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19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA**
21 **WESTERN DIVISION**

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CLERK OF DISTRICT COURT
FEDERAL BUILDING
SAN FRANCISCO, CALIF.

CAS
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22 FEDERAL TRADE COMMISSION,

23 Plaintiff,

24 v.

25 CASHIER MYRICKS JR. d/b/a
26 MP3DOWNLOADCITY.COM,

27 Defendant.

28 CV05-7013

Civ. No.

**COMPLAINT FOR
INJUNCTIVE AND
OTHER RELIEF**

29 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), through
30 its undersigned attorneys, hereby alleges as follows:

31 1. Plaintiff brings this action under Section 13(b) of the Federal Trade
32 Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure preliminary and
33

1 permanent injunctive relief, restitution, disgorgement, and other equitable relief
2 against Defendant for his deceptive acts or practices in connection with the
3 advertising, marketing, and sale of a peer-to-peer (“P2P”) file-sharing program
4 tutorial and referral service, in violation of Section 5(a) of the FTC Act, 15 U.S.C.
5 § 45(a).

6 JURISDICTION AND VENUE

7 2. This Court has subject matter jurisdiction over this matter pursuant to
8 15 U.S.C. §§ 45(a) and 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

9 3. Venue in this district is proper under 15 U.S.C. § 53(b) and 28 U.S.C.
10 § 1391(b) and (c).

11 THE PARTIES

12 4. Plaintiff, the FTC, is an independent agency of the United States
13 Government created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission enforces
14 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or
15 deceptive acts or practices in or affecting commerce. The Commission is
16 authorized to initiate federal district court proceedings by its own attorneys to
17 enjoin violations of the FTC Act and to secure such equitable relief as may be
18 appropriate in each case, including restitution for injured consumers, consumer
19 redress, and disgorgement. 15 U.S.C. § 53(b).

20 5. Defendant Cashier Myricks Jr. is an individual doing business as
21 MP3DownloadCity.com (“Download”). Defendant Myricks resides, and transacts
22 or has transacted business in the Central District of California.

23 COMMERCE

24 6. The acts and practices of Defendant, as alleged herein, are or have
25 been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC
26 Act, 15 U.S.C. § 44.

DEFENDANT'S COURSE OF CONDUCT

1
2 7. Since at least January 2003, Defendant has engaged in the
3 advertising, promotion, offering for sale, and sale of a P2P file-sharing program
4 tutorial and referral service promoting the use of software to download digital
5 music, movies, and computer games to consumers throughout the United States,
6 through his Internet website www.mp3downloadcity.com. Unlike a licensed
7 subscription service, Defendant's service does not provide its paying customers
8 with a license to download and share copyrighted music, movies, or games.
9 Instead, Defendant's service simply directs users to, and instructs users how to
10 use, free P2P file-sharing software provided by others, such as Kazaa and
11 Blubster. The bulk of Defendant's website consists of instructions on how to use
12 these file sharing programs. Defendant charges consumers \$24.95 for this service.

13 8. P2P software programs are often used to download and share
14 copyrighted material. Users of these programs who download copyrighted
15 material, or who make it available to others, without the copyright owner's
16 permission are engaged in copyright infringement that may result in significant
17 monetary damages, fines, and even criminal penalties. Consumers purchase
18 Defendant's P2P file-sharing program tutorial and referral service by ordering the
19 service on Defendant's website.

20 9 To induce consumers to purchase his P2P file-sharing program
21 tutorial and referral service, Defendant disseminates Internet advertisements,
22 including those found at www.mp3downloadcity.com that, *inter alia*, assure
23 consumers that downloading music, movies, and games through Defendant's
24 service is completely legal. These advertisements include but are not limited to
25 the attached Exhibit A and contain, among other things, the following statements:

26 A. **Napster's Number One Replacement Software is Back!**

1 **"Now You Can Burn, Download MP3s, and Make CDs Free"**

2 **Free MP3 Music Downloads * * ***

3 ...We will show and share with you all the software and tools
4 you need to start downloading any type of songs and movies
5 once you sign up. . . .

6 AND BEST OF ALL PEOPLE ARE NOT
7 GETTING SUED FOR USING OUR
8 SOFTWARE. YES! IT IS 100% LEGAL. * * *

9 **FREE MP3 MUSIC DOWNLOADS, MOVIES, AND
10 GAMES! * * ***

11 You will be able to download and search for unlimited music
12 and movie files for free * * *

13 **Why Are We The #1 Free MP3 Music Download Site? * * ***

14 ✓ 100% Legal Guaranteed!

15 ✓ Download and Watch DVDs *and Movies Still in Theaters!*

16 * * *

17 **BONUS #1 Sign Up Today and Get Access To Free Full Version
18 Games For PC, Playstion (sic) 1 & 2, XBOX, Nintendo,
19 Dreamcast and more For FREE.**

20 * * *

21 **BONUS #2 Sign Up Today and Get Access To Free Full Length
22 Movie Downloads That are still in Theaters and on DVD.**

23 (Exhibit A, at www.mp3downloadcity.com/)

24 **B. * * * Is file-sharing Legal - Yes!**

25 Today over 220 million users on the internet are sharing music,
26 movies and game files legally. Your membership with
27 MP3DownloadCity is 100% legal.

28 **See News.com Article: Federal Judge Rules: File-swapping tools
are legal**

MP3 is simply an audio format and as such has no legal standing.
While rights owners have concerns about a format that is used to
make digital copies of music, it's not the MP3 format itself that is at
issue but rather the copying of music - regardless of the particular
format used in creating the file. In fact, while the MP3 format is the

1 main music format available on the file-sharing networks, there are a
2 variety of other audio and video formats in use.

3 Today, there are hundreds of millions of users trading MP3s & videos
4 on these legal file-sharing networks. Rest assured that File-Sharing is
5 100% legal, MP3s are 100% legal, and your membership to
6 Mp3downloadcity.com is 100% legal. * * *

7 Mp3downloadcity.com does not condone piracy or breaking
8 copyright laws. The MP3 sharing tools available on our website are
9 powerful search tools & we recommend that you use your discretion
10 when downloading music and movie files.

11 (Exhibit A, at www.mp3downloadcity.com/legal, linked from
12 www.mp3downloadcity.com/ "affiliate program" and
13 www.mp3downloadcity.com/business "100% Legal")

14 C. **100% Legal Start Downloading All Your Favorite Music**
15 **CLICK FOR MORE INFO And Movies FREE. All Titles Available!!!**

16 * * *

17 - Over 99 billion files - Instant access to the largest network on the
18 planet! Play what you want, when you want...without limits! - 100%
19 Legal

20 (Exhibit A, at www.mp3downloadcity.com/mp3agreement)

21 SECTION 5 OF THE FTC ACT

22 10. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or
23 deceptive acts or practices in or affecting commerce. As set forth below,
24 Defendant has engaged and is continuing to engage in such unlawful practices in
25 connection with the marketing and sale of his P2P file-sharing program tutorial
26 and referral service.

27 DECEPTIVE ACTS OR PRACTICES IN VIOLATION OF THE FTC ACT

28 11. Through the means described in Paragraph 9, Defendant represents,
and has represented, expressly or by implication, that consumers who use the P2P
file-sharing programs promoted by Defendant to download unlimited music,
movies (including movies still in theaters), and computer games are not violating
the law.

1 12. The representation set forth in Paragraph 11 is false and/or was not
2 substantiated at the time the representation was made. In fact, using the file-
3 sharing programs in conjunction with Defendant's service to download
4 copyrighted materials is unlawful. Therefore, the making of the representation set
5 forth in Paragraph 11 constitutes a deceptive practice, in or affecting commerce, in
6 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

7 **CONSUMER INJURY**

8 13. Consumers throughout the United States have suffered and continue
9 to suffer substantial monetary loss because of Defendant's violations of the FTC
10 Act. In addition, Defendant has been unjustly enriched as a result of his unlawful
11 acts and practices. Absent injunctive relief by this Court, Defendant is likely to
12 continue to injure consumers, reap unjust enrichment, and harm the public interest.

13 **THIS COURT'S POWER TO GRANT RELIEF**

14 14. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this
15 Court to grant injunctive and other ancillary relief, including consumer redress,
16 disgorgement and restitution, to prevent and remedy any violations of any
17 provision of law enforced by the Federal Trade Commission.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff FTC requests that this Court, as authorized by
20 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable
21 powers:

22 (a) Permanently enjoin Defendant from violating Section 5(a) of the FTC
23 Act, 15 U.S.C. § 45(a), in connection with the offer, sale, advertising, or other
24 promotion or distribution of P2P file-sharing program tutorial and referral
25 services, or any other computer software services or computer software;

1 (b) Award all temporary and preliminary injunctive and ancillary
2 monetary relief that may be necessary to avert the likelihood of consumer injury
3 during the pendency of this action, and to preserve the possibility of effective final
4 relief, including, but not limited to, temporary and preliminary injunctions;

5 (c) Award such equitable relief as the Court finds necessary to prevent
6 and remedy injury to consumers caused by Defendant's law violations, including,
7 but not limited to, rescission of contracts and restitution, and the disgorgement of
8 ill-gotten gains; and

9 (d) Award the Plaintiff the costs of bringing this action, and such other
10 equitable relief as the Court may determine to be just and proper.

11
12 Dated: September 27, 2005

Respectfully Submitted,

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