

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RENAISSANCE MARKETING CORPORATION,)
an Illinois corporation, and JULIA MEYER,)

Plaintiffs,)

v.)

VIACOM, INC., a Delaware corporation, and)
VIACOM INTERNATIONAL, INC., a Delaware)
corporation,)

Defendants.)

Case No. 10 C 7667

Jury Trial Demanded

COMPLAINT

Plaintiffs, Renaissance Marketing Corporation (“Renaissance”) and Julia Meyer (“Meyer”) (collectively “Plaintiffs”), by their undersigned attorneys, state as follows for their complaint against the Defendants Viacom, Inc. and Viacom International, Inc. (collectively “Defendants” or “Viacom”):

Nature of the Case

1. Plaintiff Meyer is the exclusive owner of all of the copyrights to the video and music for the 1985 Chicago Bears Super Bowl Shuffle (“’85 Bears Shuffle Video”). Defendants, through their MTV Networks unit, operate the MTV and VH1 television channels, which displayed the ’85 Bears Shuffle Video in programs like “Behind the Scenes” and “One Hit Wonders” without permission from the Plaintiff. The Defendants’ conduct has significantly harmed Plaintiffs.

2. This lawsuit seeks damages for commercial piracy in violation of the Copyright Act of 1976 (the “Copyright Act”), as amended, 17 U.S.C. §101, *et seq.*, including an accounting of profits that Plaintiffs are entitled to under the Act that Defendants derived from their

infringing activity, reasonable attorneys fees, costs and an injunction. This lawsuit seeks damages for violation of the Lanham Act, 15 U.S.C. §1125. It also seeks damages for violation of the Illinois Uniform Trade Practice Act, 815 ILCS 510/2, and for unjust enrichment.

Jurisdiction

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331, 1338(a) and 1367 because Plaintiffs are bringing claims under federal law, including copyright infringement, and these claims are joined with related Illinois law claims. This Court also has jurisdiction under 15 U.S.C. §1121.

4. This Court has specific personal jurisdiction over Defendants because, on information and belief, they have engaged in conduct, giving rise to the claims herein, that satisfies the Illinois long-arm statute including: the commission of a tortious act within Illinois and the commission of a tortious act outside Illinois knowing and intending that such act would interfere with Illinois interests and cause injury within Illinois.

5. This Court has personal jurisdiction over Viacom, Inc. and Viacom International, Inc. because, on information and belief, they transact business and are doing business within Illinois.

6. This Court has general personal jurisdiction over Viacom, Inc. and Viacom International, Inc. because, on information and belief, they have continuous and systematic contacts with Illinois.

Venue

7. Venue is proper in the United States District Court for the Northern District of Illinois pursuant to 28 U.S.C. §§1391 and 1400(a) because a substantial part of the events giving

rise to the claims occurred in this judicial district, and Defendants or their agents reside or may be found in this district.

Parties and Background Facts

8. Renaissance is an Illinois corporation with its principal place of business in Chicago, Illinois. Renaissance is engaged in the business of licensing and selling the '85 Bears Shuffle Video and other items related to the Super Bowl Shuffle.

9. Meyer is an individual residing in Chicago, Illinois.

10. Defendant Viacom, Inc. is a Delaware corporation with headquarters in New York. Defendant Viacom International, Inc. is a subsidiary of Viacom, Inc. and is also a Delaware corporation with headquarters in New York. The Defendants own and operate the MTV and VH1 television channels and websites.

11. Meyer exclusively owns the rights, title and interest in and to the copyrights in the '85 Bears Shuffle Video. Attached as **Exhibit 1** hereto is a true and accurate copy of the original copyright certificates and a true and accurate copy of the assignment of those copyrights. Meyer became the rightful and sole owner of all of the copyrights for the '85 Bears Shuffle Video when assignee of the copyrights, Richard E. Meyer, died.

12. Defendants, through MTV Networks, featured the '85 Bears Shuffle Video on their program, "MTV News." The program, which aired on December 4, 2007, features over forty seconds of scenes from the video, including players singing portions of the '85 Bears Shuffle Video and interviews with players.

13. VH1 features approximately thirteen seconds of various scenes from the video on its program, "One Hit Wonders." This program aired on, February 9, 2008, February 17, 2008, and February 27, 2008.

14. On information and belief, Defendants have displayed, on its MTV and VH1 television channels, the '85 Bears Shuffle Video at various times between February 2008 and the date this lawsuit is filed.

15. For example, on October 27, 2010, Viacom's MTV website (www.mtv.com/videos/news/131407/super-bowl-shuffle-extended-clip.jhtml) displayed a one minute forty-three second clip of the '85 Bears Shuffle Video. A true and accurate copy of a printout of the aforementioned website page is attached hereto as **Exhibit 2**. As of December 2, 2010, Viacom's MTV website was still displaying the aforementioned website page showing the '85 Bears Shuffle Video.

16. The Plaintiffs license and sell the '85 Bears Shuffle Video for commercial advantage.

17. The '85 Bears Shuffle Video was created in December of 1985 by having various members of the Chicago Bears professional football team ("1985 Bears") sing and dance. The 1985 Bears won the Super Bowl on January 26, 1986.

18. At various times, the '85 Bears Shuffle Video was available for purchase from particular retail stores and Internet retailers.

19. The Defendants' conduct significantly damaged the market for the '85 Bears Shuffle Video. The 25th Anniversary of the '85 Bears Shuffle Video will take place during late 2010 and early 2011, which has created additional interest from the public in the '85 Bears Shuffle Video.

Count I
Federal Copyright Infringement
(17 U.S.C. §§ 101, *et seq.*)

20. Meyer realleges and incorporates by reference paragraphs 1 through 19 as paragraph 20.

21. Meyer has complied in all respects with the Copyright Act and secured the exclusive rights and privileges in and to the copyrights of '85 Bears Shuffle Video which are the subject of this lawsuit. As a result, Meyer is the exclusive owner of the United States copyrights which are the subject of this lawsuit.

22. Meyer has been at all times, and still is, the sole holder of all the right, title, and interest in and to the copyrights that are the subject of this lawsuit.

23. Meyer licenses the '85 Bears Shuffle Video exclusively through Renaissance.

24. Defendants' conduct through their MTV and VH1 networks violates the exclusive rights belonging to Meyer as owner of the copyrights in the '85 Bears Shuffle Video, including, without limitation, Meyer's rights under 17 U.S.C. §106.

25. On information and belief, Defendants' infringing acts have been willful and deliberate, and in utter disregard for Meyer's rights.

26. The Plaintiffs previously sued parties for the unauthorized showing of the '85 Bears Shuffle Video on MTV's website. That lawsuit was filed in the United States District Court for the Northern District of Illinois and entitled *Renaissance Marketing, et al., v. America Online, et al.*, Court Number 06 C 1636.

27. As a direct and proximate result of Defendants' wrongful conduct, they have realized financial gains and reaped benefits rightfully belonging to Meyer.

28. Unless Defendants are enjoined by this Court, they will continue their course of conduct, and will wrongfully use, infringe upon and otherwise profit from the '85 Bears Shuffle Video.

WHEREFORE, Plaintiffs request the following relief against Defendants:

A. Award Plaintiffs damages in an amount to be determined at trial, including: (i) actual damages; (ii) statutory damages under the Copyright Act; (iii) the profits Defendants made from their infringing conduct; (iv) the benefit to Defendants from their infringing conduct; and (v) all other damages attributable to Defendants' infringement to which Plaintiffs are entitled under 17 U.S.C. §504;

B. Award Plaintiffs their costs and reasonable attorney's fees pursuant to 17 U.S.C. §505;

C. Order Defendants to account to Plaintiffs for all gains, profits, and advantages derived by them from their infringement of copyrights belonging to Meyer;

D. Permanently enjoin Defendants, and their officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them, from publishing, republishing, distributing, displaying, copying, or otherwise using in any commercial manner any portion of the '85 Bears Shuffle Video;

E. Award prejudgment interest to Plaintiffs;

F. Award such other relief to which Plaintiffs are entitled under the Copyright Act;
and

G. Grant such other relief that this Court deems just and proper.

Count II
Violation of the Lanham Act

29. Plaintiffs reallege and incorporate by reference paragraphs 1 through 28 as paragraph 29.

30. On information and belief, Defendants knew or should have known that Meyer held the copyright to the '85 Bears Shuffle Video and Renaissance held the rights to license the '85 Bears Shuffle Video.

31. Defendants' MTV and VH1 units featured parts of the '85 Bears Shuffle Video on their respective programs, "Behind the Scenes" and "One Hit Wonders" without license or permission from Plaintiffs.

32. Defendants' conduct implicitly misrepresented that Plaintiffs approved or sponsored the availability of the '85 Bears Shuffle Video.

33. Defendants' conduct constitutes unfair competition, false or misleading designation, description or representation, false advertising, and/or unfair and deceptive trade practices in that it likely caused confusion and mistake by the public and/or others in violation of §43(a) of the Lanham Act. 15 U.S.C. §1125.

34. Defendants' above-described conduct suggested to viewers of those programs that Plaintiffs endorsed and approved of their use of the '85 Bears Shuffle Video when in fact those suggestions or impressions or identifications were not true.

35. On information and belief, Defendants engaged, in the above-described conduct with the intent to deceive the purchasing public and others, or otherwise having the likelihood that such deception would be the result.

36. The conduct of Defendants has significantly harmed Plaintiffs.

WHEREFORE, Plaintiffs respectfully request the following relief against Defendants:

- A. Award Plaintiffs damages in an amount to be determined at trial for violation of §43(a) of the Lanham Act;
 - B. Award Plaintiffs' their costs and reasonable attorney's fees;
 - C. Award prejudgment interest to Plaintiffs;
 - D. Permanently enjoin Defendants and their respective officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them, from publishing, republishing, distributing, displaying, copying, or otherwise using in any commercial manner any portion of the '85 Bears Shuffle Video;
 - E. Award such other relief to which Plaintiffs are entitled under the Lanham Act;
- and
- F. Grant such other relief that this Court deems just and proper.

Count III
Violation of Illinois Uniform Deceptive Trade Practices Act

37. Plaintiffs reallege and incorporate by reference paragraphs 1 through 36 as paragraph 37.

38. Section 2 of the Illinois Uniform Deceptive Trade Practices Act states in relevant part:

A person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, the person: * * *

(2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with or certification by another; * * *

(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have; * * *

(8) disparages the goods, services, or business of another by false or misleading representation of fact; * * *

(12) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding.

815 ILCS 510/2.

39. Defendants' conduct constitutes unfair competition and/or unfair and deceptive trade practices in that it likely caused confusion and mistake by the public and/or others in violation of § 2 of the Illinois Uniform Deceptive Trade Practices Act.

40. The conduct of Defendants violated public policy.

41. The conduct of Defendants was immoral, unethical, oppressive and/or unscrupulous.

42. The conduct of Defendants has significantly harmed Plaintiffs and consumers generally.

WHEREFORE, Plaintiffs respectfully request the following relief against Defendants:

A. Award Plaintiffs damages in an amount to be determined at trial for violation of §2 of the Illinois Uniform Deceptive Trade Practices Act;

B. Award Plaintiffs their costs and reasonable attorney's fees;

C. Award prejudgment interest to Plaintiffs;

D. Permanently enjoin Defendants and their respective officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them, from publishing, republishing, distributing, displaying, copying, or otherwise using in any commercial manner any portion of the '85 Bears Shuffle Video;

E. Award punitive damages to Plaintiffs in an amount to be determined at trial;

F. Award such other relief to which Plaintiffs are entitled under the Illinois Uniform Deceptive Trade Practices Act; and

G. Grant such other relief that this Court deems just and proper.

Count IV
Unjust Enrichment

43. Plaintiffs reallege and incorporate by reference paragraphs 1 through 47 as paragraph 48.

44. As a result of Defendants' conduct described above in connection with '85 Bears Shuffle Video, they have reaped the benefit therefrom and have unjustly retained a benefit to Plaintiffs' detriment.

45. Defendants' retention of this benefit violates fundamental principles of justice, equity and good conscience.

WHEREFORE, the Plaintiffs respectfully request the following relief against Defendants:

A. Award damages to Plaintiffs equal to the amount by which Defendants were unjustly enriched by their conduct described above; and

B. Grant such other relief that this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all issues so triable.

RENAISSANCE MARKETING CORPORATION
and JULIA MEYER, Plaintiffs

By: s/ Paul F. Markoff
One of their Attorneys

Paul F. Markoff (paul@markofflawfirm.com)
Markoff Law Firm, LLC
180 W. Washington St., Ste. 700
Chicago, IL 60602
312.726.4162
Atty. No. 6237614