

JS 44C/SDNY
REV. 7/2012

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 use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS JOHN JOHNSON and TAMARACK PRODUCTIONS, INC.
DEFENDANTS AMAZON.COM, INC., AMAZON.COM KYDC, INC., ON-DEMAND PUBLISHING LLC, JOHN DOE NOS. 1 THROUGH 10

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) LAW OFFICES OF JOSHUA GRAUBART, P.C.
6 E. 39TH STREET, 6TH FLOOR, NEW YORK, NY 10016
(646) 781-9321
ATTORNEYS (IF KNOWN)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)
17 USC 501 - COPYRIGHT INFRINGEMENT

Has this or a similar case been previously filed in SDNY at any time? No Yes Judge Previously Assigned
If yes, was this case Vol. Invol. Dismissed. No Yes If yes, give date _____ & Case No. _____

IS THIS AN INTERNATIONAL ARBITRATION CASE? No Yes

(PLACE AN [x] IN ONE BOX ONLY) **NATURE OF SUIT**

TORTS		ACTIONS UNDER STATUTES			
CONTRACT	PERSONAL INJURY	PERSONAL INJURY	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
[] 110 INSURANCE	[] 310 AIRPLANE	[] 382 PERSONAL INJURY -	[] 610 AGRICULTURE	[] 422 APPEAL	[] 400 STATE
[] 120 MARINE	[] 315 AIRPLANE PRODUCT	MED MALPRACTICE	[] 620 OTHER FOOD &	28 USC 158	REAPPORTIONMENT
[] 130 MILLER ACT	LIABILITY	[] 385 PERSONAL INJURY	DRUG	[] 423 WITHDRAWAL	[] 410 ANTITRUST
[] 140 NEGOTIABLE	[] 320 ASSAULT, LABEL &	PRODUCT LIABILITY	[] 625 DRUG RELATED	28 USC 157	[] 430 BANKS & BANKING
INSTRUMENT	SLANDER	[] 388 ASBESTOS PERSONAL	SEIZURE OF		[] 450 COMMERCE
[] 150 RECOVERY OF	[] 330 FEDERAL	INJURY PRODUCT	PROPERTY	PROPERTY RIGHTS	[] 460 DEPORTATION
OVERPAYMENT &	EMPLOYERS'	LIABILITY	21 USC 881		[] 470 RACKETEER INFLU-
ENFORCEMENT	LIABILITY	PERSONAL PROPERTY	[] 630 LIQUOR LAWS	[] 820 COPYRIGHTS	ENCED & CORRUPT
OF JUDGMENT	[] 340 MARINE	[] 370 OTHER FRAUD	[] 640 RR & TRUCK	[] 830 PATENT	ORGANIZATION ACT
[] 151 MEDICARE ACT	[] 345 MARINE PRODUCT	[] 371 TRUTH IN LENDING	[] 650 AIRLINE REGS	[] 840 TRADEMARK	(RICO)
[] 152 RECOVERY OF	LIABILITY	[] 380 OTHER PERSONAL	[] 660 OCCUPATIONAL		[] 480 CONSUMER CREDIT
DEFAULTED	[] 350 MOTOR VEHICLE	PROPERTY DAMAGE	[] 690 OTHER	SOCIAL SECURITY	[] 490 CABLE/SATELLITE TV
STUDENT LOANS	[] 355 MOTOR VEHICLE	[] 385 PROPERTY DAMAGE		[] 861 HIA (1395ff)	[] 810 SELECTIVE SERVICE
(EXCL VETERANS)	PRODUCT LIABILITY	PRODUCT LIABILITY	LABOR	[] 862 BLACK LUNG (923)	[] 850 SECURITIES/
[] 153 RECOVERY OF	[] 380 OTHER PERSONAL		[] 710 FAIR LABOR	[] 863 DIWC/DIWW (405(g))	COMMODITIES/
OVERPAYMENT	INJURY	PRISONER PETITIONS	[] 720 LABOR/MGMT	[] 864 SSID TITLE XVI	EXCHANGE
OF VETERAN'S		[] 510 MOTIONS TO	[] 730 LABOR/MGMT	[] 865 RSI (405(g))	[] 875 CUSTOMER
BENEFITS	ACTIONS UNDER STATUTES	VACATE SENTENCE	[] 740 RAILWAY LABOR ACT		CHALLENGE
[] 160 STOCKHOLDERS	CIVIL RIGHTS	20 USC 2255	[] 790 OTHER LABOR	FEDERAL TAX SUITS	12 USC 3410
SUITS	[] 441 VOTING	[] 530 HABEAS CORPUS	[] 791 EMPL RET INC	[] 870 TAXES (U.S. Plaintiff or	[] 890 OTHER STATUTORY
[] 190 OTHER	[] 442 EMPLOYMENT	[] 535 DEATH PENALTY	SECURITY ACT	Defendant)	ACTIONS
CONTRACT	[] 443 HOUSING/	[] 540 MANDAMUS & OTHER	IMMIGRATION	[] 871 IRS-THIRD PARTY	[] 891 AGRICULTURAL ACTS
[] 195 CONTRACT	ACCOMMODATIONS	PRISONER CIVIL RIGHTS	[] 462 NATURALIZATION	26 USC 7609	[] 892 ECONOMIC
PRODUCT	[] 444 WELFARE	[] 550 CIVIL RIGHTS	APPLICATION		[] 893 STABILIZATION ACT
LIABILITY	[] 445 AMERICANS WITH	[] 555 PRISON CONDITION	[] 463 HABEAS CORPUS-	[] 870 TAXES (U.S. Plaintiff or	[] 894 ENVIRONMENTAL
[] 196 FRANCHISE	EMPLOYMENT		ALIEN DETAINEE	Defendant)	MATTERS
	[] 446 AMERICANS WITH		[] 465 OTHER IMMIGRATION	[] 871 IRS-THIRD PARTY	[] 895 ENVIRONMENTAL
	DISABILITIES - OTHER		ACTIONS	26 USC 7609	INFORMATION ACT
	[] 440 OTHER CIVIL RIGHTS				[] 900 APPEAL OF FEE
	(Non-Prisoner)				DETERMINATION
REAL PROPERTY					UNDER EQUAL
[] 210 LAND					ACCESS TO JUSTICE
CONDEMNATION					[] 950 CONSTITUTIONALITY
[] 220 FORECLOSURE					OF STATE STATUTES
[] 230 RENT LEASE &					
EJECTMENT					
[] 240 TORTS TO LAND					
[] 245 TORT PRODUCT					
LIABILITY					
[] 290 ALL OTHER					
REAL PROPERTY					

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE: _____

DEMAND \$ 300,000.00 OTHER INJUNCTION JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint
JURY DEMAND: YES NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN *x* IN ONE BOX ONLY)

ORIGIN

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from (Specify District) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judge Judgment
- a. all parties represented b. At least one party is pro se.

(PLACE AN *x* IN ONE BOX ONLY)

BASIS OF JURISDICTION

IF DIVERSITY, INDICATE CITIZENSHIP BELOW. (28 USC 1332, 1441)

- 1 U.S. PLAINTIFF 2 U.S. DEFENDANT 3 FEDERAL QUESTION (U.S. NOT A PARTY) 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF [] DEF []	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF [] DEF []	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF [] DEF []
CITIZEN OF ANOTHER STATE	[] 2 [] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] 4 [] 4	FOREIGN NATION	[] 6 [] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

JOHN JOHNSON, 3730 Canterbury Lane, Pueblo, CO 81005
 TAMARACK PRODUCTIONS, INC., 3730 Canterbury Lane, Pueblo, CO 81005

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

AMAZON.COM, INC., 1516 2nd Ave., Seattle, WA 98101
 AMAZON KYDC, INC., 172 Trade Street, Lexington, KY 40511
 ON-DEMAND PUBLISHING LLC, 7290 Investment Drive, Charleston, SC 29418

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

JOHN DOE NOS. 1 THROUGH 10

Check one: THIS ACTION SHOULD BE ASSIGNED TO: WHITE PLAINS MANHATTAN
 (DO NOT check either box if this a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT.)

DATE 7/18/2013 SIGNATURE OF ATTORNEY OF RECORD  ADMITTED TO PRACTICE IN THIS DISTRICT
 NO
 YES (DATE ADMITTED Mo. Oct. Yr. 2009)
 Attorney Bar Code # JG6791

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN JOHNSON and TAMARACK
PRODUCTIONS, INC.

Plaintiffs,

- against -

AMAZON.COM, INC., AMAZON .COM
KYDC, INC., ON-DEMAND
PUBLISHING LLC, and JOHN DOE
NOS. 1 through 10,

Defendants.

Civil Action No.

COMPLAINT AND JURY DEMAND

Plaintiffs John Johnson and Tamarack Productions, Inc., by their attorney, Joshua G. Graubart, Law Offices of Joshua Graubart, P.C., for their Complaint against Defendants amazon.com, Inc., amazon.com KYDC, Inc., On-Demand Publishing, LLC, and John Doe Nos. 1-10, allege as follows:

NATURE OF DISPUTE

1. This is a civil action in which Plaintiffs seek an award of damages from this Court for Defendants' infringement of their copyrights in a motion picture work entitled "The Curse of the Blue Lights" (the "Motion Picture"). Plaintiffs also seek an order from this Court enjoining Defendants from continued reproduction, distribution, and public performance of infringing copies of the Motion Picture. Absent such an order, Plaintiffs will continue to suffer substantial injury, loss and damage to their ability to exploit their valuable copyrights in the Motion Picture as a result of Defendants' actions.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff John Johnson is a resident of Colorado. He is the author and sole owner of a screenplay entitled “Blue Lights” (the “Screenplay”).

3. Plaintiff Tamarack Productions, Inc. is a corporation organized under the laws of Colorado and maintaining a principal place of business at 3730 Canterbury Lane, Pueblo, Colorado, and is the sole owner of copyright in the Motion Picture.

4. Defendant amazon.com, Inc. (“Amazon”) is a corporation organized under the laws of Delaware, and maintaining a principal place of business at 1516 2nd Ave., Seattle, Washington.

5. Defendant amazon.com KYDC, Inc. (“KYDC”) is a corporation organized under the laws of Delaware, and maintaining a principal place of business at 172 Trade Street, Lexington, Kentucky. On information and belief, KYDC is, and at all pertinent times has been, a wholly-owned subsidiary of Defendant Amazon.

6. Defendant On-Demand Publishing LLC, doing business as “CreateSpace” (“CreateSpace”), is a limited liability company organized under the laws of Delaware, and maintaining a principal place of business at 7290 Investment Drive, North Charleston, South Carolina. On information and belief, CreateSpace is, and at all pertinent times has been, a wholly-owned subsidiary of Defendant Amazon.

7. Defendants John Doe Nos. 1-10 are persons or entities who profited or benefitted from the infringements of the other Defendants. Among them are one or more persons or entities identified as “Mom’N’Pop Video Shop,” (referred to herein – collectively if applicable – as “John Doe No. 1”) whom the packaging of infringing DVDs distributed by Defendant Amazon identifies as the “Presenter.” Email communication from Defendant John Doe No. 1 indicates that a person identifying him or herself as “Chris

Justin” either solely composes or is one of several persons who collectively compose Defendant John Doe No. 1.¹ The residence of Defendant John Doe No. 1, and of the other Doe Defendants, is unknown.

8. Plaintiff brings this action seeking damages and injunctive relief in relation to federal copyright law. The Court has subject matter jurisdiction over this action pursuant to 28 U. S. C. §§ 1331 and 1338.

9. Defendants have sufficient contacts with this District in connection with the events alleged in this Complaint so that each Defendant is subject to this Court's exercise of personal jurisdiction over them.

10. Venue is proper pursuant to 28 U.S.C. § 1400(a) because Defendants Amazon resides or may be found here.

FACTS

11. In or about 1987 and 1988, Plaintiffs respectively produced and released the Motion Picture. On or about October 28, 1988, Plaintiffs registered the Motion Picture with the United States Copyright Office (Registration Number PAu001172689) under the name “Blue Lights.” The Motion Picture is an original work derived from the Screenplay, authored by Plaintiff Johnson, and registered with the United States Copyright Office (Registration Number PAu000909357).

12. On information and belief, Defendant John Doe No. 1 contracted with Defendant CreateSpace for the manufacture and distribution of infringing DVD-formatted copies of the Motion Picture. On information and belief, Defendant CreateSpace arranged for the

¹ It is not clear whether the name “Chris Justin” is a pseudonym. Emails sent by Defendant John Doe No. 1 were signed “Chris Justin”; the email address used identified the sender as “Clyde Anderson” – “Clyde Anderson” was a pseudonym used by the Italian film director Claudio Fragasso, several of whose works “Mom’N’Pop Video Shop” have also distributed.

manufacture of such copies by its affiliate, Defendant KYDC, and for the distribution of such copies by its parent company, Defendant Amazon. Defendant John Doe No. 1, on the one hand, and Defendants CreateSpace, KYDC, and Amazon, on the other hand, would divide between them the revenue from such manufacture and distribution.

13. Defendants KYDC and Amazon have been respectively manufacturing and distributing copies of the Motion Picture in DVD format without authorization from Plaintiffs. Indeed, the DVD copies explicitly state on their packaging that such copies have not been “licensed nor authorized by the original copy right [*sic*] owners.”

14. In communication with the undersigned, Defendants have admitted that they have manufactured and distributed at least twenty-two such unauthorized copies of the Motion Picture. The packaging of the DVD copies distributed by Defendant Amazon states “Manufactured by Amazon.com KYDC, Lexington, KY.” At least one such copy was sold and delivered to the undersigned in Manhattan, New York.

FIRST CLAIM FOR RELIEF
(Permanent Injunction)

15. Plaintiffs repeat and reallege each and every fact contained within the above paragraphs.

16. By reason of Defendants’ infringements, Plaintiffs have sustained and will continue to sustain injury, loss and damage caused by the continued reproduction, and distribution, of infringing copies of the Motion Picture.

17. Monetary damages alone cannot adequately remedy Plaintiffs’ substantial injury caused by Defendants’ actions. Continued infringing reproduction and distribution of the Motion Picture is difficult to police and damages deriving from the presence in the market of Defendants’ unauthorized releases are nearly impossible to quantify.

18. Considering the balance of hardships between Plaintiffs and Defendants, a remedy in equity is warranted because Defendants must merely cease manufacture and distribution of the Motion Picture, activities to which Defendants are not legally entitled.

19. It would not disserve the public interest to enjoin Defendants from reproducing, a and distributing the Motion Picture because it is in accordance with public policy to protect the rights of copyright holders and no public policy is served by Defendants' infringement.

SECOND CLAIM FOR RELIEF
(Copyright Infringement – Reproduction)

20. Plaintiffs repeat and reallege each and every fact contained within the above paragraphs.

21. The Motion Picture has been reproduced in the United States by Defendant KYDC, as indicated by the statement on the packaging of DVDs sold through Defendant Amazon: "Manufactured by Amazon.com KYDC."

22. Though Defendants knew that they possessed no rights in the Motion Picture – as clearly indicated by the statement on the packaging of DVDs sold through Defendant Amazon to the effect that the Motion Picture had not been "licensed nor authorized by the original copy right [*sic*] owners," Defendant KYDC nonetheless proceeded to manufacture at least 22 copies for distribution.

23. By reproducing the Motion Picture, Defendant KYDC has directly, and the other Defendants have secondarily, infringed Plaintiffs' rights under United States law. Such manufacture in the light of Defendants' clear knowledge of their lack of authorization constitutes willful infringement, and is subject to the enhanced damages provisions of section 504(c)(2) of the Copyright Act.

THIRD CLAIM FOR RELIEF
(Copyright Infringement – Distribution)

24. Plaintiffs repeat and reallege each and every fact contained within the above paragraphs.
25. The Motion Picture has been distributed in the United States by Defendant Amazon. According to Defendant Amazon itself, it has distributed twenty-two infringing copies of the Motion Picture.
26. Though Defendants knew that they possessed no rights in the Motion Picture – as clearly indicated by the statement on the packaging of DVDs sold through Defendant Amazon to the effect that the Motion Picture had not been “licensed nor authorized by the original copy right [*sic*] owners,” Defendant Amazon nonetheless proceeded to distribute at least twenty-two copies of the Motion Picture.
27. By distributing the Motion Picture, Defendant Amazon has directly, and the other Defendants have secondarily, infringed Plaintiffs’ rights under United States law. Such manufacture in the light of Defendants’ clear knowledge of their lack of authorization constitutes willful infringement, and is subject to the enhanced damages provisions of section 504(c)(2) of the Copyright Act.

WHEREFORE, Plaintiffs demand judgment as follows:

- a. For a permanent injunction restraining all Defendants, and all persons acting in concert with them, from reproducing and distributing the Motion Picture;
- b. Statutory damages for infringements of Plaintiffs’ reproduction right in the Composition in the United States of not less than \$150,000.00, plus accrued interest;

- c. Statutory damages for infringements of Plaintiffs' distribution right in the Motion Picture in the United States of not less than \$150,000.00, plus accrued interest;
- d. For an accounting of Defendants' income and profits derived from their infringement of Plaintiffs' copyrights;
- e. For attorney's fees incurred in prosecuting this action;
- f. For other costs incurred in prosecuting this action; and
- g. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

As to all Causes of Action, where applicable, Plaintiff demands a jury trial.

Dated: New York, New York
July 18, 2013

LAW OFFICES OF JOSHUA GRAUBART, P.C.



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