Marks is the direct result of Cyclopien’s development, marketing, and promotion of the MISFITS Marks and the substantial time and money investment made by Cyclopien. This goodwill, popularity, and recognition is precisely why Defendant has chosen to exploit and trade on Cyclopien’s MISFITS Marks in connection with his online activities and statements as described herein.

B. Mr. Caiafa's Intellectual Property Rights

23. As noted above, Mr. Caiafa is a founding member of THE MISFITS and the only constant member of the group throughout its existence spanning nearly three decades.

24. In addition to performing as a member of THE MISFITS, Mr. Caiafa is the owner of numerous copyrights in and to musical sound recordings and musical compositions of THE MISFITS.

25. As pertinent here, in or around 1996, Mr. Caiafa created, and owns the copyrights in and to, the musical sound recording and musical composition of a MISFITS song entitled "Mars Attacks." This work is copyrightable subject matter under the laws of the United States.

26. Mr. Caiafa has complied in all respects with the Copyright Act of the United States and all other laws governing copyright, and secured the exclusive right and privilege in and to the copyright of the "Mars Attacks" work. Mr. Caiafa received from the Register of Copyrights a certificate of registration for the work "Mars Attacks", U.S. Copyright No. PAu002063264, having an effective date of February 22, 1996. A printout of U.S. Copyright No. PAu002063264 from the U.S. Copyright Office's website at www.copyright.gov is attached at Exhibit 1.

C. Mr. Cafiero's Intellectual Property Rights

27. In or around 1997, Mr. Cafiero created and produced an animated audio-visual program entitled "Misfits Re-Animated." This work is copyrightable subject matter under the laws of the United States.

28. The “Misfits Re-Animated” program contained certain artwork by various individuals, including, among others, Defendant. On July 19, 1996, Defendant signed a release, acknowledging that the “Misfits Re-Animated” program in its “produced, directed, shot, edited final form as it exists on video tape” is the sole property of Cheese TV—the name of an entertainment property created and owned by Mr. Cafiero. Defendant further acknowledged that “[a]fter its debut, the animation remains the sole (c.) property of Cheese TV and cannot be used by any other television program or broadcast medium, including music videos without the involvement and/or the written authorization of Cheese TV and/or Producer / Director John Cafiero.” A copy of the release signed by Defendant is attached at Exhibit 2.

29. Mr. Cafiero obtained similar releases from other individuals who contributed to the “Misfits Re-Animated” program.

30. Mr. Cafiero was granted a license by Mr. Caiafa with respect to THE MISFITS music, trademarks, likenesses, and other intellectual property used in connection with the “Misfits Re-Animated” program, including, but not limited to, the copyrights to Mr. Caiafa’s “Mars Attacks” sound recording and composition which is used as the background music for the “Misfits Re-Animated” program, THE MISFITS mark used in the title of the program, and rights owned by Mr. Caiafa to the likenesses and drawings of THE MISFITS that were depicted in the program.

31. Mr. Cafiero has complied in all respects with the Copyright Act and all other laws governing copyright, and secured the exclusive right and privilege in and to the copyright of the “Misfits Re-Animated” program. Mr. Cafiero received from the Register of Copyrights a certificate of registration for the work “Misfits Re-Animated”, U.S. Copyright No. PA U2-177-

673, having an effective date of February 7, 1997. A copy of the Certificate of Registration for the work "Misfits Re-Animated" is attached at Exhibit 3.

32. Aside from a brief clip of the "Misfits Re-Animated" program that aired on the MTV network in 1997 to promote a music video of THE MISFITS (that was also directed by Mr. Cafiero), the "Misfits Re-Animated" program was never released to the public. Because the video had never been publicly released in its entirety, and because THE MISFITS have particularly passionate fans for whom such unique MISFITS-related materials create special interest, the initial public release of the "Misfits Re-Animated" program is a valuable and potentially-lucrative commodity.

D. Defendant's Infringing Conduct

33. Upon information and belief, Defendant participates in various online forums such as YouTube.com and MisfitsCentral.com, and social networking websites such as MySpace.com, under different aliases, including, but not limited to Doug Evil, FestivalPublishing, and Travis Crabtree.

34. Using these and other aliases, Defendant has uploaded the MTV clip as well as the complete "Misfits Re-Animated" program to various internet websites, including YouTube.com, MisfitsCentral.com, MySpace.com, and megaupload.com.

35. By uploading the program, Defendant has exploited, reproduced and/or publicly displayed Mr. Caiafa's "Mars Attacks" copyrighted work and Mr. Cafiero's "Misfits Re-Animated" copyrighted work without their authorization or consent.

36. At no time has Messrs. Caiafa or Cafiero given Defendant a license or other form of express or implied authorization or consent for Defendant's display of their copyrighted works.

37. Defendant's infringement was the first public release of the complete "Misfits Re-Animated" program. In fact, Defendant posted statements on the internet in which he acknowledged that the "Misfits Re-Animated" program had never previously been publicly released in its entirety. As a result, Mr. Cafiero was deprived of his rights as the copyright owner to release the program at a time and in a manner of his choosing and to receive the economic benefits associated with such an initial release.

38. Defendant's infringement of Messrs. Caiafa and Cafiero's copyrights was willful. Upon removal of Defendant's first upload of the "Misfits Re-Animated" program to megaupload.com and MisfitsCentral.com at the insistence of Plaintiffs' counsel, Defendant re-uploaded the infringing material to megaupload.com and MisfitsCentral.com and encouraged others to "get it and host it on your own YouTube and Myspace sites."

39. Defendant also encouraged further copyright infringement in connection with uploading the complete "Misfits Re-Animated" program at YouTube.com by stating "[p]lease download this video and host it on your own channel." Later, after YouTube.com disabled Defendant's posting of the "Misfits Re-Animated" program at the insistence of Plaintiffs' counsel, Defendant again stated "[p]lease contact me to get a download of [the "Misfits Re-Animated"] video to host on your own channel!"

40. In addition to Defendant's infringement of Messrs. Cafiero and Caiafa's copyrighted works, Defendant's unauthorized release of "Misfits Re-Animated" unlawfully

trades on and/or exploits Cyclopiant's MISFITS marks in a manner likely to confuse or deceive consumers that Defendant's use of the MISFITS Marks was sponsored, authorized or approved by Cyclopiant or that Defendant is somehow affiliated, connected and/or associated with Cyclopiant.

41. At no time has Cyclopiant' given Defendant a license or other form of express or implied approval or consent for Defendant's use of the MISFITS Marks for any purpose whatsoever.

42. Defendants' use of the MISFITS Marks without authorization to do so constitutes a willful violation of the Lanham Act.

E. Defendant's Defamatory Statements

43. In addition to Defendant's willful infringement of Plaintiffs' intellectual property, Defendant's online postings on the internet, including, but not limited to, at YouTube.com, MisfitsCentral.com, and MySpace.com contained false and defamatory statements regarding Mr. Cafiero.

44. Specifically, in connection with his uploading of the "Misfits Re-Animated" program to YouTube.com under the alias FestivalPublishing, Defendant posted the following:

"The Misfits as animated characters are © 1994/2008 J. Only/D. Evil. The content shown here is property of Festival Publishing. The copyright attributed to John Cafiero/ Cheese T.V. has been falsely labeled as I have never given Cafiero rights to my animation and/or characters for exclusive use by him or his company. The names 'Skully', 'Baby', etc. were given to my characters by Cafiero as well."

45. Defendant has also claimed on YouTube.com that he is “the owner of this material [Misfits Re-Animated].”

46. Additionally, in connection with the upload of an animated video entitled “120 Minutes” Fall 1997 Cartoon to YouTube.com, Defendant stated that he “created the animation and initiated the process of having the ‘Dig Up her Bones’ [MISFITS] video made” and that his “work had been distributed without my name credited” by Mr. Cafiero.

47. Defendant’s statements are false and reflect negatively on the personal and professional reputation of Mr. Cafiero.

48. Defendant made such false statements with actual malice and/or with knowledge that his statements were false at the time they were made or with reckless disregard as to the truth or falsity of the statements.

49. On July 15, 2008, Plaintiffs’ counsel electronically filed copyright complaints using YouTube.com’s Copyright Complaint Form. The complaints listed the URL addresses where Defendant had uploaded the “Misfits Re-Animated” program which infringed Messrs. Cafiero and Caiafa’s intellectual property rights.

50. On July 16, 2008, Plaintiffs’ counsel sent an email message to copyright@youtube.com identifying those same URL addresses where Defendant uploaded the “Misfits Re-Animated” program that infringe Messrs. Cafiero and Caiafa’s intellectual property rights and requested that YouTube.com disable access to the infringing content pursuant to the DMCA, 17 U.S.C. § 512(c).

51. On or about July 17, 2008, YouTube.com disabled access to the listed infringing material uploaded by Defendant.

52. On July 17, 2008, Defendant submitted a DMCA Counter-Notification (the "Counter-Notification") to YouTube.com under 17 U.S.C. § 512(d), representing himself to be the rightful owner of the intellectual property contained within the listed uploads and accusing "the party who has filed the infringement case" of committing "perjury."

53. The statements made by Defendant in the Counter-Notification are false and misleading and harm the personal and professional reputation of Mr. Cafiero.

54. Defendant made such false statements with actual malice and/or with knowledge that his statements were false at the time they were made or with reckless disregard as to the truth or falsity of the statements.

55. As a direct result of Defendant's false statements in the Counter-Notification, Plaintiffs incurred the cost of preparing and filing a federal complaint against Defendant for the infringement of Messrs. Cafiero and Caiafa's intellectual property.

F. Defendant's Ongoing Harassment of Messrs. Cafiero and Caiafa

56. Defendant's infringement of Plaintiffs' intellectual property and false and defamatory statements about Mr. Cafiero in that regard, are simply the latest incidents in a pattern of abusive and harassing misconduct that Defendant has directed against Messrs. Cafiero and Caiafa.

57. In late-2005, Defendant began his abusive and harassing actions directed toward Mr. Cafiero on Internet message boards. Defendant posted a message that stated, among other things, that Mr. Cafiero “erase[d] my name and my copyright from the footage [Mr. Cafiero] put in [his] demo reel and shopped around” and that Mr. Cafiero “left a really, really clear trail of blatantly ripping people off.” Defendant went on to state regarding Mr. Cafiero, “some of your earliest personal achievements were really my personal achievements.” Revealing his malicious intent against Mr. Cafiero, Defendant also stated, “if I ever were so inclined I could do a lot of damage.”

58. In mid-2006, Defendant continued his false accusations against Mr. Cafiero on his MySpace.com page and accused Mr. Cafiero of plagiarism in a post on a message board under his alias Travis Crabtree. Specifically, Defendant stated the following: “<http://en.wikipedia.org/wiki/Plagiarism>. This also may help you understand who John Cafiero is.”

59. Defendant followed that post a week later by again claiming that Mr. Cafiero stole his copyrighted material. Defendant, again as Travis Crabtree, stated “you should see the proof that [Mr. Cafiero] removed copyrights and credits off video material and passed them on to Geffen Records as solely his own.”

60. However, Defendant was not satisfied with simply harassing Mr. Cafiero with false and defamatory claims directed at his alleged copyrighted material. In or around early-2008, Defendant launched a blog on the internet at thumblogger URL <http://osukapapsmear.thumblogger.com>. As suggested by the internet address, which is a vulgar and disparaging manipulation of the name of Mr. Cafiero’s band, OSAKA POPSTAR, the blog

is a forum for Defendant to publish offensive, vile, and vulgar disparagements regarding Messrs. Cafiero and Caiafa and to encourage others to do the same.

61. On the opening page of the blog, Defendant has prominently depicted the name “Osuka Papsmear” identical to the stylized depiction of the OSAKA POPSTAR trademark that is registered with the U.S. Patent and Trademark Office. Defendant also has depicted various vulgar and graphic images protruding from the name “Osuka Papsmear.” Immediately below the name “Osuka Papsmear,” in a clear reference to Mr. Cafiero and his band, OSAKA POPSTAR, Defendant has depicted the slogan, “Lie, Steal . . . It’s Alright!”—a reference to the lyrics of an OSAKA POPSTAR song that have been taken out-of-context.

62. The blog also depicts the likenesses and images of Messrs. Cafiero and Caiafa in association with the name “Osuka Papsmear” and the slogan “Lie, Steal . . . It’s Alright!” Specifically, Defendant depicts various offensive and derogatory graphic images of Mr. Cafiero as effeminate and wearing women’s clothing and accessories (including sex toys) in an unmistakable attempt to portray Mr. Cafiero as a homosexual, which he is not. Defendant also depicts various offensive and derogatory graphic images of Mr. Caiafa, including an image of Mr. Caiafa urinating on himself.

63. Immediately below the graphic images of Mr. Cafiero is certain text that refers to Mr. Cafiero as a “swishy manager—slash—director—slash—writer—fluff girl.” “Fluff girl” is a highly derogatory term associated with pornography and pornographic films.

64. In fact, acknowledging the legal impropriety of his conduct, Defendant expressly posts on the blog, “Please DO NOT show this blog to any lawyers.”

65. Defendant made similar postings on MySpace.com, including the following statement in one blog, "Lies, Deception, Fraud, Fakers, Phonies . . . the **true story** of a not so great Rock 'n Roll swindle Osuka Papsmear."

66. In connection with Defendant's infringing uploading of Plaintiffs' intellectual property on YouTube.com, Defendant has made use of various "tags" to further his harassment of Mr. Cafiero. "Tags" are keywords that can be used to describe a video that has been uploaded on YouTube.com. YouTube.com's search engine then sorts through the "tags" in response to search requests from YouTube.com users to identify and locate content by a particular artist or involving a particular subject matter.

67. Specifically, Defendant uses, among other things, the "tags" "Osuka Papsmear," "John Cafiero," and "Cafiero Gay" to describe the "Misfits Re-Animated" program. Thus, a YouTube.com user who searches for material by "John Cafiero" would be directed to Defendant's infringing posting. Defendant also has posted his thumblogger URL <http://osukapapsmear.thumblogger.com> in conjunction with his infringing posting of the "Misfits Re-Animated" program on YouTube.com to link to his malicious and unlawful conduct directed towards Mr. Cafiero and to attempt to increase traffic to his harassment of Mr. Cafiero on <http://osukapapsmear.thumblogger.com>.

68. Such portrayals of Mr. Cafiero are false, defamatory, and offensive, and intended to reflect negatively on the personal and professional reputation of Mr. Cafiero.

69. Even after the initial filing of this lawsuit, Defendant has continued to post false, defamatory and vulgar statements regarding Mr. Cafiero on the internet. For example, upon information and belief, on April 15, 2009 Defendant posted on an Osuka Papsmear page on

MySpace.com, intending to make it appear as if the post came from Mr. Cafiero, "The truth is I do like having sex with underage children, and sometimes the truth hurts, especially if you are on the receiving end." Upon information and belief, on the same MySpace.com page Defendant also posted a photograph of Mr. Cafiero in which Mr. Cafiero is giving a "thumbs up" sign with the vulgar and defamatory statement underneath, "Thumbs up 11 year old butts!"

70. Mr. Caifa has similarly been a target of Defendant's false, defamatory and vulgar postings. Among other things, upon information and belief, on the Osuka Papsmear page of MySpace.com Defendant listed the "Band Members" of Osuka Papsmear as "John Cafiero and Verry Jerry Only" and posted under the heading "Upcoming Shows" the false and defamatory statement "Bangkok Child Molester and Comic Book Convention." Defendant further posted under the heading "Influences" the false and defamatory statement "Anything we can steal and claim as our own."

71. MySpace.com officials have been disturbed by the posting of this type of offensive materials and have monitored and removed any such materials upon discovery.

72. Upon information and belief, Defendant also has conspired with third parties, including, but not limited to, disgruntled former-MISFITS employee, Michael C. Emanuel a/k/a Michale Graves, to post additional false and defamatory statements on the internet regarding Messrs. Cafiero and Caiafa.

73. Defendant made such false statements with actual malice and/or with knowledge that his statements were false at the time they were made or with reckless disregard as to the truth or falsity of the statements.

74. Because of Defendant's violations of Plaintiffs' copyright and trademark rights and because of Defendant's false, misleading, and defamatory statements regarding ownership of that intellectual property and Plaintiffs generally, Plaintiffs seek a permanent injunction from this Court enjoining Defendant from using, exploiting, displaying, or in any way trading on Plaintiffs' intellectual property rights. Separately, Plaintiffs seek to recover damages, including, but not limited to, statutory damages, attorneys' fees, and the costs of litigation in accordance with federal and state law.

COUNT I – COPYRIGHT INFRINGEMENT

75. Plaintiffs incorporate herein by reference each of the foregoing allegations as if fully set forth at length.

76. Plaintiff John Cafiero is the owner of federal Copyright Registration No. PA U2-177-673 for the animated program "Misfits Re-Animated."

77. Defendant has, unlawfully and without consent, exploited, reproduced and/or publicly displayed Mr. Cafiero's copyrighted work in violation of Mr. Cafiero's exclusive rights as the copyright owner of the work.

78. Defendant's infringement of Mr. Cafiero's copyright was willful.

79. Defendant's misconduct has injured Mr. Cafiero in an amount to be determined at trial.

80. Defendant's misconduct has caused and will continue to cause irreparable injury to Mr. Cafiero, for which he has no adequate remedy at law.

COUNT II – COPYRIGHT INFRINGEMENT

81. Plaintiffs incorporate herein by reference each of the foregoing allegations as if fully set forth at length.

82. Plaintiff Jerry Caiafa is the owner of federal Copyright Registration No. PAu002063264 for the sound recording and musical composition for the song titled “Mars Attacks.”

83. Defendant has, unlawfully and without consent, exploited, reproduced and/or publicly displayed Mr. Caiafa’s copyrighted work in violation of Mr. Caiafa’s exclusive rights as the copyright owner of the work.

84. Defendant’s infringement of Mr. Caiafa’s copyright was willful.

85. Defendant’s misconduct has injured Mr. Caiafa in an amount to be determined at trial.

86. Defendant’s misconduct has caused and will continue to cause irreparable injury to Mr. Caiafa, for which he has no adequate remedy at law.

COUNT III – MISREPRESENTATION IN VIOLATION OF 17 U.S.C. § 512(g)

87. Plaintiffs incorporate herein by reference each of the foregoing allegations as if fully set forth at length.

88. In his Counter-Notification submitted pursuant to 17 U.S.C. § 512, Defendant materially misrepresented himself to be the rightful owner of the intellectual property contained in video clips which Defendant uploaded to YouTube.com.

89. Defendant's misrepresentations were made knowingly.

90. Plaintiffs have been injured by Defendant's misrepresentation in that they were required to incur the expense of initiating litigation against Defendant pursuant to the DMCA, in order to prevent YouTube.com from reinstating access to the infringing materials.

COUNT IV - DEFAMATION

91. Plaintiffs incorporate herein by reference each of the foregoing allegations as if fully set forth at length.

92. Defendant made and published the false and defamatory statements described herein regarding Plaintiffs' intellectual property rights, including, but not limited to, false assertions that Mr. Cafiero's claim of ownership to the copyright in the "Misfits Re-Animated" program was somehow improper, as well as false accusations of perjury and other criminal conduct.

93. Defendant's statements are false and attribute to Plaintiffs business misconduct by ascribing to them conduct, character, or a condition that would adversely affect their fitness for the proper conduct of their lawful business, trade, or profession.

94. Defendant's statements further falsely impute criminal conduct to Plaintiffs.

95. Defendant's statements harmed Plaintiffs in that it impaired their reputation and standing in the community, and caused them personal humiliation, mental anguish, and/or suffering.

96. Defendant made such false statements with actual malice and/or with knowledge that his statements were false at the time they were made or with reckless disregard as to the truth or falsity of the statements.

97. Defendant's actions involved outrageous conduct that is the result of Defendant's bad motive and ill will toward Plaintiffs, and/or reckless indifference to Plaintiffs' rights.

COUNT V – FALSE LIGHT

98. Plaintiffs incorporate herein by reference each of the foregoing allegations as if fully set forth at length.

99. Defendant made and published the false statements described herein regarding Plaintiffs that tend to portray Plaintiffs in a false light.

100. A reasonable person would find such statements to be highly offensive.

101. Defendant's statements would tend to cause mental suffering, shame, or humiliation to a person of ordinary sensibilities.

102. Defendant made such false statements with actual malice and/or with knowledge that his statements were false at the time they were made or with reckless disregard as to the truth or falsity of the statements.

103. Defendant's actions involved outrageous conduct that is the result of Defendant's bad motive and ill will toward Plaintiffs and/or reckless indifference to Plaintiffs' rights.

**COUNT VI – TRADEMARK INFRINGEMENT UNDER SECTION 32 OF THE
LANHAM ACT**

104. Plaintiffs incorporate herein by reference each of the foregoing allegations as if fully set forth at length.

105. Plaintiff Cycloplan is the owner of federally-registered rights in the MISFITS Marks as describe herein.

106. Defendant's unauthorized use and release of "Misfits Re-Animated" unlawfully trades on and/or exploits Cycloplan's MISFITS Marks in a manner likely to confuse or deceive consumers that Defendant's use of the MISFITS Marks was sponsored, authorized or approved by Cycloplan or that Defendant is somehow affiliated, connected and/or associated with Cycloplan. Cycloplan has been substantially injured as a result.

107. The aforementioned acts of Defendant were willful and intentional and were undertaken in a deliberate effort to cause confusion and mistake among the public as to the source, affiliation and/or sponsorship of said acts, and to gain for Defendant the benefit of the goodwill associated with Cycloplan's MISFITS Marks.

108. Defendant has engaged in trademark infringement in violation of § 32 of the Lanham Act, 15 U.S.C. § 1114.

109. The threat of the loss of Cycloplan's right to control and exploit the use of its MISFITS Marks and the substantial reputation, goodwill, and indelible association with Cycloplan of its goods and services is real and substantial.

110. Defendant's misconduct has injured Cycloplan in an amount to be determined at trial. Defendant's misconduct also has caused and will continue to cause irreparable injury to Cycloplan, for which Cycloplan has no adequate remedy at law.

COUNT VII – FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION
UNDER SECTION 43 OF THE LANHAM ACT

111. Plaintiffs incorporate herein by reference each of the foregoing allegations as if fully set forth at length.

112. Plaintiff Cycloplan is the owner of federally-registered and common law rights in the MISFITS Marks as describe herein.

113. As described herein, Defendant has made use of the MISFITS Marks, and/or other words, terms, names, symbols or devices, or any combination thereof, false designation of origin, false or misleading descriptions of fact, or false or misleading representations of fact in a manner likely to confuse or deceive consumers that Defendant's use of the MISFITS Marks was sponsored, authorized or approved by Cycloplan or that Defendant is somehow affiliated, connected and/or associated with Cycloplan. Cycloplan has been substantially injured as a result of Defendant's violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

114. The threat of the loss of Cycloplan's right to control and exploit the use of its MISFITS Marks and the substantial reputation, goodwill, and indelible association with Cycloplan of its goods and services is real and substantial.

115. Defendant's misconduct has injured Cycloplan in an amount to be determined at trial. Defendant's misconduct also has caused and will continue to cause irreparable injury to Cycloplan, for which Cycloplan has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs respectfully request that this Court award the following relief:

1. A permanent injunction enjoining and restraining Defendant Doug Custer and all others acting in concert therewith or having knowledge thereof from publicly displaying or otherwise exploiting any copyrighted works owned by Plaintiffs.
2. A permanent injunction enjoining and restraining Defendant Doug Custer and all others acting in concert therewith or having knowledge thereof from defaming or otherwise disparaging Plaintiffs.
3. All damages sustained by Plaintiffs as a result of Defendant's wrongful acts.
4. Statutory damages as a result of Defendant's wrongful acts.
5. Treble damages stemming from Defendant's willful acts.
6. Plaintiffs' costs and attorneys' fees and expenses of litigation, together with prejudgment interest.
7. All such other and further relief as this Court deems just and appropriate.

JURY TRIAL DEMANDED

Respectfully submitted,

/s/ Christopher M. Verdini
Curtis B. Krasik
Christopher M. Verdini
K&L Gates LLP
Henry W. Oliver Building
535 Smithfield Street
Pittsburgh, PA 15222
(412) 355-6500 – phone
(412) 355-6501 – facsimile

Dated: May 28, 2009

Attorneys for Plaintiffs

Exhibit 1

Copyright

United States Copyright Office

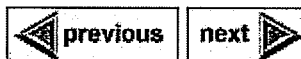
[Help](#)[Search](#)[History](#)[Titles](#)[Start Over](#)

Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Copyright Number = pau002063264

Search Results: Displaying 1 of 1 entries

[Labeled View](#)*Mars attacks.***Type of Work:** Music**Registration Number / Date:** PAu002063264 / 1996-02-22**Title:** Mars attacks.**Description:** Sound cassette + lyrics sheet.**Notes:** Words & music.**Copyright Claimant:** Jerry Caiafa 2nd, 1985-**Date of Creation:** 1996**Names:** Caiafa, Jerry 2nd, 1985-**Save, Print and Email (Help Page)**

Select Download Format	<input type="button" value="Full Record"/>	<input type="button" value="Format for Print/Save"/>
Enter your email address:	<input type="text"/>	<input type="button" value="Email"/>

[Help](#) [Search](#) [History](#) [Titles](#) [Start Over](#)

[Contact Us](#) | [Request Copies](#) | [Get a Search Estimate](#) | [Frequently Asked Questions \(FAQs\) about Copyright](#)
| [Copyright Office Home Page](#) | [Library of Congress Home Page](#)

Type of Work: Music

Registration Number / Date:

PAu002063264 / 1996-02-22

Title: Mars attacks.

Description: Sound cassette + lyrics sheet.

Notes: Words & music.

Copyright Claimant:

Jerry Caiafa 2nd, 1985-

Date of Creation: 1996

Names: Caiafa, Jerry 2nd, 1985-

=====

Exhibit 2

FROM : WAYNE J CUSTER
JUL-19-96 FRI 14:00

BV EDIT NYC

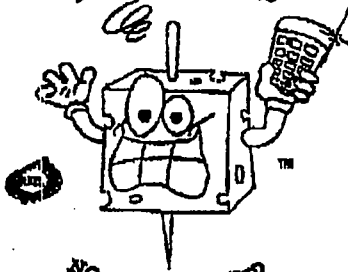
FAX NO. 12127131535

PHONE NO. : 814 754 8033

P.01

CHEESE TV
NON-HOMOGENIZED

P.O. BOX 560, RADIO CITY STATION, NEW YORK, NY 10101-0560
(212) 388-7087



in

CHEESE TV

"MISFITS: THE ANIMATED SERIES" segment is currently in development *exclusively* for "CHEESE TV".

I the undersigned hereby authorize the use of the MISFITS name, logo, characters, names, artwork, music etc. for use in/broadcast on CHEESE TV. This includes any advertisements/connected promotion for the program.

I understand that there will be no financial compensation for such use. This term holds for this segment however, financial terms will be arranged for future segments upon launch of the series CHEESE TV as well as the launch of the "MISFITS: THE ANIMATED SERIES" within CHEESE TV.

I the undersigned hereby agree to the following terms:
This animated segment is being created *exclusively* for the launch of "MISFITS: THE ANIMATED SERIES" on CHEESE TV and is to be used solely for this purpose and this program. The characters as well as the MISFITS music used within the cartoon remain the property of the legal (c.) owners Doug Evil, Jerry Only etc.. However, the animation in its produced, directed, shot, edited final form as it exists on video tape, is the sole (c.) property of CHEESE TV.

Demo reels, opening up live concert performances etc. would all be acceptable uses after and only after its *exclusive* television broadcast debut on CHEESE TV. After its debut, the animation remains the sole (c.) property of CHEESE TV and cannot be used by any other television program or broadcast medium, including music videos without the involvement and or the written authorization of CHEESE TV and/or Producer/Director John Caffero.

Wayne J. Custer
Signature

7/19/96
Date

DOUG E. CUSTER
Print Name

cc: John Caffero, Ken Caifa, Doug E. Custer, Jerry Only



all the fellow love cheese

the galagator is too



Exhibit 3

CERTIFICATE OF REGISTRATION



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters
REGISTER OF COPYRIGHTS
United States of America

FORM PA
For a Work of the Performing Arts
UNITED STATES COPYRIGHT OFFICE

PAU 2-177-673



EFFECTIVE DATE OF REGISTRATION

FEB 07 1997

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼

"MISFITS RE-ANIMATED"

PREVIOUS OR ALTERNATIVE TITLES ▼

NATURE OF THIS WORK ▼ See instructions

ANIMATED VIDEO & WRITTEN TEXT

NAME OF AUTHOR ▼

JOHN CAFIERO

Was this contribution to the work a "work made for hire"?

☐ Yes
☒ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

 OR { Citizen of ►
 Domiciled in ►

USA

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

1968

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☒ NoPseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions

NATURE OF AUTHORSHIP Briefly describe the nature of material created by this author in which copyright is claimed. ▼

PRODUCER, DIRECTOR, WRITER, DEVELOPER

NAME OF AUTHOR ▼

Was this contribution to the work a "work made for hire"?

☐ Yes
☒ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

 OR { Citizen of ►
 Domiciled in ►

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☒ NoPseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

Was this contribution to the work a "work made for hire"?

☐ Yes
☒ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

 OR { Citizen of ►
 Domiciled in ►

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☒ NoPseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

1997

This information must be given in all cases.

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Complete this information ONLY if this work has been published.

Month ►

Day ►

Year ►

Nabon

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

JOHN CAFIERO

CONFIDENTIAL INFO

APPLICATION RECEIVED

FEB. 07. 1997

ONE DEPOSIT RECEIVED

FEB. 07. 1997

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

MORE ON BACK ►

- Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
- See detailed instructions.
- Sign the form at line 8

DO NOT WRITE HERE

Page 1 of 2 pages

1



066512935

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part and leave the space for dates of birth and death blank.

3

4

See instructions before completing this space

EXAMINED BY

QMA/LLG

FORM PA

CHECKED BY

CORRESPONDENCE

Yes

FOR
COPYRIGHT
OFFICE
USE
ONLY**DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.****PREVIOUS REGISTRATION** Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

- a. ☐ This is the first published edition of a work previously registered in unpublished form.
- b. ☐ This is the first application submitted by this author as copyright claimant.
- c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

See instructions
before completing
this space

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

JOHN CAFIERO

CONFIDENTIAL INFO

JOHN CAFIERO

CHEESE TV

P.O. Box 560, Radio City Station
New York, NY 10101-0560

Area Code and Telephone Number ▼

CONFIDENTIAL INFO

(212) 353-7087

Be sure to
give your
daytime phone
number**CERTIFICATION*** I, the undersigned, hereby certify that I am the

Check only one ▼

☒ author☐ other copyright claimant☐ owner of exclusive right(s)☐ authorized agent of

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 7, do not sign and submit it before that date.

JOHN CAFIERO

date 2/5/97

Handwritten signature (X) ▼

**MAIL
CERTIFI-
CATE TO**

Name ▼

JOHN CAFIERO

Number/Street/Apartment Number ▼

CONFIDENTIAL INFO

City/State/ZIP

CONFIDENTIAL INFO

Certificate
will be
mailed in
window
envelope**YOU MUST:**
• Complete all necessary spaces
• Sign your application in space 8**SEND ALL 3 ELEMENTS
IN THE SAME PACKAGE:**

1. Application form
2. Nonrefundable \$20 filing fee in check or money order payable to Register of Copyrights
3. Deposit material

MAIL TO:
Register of Copyrights
Library of Congress
Washington, D.C. 20559-6000

The Copyright Office has the authority to act just fees at 5-year intervals, based on change in the Consumer Price Index. The next adjustment is due in 1999. Please contact the Copyright Office at the actual fee schedule.

*17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

July 1993—100,000

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U.S. GOVERNMENT PRINTING OFFICE: 1993 342-582-000