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CENTRAL DISTRICT CALIF.
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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 JACKSON BROWNE, an individual

16 Plaintiff,

17 vs.

18 JOHN MCCAIN, an individual; THE
19 REPUBLICAN NATIONAL
20 COMMITTEE, a non-profit political
21 organization; THE OHIO
22 REPUBLICAN PARTY; a non-profit
23 political organization

24 Defendants.

CASE NO. CV08-05334

COMPLAINT FOR:
(1) COPYRIGHT INFRINGEMENT;
(2) VICARIOUS COPYRIGHT
INFRINGEMENT;
(3) VIOLATION OF LANHAM ACT
- §1125(a);
(4) VIOLATION OF CALIFORNIA
COMMON LAW RIGHT OF
PUBLICITY

DEMAND FOR JURY TRIAL

RGK
(Ex)

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I/S
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©

INTRODUCTION

1
2 1. Jackson Browne (“Browne”) is a world-renowned singer and
3 songwriter whose politically and socially charged songs have reached audiences
4 since the 1960s. As influential and enduring as his music is Browne's legacy as an
5 advocate for social and environmental justice. Throughout Browne’s career, he has
6 closely associated himself with liberal causes and Democratic political candidates.
7 Indeed, Browne has spent significant time throughout his career raising public
8 awareness for such causes. Browne brings this action in order to vindicate an
9 egregious, intentional false association created by agents of the presumptive
10 Republican candidate for President of the United States, Senator John McCain
11 (“McCain”), suggesting that Browne sponsors and endorses McCain; a false
12 association that directly conflicts with the political and social values that Browne
13 has espoused and supported throughout his career.

14 2. Defendant, the Ohio Republican Party (the “ORP”), acting as an agent
15 for defendants the Republican National Committee (the “RNC”) and McCain,
16 recently released a television commercial in which McCain mocks the suggestion of
17 the presumptive Democratic candidate for President, Senator Barack Obama, that
18 the country can conserve gasoline by keeping their automobile tires inflated to the
19 proper pressure (the “Commercial”). During the Commercial, a sound recording of
20 Browne performing one of his most famous musical compositions, *Running On*
21 *Empty* (the “Composition”), plays in the background. As a result, the Commercial
22 falsely suggests that Browne sponsors, endorses and is associated with McCain and
23 the Republican Party, when nothing could be further from the truth. Neither
24 McCain, the ORP or the RNC sought or received a license or Browne’s permission
25 to use the Composition in the Commercial.

26 3. Browne is informed and believes, and based thereon alleges that he is
27 not the first victim of McCain’s creation of false endorsements and manifest lack of
28 respect for the intellectual property rights accorded to musicians by the United

1 States Constitution. It has been reported that throughout his current campaign for
 2 President, McCain and his agents have engaged in a consistent pattern of making
 3 unauthorized use of copyrighted musical compositions in an effort to boost
 4 McCain's image. For example, McCain created a commercial incorporating music
 5 by Frankie Valli without authorization. Warner Music Group immediately
 6 demanded that McCain cease and desist from airing the commercial. Earlier, the
 7 musical group ABBA demanded that McCain cease and desist from the
 8 unauthorized use of their song, *Take a Chance on Me*, at McCain's rallies.
 9 Similarly, singer/songwriter John Mellencamp, who is also a well-known supporter
 10 of Democratic ideals, recently demanded that McCain stop playing his composition,
 11 *Pink Houses*, at McCain's events.

12 PARTIES

- 13 4. Plaintiff Browne is a citizen of the State of California.
- 14 5. Defendant McCain is a United States Senator and is a citizen of the
 15 State of Arizona.
- 16 6. Browne is informed and believes, and based thereon alleges that
 17 defendant RNC is a non-profit political organization with its principal place of
 18 business and headquarters in the District of Columbia.
- 19 7. Browne is informed and believes, and based thereon alleges that
 20 defendant ORP is a non-profit political organization with its principal place of
 21 business and headquarters in the State of Ohio.
- 22 8. Browne is informed and believes, and based thereon alleges that at all
 23 relevant times each of the defendants was the agent, employee, representative,
 24 and/or co-conspirator of one or more of the remaining defendants and in doing the
 25 acts herein alleged was acting in the course and scope of such agency, employment,
 26 and co-conspiracy.
- 27 9. Defendants McCain, the RNC and the ORP are collectively referred to
 28 herein as "Defendants."

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JURISDICTION AND VENUE

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2 10. This action arises under the United States Copyright Act 17 U.S.C. §
3 101 et. seq., as well as the Lanham Act, 15 U.S.C. § 1051 et. seq. Jurisdiction is
4 based upon 28 U.S.C. §§ 1331 and 1338(a) and principles of supplemental and
5 pendant jurisdiction pursuant to 28 U.S.C § 1367(a).

6 11. Jurisdiction alternatively exists in this action pursuant to 28 U.S.C. §
7 1332, based on the complete diversity of citizenship between Browne and
8 Defendants. The amount at issue exceeds \$75,000.

9 12. Venue is proper in this judicial district pursuant to 28 U.S.C. §
10 1391(b)(2) because this is the judicial district in which a substantial part of property
11 that is the subject of the action is situated.

STATEMENT OF FACTS

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13 13. In 1977, Browne released an album entitled *Running On Empty* (the
14 “Album”), which contained the Composition sharing the same name. The Album
15 became Browne’s best selling album ever, reaching platinum status (sales of one
16 million or more albums) seven times over. The Album and the Composition are
17 famously associated with Browne.

18 14. Browne owns a federally registered copyright in the Composition. A
19 true and correct copy of the renewal certificate for the Composition is attached
20 hereto as Exhibit A.

21 15. In addition to maintaining a long-standing position in favor of liberal
22 causes and Democratic candidates, Browne has often performed at political rallies
23 for Democratic Party candidates. Browne’s public support for the Democratic Party
24 and its presumptive candidate for President of the United States, Senator Barack
25 Obama, is well-known.

26 16. Browne is informed and believes, and based thereon alleges that the
27 ORP – acting as an agent for, and in concert with McCain and the RNC – created
28 the Commercial and broadcast it on television and cable networks in Ohio and

1 Pennsylvania. Browne is further informed and believes, and based thereon alleges
 2 that Defendants intentionally placed the Commercial on Internet websites such as
 3 YouTube.com in order to reach an international audience, including audiences in
 4 California, without cost. In addition, several other Internet websites have broadcast
 5 the Commercial internationally, including well-known conservative Arianna
 6 Huffington's website, the Huffingtonpost.com. The Commercial has also been aired
 7 and discussed by the national news media, including but not limited to on MSNBC.
 8 At a minimum, Defendants knew or should have known that the Commercial would
 9 be aired internationally on the Internet and by the national news media.

10 17. Browne has received numerous inquiries since the Commercial first
 11 appeared on television and on the Internet expressing concern about Defendants' use
 12 of the Composition and Browne's performance.

13 18. Defendants did not obtain a license, or seek or receive Browne's
 14 permission to use the Composition in the Commercial. In fact, Browne has never
 15 allowed the Composition to be used in any commercial. By using the Composition
 16 without the consent of Browne, Defendants have willfully infringed Browne's
 17 copyright in the Composition, and have falsely suggested to the public that Browne
 18 supports, endorses and is associated with Defendants, and specifically McCain.
 19 Additionally, by misappropriating Browne's unique and widely known voice in the
 20 Commercial, Defendants have violated Browne's right of publicity under California
 21 common law.

22 FIRST CAUSE OF ACTION

23 **(Copyright Infringement – Unauthorized Performance of a Copyrighted Work 24 in an Audiovisual Work 17 U.S.C. § 106(4) – Against All Defendants)**

25 19. Browne incorporates by reference paragraphs 1 through 18, as though
 26 fully set forth herein.

27 20. Browne is the owner of a federally registered copyright in the
 28 Composition.

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1 campaign.

2 28. Browne is informed and believes, and based thereon alleges that the
3 RNC and McCain received a direct financial benefit from the ORP's infringement
4 by, among other things, receiving national media exposure for McCain's
5 Presidential campaign and increased campaign contributions.

6 29. As a result of Defendants' actions as described above, Browne has
7 suffered damages and will continue to suffer damages in an amount that is presently
8 unknown, but which exceeds \$75,000.

9 30. Defendants' infringement of Browne's copyright has caused and will
10 cause irreparable harm to Browne that cannot be fully compensated by money.
11 Because Browne has no adequate remedy at law, Browne is entitled to a temporary
12 restraining order, as well as preliminary and permanent injunctive relief prohibiting
13 Defendants from using the Composition, or any of Browne's musical compositions,
14 without a license therefor.

15 31. Browne is informed and believes, and based thereon alleges that
16 Defendants' unauthorized use of the Composition was willful and as such, Browne
17 is entitled to recover statutory damages for each act of infringement pursuant to 17
18 U.S.C. § 504(c). Defendants' willful, unauthorized use also entitles Browne to
19 recover his attorneys' fees and costs pursuant to 17 U.S.C. § 505.

20 **THIRD CAUSE OF ACTION**

21 **(Federal Trademark Infringement – False Association or Endorsement – 15**
22 **U.S.C. § 1125(a))**

23 32. Browne incorporates by reference paragraphs 1 through 31, as though
24 fully set forth herein.

25 33. Browne is an internationally renowned singer and songwriter. Browne
26 is equally respected nationally for his political and social activism, including his
27 longstanding association with liberal causes and Democratic candidates. The
28 Composition is famously associated with Browne and immediately conjures

1 Browne's identity and persona in the minds of the public.

2 34. Browne is informed and believes, and based thereon alleges that
3 Defendants intentionally used Browne's identity and persona in the Commercial to
4 confuse the public into thinking that Browne sponsors, endorses and is associated
5 with Defendants, and specifically McCain, when they in fact knew that Browne does
6 not endorse or sponsor Defendants or McCain. At a minimum, Defendants knew or
7 should have known that their unauthorized use of Browne's identity and persona
8 would confuse the public into believing that Browne sponsors, endorses and is
9 associated with Defendants.

10 35. Browne is informed and believes, and based thereon alleges that as a
11 result of Defendants' unauthorized use of Browne's identity and persona, the public
12 was confused into believing that Browne sponsors, endorses and is associated with
13 Defendants.

14 36. As a result of Defendants' unauthorized use of Browne's identity and
15 persona in the Commercial, Browne has suffered damages and will continue to
16 suffer damages in an amount that is presently unknown, but which exceeds \$75,000.

17 37. Defendants unauthorized use of Browne's identity and persona has
18 caused and will cause irreparable harm to Browne that cannot be fully compensated
19 by money. Because Browne has no adequate remedy at law, Browne is entitled to a
20 temporary restraining order, as well as preliminary and permanent injunctive relief
21 prohibiting Defendants from using Browne's identity and persona without a license
22 therefor.

23 38. Browne is informed and believes, and based thereon alleges that
24 Defendants did the acts as herein alleged with an intent to injure Browne and to
25 subject Browne to cruel and unjust hardship in conscious disregard of Browne's
26 rights, and that said acts were done willfully, maliciously, and oppressively.
27 Browne is, therefore, entitled to prejudgment interest, reasonable attorneys' fees and
28 costs against Defendants, pursuant to 15 U.S.C. § 1117.

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FOURTH CAUSE OF ACTION

(Violation of California Common Law Right of Publicity)

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39. Browne incorporates by reference paragraphs 1 through 38, as though fully set forth herein.

40. Browne’s distinct and readily identifiable voice is widely known and closely associated with Browne. As such, Defendants’ unauthorized use of Browne’s voice in the Commercial invoked Browne’s identity in the minds of the public.

41. As a result of Defendants’ intentional, unauthorized use of Browne’s identity in the Commercial, Browne has been damaged in an amount that is presently unknown, but which exceeds \$75,000.

42. Defendants usurpation of Browne’s identity has caused and will cause irreparable harm to Browne that cannot be fully compensated by money. Because Browne has no adequate remedy at law, Browne is entitled to a temporary restraining order, as well as preliminary and permanent injunctive relief prohibiting Defendants from using Browne’s identity without a license therefor.

43. Browne is informed and believes, and based thereon alleges that Defendants did the acts as herein alleged with an intent to injure Browne and to subject Browne to cruel and unjust hardship in conscious disregard of Browne’s rights, and that said acts were done willfully, maliciously, and oppressively. Browne is, therefore, entitled to an additional award of punitive and/or exemplary damages in an amount sufficient to punish Defendants and to deter them from committing such despicable acts in the future.

PRAYER FOR RELIEF

WHEREFORE, Browne prays for relief as follows:

FIRST CAUSE OF ACTION

1. For damages according to proof, including pre-judgment interest, the exact amount to be determined at trial;

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- 1 2. For maximum statutory damages pursuant to 17 U.S.C. §504(c).
- 2 3. For reasonable attorneys’ fees and costs of suit pursuant to 17 U.S.C. §
- 3 505;
- 4 4. For a temporary restraining order, as well as preliminary and permanent
- 5 injunctive relief prohibiting Defendants from using the Composition, or any of
- 6 Browne’s musical compositions, without a license therefor.

SECOND CAUSE OF ACTION

- 8 5. For damages according to proof, including pre-judgment interest, the
- 9 exact amount to be determined at trial;
- 10 6. For maximum statutory damages pursuant to 17 U.S.C. §504(c);
- 11 7. For reasonable attorneys’ fees and costs of suit pursuant to 17 U.S.C. §
- 12 505;
- 13 8. For a temporary restraining order, as well as preliminary and permanent
- 14 injunctive relief prohibiting Defendants from using the Composition, or any of
- 15 Browne’s musical compositions, without a license therefor.

THIRD CAUSE OF ACTION

- 17 9. For damages according to proof, including pre-judgment interest, the
- 18 exact amount to be determined at trial;
- 19 10. For attorneys’ fees and costs of suit pursuant to 15 U.S.C. §1117;
- 20 11. For a temporary restraining order, as well as preliminary and permanent
- 21 injunctive relief prohibiting Defendants from using Browne’s identity and persona
- 22 without authorization.

FOURTH CAUSE OF ACTION

- 24 12. For damages according to proof, including pre-judgment interest, the
- 25 exact amount to be determined at trial;
- 26 13. For a temporary restraining order, as well as preliminary and permanent
- 27 injunctive relief prohibiting Defendants from using Browne’s identity without a
- 28 license therefor.

14. For punitive damages in a sum to be determined at trial.

ALL CAUSES OF ACTION

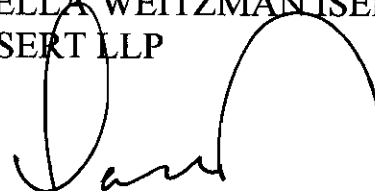
15. Browne's cost of suit, the exact amount to be proved at trial; and

16. For such other and further relief as the Court may deem just and proper.

DATED: August 13, 2008

KINSELLA WEITZMAN ISER KUMP &
ALDISERT LLP

By: _____


Lawrence Y. Iser
Attorneys for Jackson Browne

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DEMAND FOR JURY TRIAL

Browne hereby requests a jury trial on all issues so triable.

DATED: August 13, 2008

KINSELLA WEITZMAN ISER KUMP &
ALDISERT LLP

By: 

Lawrence Y. Iser
Attorneys for Jackson Browne

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Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America



Form RE

For Renewal of a Work
UNITED STATES COPYRIGHT OFFICE

RE 922-852



EFFECTIVE DATE OF RENEWAL REGISTRATION

NOV 22 2005

Month Day Year

DO NOT WRITE ABOVE THIS LINE IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET (FORM RECON).

RENEWAL CLAIMANT(S), ADDRESS(ES), AND STATEMENT OF CLAIM ▼ (See instructions)

a	Name	Jackson Browne
	Address	c/o Wixen Music Publishing, 24025 Park Sorrento, Suite 130, Calabasas, CA 91302
	Claiming as	Author <small>(Use appropriate statement from instructions)</small>
b	Name	
	Address	
	Claiming as	
c	Name	
	Address	
	Claiming as	

TITLE OF WORK IN WHICH RENEWAL IS CLAIMED ▼

Running On Empty

RENEWABLE MATTER ▼

Words and Music

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or other composite work, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial, give Volume ▼ Number ▼ Issue Date ▼

AUTHOR(S) OF RENEWABLE MATTER ▼ (If any author is deceased, give month, day, and year of death)

Name	Jackson Browne	Date of death	
Name		Date of death	
Name		Date of death	

ORIGINAL REGISTRATION NUMBER ▼ ORIGINAL COPYRIGHT CLAIMANT ▼

EU 858091

Swallow Turn Music

ORIGINAL DATE OF COPYRIGHT

If the original registration for this work was made in published form, give

DATE OF PUBLICATION (Month) (Day) (Year)

OR

If the original registration for this work was made in unpublished form, give

DATE OF REGISTRATION (Month) (Day) (Year)
December 27, 1977

MORE ON BACK ▶ • Complete all applicable spaces (numbers 6-8) on the reverse side of this page
• See detailed instructions. • Sign the lines at space 7

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Page 1 of 2 pages

RENEWAL APPLICATION RECEIVED

FORM RE

NOV 22 2005
CORRESPONDENCE YES

EXAMINED BY _____

CHECKED BY _____

FUNDS RECEIVED _____

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RENEWAL FOR GROUP OF WORKS BY SAME AUTHOR To make a single registration for a group of works by the same individual author published as contributions to periodicals (see instructions), give full information about each contribution. If more space is needed, request continuation sheet (Form RE/CON)

a	Title of Contribution	Vol	No	Issue Date
	Title of Periodical	Registration Number		
	Date of Publication (Month) (Day) (Year)			
b	Title of Contribution	Vol	No	Issue Date
	Title of Periodical	Registration Number		
	Date of Publication (Month) (Day) (Year)			
c	Title of Contribution	Vol	No	Issue Date
	Title of Periodical	Registration Number		
	Date of Publication (Month) (Day) (Year)			
d	Title of Contribution	Vol	No	Issue Date
	Title of Periodical	Registration Number		
	Date of Publication (Month) (Day) (Year)			

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account

Name _____

Account Number _____

Area code and daytime telephone number ▶ (818) 591-7355

CORRESPONDENCE Give name and address to which correspondence about this application should be sent

Name Erik Szabo

Address 24025 Park Sorrento, Suite 130

Calabasas CA 91302

(City) (State) (ZIP)

Fax number ▶ (818) 591-7178 Email address ▶ eszabo@wixenmusic.com

CERTIFICATION* I, the undersigned, hereby certify that I am the (Check one)
 renewal claimant duly authorized agent of Claimant named in space 1

(Name of renewal claimant) A
of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge

Typed or printed name ▼ Randall Wixen

Date ▼ 11/11/2005

Handwritten signature (X) ▼

Certificate will be mailed in window envelope to this address

Name ▼	<u>Wixen Music Publishing, Inc</u>
Number/Street/Apt ▼	<u>24025 Park Sorrento, Suite 130</u>
City/State/ZIP ▼	<u>Calabasas, CA 91302</u>

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- Complete all necessary spaces
- Sign your application in space 7

SEPARATE ENVELOPE IN THE SAME ENVELOPE

1. Application form
2. Nonrefundable filing fee in check or money order payable to Registrar of Copyrights

Library of Congress
Copyright Office
101 Independence Avenue S E
Washington D C 20559-6000

How to request a change. For complete instructions, see the Copyright Office website at www.copyright.gov or call (800) 771-0759.

17 U.S.C. § 308(e) Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 406 or in any written statement filed in connection with the application shall be fined not more than \$2,500.