

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION

MATTHEW ROSENBERG, )  
Plaintiff, )

vs. )

SPICY BEAR MEDIA LLC, )  
KYLE J. REDINGER, individually, )  
and JOHN DOES 1-10, )  
Defendants. )

CASE NO. 3:09-cv-37

**Jury Trial Demanded**

**COMPLAINT FOR DAMAGES**

**JURISDICTION AND VENUE**

1.

This action arises under the Federal Copyright Act of 1976, as amended, 17 U.S.C. § 101, *et seq.* Jurisdiction is founded on 28 U.S.C. §§ 1331 and 1338(a).

2.

This Court has personal jurisdiction over Defendants Spicy Bear Media LLC and Kyle J. Redinger by virtue of their physical presence in this District, and because a substantial part of the relevant events occurred in this District.

3.

Venue is Proper under 28 U.S.C. §§ 1391(b)(1) and (c) and 1400(a).

**THE PARTIES TO THIS COMPLAINT**

4.

Plaintiff Matthew Rosenberg (hereinafter "Rosenberg,") is an individual residing in Charlottesville, VA 22901.

5.

Defendant Spicy Bear Media LLC (“Spicy Bear”) is a company formed in Virginia with headquarters located at 250 West Main Street, Suite 201, Charlottesville, VA 22902. It may be served through its registered agent, Kyle J. Redinger, at the same address.

6.

On information and belief, Spicy Bear Media LLC owns and operates cVillain.com.

7.

Defendant Kyle J. Redinger (hereinafter “Defendant Redinger,”) is an individual residing in Charlottesville, VA, who, upon information and belief, owns and operates Spicy Bear Media, LLC.

8.

Plaintiff does not know the true names of defendants John Does 1 through 10, inclusive, and therefore sues them by those fictitious names. Plaintiff is informed and believes and, on the basis of that information and belief, alleges that each of those defendants was in some manner negligent, grossly negligent, guilty of willful and wanton conduct, and proximately caused Plaintiff’s damages.

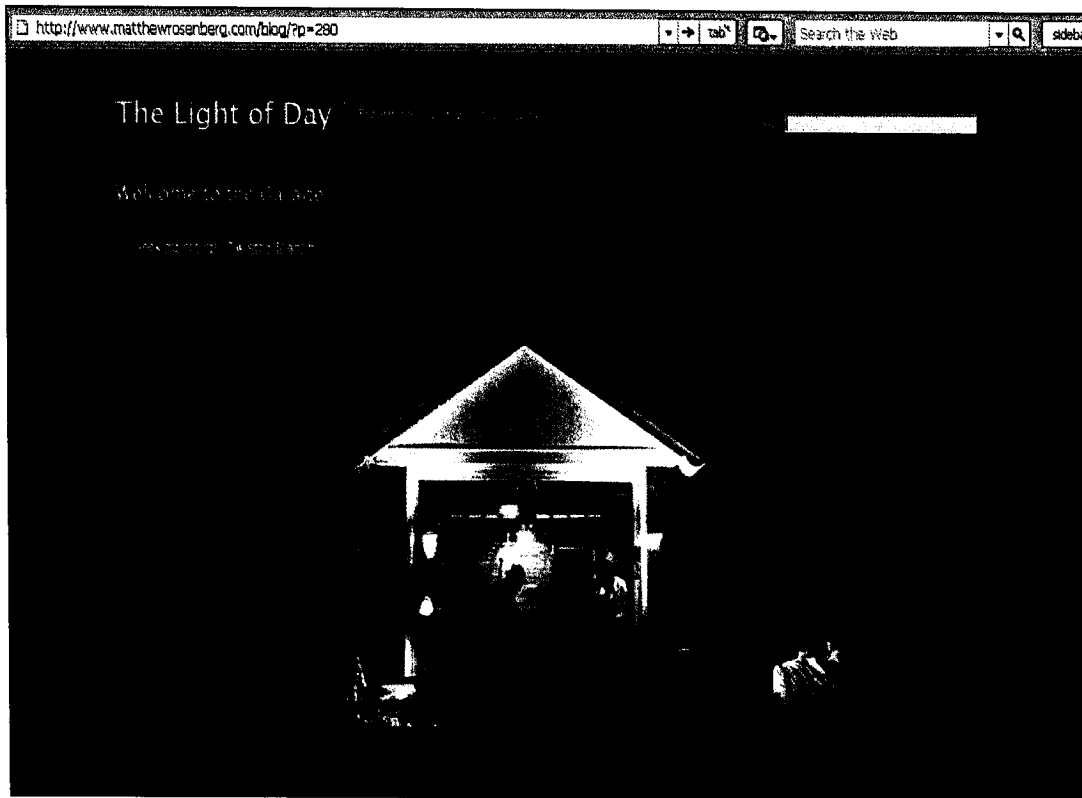
#### FACTS

9.

Rosenberg is a professional photographer who took a picture of a venue in Charlottesville known as the Garage (hereinafter “the Photograph”).

10.

On or around June 18, 2008, Rosenberg posted the Photograph on his website at <http://www.matthewrosenberg.com/blog/?p=280>, as shown below:



11.

Rosenberg is and has always has been the sole proprietor of all rights, title, and interest in and to the copyright in the Photograph. Rosenberg has complied in all respects with the Copyright Act of 1976, 17 U.S.C. §101 *et seq.*, as amended, and all other laws and regulations governing copyrights, and has secured the exclusive rights and privileges in and to the copyright for the Photograph. The Register of Copyrights for the U.S. Copyright Office issued Rosenberg a valid Certificate of Copyright Registration for the Photograph, (VA-1-647-367) effective September 16, 2008.

## FIRST CAUSE OF ACTION

(Copyright Infringement – 17 U.S.C. §§ 101 et seq.)

12.

Rosenberg re-alleges and incorporates by reference Paragraphs 1 through 11 above.

13.

On or about September 15, 2008, the Defendants copied, reproduced, and/or created a derivative work of the Photograph on the www.cvillain.com website at <http://cvillain.com/2008/09/15/downtown-re-defines-the-garage-band/> without authorization (the “First Infringement”) as shown below:



The screenshot shows a web browser window with the address bar displaying <http://cvillain.com/2008/09/15/downtown-re-defines-the-garage-band/>. The website header features the 'cvillain.com' logo and navigation links: All Articles, Drink, Events, Food, Gossip, News, Contact, Full Archives, About, and Login. The main content area displays the article title 'Downtown re-defines the "Garage Band"' with a sub-header 'Posted by Pogo on September 15th, 2008' and '05 Comments'. A small thumbnail image of a building is shown. The article text reads: 'After roaming the downtown mall for several hours while waiting for the doors to open to a show at Gravity I stumbled upon something great. Walking through Lee Park the sound of live acoustic music caught my attention through the buzz of ambient pavilion rattle. As I followed the music I see a hillside scattered with people watching live amplified music coming from what was obviously intended to be a garage. "The Garage" is in its first month of operation bringing free, live, music weekly to the hillside of Lee Park Fridays at 9p.m. Making for a relaxed, enjoyable Friday night for those who perhaps prefer an intimate music environment to the jumble of the pavilion. Grab a cupcake, a milkshake or a cigar from the downtown mall and head over to the garage for a good start to a weekend.' Below the text is a caption: '[thumbnail from Matthew Rosenberg (click to see big pic!)]'. On the right side of the page, there is a search bar with a 'Search' button and a 'Recent Comments' section listing several comments and responses.

14.

The Defendants' conduct related to the First Infringement violates the exclusive rights belonging to Rosenberg as owner of the copyright for the Photograph, including without limitation, Rosenberg's exclusive rights under 17 U.S.C. § 106.

15.

As a direct and proximate result of its wrongful conduct, the Defendants have realized profits and other benefits rightfully belonging to Rosenberg for the Photograph. Accordingly, Rosenberg seeks an award of actual damages plus attorneys' fees and costs for the First Infringement pursuant to 17 U.S.C. §§ 504 and 505.

16.

In the alternative, Rosenberg is entitled to and seeks statutory damages for the First Infringement of the Photograph, including attorneys' fees and costs, pursuant to 17 U.S.C. §§ 504 and 505.

17.

The First Infringement by the Defendants was willful and performed with knowledge that the use of the Photograph was unauthorized; Rosenberg is therefore entitled to the recovery of enhanced statutory damages pursuant to 17 § U.S.C. 504.

SECOND CAUSE OF ACTION

(Copyright Infringement – 17 U.S.C. §§ 101 et seq.)

18.

Rosenberg re-alleges and incorporates by reference Paragraphs 1 through 17 above.

19.

On September 15, 2008, after the First Infringement, Rosenberg sent a notice by facsimile to Defendants that the use of his Photograph by Defendants was not authorized.

20.

On or about November 6, 2008, the Defendants again copied, reproduced, and/or created a derivative work by displaying the Photograph at <http://cvillain.com/?s=Garage+Goes+Dressy> without authorization (the "Second Infringement") as shown below:

The screenshot shows the cvillain.com website interface. At the top, there is a navigation bar with links for "All Articles", "Drink", "Events", "Food", "Gossip", "News", "Contact", "Full Archives", "About", and "Login". The main content area displays search results for "The Garage Goes Dressy", posted by katedaughdrill on November 6th, 2008, with 17 comments. A small image of a building is visible. The text describes an event at the Garage venue, mentioning local artist Kate Daughdrill and musicians Dusty Brown and Joe Pollock. On the right side, there is a sidebar with a "Welcome to cvillain!" message, a promotional offer for an exclusive weekly sponsor, and a "throw down. drink up." logo for cvillesocial.com. Below the logo is a search bar and a "Recent Comments" section.

21.

The Defendants' conduct related to the Second Infringement violates the exclusive rights belonging to Rosenberg as owner of the copyright for the Photograph, including without limitation, Rosenberg's exclusive rights under 17 U.S.C. § 106.

22.

As a direct and proximate result of its wrongful conduct, the Defendants have realized profits and other benefits rightfully belonging to Rosenberg for the Photograph. Accordingly, Rosenberg seeks an award of actual damages plus attorneys' fees and costs for the Second Infringement pursuant to 17 U.S.C. §§ 504 and 505.

23.

In the alternative, Rosenberg is entitled to and seeks statutory damages for the Second Infringement of the Photograph, including attorneys' fees and costs, pursuant to 17 U.S.C. §§ 504 and 505.

24.

The Second Infringement by the Defendants was willful and performed with knowledge that the use of the Photograph was unauthorized; Rosenberg is therefore entitled to the recovery of enhanced statutory damages pursuant to 17 § U.S.C. 504.

THIRD CAUSE OF ACTION

(Removal/Alteration of Copyright Management Information-

17 U.S.C. §§ 1202 et seq.)

25.

Plaintiff re-alleges and incorporates by reference paragraphs 1 through 24 above.

26.

Rosenberg conveyed his name and title of the work, as described in 17 U.S.C. § 1202(c) (hereinafter, "Copyright Management Information"), with the Photograph on his website at <http://www.matthewrosenberg.com/blog/?p=280>.

27.

For the Second Infringement, Defendants knowingly and with the intent to induce, enable, facilitate or conceal infringement provided and/or distributed Copyright Management Information that is false for Rosenberg's Photograph, in violation of 17 U.S.C. § 1202 (a).

28.

For the Second Infringement, Defendants, without the authority of Rosenberg or the law, intentionally removed and/or altered Rosenberg's Copyright Management Information, distributed Copyright Management Information knowing that Rosenberg's Copyright Management Information had been removed or altered without the authority of Rosenberg or the law, and/or distributed Rosenberg's Photograph knowing that Rosenberg's Copyright Management Information had been removed or altered without the authority of Rosenberg or the law, in violation of 17 U.S.C. § 1202 (b).



29.

Rosenberg is entitled to and seeks statutory damages for Defendants' removal of the Copyright Management Information from the Photograph, including attorneys' fees and costs, pursuant to 17 U.S.C. § 1203.

FOURTH CAUSE OF ACTION

(Vicarious, Contributory, and/or Personal Liability of Kyle J. Redinger)

30.

Plaintiff realleges and incorporates by reference paragraphs 1 through 29 above.

31.

As the owner and/or operator of www.cVillain.com, Redinger had: (1) the right and ability to supervise or control the activity related to the First, Second, and Third Causes of Actions; and (2) a direct financial benefit from the activity related to the First, Second, and Third Causes of Actions. As such, Redinger is vicariously, contributory, and personally liable for the First, Second, and Third Causes of Actions.

WHEREFORE Plaintiff prays for judgment as follows:

1. Declare that the Defendants' unauthorized conduct violates Rosenberg's rights under common law and the Federal Copyright Act;
2. Order the Defendants to account to Rosenberg for all gains, profits, and advantages derived by their infringements of Rosenberg's copyright; or such damages as are proper;
3. Award Rosenberg profits and damages in such amount as may be found pursuant to 17 U.S.C. § 504 (b) for the Infringements of the Photograph; alternatively,

award Rosenberg maximum statutory damages in the amount of \$30,000 for each infringement pursuant to 17 U.S.C. § 504 (c)(1); or such other amount as may be proper pursuant to 17 U.S.C. § 504;

4. Award Rosenberg maximum statutory damages in the amount of \$150,000 for each infringement pursuant to 17 U.S.C. § 504 (c)(2) for the Photograph; or such other amount as may be proper pursuant to 17 U.S.C. § 504;
5. Award Rosenberg actual damages in such amount as may be found pursuant to 17 U.S.C. § 1203(c)(2); alternatively, award Rosenberg maximum statutory damages in the amount of \$25,000, pursuant to 17 U.S.C. § 1203(c)(3)(B); or such other amounts as may be proper pursuant to 17 U.S.C. § 1203;
6. Award Rosenberg his costs, reasonable attorneys' fees, and disbursements in this action, pursuant to 17 U.S.C. § 505 and 17 U.S.C. § 1203(b)(5); and
7. For such other and further relief as the Court may deem just and proper.

Plaintiff demands a jury trial on all of the foregoing counts.

This 15th day of May, 2009.

Respectfully submitted,

S/ PETER J. CARAMANIS, ESQ.  
Virginia Bar Number: 43447  
Tremblay & Smith, LLP  
P. O. Box 1585  
105-109 East High Street  
Charlottesville, Virginia 22902  
Phone (434) 977-4455  
Facsimile (434) 979-1221  
Email: [Pete.Caramanis@tremblaysmith.com](mailto:Pete.Caramanis@tremblaysmith.com)  
*Attorneys for Plaintiff*

# CIVIL COVER SHEET

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

<p><b>I. (a) PLAINTIFFS</b></p> <p style="margin-left: 40px;">Matthew Rosenberg</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>Albemarle</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c)</b> Attorney's (Firm Name, Address, and Telephone Number) Tremblay &amp; Smith, LLP; P. O. Box 1585; 105-109 East High Street; Charlottesville, Virginia 22902 (434) 977-4455</p>	<p><b>DEFENDANTS</b></p> <p style="margin-left: 40px;">Kyle J. Redinger Spicy Bear Media, LLC</p> <p>County of Residence of First Listed Defendant <u>Charlottesville</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p style="text-align: center;">NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known) Unknown</p>
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**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

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

Citizen of This State	<b>PTF</b>	<b>DEF</b>	Incorporated or Principal Place of Business In This State	<b>PTF</b>	<b>DEF</b>
<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<p><b>PRISONER PETITIONS</b></p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<p><b>PROPERTY RIGHTS</b></p> <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
		<p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN** (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
17 U.S.C. 101, et seq.

Brief description of cause:  
Unauthorized use of Plaintiff's photograph by Defendants.

**VII. REQUESTED IN COMPLAINT:**

<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	<b>DEMAND \$</b> \$175,000	<b>CHECK YES only if demanded in complaint:</b> <b>JURY DEMAND:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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**VIII. RELATED CASE(S) IF ANY** (See instructions):

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

DATE: 5/15/2009 SIGNATURE OF ATTORNEY OF RECORD: s/ Peter J. Caramanis (VSB No. 43447)

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**Pete Caramanis**

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**From:** ecfnoticing@vawd.uscourts.gov  
**Sent:** Friday, May 15, 2009 1:25 PM  
**To:** vawd\_ecf\_nef@vawd.uscourts.gov  
**Subject:** Activity in Case 3:09-cv-00037-nkm Rosenberg v. Spicy Bear Media, LLC et al  
Complaint

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U.S. District Court

Western District of Virginia

**Notice of Electronic Filing**

The following transaction was entered on 5/15/2009 at 1:24 PM EDT and filed on 5/15/2009

**Case Name:** Rosenberg v. Spicy Bear Media, LLC et al

**Case Number:** 3:09-cv-37

**Filer:** Matthew Rosenberg

**Document Number:** 1

**Docket Text:**

**COMPLAINT** against all defendants (Filing fee \$ 350.), filed by Matthew Rosenberg. 100 Day Notice due by 8/24/2009 120 Day Service due by 9/14/2009 (Attachments: # (1) Civil Cover Sheet)(mab)

**3:09-cv-37 Notice has been electronically mailed to:**

Peter James Caramanis [pete.caramanis@tremblaysmith.com](mailto:pete.caramanis@tremblaysmith.com)

**3:09-cv-37 Notice has been delivered by other means to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

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**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1052918722 [Date=5/15/2009] [FileNumber=1111303-0] [6ea555aa442a702fc1a07807a55383f63b3210b9212d579b0e59c74857d7dc4d181dd91669b594a9280b49e70d0365af295552ab4d3665612bc02731a24bfe13]]

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[STAMP dcecfStamp\_ID=1052918722 [Date=5/15/2009] [FileNumber=1111303-1  
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