

1 D. GILL SPERLEIN (172887)
2 THE LAW OFFICE OF D. GILL SPERLEIN
3 345 Grove Street
4 San Francisco, California 94102
5 Telephone: (415) 404-6615
6 Facsimile: (415) 404-6616
7 gill@sperleinlaw.com

8 Attorney for Plaintiff
9 CELESTIAL, INC.

FILED
2012 FEB -8 PM 2:12
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT CALIF.
LOS ANGELES

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

FILED BY FAX

13 CELESTIAL, INC,
14)
15 Plaintiff,
16 vs.
17 GARY CATALANO, KENNY
18 DAUGHERTY, CYNTHIA
19 MOLNAR, MARTHA SEVERINO,
20 SHALE SMITH, and DAVID SOPP,
21 Defendants.

) CASE NO.: C-11-8512 GHK (MRXx)
)
)
) FIRST AMENDED COMPLAINT:
) (1) COPYRIGHT
) INFRINGEMENT;
) (2) CONTRIBUTORY COPYRIGHT
) INFRINGEMENT; and
) (3) NEGLIGENCE;
)
) JURY TRIAL DEMANDED
)
)
)

23
24 INTRODUCTION

25
26 1. This is an action by CELESTIAL, INC., a California corporation, to
27 recover damages arising from infringement of a Celestial, Inc. owned motion picture
28

1 by Defendants GARY CATALANO, KENNY DAUGHERTY, CYNTHIA
2 MOLNAR, MARTHA SEVERINO, SHALESMITH, and DAVID SOPP and to
3
4 enjoin Defendants from future infringement.

5 2. Defendants without authorization reproduced and distributed Celestial,
6
7 Inc.'s motion picture. Celestial previously registered the copyright for the motion
8 picture with the United States Copyright Office. The U.S. Copyright Office
9 assigned the work the registration number PA 1-715-691. A true and complete copy
10 of the registration is attached hereto as exhibit A.¹

11
12 3. On November 8, 2011, Celestial Productions released and published the
13 movie at issue in this action.

14
15 4. A mere eight days later, on November 16, 2010, using BitTorrent
16 technology, Defendants acted in a collective and interdependent manner in the
17 unlawful reproduction and distribution of Plaintiff's motion picture by sharing
18 pieces of the motion picture (bits) between themselves and other bit torrent users.

19
20 5. Each time individuals such as the Defendants in this matter unlawfully
21 distribute a copy of Plaintiff's copyrighted Motion Picture to others over the
22 Internet, each recipient can then further distribute that unlawful copy to others
23 without degradation in sound or picture quality. Thus, a Defendant's distribution of
24
25

26
27
28

¹ Bryan W. Ott, dba Celestial Productions originally registered the copyright, but later assigned the entire copyright to Celestial, Inc.

1 even a single unlawful copy of the Motion Picture can result in the nearly
2 instantaneous worldwide distribution of that single copy to a near limitless number
3 of people.
4

5 6. By engaging in such illegal distribution of its works, within days of the
6 release of the work, the Defendants infringed Plaintiff's exclusive distribution rights
7 and deprived Plaintiff of its ability to sell the work in the market place at its true
8 value.
9
10

11 7. Plaintiff seeks redress for the Defendants' infringement of its exclusive
12 rights in the motion picture, and for injunctive relief to stop Defendants from
13 continuing to infringe upon Plaintiff's copyrighted work.
14

15 **JURISDICTION**

16 8. This Court has subject matter jurisdiction over Plaintiff's claims for
17 copyright infringement and related claims pursuant to 17 U.S.C. §§ 101, *et. seq.*, and
18 28 U.S.C. §§ 1331 and 1338(a).
19
20

21 9. Defendants reside in, solicit, transact, or are doing business within the
22 jurisdiction; or they have committed unlawful and intentional tortuous acts both
23 within and outside the jurisdiction, directing those acts at this jurisdiction, with the
24 full knowledge that their acts would cause injury in this jurisdiction. As such,
25 Defendants have sufficient contacts with this judicial district to permit the Court's
26 exercise of personal jurisdiction over each.
27
28

1 10. The audiovisual file that each of the Defendants reproduced and
2 distributed clearly indicates displays within the first 11 seconds of play the title of
3 the work, the name of the producer and the California address of the producer. As
4 the Defendants engaged in an intentional tort (copyright infringement) against a
5 California company, and the infringed material clearly identified the name and
6 California address of Plaintiff, identifying it as the producer of the movie, the
7 Defendants knew or should have known that infringement upon the copyright would
8 cause harm and damage to Plaintiff in California.
9
10

11 11. Plaintiff's claims arise out of the Defendants' conduct that gives rise to
12 personal jurisdiction over Defendants. By taking the affirmative act of both
13 downloading and uploading a known California company's intellectual property,
14 Defendants engaged in intentional acts. As the Defendants knew or should have
15 known (and only could not have known through willful blindness) that the copyright
16 they infringed upon was California intellectual property, the Defendants expressly
17 aimed their acts at a California company.
18
19
20
21

22 12. The Plaintiff is well-known as being a California company and the
23 entertainment industry is commonly known to be centered in California. There was
24 clearly foreseeable harm in this jurisdiction, and the Defendants' conduct caused
25 harm that they knew or should have known was likely to be suffered in this forum.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13. It was a foreseeable consequence of the Defendants’ actions that the Plaintiff would suffer harm to its profits, business reputation, and goodwill. It was foreseeable that Plaintiff would suffer these harms in this jurisdiction and venue.

VENUE

14. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(2) and 1400(a).

THE PARTIES
THE PLAINTIFF CELESTIAL, INC.

15. Celestial, Inc. is a California corporation with its principal place of business located at 23248 Canzonet Street Woodland Hills CA 91367. Celestial, Inc. produces, markets, and distributes adult entertainment products, including Internet website content, videos, DVDs, photographs, etc.

THE DEFENDANTS

16. All of the Defendants republished and duplicated the Plaintiff’s motion picture. However, not only did they replicate the exact same motion picture, but all of the Defendants reproduced, and distributed the precise same copy and same hash version (UOUXFRBA3KUQZTX5ZUWO2ZT6ZMJ6DXDF). Thus, all Defendants replicated and shared with one another the exact same precise file and portions thereof in a completely interconnected conspiracy and concerted effort to deprive Plaintiff of its exclusive rights under the Copyright Act.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

17. Plaintiff is informed and believes and based thereon alleges that each of the Defendants, was and is the agent of the other Defendants, acting within the purpose and scope of said agency. Plaintiff is further informed and believes and based thereon alleges that each of the Defendants, authorized and ratified the conduct herein alleged of each of the other Defendants.

18. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants performed, participated in, abetted in some manner, and are responsible for, the acts described in this Complaint and proximately caused the damages resulting there from.

19. Each of the named Defendants engaged in their copyright infringement scheme together. They all used the same torrent-sharing website to coordinate their copyright theft; they were all part of the same swarm on the same day; they all used the same tracker file; they all shared and republished the same motion picture; and linking them all together inextricably, they all shared the precise hash file of the film with each other and other individuals.

20. On August 16, 2010, each Defendant accessed the Internet for the purpose of reproducing and distributing with the remaining defendants and others peers pieces of Plaintiff's motion picture as reproduced in the file identified by the hash ID UOUXFRBA3KUQZTX5ZUWO2ZT6ZMJ6DXDF.

1 21. During the day of 11/16/2010 starting at least as early as 11:32:26 AM,
2 Defendant DAVE SOPP or an agent acting with his authority, or a coconspirator,
3 without authorization from Celestial, Inc., reproduced and distributed Plaintiff's
4 registered Motion Picture by downloading bits of the digital file identified as Hash
5 UOUXFRBA3KUQZTX5ZUWO2ZT6ZMJ6DXDF from various bit torrent peers.
6
7 As SOPP or his agent downloaded the pieces of the file from bit torrent peers, he
8 made those pieces available for immediate, as well as, future downloading by other
9 bit torrent peers including the remaining Defendants. On 11/16/2010 at 11:32:26
10 AM GMT, Plaintiff's investigators documented that someone using an Internet
11 account registered to DAVE SOPP, as a bit torrent peer, offered Hash
12 UOUXFRBA3KUQZTX5ZUWO2ZT6ZMJ6DXDF for other bit torrent peers to
13 download. Plaintiff is informed and believes and based thereon alleges that DAVE
14 SOPP, his agent, or coconspirator continued to make pieces of the file available to
15 other bit torrent peers, thereby making it available for the remaining Defendants and
16 other peers to download and further distribute.
17
18
19
20
21

22 22. The remaining Defendants acted in an identical fashion first accessing
23 the Internet to download pieces of file hash
24 UOUXFRBA3KUQZTX5ZUWO2ZT6ZMJ6DXDF from peers, including other
25 Defendants, and then further distributing those pieces to other peers including the
26
27
28

1 other Defendants. Plaintiff's investigators documented those Defendants accessing
2 the Internet as follows.

3
4 23. On 11/16/2010 at 11:33:26 AM, CYNTHIA MOLNAR, her agent, or
5 coconspirator, accessed the Internet to offer pieces of hash
6 UOUXFRBA3KUQZTX5ZUWO2ZT6ZMJ6DXDF using the ip address
7 96.251.63.181.
8

9
10 24. On 11/16/2010 at 11:59:51 AM, GARY CATALANO, his agent, or
11 coconspirator accessed the Internet to offer pieces of hash
12 UOUXFRBA3KUQZTX5ZUWO2ZT6ZMJ6DXDF using the ip address
13 71.251.171.170.
14

15
16 25. On 11/16/2010 at 12:04:58 PM, SHALE SMITH, his agent, or
17 coconspirator, accessed the Internet to offer pieces of hash
18 UOUXFRBA3KUQZTX5ZUWO2ZT6ZMJ6DXDF using the ip address
19 99.50.233.118.
20

21
22 26. On 11/16/2010 at 12:49:27 PM, KENNY DAUGHERTY, his agent, or
23 coconspirator, accessed the Internet to offer pieces of hash
24 UOUXFRBA3KUQZTX5ZUWO2ZT6ZMJ6DXDF using the ip address
25 71.108.18.114.
26

27
28 27. On 11/16/2010 at 08:16:57 PM, MARTHA SEVERINO, her agent, or
coconspirator, accessed the Internet to offer pieces of hash

1 UOUXFRBA3KUQZTX5ZUWO2ZT6ZMJ6DXDF using the ip address
2 75.22.119.229.
3

4 **FACTS COMMON TO ALL CLAIMS**

5 28. Plaintiff repeats and incorporates by this reference the allegations set
6 forth in all previous paragraphs.
7

8 29. Technological advances have made it increasingly possible to transfer
9 large amounts of data, including digital video files, by and through the Internet. As
10 Congress and the courts clarify the law and close legal loopholes in order to hold
11 infringers liable for their actions, would-be infringers develop new and often
12 increasingly complex means of engaging in piracy, hoping that the complexity of
13 their systems will help them avoid detection, identification, and prosecution.
14 Defendants' infringement represents one of these manifestations of on-line digital
15 piracy.
16
17
18

19 30. BitTorrent is a peer-to-peer file sharing protocol used for distributing
20 and sharing data on the Internet, including motion pictures. Rather than
21 downloading a file from a single source, the BitTorrent protocol allows users to join
22 a "swarm," or group, of hosts to download and upload from each other
23 simultaneously. The process works as follows. First, users download a torrent
24 tracker file onto their computer. This file contains a unique hash code known as the
25 SHA-1 hash – a unique identifier generated by a mathematical algorithm developed
26
27
28

1 by the National Security Agency. This hash serves as a roadmap to a BitTorrent
2 program to download all the pieces of a file such as a motion picture or music file.
3
4 Second, the user places the torrent file into a BitTorrent program, also known as a
5 BitTorrent “client” application. This program connects uploaders of the file (i.e.
6 those that are distributing the content) with downloaders of the file (i.e. those that
7 are copying the content). During this process, a tracker directs a BitTorrent user’s
8 computer to other users who have a particular file, and then facilitates the download
9 process from those users.
10
11

12 31. For the user, this process is quite simple. When a BitTorrent user seeks
13 to download a motion picture, he or she merely clicks on the appropriate torrent file
14 which may be found online on any number of BitTorrent websites. The torrent file
15 then instructs the client software how to connect to a tracker that will identify where
16 the file is available and begins downloading it without any further effort from the
17 user.
18
19
20

21 32. Files obtained by this method are downloaded in hundreds of individual
22 pieces (bits). Each downloaded piece is immediately available for distribution to
23 other users seeking the same file. The effect of this technology makes every
24 downloader also an uploader of the content. This means that every user who has a
25 copy of the infringing material on a torrent network must necessarily also be a
26 source of download for that material.
27
28

1 33. The motion picture at issue in this action is of obvious high production
2 values and is easily discernable as a professional work. Plaintiff created the work
3 using professional performers, directors, cinematographers, lighting technicians, set
4 designers and editors. Plaintiff created each work with professional-grade cameras,
5 lighting, and editing equipment.

6
7
8 34. As set forth specifically for in the Parties section above, Plaintiff has
9 recorded each Defendant herein reproducing and distributing the motion picture by
10 and through the Internet using BitTorrent technology.

11
12 **FIRST CLAIM**
13 **COPYRIGHT INFRINGEMENT – 17 U.S.C. §501**

14 **Plaintiff Celestial, Inc. Owns Federally Registered Copyrights of Various Creative**
15 **Works**

16
17 35. Plaintiff repeats and incorporates by this reference the allegations set
18 forth in all previous paragraphs.

19
20 36. At all times relevant hereto, Plaintiff has been the producer and owner
21 of the audiovisual work *Big Dick Glory Holes*, vol. 6, which Defendants reproduced
22 and distributed by and through the Internet using BitTorrent technology.

23
24 37. Plaintiff holds a copyright registration certificate from the United States
25 Copyright Office for the motion picture. The registration certificate number is PA
26 1-715-691.

1 Defendants Willfully Infringed Plaintiff’s Registered Copyrights

2 38. Plaintiff is informed and believes and based thereon alleges that
3
4 Defendants without authorization, reproduced and distributed Plaintiff’s copyright
5 registered motion picture by and through the Internet using BitTorrent technology.
6

7 39. Defendants knew or should have known that they were not authorized
8 to reproduce or distribute Plaintiff’s motion picture. During the very first second of
9 play of the audiovisual file, it displays a warning stating that “FEDERAL LAW
10 PROVIDES FOR CIVIL AND CRIMINAL PENALTIES FOR THE
11 UNAUTHORIZED REPRODUCTION, DISTRIBUTION, OR EXHIBITION OF
12 COPYRIGHTED MOTION PICTURES, VIDEO TAPES, AND VIDEO DISCS”
13 and cites the relevant U.S. statutes.
14
15

16 **SECOND CLAIM**
17 **CONTRIBUTORY COPYRIGHT INFRINGEMENT**

18
19 40. Plaintiff repeats and incorporates by this reference the allegations set
20 forth in all previous paragraphs.
21

22 41. Plaintiff repeats and incorporates by this reference the allegations set
23 forth in all previous paragraphs.
24

25 42. Each Defendant has directly engaged in the unauthorized reproduction
26 and distribution of Plaintiff’s copyright registered work as set forth above.
27
28

1 43. Each Defendant materially contributed to the direct infringement of the
2 subsequently named Defendants by providing pieces of Plaintiff's copyright
3 registered work to those Defendants directly and/or by allowing those Defendants to
4 download the infringing copies from other peers more quickly and more efficiently
5 by adding to the overall efficiency of the swarm on the date in question.
6
7

8 44. Defendants knew they were infringing Plaintiff's copyright and knew
9 the other swarm participates, including the other Defendants, also were infringing
10 Plaintiff's work.
11

12 45. It is helpful to think of the process of transferring files using BitTorrent
13 technology in the context of a constructed puzzle. In furtherance of sharing this
14 puzzle, it is deconstructed into tiny pieces. These pieces are then uploaded and
15 distributed among one or more peers. Once a peer identifies a file he wants to
16 download, the Network locates all the peers currently on line and offering for
17 distribution the identical file as identified by the unique HASH ID. The
18 technology, in conjunction with software residing on tracking servers, is capable of
19 locating all the unique corresponding pieces that make up the original file. The
20 software then downloads pieces of the file from various peers, always seeking the
21 pieces that will download the fastest. Once all the pieces are located and
22 downloaded, the software places the pieces into the original order thereby
23 reconstructing the entire original copyrighted file.
24
25
26
27
28

1 46. When users possess the same infringing file as identified by the unique
2 hash value (as in this case), it is because each infringer possesses an exact digital
3 copy containing the exact pieces unique to that file. Returning to the puzzle
4 analogy, other puzzles may be created out of the same motion picture, but those
5 pieces will not fit together with the pieces from another puzzle, even if made from
6 the same motion picture. Only pieces from the puzzle identified by the unique hash
7 i.d. will fit together. Thus, the BitTorrent users rely on other users that are working
8 with the same version of the puzzle at the same time.

9
10
11
12 47. Each of the Defendants downloaded, uploaded, and distributed the
13 precise same hash file - UOUXFRBA3KUQZTX5ZUWO2ZT6ZMJ6DXDF.

14
15 48. Because it is the exact same motion picture, using the exact same hash,
16 during the same time period, and because each Defendant then materially
17 contributed to the infringing acts of the subsequently named Defendants the
18 transaction of events at issue in this Complaint is common to all Defendants, thus
19 rendering the Defendants properly joined in this action.

20
21
22 49. Each of the peers who illegally downloaded the movie derived portions
23 of their illegal replication of the file from multiple peers including the other
24 Defendants. At the same time, each Defendant offered pieces of the file to help
25 other peers, including the remaining Defendants, replicate and compile new copies
26 of the file.
27
28

1 50. Each Defendant assisted any other Defendant who was part of the
2 swarm during overlapping times, by either exchanging pieces with that user directly
3 or by providing an alternative source for peers thereby making the swarm work
4 more efficiently and increasing the speed in which each other Defendant was able to
5 download the entire audiovisual file.
6
7

8 51. The Defendants were conscious of their own infringement and of the
9 fact that multiple other persons derivatively downloaded from them the file
10 containing Plaintiff's motion picture.
11

12 52. The infringement by other BitTorrent users could not have occurred but
13 for the Defendants' participation in uploading the Plaintiff's protected work. As
14 such, the Defendants' participation in the infringing activities of others is
15 substantial.
16
17

18 53. Each Defendant is contributory liable for the infringing acts of the
19 subsequently named Defendants.
20

21 54. Each Defendant is jointly and severally liable for the harm Plaintiff
22 suffered as a result of the Defendants contribution in the infringement of its
23 copyright registered work.
24
25
26
27
28

THIRD CLAIM
NEGLIGENCE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

55. Plaintiff repeats and incorporates by this reference the allegations set forth in previous paragraphs.

56. Defendants accessed or controlled access to the Internet connection used in performing the unauthorized copying and sharing of Plaintiff's Motion Picture as described above.

57. Defendants failed to adequately secure their Internet access, whether accessible only through their computer when physically connected to an Internet router, or accessible to many computers by use of a wireless router, and failed to prevent its use for this unlawful purpose.

58. Reasonable Internet users take steps to secure their Internet access accounts to prevent the use of such accounts for nefarious and illegal purposes. As such, Defendants' failure to secure their Internet access accounts, and thereby prevent such illegal uses thereof, constitutes a breach of the ordinary care that reasonable persons exercise in using an Internet access account. In fact, most Internet service providers, including those who provided service for Defendants, generally require in their Terms of Service or Terms of Use that subscribers secure wireless routers with a password.

1 (1) That the Court enter a judgment against all Defendants that they have:
2 a) willfully infringed Plaintiff's rights in federally registered copyrights under 17
3 U.S.C. § 501; and b) otherwise injured the business reputation and business of
4 Plaintiff by all Defendants' acts and conduct set forth in this Complaint.
5

6 (2) That the Court issue injunctive relief against all Defendants, and that all
7 Defendants, their agents, representatives, servants, employees, attorneys, successors
8 and assigns, and all others in active concert or participation with them, be enjoined
9 and restrained from copying, posting or making any other infringing use or
10 infringing distribution of audiovisual works, photographs or other materials owned
11 by or registered to Plaintiff;
12

13 (3) That the Court enter an order of impoundment pursuant to 17 U.S.C. §§
14 503 and 509(a) impounding all infringing copies of Plaintiff's audiovisual works,
15 photographs or other materials, which are in Defendants' possession or under their
16 control;
17

18 (4) That the Court order all Defendants to pay Plaintiff's general, special,
19 actual and statutory damages as follows: Plaintiff's damages and Defendants' profits
20 pursuant to 17 U.S.C. § 504(b), or in the alternative, enhanced statutory damages in
21 the amount of one hundred fifty thousand dollars (\$150,000.00) per infringed work,
22 pursuant to 17 U.S.C. § 504(c)(2), for Defendants' willful infringement of Plaintiff's
23 copyrights;
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(5) That the Court order all Defendants to pay Plaintiff both the costs of this action and the reasonable attorney's fees incurred by it in prosecuting this action pursuant to 17 U.S.C. § 504; and

(6) That the Court grant to Plaintiff such other and additional relief as is just and proper.

Dated: *February 6, 2012*

Respectfully submitted,



D. GILL SPERLEIN
THE LAW OFFICE OF D. GILL SPERLEIN
Attorney for Plaintiff, Celestial, Inc.