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6 Attorneys for plaintiff
 FLO & EDDIE, INC.

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 CENTRAL DISTRICT OF CALIFORNIA

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 8 **United States District Court**
 9 **Central District of California**

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FLO & EDDIE, INC., a California
 corporation,
 Plaintiff,
 v.
 FORD MOTOR COMPANY, a
 Delaware corporation;
 FORD MOTOR COMPANY
 BRASIL LTDA., a Brazilian
 corporation;
 J. WALTER THOMPSON U.S.A.,
 INC., a Delaware corporation;
 J.W. THOMPSON PUBLICIDADE
 LTDA., a Brazilian corporation,
 Defendants.

Case No. **CV08-07667** **PLA_x** **DDP**
COMPLAINT FOR
INFRINGEMENT OF COPYRIGHT
AND NEIGHBORING RIGHTS

JURY TRIAL DEMANDED

I/S
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©

Given
 Copyright
 Form

1 Plaintiff Flo & Eddie, Inc. alleges:
2

3 **I**

4 **SUBJECT MATTER JURISDICTION**

5 1. This court has jurisdiction over the subject matter of this action
6 pursuant to 28 U.S.C. § 1332(a)(1), because there is a complete diversity of
7 citizenship between plaintiff and defendants, and because the amount in controversy
8 of plaintiff's claims, exclusive of costs and attorney fees, exceeds \$75,000.
9

10 **II**

11 **PARTIES**

12 2. Plaintiff Flo & Eddie, Inc. ("FEI") is a corporation organized and
13 existing under the laws of the State of California,

14 3. Defendant Ford Motor Company ("Ford") is a corporation organized
15 and existing under the laws of the State of Delaware, with its principal place of
16 business in the State of Michigan. Ford is a multinational corporation, ranked as
17 the world's fourth largest automaker based on worldwide vehicle sales.

18 4. Defendant Ford Motor Company Brasil Ltda. ("Ford Brazil") is a
19 corporation organized and existing under the laws of Brazil and is a wholly-owned
20 subsidiary of Ford. Plaintiff is informed and believes, and upon such information
21 and belief alleges, that based on its relationship with Ford, Ford Brazil has
22 extensive, systematic and continuous dealings with the Central District of California
23 sufficient to confer this court with personal jurisdiction over it.

24 5. Defendant J. Walter Thompson U.S.A., Inc. ("JWT") is a corporation
25 organized and existing under the laws of the State of Delaware, with its principal
26 place of business in the State of New York. JWT is a wholly-owned subsidiary of
27 WPP Group plc, a corporation organized under the laws of the United Kingdom,
28 which is one of the world's largest holding companies of advertising agencies. JWT

1 Ford and JWT are residents of the Central District of California. Either a
2 substantial part of the events or omissions giving rise to the claim should be
3 deemed to have occurred in this district, or, if not, this action could not have been
4 brought in any other district because not all defendants reside in the same district.

6 IV

7 GENERAL ALLEGATIONS

8 10. Plaintiff incorporates by reference the definitions of the terms
9 “audiovisual work,” “Berne Convention,” “derivative work,” “Geneva
10 Phonograms Convention,” “international agreement,” “musical works,” “sound
11 recordings,” “treaty party,” and “WIPO Performances and Phonograms Treaty”
12 codified in 17 U.S.C. § 101.

13 11. The term “phonograms” is synonymous with the term “sound
14 recordings.” In some countries, such as the United States, both musical works and
15 sound recordings are the subject of copyright, 17 U.S.C. § 102(2) & 102(7). In
16 other countries, such as Brazil, musical works are the subject of copyright
17 (“authors’ rights,” including both economic rights and moral rights), Law No.
18 9610 of February 19, 1998 (“Brazilian Copyright Law”), article 7, paragraph V.,
19 while sound recordings (phonograms) are the subject of another body of law known
20 as “neighboring rights,” *id.* articles 90 & 93. Argentina includes both musical
21 works and phonorecords as the subject matter of copyright, Law No. 11.723
22 (“Argentinian Copyright Law”), article 1, just as the United States does.

23 12. The United States and Argentina are both members of the Berne
24 Convention, Geneva Phonograms Convention, and the WIPO Performances and
25 Phonograms Treaty; Brazil is a member of the Geneva Phonograms Convention.
26 Each of these three international agreements provides that works of foreign origin
27 are afforded national treatment, that is, the treaty parties afford the same rights to
28 works of United States origin as to works originating in their own countries.

V

**FIRST CLAIM FOR RELIEF FOR INFRINGEMENT
OF NEIGHBORING RIGHTS**

(Against All Defendants)

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5 13. Plaintiff realleges paragraphs 1 through 12, inclusive, as if fully set
6 forth.

7 14. FEI is the worldwide and exclusive owner of the rights in the sound
8 recordings of the musical group known as "The Turtles." The musical work which
9 is most associated with The Turtles is entitled "Happy Together," which was
10 written by Gary Bonner and Alan Gordon. The 1967 sound recording of "Happy
11 Together" is not only one of The Turtles' greatest hits, it is The Turtles' single
12 greatest hit, and the group still performs it. The members of The Turtles were all
13 citizens of the United States at the time they recorded "Happy Together," and they
14 did so in the United States.

15 15. FEI is the successor to the performers and producers of the phonogram
16 embodying the 1967 performance of the musical work "Happy Together" by The
17 Turtles.

18 16. Defendants JWT and JWT Brazil prepared an audiovisual work, a
19 television commercial entitled "Manufacturing Plant," for Ford and Ford Brazil.
20 "Manufacturing Plant" includes in its audio portion a version of the musical work
21 "Happy Together." The version of the musical work "Happy Together"
22 incorporated in the audio portion of "Manufacturing Plant" incorporates both
23 plaintiff's sound recording of The Turtles' 1967 performance of "Happy Together"
24 and other sounds.

25 17. For the sum \$160,000, defendants obtained a license from the owner
26 of the copyright of the musical work "Happy Together" to prepare the derivative
27 work "Manufacturing Plant" in Brazil, and agreed that for an additional \$60,000,
28 they could do so in Argentina.

1 18. Defendants, however, did not obtain a license from plaintiff for the use
2 of plaintiff's sound recording "Happy Together" in Brazil. Such unauthorized use
3 constitutes a violation of Brazilian Copyright Law article 93, which provides:

4 A phonogram producer has the exclusive right to
5 authorize or prohibit either for a consideration or free of
6 charge,

7 I. the direct or indirect, total or partial
8 reproduction of his phonograms;

9 II. the distribution by sale or rental of copies of
10 phonograms so reproduced;

11 III. the communication of his phonograms to the
12 public by public performance, including broadcasting;

13 IV. [vetoed]

14 V. any other form of use of his phonograms that
15 exists at present or might be devised in the future.

16 19. As a result of this violation of FEI's neighboring rights under the laws
17 of Brazil, FEI has been damaged in an amount according to proof, but in no event
18 less than \$160,000.

19
20 VI

21 **SECOND CLAIM FOR RELIEF FOR**
22 **INFRINGEMENT OF COPYRIGHT**

23 (Against All Defendants)

24 20. Plaintiff realleges paragraphs 1 through 12, inclusive, and paragraphs
25 14 through 17, inclusive, as if fully set forth.

26 21. Defendants, however, did not obtain a license from plaintiff for the use
27 of plaintiff's sound recording "Happy Together" in Argentina. Such unauthorized
28 use constitutes a violation of Argentinian Copyright Law article 2, which provides:

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The right of ownership of a scientific, literary or artistic work shall include, for its author, the entitlement to dispose of, publish, perform and publicly exhibit, alienate, translate, adapt or authorize the translation of, and reproduce the work in any form.

and article 4(c), which provides:

The holders of intellectual property rights shall be:

.....

(c) those who have the author's permission to translate, revise, adapt, modify or transfer the work to the new resulting intellectual work.

22. As a result of this violation of FEI's copyright under the laws of Argentina, FEI has been damaged in an amount according to proof, but in no event less than \$60,000.

WHEREFORE, plaintiff prays as follows:

- 1. For actual damages according to proof, but in no event less than \$220,000;
- 2. For costs of suit; and
- 3. For such other and further relief as the court should deem just and proper.

Dated: November 19, 2008 COHEN AND COHEN

By: 
S. MARTIN KELETI

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiff hereby demands a jury trial.

Dated: November 19, 2008 COHEN AND COHEN

By: 
S. MARTIN KELETI