

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

-----)	
YAMAHA CORPORATION, and)	
YAMAHA MOTOR CO., LTD.,)	
)	Case No. 3:12-cv-1987
Plaintiffs,)	
)	JURY TRIAL DEMANDED
v.)	
)	
YAMAHA AIR CONDITIONING, INC.,)	
KHALED JAROUN, and)	
KHALID QIREM,)	
)	
Defendants.)	
-----)	

**COMPLAINT FOR TRADEMARK INFRINGEMENT, TRADEMARK
DILUTION, CYBERSQUATTING, FALSE DESIGNATION OF ORIGIN, AND
UNFAIR COMPETITION**

Plaintiffs Yamaha Corporation and Yamaha Motor Co., Ltd. (collectively “Yamaha” or “Plaintiffs”), by their undersigned attorneys, allege as follows, upon actual knowledge with respect to themselves and their own acts, and upon information and belief as to all other matters:

NATURE OF THE ACTION

1. This is an action for trademark infringement, trademark dilution, cybersquatting, false designation of origin, and unfair competition under federal, state, and/or common law. Yamaha brings this action seeking equitable and monetary relief against Yamaha Air Conditioning, Inc., Khaled Jaroun, and Khalid Qirem (collectively “Defendants”) for their knowing violation of Yamaha’s longstanding rights in its famous YAMAHA trademark through Defendants’ unauthorized use of the identical trademark

and trade name YAMAHA and the domain name YAMAHAAC.COM (including the e-mail address info@yamahaac.com) in connection with Defendants' manufacture, promotion, offer, and sale of air conditioners and related products.

THE PARTIES

2. Plaintiff Yamaha Corporation is a corporation of Japan with a business address at 10-1, Nakazawa-cho, Naka-ku, Hamamatsu, Shizuoka 430-8650, Japan.

3. Plaintiff Yamaha Motor Co., Ltd. (also known as Yamaha Hatsudoki Kabushiki Kaisha) is a corporation of Japan with a business address at 2500 Shingai, Iwata, Shizuoka 438-8501, Japan.

4. Defendant Yamaha Air Conditioning, Inc. is a Texas corporation with a business address at 1313 South State Highway 205, Rockwall, Texas 75032.

5. Defendant Khaled Jaroun is an individual with a business address at 1313 South State Highway 205, Rockwall, Texas 75032.

6. Defendant Khalid Qirem is an individual with a business address at 1313 South State Highway 205, Rockwall, Texas 75032.

JURISDICTION AND VENUE

7. This action arises under the federal Trademark Act, 15 U.S.C. § 1051, *et. seq.*, and under Texas statutory and common law. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b). Because Plaintiffs are citizens of Japan, Defendants are each citizens of a U.S. State, and the matters in controversy exceed the sum or value of seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs, this Court also has jurisdiction under 28 U.S.C. § 1332. This Court has supplemental jurisdiction over Yamaha's state law claims pursuant to 28 U.S.C. § 1367.

8. This Court has personal jurisdiction over Defendants and venue is proper in the Northern District of Texas pursuant to 28 U.S.C. §§ 1391(b) and (c), because Yamaha is being harmed in this District, Defendants are conducting business in this District, Defendants are using their infringing YAMAHA mark, name, and domain name in this District, and Defendants and/or their alter egos are located in this District.

YAMAHA AND ITS FAMOUS YAMAHA NAME AND MARK

9. Plaintiffs Yamaha Corporation and Yamaha Motor Co., Ltd. are related companies. In particular, Plaintiff Yamaha Motor Co., Ltd. was founded by Plaintiff Yamaha Corporation as a wholly owned-subsidiary, which later became a separate (but related) company where Plaintiffs each own non-controlling shares of each other's stock. Plaintiffs each own rights in the YAMAHA name and mark, which is managed by a Joint Brand Committee.

10. Yamaha's distinctive YAMAHA brand is a household name in the United States and around the world. Yamaha is one of the world's largest and best-known manufacturers of musical instruments, audio-visual equipment, motorcycles, marine craft and engines, generators, and other products.

11. For more than fifty years, Yamaha has offered and sold its products and services under the YAMAHA name and mark in the United States.

12. Yamaha has used the stylized versions of its YAMAHA mark shown below (or substantially identical versions) for many decades:



13. Over the course of the last half century, sales of Yamaha's YAMAHA-branded products and services have been immense. Over the last decade alone, Yamaha's sales in the U.S. have exceeded a staggering \$10 billion.

14. Yamaha has likewise spent considerable resources advertising, marketing, and promoting its YAMAHA mark through a variety of media, including television, print, the Internet, product placements, promotions, and promotional materials. Each year, Yamaha spends many millions of dollars advertising and promoting its YAMAHA products in the U.S.

15. Yamaha's YAMAHA brand has enjoyed substantial unsolicited media attention and acclaim.

16. "Yamaha" means "mountain leaves" in Japanese, and was also the surname of the founder of Yamaha, Mr. Torakusu Yamaha. The YAMAHA mark is distinctive as applied to Yamaha's products and services. Given Yamaha's long-standing marketplace success and extensive advertising, publicity, and promotion of its YAMAHA-branded goods, the YAMAHA trademark is commercially strong.

17. The YAMAHA mark enjoys tremendous goodwill, is well-known, famous, and an asset of incalculable value.

18. Yamaha owns, among others, many valid and subsisting federal registrations for the YAMAHA mark in the United States. Some of those registrations include the following:

<u>Mark</u>	<u>Owner</u>	<u>Goods/Services</u>	<u>Reg. No.</u> <u>Reg. Date</u>
YAMAHA	Yamaha Corporation	Pianos, reed and pipe organs, electronic organs, accordions, saxophones, clarinets, bugles, trumpets, cornets, trombones, french horns, oboes, flutes, piccolos, tubas, violins, [violas], harps, cellos, guitars, ukuleles, mandolins, banjos, drums, cymbols, triangles, harmonicas, xylophones, metronomes, and all parts and accessories therefor, in international Class 9.	0678446 5/12/1959
YAMAHA	Yamaha Hatsudoki Kabushiki Kaisha	Motorcycles, in International Class 12.	0688208 11/17/1959
YAMAHA	Yamaha Hatsudoki Kabushiki Kaisha	Outboard engines, in International Class 7; Motorboats and parts thereof, in International Class 12.	0866762 3/18/1969
YAMAHA	Yamaha Corporation	Electronic and electrical instruments and apparatus including wirelesses, particularly speakers, audio amplifiers, tuners, radio sets, television sets, microphones, earphones, headphones; and cabinets for speakers, radio sets, electric gramophones, and television sets; electric gramophones, record players, tape recording and reproducing apparatus, and recording tape, in International Class 9.	0893186 6/23/1970

YAMAHA	Yamaha Corporation	Musical instruments-namely, brass wind instruments, wood wind instruments and keyboard operated wind instruments, in international class 15.	1042842 7/6/1976
YAMAHA	Yamaha Hatsudoki Kabushiki Kaisha	Lubricating oils for motorized vehicles and parts thereof, in International Class 4.	3555631 4/7/1981
YAMAHA	Yamaha Hatsudoki Kabushiki Kaisha	Robots for industrial use in International Class 7.	1353726 8/13/1985
YAMAHA	Yamaha Hatsudoki Kabushiki Kaisha	Structural parts for motorcycles; motorcycle frames, motorcycle engines, motorcycle suspensions; motor scooters and structural parts therefor; snowmobiles and structural parts therefor; personal watercraft, jet-propelled water vehicles, water scooters and structural parts therefor; all-terrain vehicles and structural parts therefor; golf carts and structural parts therefor, in International Class 12.	2017999 11/19/1996
YAMAHA	Yamaha Corporation	Electric and electronic circuits, sound boards, sound cards, in International Class 9.	2283155 10/5/1999
YAMAHA	Yamaha Corporation	Accessories for musical instruments, namely, soaps for brass, polish for musical instruments that have a lacquer finish, metal polishes, silver polishes, cleaning preparations	3559368 1/13/2009

		<p>for musical instruments, cleaning preparations for cleaning mouthpieces of musical instruments, cleaning paper for musical instruments in International Class 3;</p> <p>Hand-operated tools, namely, cleaning rods for musical instruments in International Class 8;</p> <p>A full line of home and commercial sound and music recording, mixing, and playing equipment and parts and replacement parts therefore;</p> <p>Accessories for musical instruments, namely, control units for automatically playing pianos, electric foot switches, electric foot controllers, head phones, metronomes, electrical pick-ups for use with musical instruments, power adaptors, remote controls for automatically playing pianos, digital phrase samplers used to record, replay, and edit digitally stored music samples, electronic music sequencers, electronic sound effectors, electronic tone generators, and USB cables and drives; amplifiers for musical instruments; audio conferencing equipment, namely, microphones and speakers; audio-video receivers; cabinets for loud speakers, radio sets, electric gramophones, and television sets; compact disc cases; computer software, namely, computer software for tuning musical instruments, computer software for creating computer music, computer software for arranging and</p>	
--	--	--	--

		<p>sequencing music, computer software for playing music, and computer software for automatically playing pianos; downloadable electronic music via the Internet or wireless devices including mobile telephones; downloadable electronic publications, namely, manuals in the field of musical instruments and audio-video apparatus; electronic publications in the field of music, namely, musical scores and sheet music recorded on computer media; flat panel television monitors; floppy discs and CDs containing music for automatically playing pianos; goggles for sports; musical instruction videotapes; plasma display monitors; preamplifiers for musical instruments; pre-recorded discs, namely, discs pre-recorded with music data in MIDI file format, discs pre-recorded with music data for use in the operation of player pianos, and pre-recorded discs featuring music. blank tapes for recording; speaker stands; sunglasses; television receiving sets; television sets; video projectors in International Class 9;</p> <p>A full line of musical instruments and replacement parts and component parts therefore; accessories for musical instruments, namely, bass drum stands, brass instrument mouth pieces, bows for musical instruments, carrying cases for musical instruments, covers for musical instruments, clarinet barrels</p>	
--	--	--	--

		<p>used as structural parts for clarinets, drum stands, cymbal stands, foot pedals for drums, flute head joints used as structural parts for flutes, guitar and bass bridges, hi-hat cymbal stands, horn slides for brass musical instruments, keyboard stands, mouthpiece patches for wind musical instruments; mutes, neck straps, saxophone necks, shoulder straps, thumb-rest cushions all for musical instruments; tremelo units for guitars, tuners, valve protectors, and woodwind mouthpieces all for musical instruments; percussion instrument accessories, namely, drum sticks, drum stick and mallet holders, drum trigger modules, frames, mallets, pedal mechanisms, slap sticks, sound projectors, tambourines, triangles, and woodblocks in International Class 15;</p> <p>Accessories for musical instruments, namely, cleaning swabs for musical instruments, cleaning brushes for musical instruments with flexible wire handles, mouthpiece brushes for musical instruments, polishing cloths, silicon cleaning cloths, silver cleaning cloths, tone hole cleaners consisting of brushes used to clean tone holes of musical instruments; gauze for cleaning and polishing musical instruments in International Class 21.</p>	
--	--	---	--

The United States Patent and Trademark Office (“USPTO”) registration certificates for these marks are attached as Exhibit A. Yamaha’s federal registrations are valid and conclusive evidence of its ownership of the YAMAHA mark. Yamaha’s Registration Nos. 0678446, 0688208, 0866762, 0893186, 1042842, 3555631, 1353726, 2017999, and 2283155 listed above are incontestable.

19. Yamaha is the exclusive owner of federal trademark registrations for the YAMAHA mark for any goods or services. On information and belief, no other company uses YAMAHA as a mark and trade name in the U.S. for any products other than Defendant Yamaha Air Conditioning, Inc.

20. Yamaha’s exclusive, federally registered, and propriety rights in and to the famous YAMAHA mark long predate Defendants’ use of the YAMAHA mark and name.

DEFENDANTS’ WRONGFUL ACTS

21. Defendant Yamaha Air Conditioning, Inc. (“Yamaha Air”) sells air-conditioning products.

22. On information and belief, Yamaha Air was founded and is run by its principals, Defendants Khaled Jaroun and Khalid Qirem.

23. Defendants Khaled Jaroun and Khalid Qirem are both registered as directors of Yamaha Air with the Texas Secretary of State corporate records. Those records list Khaled Jaroun’s address as PO Box 741074, Dallas, Texas 75374, and Khalid Qirem’s address as 1313 S. State Highway 205, Rockwall, Texas 75032. Printouts from the Texas Secretary of State website are attached as Exhibit B.

24. On information and belief, Defendants Khaled Jaroun and Khalid Qirem own, direct, supervise, and/or control the day-to-day operations of Yamaha Air.

25. On information and belief, Defendants Khaled Jaroun and Khalid Qirem have knowledge of, direct, control, supervise, act in concert with, and/or take actions to further Yamaha Air's unlawful activities described herein.

26. On information and belief, Defendant Yamaha Air is the alter ego of Defendants Khaled Jaroun and Khalid Qirem.

27. Yamaha Air holds itself out as YAMAHA and brands its products with the YAMAHA trademark as shown below:



28. On information and belief, Yamaha Air offers, promotes, contracts for the manufacture and sale of, and/or sells air conditioners and related products under the YAMAHA mark and name in the United States and/or abroad from its principal place of business in this District.

29. On information and belief, to the extent sales of Defendants' YAMAHA-branded products are intended for delivery outside of the United States, Defendants undertake the essential steps for such sales within the U.S., including the general

management of Defendant Yamaha Air's business, the marketing and sale of the infringing goods, the contracting of the infringing goods for manufacture, the manufacture (in whole or in part) of its YAMAHA-branded goods, the contracting of the infringing goods for shipment from the manufacturer to Defendant Yamaha Air's customers, the shipment of the goods to and/or from the U.S., and/or the receipt of customer payments and revenue in the U.S. for the sales of the infringing YAMAHA-branded goods.

30. As shown below, the stylized font Defendant Yamaha Air adopted and uses in connection with its YAMAHA mark slavishly copies from the stylized font long-used by Yamaha for its YAMAHA mark.

YAMAHA

Defendants' Mark

YAMAHA

Yamaha's Mark

31. On information and belief, Defendant Yamaha Air is not related to or owned by a Japanese company, nor does it have any corporate ownership stake or interest in a Japanese company. On further information and belief, no one involved in the creation or management of Yamaha Air is named "Yamaha." On additional information and belief, Defendants Khaled Jaroun and Khalid Qirem and the individual officers, directors, and employees of Yamaha Air have no Japanese family lineage and are not Japanese citizens.

32. Defendant Yamaha Air promotes its products online through its website located at YAMAHAAC.COM. The following appears at that website:



A printout of that page is attached as Exhibit C.

33. The YAMAHAAC.COM domain name was registered on October 6, 2008 by Genia Snyder, who, on information and belief, is an employee of Yamaha Air and/or a related company operated by Defendant Khaled Jaroun. Defendant Yamaha Air is listed as the Administrative Contact and Technical Contact for the YAMAHAAC.COM domain name. A printout of the registration details for the YAMAHAAC.COM domain name is attached as Exhibit D.

34. Defendant Yamaha Air's website contains information, specifications, and all other pertinent details about the various YAMAHA products it offers for sale. Such website and materials are directed towards and accessed by prospective consumers, including consumers located within the U.S. and this District, and lists contact information for Defendant Yamaha Air, including a mailing address and telephone number located within this District.

35. On September 9, 2008, Defendants Khaled Jaroun and Khalid Qirem filed U.S. Trademark Application Serial Number 77/565,522 for the mark YAMAHA AIR CONDITIONING, INC. for “Air conditioners; Air conditioning apparatus; Air conditioning units; Air filters for air conditioning units; Air-conditioning apparatus; Air-conditioning apparatus; Air-conditioning, air cooling and ventilation apparatus and instruments; Components for air conditioning and cooling systems, namely, evaporative air coolers; Dampers, namely, control devices used in air ducts to regulate the flow of air” in International Class 11 (the “2008 Application”).

36. When filing the 2008 Application, Defendants Khaled Jaroun and Khalid Qirem declared under oath in their individual capacities that they owned the rights to that trademark and that no other person or company held such rights in that mark or confusingly similar marks. Defendants Khaled Jaroun and Khalid Qirem both signed such declaration under the title “Owner.”

37. The owner address listed in the 2008 Application for both Khaled Jaroun and Khalid Qirem is 1313 S. State Highway 205, Rockwall, Texas 75032.

38. On December 12, 2008, the USPTO rejected the 2008 Application based on a likelihood of confusion with Yamaha’s prior-registered YAMAHA mark. Defendants Khaled Jaroun and Khalid Qirem failed to respond to the USPTO Office Action and the 2008 Application was abandoned on June 15, 2009.

39. On June 8, 2011, Defendant Yamaha Air filed U.S. Trademark Application Serial Number 85/340,819 for the mark YAMAHA for “Air conditioning units; air handling units; water chillers” in International Class 11 (the “2011 Application”).

40. When filing the 2011 Application, Defendant Yamaha Air declared under oath that it was using the YAMAHA mark in U.S. commerce as of June 8, 2011 and that it had been doing so since at least as early as November 30, 2008, that Yamaha Air owned the YAMAHA mark, and that no other person or company held rights in that mark or confusingly similar marks. The declaration of Defendant Yamaha Air was signed by Defendant Khaled Jaroun.

41. On September 27, 2011, the USPTO rejected the 2011 Application based on a likelihood of confusion with Yamaha's prior-registered YAMAHA mark.

42. In response to the USPTO's rejection, Defendant Yamaha Air filed to partially cancel Yamaha's U.S. Trademark Registration Number 3,458,173 before the Trademark Trial and Appeal Board of the USPTO (the "Board") on November 7, 2011, Cancellation No. 92054781.

43. On December 27, 2011, Defendant Yamaha Air requested suspension of prosecution of the 2011 Application pending disposition of the cancellation action it filed against Yamaha.

44. On February 17, 2012, Yamaha filed a lawsuit against Yamaha Air, Khaled Jaroun, Nordyne LLC, and Nordyne International, Inc. in the U.S. District Court for the Eastern District of Missouri, Case No. 4:12-cv-00303-HEA, alleging trademark infringement, trademark dilution, cybersquatting, false designation of origin, and unfair competition under federal, state, and/or common law, relating to the defendants' unauthorized use of the trademark and trade name YAMAHA and the domain name YAMAHAAC.COM in connection with defendants' manufacture, promotion, offer, and sale of air conditioners and related products (the "Missouri Action").

45. On March 27, 2012, the Board issued an order suspending the cancellation action pending final determination of the Missouri Action.

46. On June 12, 2012, Defendants Yamaha Air and Khaled Jaroun filed a motion to dismiss the Missouri Action for lack of personal jurisdiction. In support of their motion to dismiss, Defendants Yamaha Air and Khaled Jaroun submitted the declaration of Khaled Jaroun (copy attached as Exhibit E), which declared under oath, among other things, that the only YAMAHA-branded air conditioning units ever produced were 355 units manufactured by a Chinese manufacturer in 2009, which were shipped directly from the Chinese manufacturer to Interglobe Technologies of Dubai, UAE (a Dubai affiliate of Yamaha Air), and that Yamaha Air has not sold any products or rendered any services anywhere in the world since it ordered the 355 YAMAHA-branded air conditioning units in 2009.

47. The statements made under oath in the Missouri Action declaration of Defendant Khaled Jaroun contradict the statements made under oath in Defendant Khaled Jaroun's declaration before the USPTO in support of the 2011 Application noted in Paragraph 40 above.

48. Plaintiffs voluntarily dismissed the Missouri Action without prejudice under FRCP 41(a)(1)(A)(i) as to Nordyne LLC and Nordyne International, Inc. on June 18, 2012, and as to Defendants Yamaha Air and Khaled Jaroun on June 22, 2012.

INJURY TO YAMAHA AND THE PUBLIC

49. Defendants' unauthorized use of the YAMAHA mark and name and the YAMAHAAC.COM domain name is likely to cause confusion, mistake, and deception as to the source or origin of Defendants' products, and is likely to falsely suggest a sponsorship, connection, license, or association between Defendants, their products,

and/or their commercial activities and Yamaha, its products and services, and/or its commercial activities.

50. Defendants' actions described above are likely to dilute the distinctiveness and value of Yamaha's famous YAMAHA mark.

51. Defendants' unauthorized use of the YAMAHA mark and name and the YAMAHAAC.COM domain name has damaged and irreparably injured and, if permitted to continue, will further damage and irreparably injure Yamaha, the YAMAHA mark, Yamaha's reputation and goodwill associated with its mark, and the public's interest in being free from confusion, mistake, and deception.

52. Defendants knew, or should have known, that their unauthorized use of the YAMAHA mark and name and the YAMAHAAC.COM domain name violates Yamaha's rights in the YAMAHA mark. As a result, Defendants have acted knowingly, willfully, in reckless disregard of Yamaha's rights, and in bad faith.

53. Yamaha has no adequate remedy at law.

**FIRST CLAIM FOR RELIEF
Trademark Infringement Under
Section 32(1) Of The Lanham Act
15 U.S.C. § 1114(1)**

54. Yamaha repeats and realleges each and every allegation set forth in paragraphs 1 through 53 of this Complaint.

55. Defendants' actions described above are likely to cause confusion, or to cause mistake, or to deceive, in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

SECOND CLAIM FOR RELIEF
Trademark Infringement, False Designation
of Origin, and Unfair Competition
Under Section 43(a) of the Lanham Act,
15 U.S.C. § 1125(a)

56. Yamaha repeats and realleges each and every allegation set forth in paragraphs 1 through 55 of this Complaint.

57. Defendants' actions described above are likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendants, Defendants' products, and/or Defendants' commercial activities, and thus constitute trademark infringement, false designation of origin, and unfair competition in violation of Section 43(a)(1) of the Lanham Act, 15 U.S.C. § 1125(a)(1).

THIRD CLAIM FOR RELIEF
Trademark Dilution Under
Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c)

58. Yamaha repeats and realleges each and every allegation set forth in paragraphs 1 through 57 of this Complaint.

59. Defendants' actions described above, all occurring after Yamaha's YAMAHA mark became famous, are likely to dilute the distinctive quality of that mark in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

FOURTH CLAIM FOR RELIEF
Cybersquatting Under
Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d)

60. Yamaha repeats and realleges each and every allegation set forth in paragraphs 1 through 59 of this Complaint.

61. Defendants have registered and/or used the YAMAHAAC.COM domain name with a bad-faith intent to profit from Yamaha, its YAMAHA mark, Yamaha's products and services, and/or Yamaha's commercial activities.

62. Yamaha's YAMAHA mark was distinctive and famous at the time Defendants registered and/or used the YAMAHAAC.COM domain name.

63. Yamaha's YAMAHA mark was federally registered at the U.S. Patent and Trademark Office at the time Defendants registered and/or used the YAMAHAAC.COM domain name.

64. The YAMAHAAC.COM domain name is identical, confusingly similar, and/or dilutive of Yamaha's YAMAHA mark.

65. One or more of the Defendants are or were the registrant or the registrant's authorized licensee or user of the YAMAHAAC.COM domain name.

66. Defendants' actions described above constitute cybersquatting in violation of Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d).

FIFTH CLAIM FOR RELIEF
Dilution Under
Tex. Bus. & Com. Code § 16.29

67. Yamaha repeats and realleges each and every allegation set forth in paragraphs 1 through 66 of this Complaint.

68. Yamaha's YAMAHA name and mark is distinctive, famous, and valid at common law.

69. Defendants' actions described above are likely to injure the business reputation of Yamaha and/or dilute the distinctive quality of Yamaha's YAMAHA name and mark in violation of Tex. Bus. & Com. Code § 16.29.

SIXTH CLAIM FOR RELIEF
Trademark Infringement, Unfair Competition,
and Misappropriation Under Texas Common Law

70. Yamaha repeats and realleges each and every allegation set forth in paragraphs 1 through 69 of this Complaint.

71. Defendants' actions described above constitute common-law trademark infringement, unfair competition, and misappropriation of Yamaha's YAMAHA mark and goodwill under the common law of Texas.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, Yamaha respectfully demands a trial by jury on all issues properly triable by a jury in this action.

PRAYER FOR RELIEF

WHEREFORE, Yamaha requests that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to, the following:

A. An Order declaring that Defendants' uses of the YAMAHA mark and name and YAMAHAAC.COM domain name infringe Yamaha's YAMAHA mark and constitute dilution, cybersquatting, and federal and common-law unfair competition, as detailed above;

B. A permanent injunction enjoining Defendants, their respective officers, directors, employees, agents, subsidiaries, distributors, dealers, alter egos, and all persons in active concert or participation with any of them:

1. From using or registering any logo, trademark, or other mark, trade name, company name, source-identifier, or designation comprised of or containing the YAMAHA mark—including the YAMAHAAC.COM domain name—or any confusingly

similar logo, mark, term, source-identifier, or designation as or as part of a product name or logo, company name or logo, trademark, service mark, trade name, business name, fictitious name, social-media name, slogan, tagline, domain name, e-mail address, URL, favicon, avatar, keyword, hashtag, metatag, or other name or identifier;

2. From representing, by any means whatsoever, directly or indirectly, that Defendants, their goods, and/or their activities originate from, are sponsored by, or are associated, affiliated, or connected in any way with Yamaha or its products or services; and

3. From assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs B(1) through (2) above.

C. An Order directing Defendants to transfer to Yamaha the YAMAHAAC.COM domain name and all other domain names they own or control that contain or are identical or confusingly similar to or dilutive of Yamaha's YAMAHA mark;

D. An Order requiring Defendants to immediately retract and destroy all products, packaging, signage, advertisements, promotional materials, stationary, forms, and/or materials and things that contain or bear the YAMAHA mark and name, the YAMAHAAC.COM domain name, or any other marks, logos, design, designations, identifiers, or indicators that are confusingly similar to or dilutive of Yamaha's YAMAHA mark;

E. An Order requiring Defendants to disseminate pre-approved corrective advertising and send pre-approved letters to all customers, agents, and representatives to

address the likely confusion and dilution caused from their use of the YAMAHA mark and name and YAMAHAAC.COM domain name;

F. An Order certified by this Court directing the Director of the U.S. Patent and Trademark Office to deny U.S. Trademark Application Serial Number 85/340,819 in accordance with 15 U.S.C. § 1119, or, alternatively, directing Defendant Yamaha Air to expressly abandon with prejudice U.S. Trademark Application Serial Number 85/340,819;

G. An Order directing each Defendant to, within 30 days after the date of entry of the injunction, file with this Court and serve on Yamaha's attorneys, a report in writing and under oath setting forth in detail the manner and form in which the Defendant has complied with the injunction;

H. An Order requiring Defendants to account for and pay to Yamaha all profits arising from Defendants' unlawful acts, and increasing such profits, for payment to Yamaha in accordance with 15 U.S.C. § 1117 and other applicable laws;

I. An Order requiring Defendants to pay Yamaha damages, in an amount to be determined, resulting from Defendants' unlawful acts, and trebling such damages, for payment to Yamaha in accordance with 15 U.S.C. § 1117 and other applicable laws;

J. An Order requiring Defendants to pay Yamaha's costs and attorneys' fees in this action pursuant to 15 U.S.C. § 1117 and other applicable laws; and

K. Other relief as the Court may deem appropriate.

Respectfully submitted,

Dated: June 22, 2012

HENRY ODDO AUSTIN & FLETCHER,
P.C.

By: /s/ Vic H. Henry

Vic H. Henry
Texas Bar No. 09484250
Lane Fletcher
Texas Bar No. 07139300
HENRY ODDO AUSTIN &
FLETCHER, P.C.
1700 Pacific Avenue, Suite 2700
Dallas, Texas 75201
Phone: (214) 658-1900
Fax: (214) 658-1919
vhenry@hoaf.com
lanefletcher@hoaf.com

and

Mark Sommers
Michael Justus
FINNEGAN, HENDERSON,
FARABOW, GARRETT &
DUNNER, L.L.P.
901 New York Avenue N.W.
Washington, DC 20001
Phone: (202) 408-4000
Fax: (202) 408-4400
mark.sommers@finnegan.com
michael.justus@finnegan.com

Attorneys for Plaintiffs
Yamaha Corporation and Yamaha
Motor Co., Ltd.