

JUDGE BAER

09 CV 7315

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

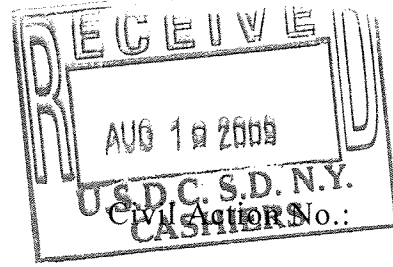
LOUIS P. PSIHOYOS,

Plaintiff,

v.

APPLE, INC. and APPLE COMPUTERS, INC.,

Defendants.



COMPLAINT AND
DEMAND FOR A JURY
TRIAL

Plaintiff, LOUIS P. PSIHOYOS, by and through undersigned counsel, demands a trial by jury of all claims and issues so triable, and, as and for his Complaint for Copyright Infringement against defendants APPLE, INC. and APPLE COMPUTERS, INC., hereby asserts and alleges as follows:

JURISDICTION AND VENUE

1. The plaintiff is a resident of the State of Colorado.
2. Defendant Apple, Inc., and its subsidiary, Apple Computers, Inc., (hereinafter collectively "Apple") are foreign corporations domiciled outside the State of New York but are corporations in good standing and licensed to transact lawful business within the State of New York and conduct substantial business in the Southern District of New York.
3. Jurisdiction for the plaintiff's claims lies with the United States District Court for the Southern District of New York pursuant to the Copyright Act of 1976, 17 U.S.C. §§101, et seq.
4. Venue is proper under 28 U.S.C. §1391 since the misconduct by Apple originated from copyright infringement information obtained from the plaintiff. Further,

Apple conducts business within the State of New York, and has infringed the plaintiff's copyright within the State of New York as described herein.

BACKGROUND FACTS

5. Apple is an American multinational corporation which designs and manufactures consumer electronics and software products. The company's best-known hardware products include Macintosh computers, the iPod and the iPhone.

6. The iPhone is an internet-connected, multimedia smartphone designed and marketed by Apple. To date, Apple has sold 21.4 million iPhones.

7. Apple has created a significant set of tools for delivering and monetizing content and services on the iPhone.

8. Apple has created the "App Store" and the "iTunes digital media library" which allows users of the iPhone to purchase "applications" for the iPhone from the world-wide-web.

9. Apple put the ability to charge small amounts of money for these applications at the center of its system for distributing iPhone applications, linking its App Store to the billing system in its iTunes digital media store.

10. It has done this to enable developers to create applications without the need to invest in a serious billing infrastructure.

11. Apple is not a tacit participant in applications on the iPhone, but functions as a partner, reviewing each application, and removing those applications that do not conform to Apple's standards.

12. i.TV is a TV and movie guide application for the iPhone and iPod touch distributed by Apple.

13. According to i.TV's own website "i.TV helps users discover entertainment options by providing up-to-date information on television shows and movies. Users also benefit from feedback and information provided by other i.TV users who utilize i.TV's community-focused features. These features enable customers to write reviews and give star ratings to visual media. In addition to this, i.TV allows users to directly access entertainment such as television previews and movie trailers through their iPhone or iPod touch." (from <http://www.i.tv/about/> last viewed on June 19, 2009.)

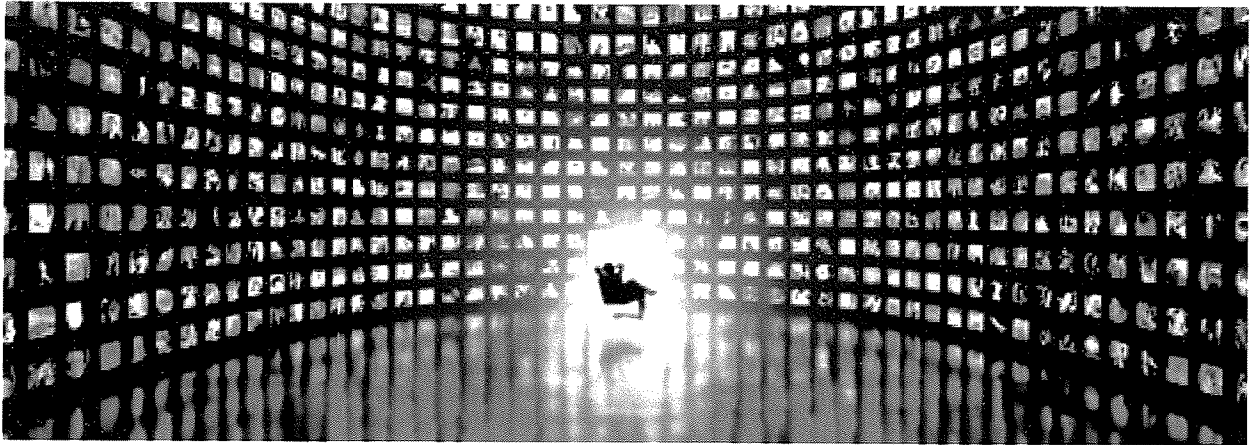
**FIRST CAUSE OF ACTION
(Copyright Infringement)**

14. Plaintiff incorporates paragraphs "1" through "13" as it set forth at length.

15. The plaintiff is the sole owner of the copyright of an iconic photographic image titled "1000 TVs." (See Exhibit 1). Plaintiff has complied with the provisions of the Copyright Act, 17 U.S.C. §101, et seq. (See copyright registration attached as Exhibit 2.)

16. Defendants Apple and i.TV recently introduced an iPhone application called "i.TV."

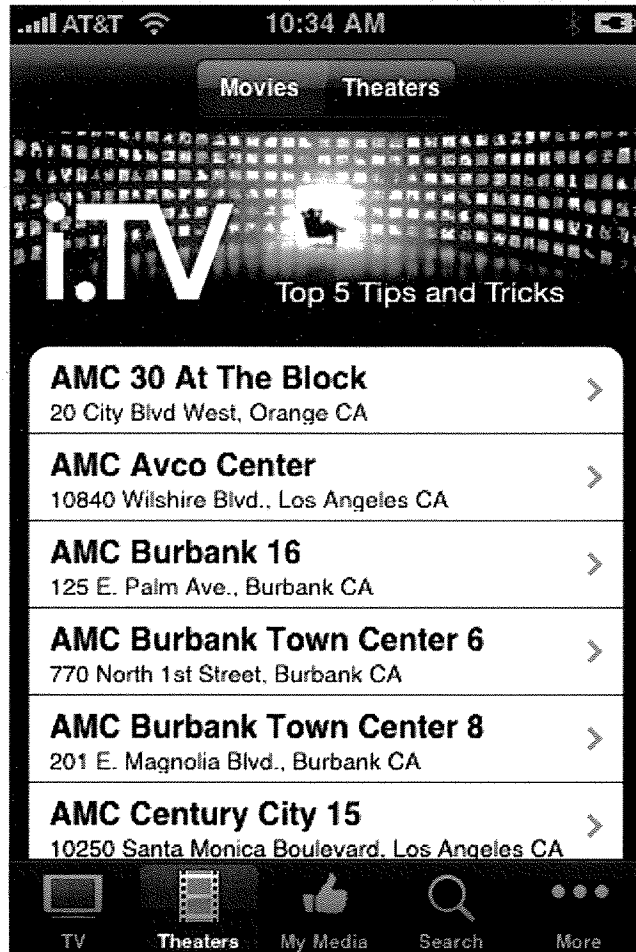
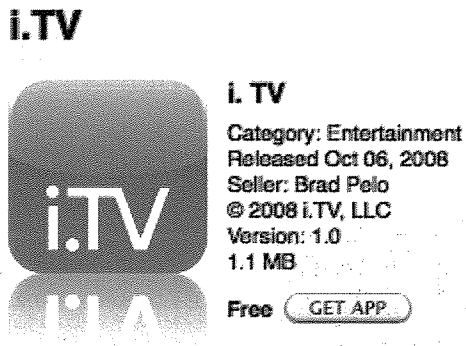
17. Version 1.0 of i.TV directly infringed on Mr. Psihoyos' copyright by incorporating the 1000 TVs image without permission.



(Exhibit 1)

18. Without permission or authorization from the plaintiff, defendants Apple and i.TV have impermissibly used, reproduced, copied, infringed, disseminated or otherwise exploited the plaintiff's copyrighted image in the i.TV application. See i.TV

screen shot, attached hereto as "Exhibit 3."



20. By commercially exploiting the plaintiff's copyrighted image in the i.TV application without the plaintiff's consent or licensure, defendant Apple has damaged the plaintiff while obtaining significant economic gains in amounts to be determined at trial.

21. Plaintiff is entitled to actual damages including defendants' profits; statutory damages for the infringing use of the 1000 TV's; attorney's fees, sustained and

which will be sustained, and any other gains, profits and advantages by defendants as a result of defendants' acts of infringement alleged above. At present, the amount of such actual damages, gains, profits and advantages cannot be fully ascertained by plaintiff, but are reasonably believed to exceed \$2,000,000.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays that this Court enter a final judgment in its favor and against defendants, jointly and severally, as follows:

A. That the Court finds that defendant has infringed Plaintiff's copyrighted 1000 TVs photograph.

B. That judgment be entered for plaintiff and against defendants for plaintiff's actual damages and for any profits attributable to infringements of plaintiff's copyright in the 1000 TVs photograph, pursuant to Copyright Act 17 U.S.C. §§ 101 et seq.

C. That Judgment be entered for plaintiff and against defendants for statutory damages for each for each and every infringing use of the subject photo, pursuant to the Copyright Act of 1976, 17 U.S.C. §§ 504(C)(1) and (2).

D. A jury trial is demanded in this matter.