

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

FUTURE WORLD ELECTRONICS, LLC.

Plaintiff

v.

OVER DRIVE MARKETING, LLC; BART
SCHNELL; JS DIRECT MARKETING, LLC; and
THE AUTO PARK, INC.

Defendants

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Civil Action No.: _____

Section: _____

Magistrate: _____

COMPLAINT

NOW INTO COURT comes Plaintiff, Future World Electronics, (hereinafter “FWE”), through undersigned counsel, who respectfully represents to the Court the following:

NATURE OF THE CASE

1. This is a civil action seeking damages and injunctive relief for copyright infringement, unfair competition, and unfair trade practices.

THE PARTIES

2. Plaintiff Future World Electronics, LLC (“FWE”) is a Louisiana Limited Liability Company organized under the laws of the State of Louisiana and having a principal place of business at 6260 Vicksburg Street, New Orleans, Louisiana 70124.

3. Upon information and belief, Defendant Over Drive Marketing, LLC (“Over Drive”) is a Limited Liability Company organized under the laws of the State of Texas and has a principal place of business at 1918 University Business Drive, Suite 513, McKinney, Texas 75071.

4. Upon information and belief, Defendant Bart Schnell is a resident of the state of Texas and is the owner of Over Drive.

5. Upon information and belief, Defendant JS Direct Marketing, LLC (“JS”) is a Missouri Limited Liability Company organized under the laws of the State of Missouri and has a principal place of business at 1660 Fenpark Drive, Fenton Missouri, 63026.

6. Upon information and belief, Defendant The Auto Park, Inc. (“Auto Park”) is a corporation organized under the laws of the State of Indiana and has a principal place of business at 1829 West Jefferson, Plymouth, Indiana 46563.

JURISDICTION AND VENUE

7. This Court has original subject matter jurisdiction over this matter under 15 U.S.C. § 1121; 28 U.S.C. § 1331; and 28 U.S.C. § 1338(a)-(b) because this case arises under an Act of Congress relating to copyrights, 17 U.S.C. § 101 *et seq.*, and unfair competition, 15 U.S.C. § 1051 *et seq.* The Court has jurisdiction over all other claims in this matter under 28 U.S.C. § 1367 because said claims are so related to the claims in the action within original

jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

8. This Court has personal jurisdiction over the Defendants and venue in this District is proper under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a), in that (a) Over Drive and Bart Schnell reside in this District; (b) acts of infringement complained of herein occurred in this District; (c) Auto Park, on information and belief, contracted with Over Drive in this judicial district to create and reproduce the Infringing Work (as hereinafter defined) and benefitted therefrom; and (d) JS, on information and belief, contracted with Over Drive in this district and thereby reproduced and distributed copies of the Infringing Work (as hereinafter defined).

BACKGROUND FACTS

9. FWE creates advertising materials for the automotive direct marketing industry. One of such advertising materials is the work titled *Seize the Opportunity – Template – Version 1* (the “Original Work”) (attached as Exhibit A). FWE customizes its advertising materials (including without limitation, the Original Work) for automobile dealerships, and copies of said customized advertising materials are mailed to consumers near automobile dealerships.

10. FWE is and has always been the owner and author of the Original Work.

11. The Original Work is the subject of a valid Certificate of Copyright Registration issued by the Register of Copyrights, based on a copyright application with an effective date of September 16, 2011. *See* Exhibit B.

12. Among the exclusive rights granted to FWE under the Copyright Act are the exclusive rights to reproduce the Original Work, to prepare derivative works based upon the Original Work, and to distribute copies of the Original Work to the public. *See* 17 U.S.C. § 106.

13. FWE has enjoyed great success in the industry, which has come to recognize the quality of FWE's products. Therefore, FWE's copyrighted works, including without limitation, the Original Work, constitute very valuable assets of FWE.

14. Over Drive has copied the Original Work to create the work attached hereto as Exhibit C (the "Infringing Work").

15. On information and belief, Over Drive distributed copies of the Infringing Work by directing Defendant JS to print and mail numerous copies of the Infringing Work to consumers residing near Warsaw, Indiana in order to entice said consumers to visit a car dealership located in Warsaw, Indiana owned and operated by Defendant Auto Park.

16. On information and belief, Over Drive has offered the Original Work, or substantially similar copies thereof (including, without limitation, the Infringing Work), for sale without attributing FWE as the owner and author thereof, thereby misleading customers to believe that the Infringing Work was created by Over Drive.

17. On information and belief, Bart Schnell had knowledge of and controlled the creation, copying, distribution, and use of the Infringing Work.

18. On information and belief, the foregoing acts of infringement have been willful and intentional, in disregard of and with indifference to the rights of FWE.

COUNT 1: COPYRIGHT INFRINGEMENT

19. FWE incorporates herein by this reference each and every allegation contained in each paragraph above.

20. As a result of Defendants' actions, FWE is entitled to statutory damages pursuant to 17 U.S.C. § 504(c) for Defendant's infringement of the Original Work. FWE further is entitled to attorneys' fees and cost pursuant to 17 U.S.C. § 505.

21. Defendants' conduct is causing and, unless enjoined and restrained by this Court, will continue to cause FWE great and irreparable injury that cannot fully be compensated or measured in money. FWE has no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and 503, FWE is entitled to injunctive relief prohibiting Over Drive from further infringing FWE's copyrights, and ordering Over Drive to destroy all copies of advertising materials made in violation of FWE's exclusive rights.

22. Bart Schnell is personally liable for Over Drive's copyright infringement.

PRAYER FOR RELIEF

WHEREFORE, FWE prays for judgment that:

- A. For injunctive relief restraining any further copyright infringement.
- B. For statutory damages arising out of infringement of the Original Work, and any other works of FWE infringed by Over Drive, pursuant to 17 U.S.C. § 504.
- C. For FWE's costs in this action, including FWE's reasonable attorneys' fees incurred herein, pursuant to 17 U.S.C. § 505.
- D. Defendants be ordered to pay FWE prejudgment interest on all sums awarded.
- E. FWE be awarded such other and further relief as this Court may deem just and proper.

Respectfully submitted,

MIDDLEBERG, RIDDLE & GIANNA

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