

**UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO.: _____

RADIO DOGS INC.,

Plaintiff,

v.

CLEAR CHANNEL COMMUNICATIONS, INC.,

a Texas Company,

and PREMIERE RADIO NETWORKS, INC.,

a Delaware Company,

Defendants.

_____ /

VERIFIED COMPLAINT

Radio Dogs Inc., ("Radio Dogs"), by and through its undersigned counsel and for its Complaint against Clear Channel Communications, Inc. ("Clear Channel"), and its subsidiary Premiere Radio Networks, Inc. ("Premiere"), respectfully states as follows:

I. JURISDICTION AND VENUE

1. This is an action for trademark infringement, unfair competition and false designation of origin under the Lanham Act, 15 U.S.C. §§ 1501, *et seq.*, and for trademark infringement and unfair competition under the laws of the State of Florida.

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) and (b); and 15 U.S.C. § 1121. This Court has personal jurisdiction, pursuant to the principles of supplemental jurisdiction and 28 U.S.C. § 1367, over Radio Dogs' claims for trademark infringement and unfair competition under the laws of the State of Florida.

3. This Court has personal jurisdiction over Premiere and Clear Channel because Premiere and Clear Channel have continuous and systematic business contacts with the State of Florida. Additionally, upon information and belief, Premiere and Clear Channel have principals, partners, officers, directors, employees, or other persons or other persons doing business in the State of Florida.

4. Venue is proper in this Court under 28 U.S.C. § 1391 in that Premiere and Clear Channel are subject to personal jurisdiction in this judicial district, and that a substantial part of the events giving rise to this action occurred in this judicial district, and because the damages suffered by Plaintiff occurred here in this district.

II. PARTIES

5. Radio Dogs is a corporation, organized and existing under the laws of the State of California, having its principal place of business at 300 Loma Metisse Road, Malibu, California 90265, and having an office in Fort Lauderdale, Florida.

6. Upon information and belief, Defendant, Premiere is a Delaware corporation, headquartered at 15260 Ventura Blvd. Sherman Oaks, CA 91403.

7. Upon information and belief, Defendant, Clear Channel is a Texas corporation, headquartered in San Antonio, Texas. Defendant, Premiere is believed to be a subsidiary of Defendant, Clear Channel.

III. STATEMENT OF FACTS

8. The idea for the Radio Music Awards (“RMAs”) was conceived in 1991 by Paul Joseph. Von Freeman and Paul Joseph took the RMA idea to a then employee of William Morris Agency, John Ferriter, who introduced Von Freeman and Paul Joseph to Tony Eaton of Tall Tony Productions (“TTP”). In 1999, Von Freeman, Paul Joseph and Tony Eaton created the production

company Radio Dogs.

9. On or about August 1, 1999, an agreement (“Event Agreement”) attached hereto as **Exhibit “A”**, was entered into between Premiere and Radio Dogs. The Event Agreement was created for the purpose of Premiere producing an event created by Radio Dogs tentatively titled, “The Radio Megablast”, which eventually became the RMAs.

10. In 1999, the first RMA was televised and included the use of the “Radio Music Awards” and “Radio Megablast” logos, which were developed by Plaintiff. Section 7.3 of the Event Agreement states in pertinent part, “any and all...intellectual property...created in whole or in part by or on behalf of Premiere hereunder or in any manner related to the Event and/or the Program...shall constitute a work made-for-hire by Premiere for Company (Radio Dogs) (emphasis added).

11. Radio Dogs registered with the United States Patent and Trademark Office (“USPTO”) the service mark “Radio MegaBlast” on January 14, 2003 under the registration number 2,673,566 (the “566 registration”), attached hereto as **Exhibit “B”**.

12. Radio Dogs registered with the USPTO the service mark “Radio Music Awards” on February 4, 2003 under the registration number 2,684,814 (the “814 registration”), attached hereto as **Exhibit “C”**.

13. In an agreement dated June 1, 2004, Paul Joseph, co-founder of Radio Dogs, entered into an executive producer agreement with TTP. Also on June 1, 2004, Von Freeman, co-founder of Radio Dogs, entered into essentially the same executive producer agreement with TTP. Attached to both agreements is an appendix titled, “Exhibit “A” Format, Service Mark, and Trademark License” (the “License Agreement”), attached hereto as **Exhibit “D”**. Section 3 of the License Agreement in both executive producer agreements discuss how the Licensor, Radio Dogs, is the exclusive owner

of the Licensor Mark, which is the '814 Registration. The Licensee in both agreements is TTP.

14. On November 16, 2005, a Memorandum of Understanding ("2005 Memorandum") attached hereto as **Exhibit "E"**, was executed between TTP, Premiere, and the National Broadcasting Company ("NBC") regarding production of the 2005 RMA's. Section 3(a) of the 2005 Memorandum states in relevant part:

"Premiere on behalf of itself and Clear Channel, hereby quitclaims, without representation or warranty, any and all right, title and interest it has, if any, in and to the Trademarks "Radio Music Awards" and "Radio Mega Blast". Premiere on behalf of itself and Clear Channel will not assert any ownership in or make any claims with respect to the trademarks "Radio Music Awards" and "Radio Mega Blast".

15. The RMAs aired in 1999 on the Warner Bros. Television Channel ("WB"), from 2000-2001 on the American Broadcasting Company ("ABC"), and from 2003-2005 on NBC. Since 2005, the RMAs have not been produced for public airing. When Plaintiff produced the RMA's, its major sponsors were Defendants and it used Ryan Seacrest as the host.

16. On or about September 17, 2010, Tony Eaton, co-founder of Radio Dogs and owner of the '814 and '566 registered trademarks, began emailing with James McDermott regarding an idea to bring back the RMAs to television. Said emails are attached hereto as **Exhibit "F"**. Over the next several years, many emails were exchanged in an attempt to revitalize the RMA television special by pitching it to several networks including NBC and the WB.

17. In a June 2, 2011 email, Tony Eaton discusses, "getting the old RMA logo clean." Attached hereto as **Exhibit "F"**.

18. In another June 2, 2011 email exchange, James McDermott sends Tony Eaton images of possible logo options, all of which use three (3) greenish-yellow lines that depict sound waves and the letters "RMA". These are the old RMA logos, which were used in the prior RMA

events, and all of which utilize the '814 registration. The email is attached hereto as **Exhibit "G"**.

19. In a third June 2, 2011 email exchange, Tony Eaton says the only graphic he wants on the "RMA reel" is at the very beginning for it to say "This is the Radio Music Awards" in dramatic fashion. The email is attached hereto as **Exhibit "H"**.

20. In a June 8, 2011 email, Thomas Repicci of Octagon Entertainment Management, says the graphic layout of the RMA logo reminded him of "the things we did at Premiere Radio/Clear Channel," referring to the RMA productions from the early 2000's. The email is attached hereto as **Exhibit "I"**.

21. In a November 14, 2011 email between Tony Eaton and Amy Ruiz-Torres, the strategist on the CW television network's media planning team, there is a discussion of producing a RMA special on the CW television network. Furthermore, there is discussion of doing a Radio Mega Blast, which is the '566 registered trademark of Radio Dogs. The email is attached hereto as **Exhibit "J"**.

22. On September 3, 2013, Radio Dogs continued discussion with agent Evan Warner at the William Morris Endeavor Agency regarding using actor, host and producer Mario Lopez in future network and sponsorship pitches. See documents attached hereto as **Exhibit "L"**.

23. On September 6, 2013, Radio Dogs cancelled its registration in the Radio Music Awards mark, the '814 Registration. However, Radio Dogs is in the process of reinstating the '814 registration, see documents attached hereto as **Exhibit "K"**.

24. In a power point presentation discussing a possible 2014 Radio Music Awards on NBC or The CW Network, Radio Dogs, defendants, is clearly developing and selling a sponsorship package that makes use of the '814 Registration throughout the presentation, including on the bottom of every page.

25. In 2013, Defendants, without authorization or license from Radio Dogs, began knowingly and willfully using the “Radio Music Awards” mark in connection with the “iHeartRadio Music Awards” event, which is to be televised on NBC, and like Plaintiff’s RMA, will be using Ryan Seacrest as the host.

26. Radio Dog’s “Radio Music Awards” mark is well-known, as shown by its ‘814 Registration by the USPTO, which is in the process of being reinstated. Furthermore, from 2003-2005, when the RMAs were last televised; the television event had remarkably high household viewer ratings as demonstrated by the email attached hereto as **Exhibit “L”**.

27. Defendants’ use of this confusingly similar “iHeartRadio Music Awards” mark is in contravention of Section 3(a) of the 2005 Memorandum as are their logotypes, as used in commerce, and as can be seen by the following comparison:



28. Radio Dog’s mark, “Radio Music Awards”, and Defendants’ mark, “iHeart Radio Music Awards”, are substantially and confusingly similar. Defendants’ mark utilizes the entirety of Radio Dog’s mark in the same narrow field, directed to the same sponsors and consumers. Furthermore, Defendants’ mark utilizes the same sound wave imagery, signified by three lines of increasing size, as Radio Dog’s Mark. Thus, Defendants’ use of the iHeart Radio Music Awards

logo is likely to be confusing to a substantial number of actual and potential customers, and is likely to cause them to be deceived and to erroneously assume that Radio Dog's services are in some way connected with, sponsored by, or affiliated with the IHeart Radio Music Awards, all to Radio Dog's detriment.

29. Attached hereto as **Exhibit "M"** are emails from sponsors and others working in the radio music business who mistakenly believed Defendants' IHeart Radio Music Awards was associated with or sponsored by Plaintiff.

COUNT I:
Federal Trademark Infringement
(Section 32(1) of the Lanham Act, 15 U.S.C. § 1114 (1))

Radio Dogs hereby realleges and incorporates by reference the allegations of paragraphs 1 to 28 of this Complaint as if fully set forth herein.

30. Radio Dog's '814 Registration with the USPTO for the "Radio Music Awards" Trademark was valid from February 4, 2003 to September 6, 2005. The '814 Registration is currently in the process of being reinstated by the USPTO.

31. Defendants' use of the confusingly similar mark "IHeartRadio Music Awards" for a competing television event and related services is likely to cause confusion, mistake, or deception as to the source or origin of Radio Dog's services in that the trade and the consuming public are likely to believe that Radio Dogs' services are provided, sponsored, approved, or licensed by Radio Dogs, or that Radio Dogs is affiliated, associated, or otherwise legitimately connected with Defendants.

32. Defendants' adoption and use of the confusingly similar mark was intentional and was for the purpose of misleading the trade and the consuming public. These willful actions are in

violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

33. As a result of Defendants' infringement, as described above, the trade and the consuming public are likely to be confused and deceived as to the source, sponsorship, affiliation or approval of Radio Dogs' services.

34. Radio Dogs has been damaged by the aforementioned acts in an amount to be determined at trial. Defendants' adoption and use of the confusingly similar mark was undertaken by Defendants intentionally, maliciously, and in bad faith. Therefore, Radio Dogs is entitled to recover from Defendants treble damages and attorneys' fees.

35. Additionally, Defendants' conduct, if it continues, will result in irreparable harm to Radio Dogs and, specifically, to the goodwill associated with its Mark, unless such conduct is enjoined.

COUNT II:

**False Designation of Origin
(Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a))**

Radio Dogs hereby realleges and incorporates by reference the allegations of Paragraphs 1 to 28 of this Complaint as if fully set forth herein.

36. Defendants' conduct as described herein constitutes use of a false designation of origin and/or a false or misleading description or representation of fact on or in connection with their services which is likely to cause confusion, mistake or deception as to the affiliation, connection, or association of Radio Dogs with Defendants, and/or as to the origin, sponsorship or approval of Defendants' services, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Defendants' conduct as described herein also constitutes an attempt to trade on the goodwill that Radio Dogs has developed in the "Radio Music Awards" mark, all to the damage of Radio Dogs.

37. Defendants' use in commerce of a designation which is confusingly similar to Radio

Dogs' mark, despite them having actual and constructive notice of Radio Dogs' prior rights in and to the mark, constitutes intentional conduct by Defendants to make false designations of origin and false descriptions about its services and commercial activities.

38. Defendants have caused and, unless restrained and enjoined by this Court, will continue to cause irreparable harm, damage and injury to Radio Dogs.

COUNT III:

**Breach of Contract for Defendants' Breach of the Quitclaim Provision
of the November 16, 2005 Memorandum of Understanding**

Radio Dogs hereby realleges and incorporates by reference the allegations of paragraphs 1 to 28 of this Complaint as if fully set forth herein.

39. On November 16, 2005, a Memorandum of Understanding was executed between TTP, Premiere, and the National Broadcasting Company ("NBC") regarding production of the 2005 RMA's. Section 3(a) of the 2005 Memorandum states in relevant part:

"Premiere on behalf of itself and Clear Channel, hereby quitclaims, without representation or warranty, any and all right, title and interest it has, if any, in and to the Trademarks "Radio Music Awards" and "Radio Mega Blast". Premiere on behalf of itself and Clear Channel will not assert any ownership in or make any claims with respect to the trademarks "Radio Music Awards" and "Radio Mega Blast".

40. In utter disregard of this Quitclaim Clause, Defendants have decided to utilize the "Radio Music Awards" trademark in its "iHeartRadio Music Awards" VH1 production.

COUNT IV:

**Trademark Infringement and Unfair Competition
(Fla. Stat. §495.131 and Common Law)**

Radio Dogs hereby realleges and incorporates by reference the allegations of paragraphs 1 to 28 of this Complaint as if fully set forth herein.

41. Defendants' acts constitute unlawful infringement and unfair competition under Fla. Stat. § 495.131 as well as Florida common law. As a result of Defendants' unlawful infringement and unfair competition, Radio Dogs has suffered and will continue to suffer irreparable injury and damage in an amount to be determined at trial.

42. Upon information and belief, Defendants' wrongful acts resulted in substantial unjust profits and unjust enrichment to Defendants in an amount to be determined at trial.

PRAYER FOR RELIEF:

WHEREFORE, Radio Dogs prays that it be granted the following relief:

A. A preliminary and permanent injunction restraining and enjoining Defendants, their principals, officers, directors, agents, servants, and employees, as well as any successors and/or assigns of Defendants and all those acting in privity, concert, or participation with Defendants, from:

(i) Imitating, copying, duplicating or otherwise making any use of the Marks or any mark confusingly similar to the Marks, including, without limitation, the '814 and '566 Trademark Registrations;

(ii) advertising, marketing, promoting, distributing, offering for sale, or selling any product or service in connection with any copy or colorable imitation of the Marks;

(iii) using any false designation of origin or false description which can or is likely to lead the trade or public, or individual members thereof, to mistakenly believe that any product or service advertised, promoted, offered or sold by Defendants is sponsored, endorsed or connected with, approved or authorized by Radio Dogs;

(iv) causing likelihood of confusion or injury to Radio Dogs' business reputation

and to the distinctiveness of the Marks by unauthorized use of the same, or any colorable imitation thereof;

(v) operating any website associated with, using, linking to, transferring, selling, exercising control over, or otherwise owning the Infringing Domain Name or any other domain name or trademark or service mark that incorporates, in whole or in part, the Marks;

(vi) engaging in any other activity constituting unfair competition or infringement of the Marks or Radio Dogs' rights in, or to use, or to exploit the same; or

(vii) assisting, aiding or abetting another person or business entity in engaging in or performing any of the activities enumerated in subparagraphs (i) through (vi) above.

B. A finding that the acts of Defendants constitute trademark infringement in violation of 15 U.S.C. §1114(1);

C. A finding that the acts of Defendants constitute trademark infringement in violation of the common law of the State of Florida;

D. A finding that the acts of Defendants constitute unfair competition in violation of the common law of the State of Florida;

E. A finding that Defendants' violations of Radio Dogs' trademark rights, under 15 U.S.C. §§ 1114, is willful as a result of the actions complained of herein, and that this is an exceptional case pursuant to 15 U.S.C. § 1117(a);

F. An award to Radio Dogs of monetary damages in an amount to be fixed by the

Court in its discretion as just, including all of Defendants' profits or gains of any kind resulting from the actions complained of herein, said amount to be trebled, and exemplary damages in view of the intentional nature of the acts complained of herein, pursuant to 15 U.S.C. § 1117(a) and (b), and the common law of the State of Florida;

G. An award to Radio Dogs of its attorneys' fees and its costs and expenses of litigation, pursuant to 15 U.S.C. § 1117(a) and (b);

H. An order requiring Defendants and any principals, agents, servants, employees, successors and assigns of and all those in privity or concert with Defendants who receive actual notice of said order, to deliver up for destruction all infringing products and all promotional, advertising and any other printed materials and items of any kind bearing (i) the designations "Radio Music Awards" and/or (ii) any other mark or design that is confusingly similar to the Marks;

I. Such other and further relief as the Court may deem just, proper and equitable under the circumstances.

VERIFICATION

I, VON FREEMAN, do hereby confirm and verify, under penalties of perjury, and of matters within my personal knowledge, the accuracy of the factual allegations set forth above.

Von Freeman

VON FREEMAN

Respectfully submitted,

WOLFE LAW MIAMI, P.A.

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