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ECODISC TECHNOLOGY AG

BY _____
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ORIGINAL

8 UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 CV09 07875 PA AWX

11 ECODISC TECHNOLOGY AG, a
corporation,

12 Plaintiffs,

13 vs.

14 DVD FORMAT/LOGO
15 LICENSING CORPORATION, a
corporation; and DVD FORUM, an
16 association,

17 Defendants.

CASE NO:

COMPLAINT FOR:

- (1) VIOLATIONS OF THE SHERMAN ACT;
- (2) VIOLATIONS OF THE CARTWRIGHT ACT;
- (3) FALSE ADVERTISING IN VIOLATION OF THE LANHAM ACT;
- (4) TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS;
- (5) TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;
- (6) TRADE LIBEL; and
- (7) UNFAIR BUSINESS PRACTICES

DEMAND FOR JURY TRIAL

DAAR & NEWMAN, PLC

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25 Plaintiff EcoDisc Technology AG complains as follows:

26 **JURISDICTION AND VENUE**

27 1. This Court has jurisdiction over the plaintiff's claims for relief arising
28 under the Sherman Act, 15 U.S.C. § 1, pursuant to 15 U.S.C. § 4, under the Lanham

1 Act, pursuant to 15 U.S.C. § 1121(a), and 28 U.S.C. §§ 1331 and 1337. The Court
2 has supplemental jurisdiction over the remaining claims for relief arising under
3 California law pursuant to 28 U.S.C. § 1367.

4 2. This is also an action to recover actual and treble damages for injuries
5 resulting from defendants' violations of the antitrust laws of the United States, as
6 set forth in Title 15 of the United States Code. Accordingly, the Court also has
7 jurisdiction of this action under 15 U.S.C. § 4 and 28 U.S.C. § 1332.

8 3. This Court has personal jurisdiction over the defendants and venue is
9 proper in this District under 28 U.S.C. § 1392(a) and (c), in that defendants do
10 substantial business in the State of California and within this District and are
11 transacting and doing business and conducting or otherwise transacting their affairs
12 in this District, and the defendants have performed acts in furtherance of their
13 illegal and wrongful conduct as alleged herein, which have had a substantial effect
14 in this District. Additionally, venue is proper as to the defendants, alien corporation
15 and association, under 28 U.S.C. § 1391(d).

16 THE PARTIES

17 4. Plaintiff EcoDisc Technology AG ("EcoDisc AG") is, and at times
18 material was, a corporation incorporated under the laws of Switzerland, with its
19 principal place of business at Sonnhaldenstrasse 7, 6052, Hergiswil, Switzerland.

20 5. EcoDisc AG is informed and believes and thereon alleges that
21 defendant DVD Format/Logo Licensing Corp. ("DVD FLLC") is, and at all times
22 material was, a corporation duly organized and existing under the laws of Japan,
23 with its principal place of business at Daimon Urbaniste Bldg., 6F2-3-6
24 Shibadainon Mimato-ku, Tokyo, 105-0012, Japan.

25 6. EcoDisc AG is informed and believes and thereon alleges that, at all
26 relevant times, defendant DVD Forum is, and at all times material was, an
27 international association of businesses engaged in the research, development,
28 manufacturing, or sales related to DVD technology, with its principal place of

1 business at Daimon Urbaniste Bldg., 6F2-3-6 Shibadainon Mimato-ku, Tokyo, 105-
2 0012, Japan.

3 INTRODUCTION

4 7. This action involves the wrongful and unlawful acts of defendants,
5 who are the core DVD industry organization for establishing DVD format standards
6 and the corporation that licenses these format standards and the DVD Logo, to
7 suppress new innovation -- the environmentally-friendly DVD. The defendants
8 have acted to suppress innovative technology that results in a thinner, lighter and
9 more flexible DVD -- the EcoDisc -- that provides a reduction in CO² emissions by
10 approximately 52% and is recyclable. Standard DVDs have remained largely
11 unchanged since their invention. Defendants have effectively threatened all disc
12 replicators that if they make the new environmentally-friendly DVD they may no
13 longer be permitted to make standard DVDs and use the DVD logo. Defendants
14 have also placed in the marketplace false information regarding these new
15 environmentally-friendly discs.

16 FACTUAL ALLEGATIONS AND BACKGROUND

17 COMMON TO ALL CAUSES OF ACTION

18 The DVD

19
20
21 8. A DVD is an optical disc storage media format that can be used for
22 playback of movies with high video and sound quality, and for storing data
23 electronically. The acronym "DVD" originally was for "Digital Video Disc," but
24 had its name changed to "Digital Versatile Disc" to reflect its widespread use for
25 non-video applications.

26 9. The introduction of DVD technology in the 1990s launched one of the
27 most successful generation of consumer products in history. According to industry
28 reports, since 1997, over 260 million DVD players and more than 10 billion DVD

1 discs have been sold in the United States and Canada alone. In 2006, 1.7 billion
2 DVD movie discs were shipped in North America, while shipments of recordable
3 discs climbed to 5.1 billion discs globally.

4 10. At issue is the technology used to make optical storage devices used to
5 store and display movies, songs and pictures. Generally, optical storage media
6 consists of several layers. A CD, for example, is comprised of a substrate, an
7 information layer (either formed into the substrate [or prerecorded CD] or formed
8 by a separate composition layer), a reflecting layer to reflect some portion of the
9 laser beam, and a protective layer over the reflecting layer. Optical storage media
10 store digital information in a continuous spiral or track in the information layer,
11 which is similar to the continuous groove of a phonograph record. The track is read
12 by pointing a laser beam onto the surface of the information layer.

13 11. A prerecorded DVD is similar to a CD, except that the DVD stores
14 data in microscopic “lands” and “pits,” which are alternating recessed and flat areas
15 on the information layer formed into the substrate. The reflective bumps (called
16 “lands”) and nonreflective holes (called “pits”) aligned along the grooves represent
17 the zeros and ones of digital information. DVDs use smaller tracks than CDs, as
18 well as new modulation and error correction methods. These allow a DVD to store
19 data seven times as large as that of a CD. The narrow tracks in a DVD require
20 special lasers, different from the lasers used on a CD. There are numerous different
21 DVD formats. These formats include DVD-5s, which have only one information
22 layer, DVD-10s, which are essentially two DVD-5’s bonded together and read from
23 opposite sides, and DVD-9’s, which have two information/reflecting layers with
24 pits and lands that can be read from the same side of the disc by using a less
25 reflective coating on the layer closest to the laser beam and a more reflective
26 coating on the information layer further from the laser beam. The laser beam inside
27 a DVD player can focus at two different levels so that it can “look through” this
28 “semi-reflective layer” to read the data on the second “reflective layer” underneath.

1 A DVD-5 allows for storage of only five gigabytes of information while a DVD-9
2 allows for storage of nine gigabytes of information.

3 The DVD Forum

4 12. Following the development and success of the compact disc (“CD”)
5 and CD-ROM, an alliance was formed by titans from the consumer electronics
6 industry to study and promote a standard for the development of a Digital Video
7 Disc (“DVD”). This alliance was the DVD Consortium. Beginning in or about
8 1995, the members of the DVD Consortium worked together to agree on
9 specifications, termed “Formats” by the DVD Consortium, applicable to the
10 recording, production, replication or use of DVDs and related equipment (the
11 “DVD Specifications”).

12 13. Each of the members of the DVD Consortium was a holder or assignee
13 of patents that involved a user application of DVD technology. The DVD
14 Consortium had a mission to create a worldwide standard for the use of the DVD.
15 The founding ten members of the DVD Consortium were Toshiba Corporation
16 (“Toshiba”), Thomson, Sony Corporation (“Sony”), Pioneer Electronic Corporation
17 (“Pioneer”), Koninklijke Philips Electronics N.V. (“Philips”), Mitsubishi Electric
18 Corporation (“Mitsubishi”), Matsushita Electric Industrial Co., Ltd. (“Matsushita”
19 and now Panasonic Corporation (“Panasonic”)), Time Warner, Inc. (“Time
20 Warner”), Victor Company of Japan, Ltd. (“JVC”), and Hitachi, Ltd. (“Hitachi”).

21 14. Prior to DVD discs being first released to the consumer in 1997, there
22 had been two principal formats competing to be the next-generation disc to succeed
23 the CD, one that was proposed by Sony and Philips and the other by Toshiba, Time
24 Warner and Matsushita. However, through the DVD Consortium, these two
25 factions agreed to a single standard, which became the standard DVD disc that uses
26 the DVD Logo (the “standard DVD”). The resulting standard DVD was a political
27 and commercial compromise. The eventual standard DVD was not the result of a
28 research and development program intended to produce the best possible DVD

1 format, irrespective of the technology owned by the different companies concerned.
2 The standard DVD was not developed as an open standard incorporating the best
3 technologies available on the market.

4 15. In October 1997, the ten-member DVD Consortium changed its name
5 to the DVD Forum and opened membership to interested companies. For purposes
6 of this Complaint, references to the DVD Forum also include, as the context
7 requires, the DVD Consortium.

8 16. The DVD Forum describes itself as “the core DVD industry
9 organization for establishing DVD format standards.” The self-stated purpose of
10 the DVD Forum is, “(1) to establish the single DVD Format for each of the DVD
11 application products, including revisions, improvements and enhancements, that
12 would be in the best interests of consumers and users, and (2) to encourage the
13 broad acceptance of DVD Formats on a worldwide basis among members of the
14 Forum, related industries and the public.” The DVD Forum periodically meets
15 throughout the world, including having meetings of its Steering Committee in this
16 District.

17 17. The DVD Forum has, as its executive body, a Steering Committee
18 comprised of Principal Members, which are entities deemed to be making a
19 significant contribution to the development, promotion or improvement of the DVD
20 Formats and initially were the original ten companies that comprised the DVD
21 Consortium. The Steering Committee approves all decisions relating to the
22 structure, policy or operation of the DVD Forum, including, but not limited to,
23 adoption and/or publication of new DVD Formats or modifications, enhancements
24 or other changes to existing DVD Formats, licensing of DVD Formats and the
25 DVD Logo to DVD Forum members and other third parties, and the approval of the
26 companies chairing and vice-chairing the DVD Forum’s Technical & Verification
27 Group and Working Groups. The DVD Forum has a number of different technical
28 Working Groups to establish, improve and enhance each format of its DVD

1 products. The membership of each Working Group is open to any Principal
2 Member of the DVD Forum.

3 18. The Steering Committee companies of the DVD Forum, for the term
4 of February 2008 to February 2010, are Hitachi, IBM Corporation, Industrial
5 Technology Research Institute, Intel Corporation, LG Electronics, Inc., Memory-
6 Tech Corporation, Microsoft Corporation, Mitsubishi, NEC Corporation,
7 Panasonic, Paramount Pictures Corporation, Pioneer, Samsung Electronics Co.,
8 Ltd., Sanyo Electric Co., Ltd., Sharp Corporation, Sony, Thomson, Toshiba, Walt
9 Disney Pictures and Television, and Warner Bros. Entertainment, Inc.

10 19. The DVD Forum maintains Antitrust Guidelines for the Forum
11 Participants (the "Antitrust Guidelines"). The updated November 5, 2007 Antitrust
12 Guidelines provide in part as follows:

13 "Communication among participants in the forum should
14 be aimed at advancing the goal of enhancing competition.
15 Participants in the forum should not have discussions
16 which call for or result in anticompetitive collective
17 action of any kind. This applies both to formal meetings
18 and informal conversations before, during, and after the
19 event. Your strict adherence to these guidelines is
20 essential.

21
22 "I. The purpose of this forum is to provide technical
23 information concerning the DVD format, to exchange
24 ideas and opinions on the DVD format, to promote its use
25 by related industries, and to facilitate compatibility
26 among the participating companies and improvements in
27 the technology for the benefit of consumers. Consistent
28 with basic compatibility, hardware, software and media

1 providers will be making their own judgments on
2 technology and will be competing with each other. Do
3 not issue a 'call to action' or tell participants that they
4 should or should not do something."

5 * * *

6 "III. Discussions should be restricted to technical issues
7 and should not involve business or competitive strategies
8 that would be implemented by individual participants or
9 by the group. There should be no discussions of
10 distribution strategies or of entities with which
11 participants will or will not deal.

12
13 "IV. Promotion of the DVD format as a standard is a
14 legitimate purpose of the Forum. However, each
15 company shall make its own decisions and individual
16 companies shall adopt their own technologies and
17 business strategies in making products that use or do not
18 use the DVD format or any technical recommendations
19 for the DVD format made by the forum participants.
20 Attending the forum does not preclude participants from
21 using other formats in addition to or instead of the DVD
22 format or commit participants to adopt any technical
23 recommendations for the DVD format made by the
24 forum participants."

25 20. The DVD Forum has only set specifications and formats for certain,
26 but not all, DVD formats. The DVD Forum has documented its official
27 specifications in a series of format books published by the DVD Forum. A DVD
28 Format Book or DVD Book is a technical standard document that defines DVD

1 disc structures and regulations of the DVD Forum Format specifications. There are
2 more than 144 possible variations of DVDs and DVDs come in approximately 24
3 different physical incarnations and more than 6 data-format variations. A
4 traditional DVD is made of two 0.6mm substrates glued together. A DVD can be
5 single-sided or double-sided. Physical compatibility is not an issue with a base
6 DVD-ROM format. Every DVD player, drive and recorder is physically able to
7 read data from a DVD-ROM disc.

8 21. The primary formats adopted by the DVD Forum with its own
9 standard specifications are DVD-ROM, DVD-Video, DVD-R, DVD-RAM, DVD-
10 Audio, DVD-RW, and DVD-Video Recording 5.

11 22. The DVD Forum recognizes that there are other DVD formats that are
12 not part of the Formats of the DVD Forum. For example, the DVD Forum
13 expressly states in its Mission Statement that, "Forum Members are not required to
14 support the DVD Format to the exclusion of other formats."

15 23. The next generation of DVDs involve high-definition and higher
16 density DVDs. Different DVD industry groups have proposed and developed
17 different new high-definition variations of the DVD. The major Japanese consumer
18 electronics companies eventually consolidated into two different camps. The DVD
19 Forum has promoted and set its own specifications for the standard HD DVD.
20 Principal members of the DVD Forum, such as Sony, have formed the separate
21 Blu-ray Disc Association, which has its own standards for Blu-ray discs. The DVD
22 Forum format of HD DVD competes with the Blu-ray disc format in the United
23 States market.

24 24. Another major DVD format that competes with the Formats of the
25 DVD Forum is DVD+RW. The DVD+RW is a writeable optical disc developed by
26 a coalition of corporations known as the DVD+RW Alliance. The primary
27 members of the DVD+RW Alliance include principal members of the DVD Forum
28 and shareholders of DVD FLLC, Sony, Philips and Thomson. The DVD+RW

1 format is a competing format to the DVD-RW Format, which is developed by the
2 DVD Forum. The DVD+RW format is not authorized by the DVD Forum. The
3 DVD Forum recognizes that this other format is “strikingly similar in appearance”
4 to its own DVD-RW format. The DVD-RW format competes with the DVD+RW
5 format in the United States market.

6 DVD FLLC

7 25. Defendant DVD FLLC was established on or about April 14, 2000,
8 and has ten shareholders, Hitachi, Philips, Mitsubishi, Panasonic, Pioneer, Sony,
9 Thomson, Time Warner, Toshiba, and JVC. It states its business as DVD format
10 and logo licensing, production, maintenance and issuance of DVD format books,
11 trademark registration and maintenance of DVD Logos, verification related
12 activities, and policing of pirate manufacturers, non-compliant products and
13 incorrect usage of the DVD Logos. The DVD FLLC offers DVD format and logo
14 licenses to companies that wish to manufacture DVDs using the DVD Formats of
15 the DVD Forum and use the DVD Logo. In addition, the DVD FLLC offers
16 licenses for HD DVD formats and logo, as established by the DVD Forum. DVD
17 FLLC does not license the Blu-ray format or the DVD+RW format.

18 26. DVD FLLC claims that it is responsible for the publication of the
19 technical specifications for the standard DVD Formats of the DVD Forum. DVD
20 FLLC also claims to own the trademarks worldwide for the DVD Logo that appears
21 on DVD products for sale in the United States and around the world. DVD FLLC
22 is the exclusive licensor of the technical specifications of the DVD Forum and the
23 DVD Logo.

24 27. Upon information and belief, the DVD Forum sets, through its
25 Steering Committee, policies and procedures that are then implemented by DVD
26 FLLC. These policies include decisions on formats and use of the DVD Logo.
27 DVD FLLC also provides updates to the Steering Committee of DVD Forum at
28 Steering Committee meetings.

1 28. DVD FLLC's licensing program has an up-front cost of \$10,000 per
2 format and product category, and with no additional charges. A manufacturer who
3 desires to produce DVD products using DVD Forum Formats and the DVD Logo
4 can obtain a license to use the DVD Forum specifications and the DVD Logo.
5 Under the license agreements with DVD FLLC, the manufacturer of DVD products
6 that do not comply with the applicable DVD specifications of the DVD forum are
7 outside the scope of the license grant and cannot then bear the DVD Logo. DVD
8 FLLC has a verification procedure to test whether, under its licensing agreement,
9 DVDs bearing the DVD Logo are compliant with the format specifications of the
10 DVD Forum.

11 29. Use of the DVD Logo and the DVD Forum Formats is needed to use
12 the DVD Logo by, for example, any replicator of pre-recorded DVD discs,
13 manufacturers of writable DVD discs, and manufacturers of DVD players. There
14 are no per-piece royalties or annual fees. All current License Agreements with
15 DVD FLLC expire on December 31, 2009. In order to continue manufacturing
16 products with the DVD Logo and using the DVD Forum Formats on and after
17 January 1, 2010, licensees need to enter into a new License Agreement, a draft of
18 which is available online from DVD FLLC. For purposes of this Complaint,
19 EcoDisc AG is informed and believes that there is no material difference between
20 the current License Agreement of DVD FLLC and the draft License Agreement for
21 use on and after January 1, 2010.

22 30. DVD FLLC licenses use of the DVD Forum's specifications and DVD
23 Logo following a prospective licensee's payment of \$5,000 and execution of a Non-
24 Disclosure Agreement. DVD FLLC then provides the prospective licensee with a
25 Format Book. If the licensee then decides to proceed with commercial production,
26 it may apply for a license to use the DVD specifications in the Format Book and
27 DVD Logo on commercial DVD product. To obtain a license, the prospective
28 licensee must pay a license fee of \$10,000 per format and product category (with a

1 one-time credit for the fee that the licensee paid upon execution of the Non-
2 Disclosure Agreement) and execute a License Agreement with DVD FLLC. The
3 License Agreement grants the licensee a non-exclusive, non-transferable license, on
4 a worldwide basis. The License Agreement also provides a non-exclusive, non-
5 transferable license, on a worldwide basis, to use the DVD Logo on specific DVD
6 products.

7 **DVD Format Specifications In The Public Domain**

8 31. Industry standards exist for a basic DVD read-only disc format. This
9 industry standard format is freely downloadable and in the public domain. Ecma
10 International ("Ecma") is an industry association founded in 1961 and dedicated to
11 the standardization of Information and Communication Technology and Consumer
12 Electronics. For over 40 years, Ecma has actively contributed to worldwide
13 standardization in information technology and telecommunications. The aims of
14 Ecma include publishing its Standards and Technical Reports in electronic and
15 printed form and having its publications be freely copied by all interested parties
16 without restrictions. More than 370 Ecma standards have been published, and more
17 than two-thirds of the Ecma Standards have also been adopted as International
18 Standards and/or Technical Reports.

19 32. The Ecma Technical Committee TC31 was established in 1984 for the
20 standardization of Optical Disks and Optical Disk Cartridges. In February 1997,
21 the DVD Forum proposed to Ecma Technical Committee TC31 to develop an
22 ECMA Standard for a 120 mm. optical disc. Ecma then developed a DVD standard
23 that specifies the physical characteristics of such a disc, which can be used for
24 video, audio or data applications. A standard for volume and file structure common
25 to these three types of applications has been developed by Ecma Technical
26 Committee TC15 and further work has been undertaken for a rewritable disc known
27 as DVD-RAM, and for a writable disc, DVD-R. The work of Ecma on these

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1 further standards is supported by a number of principal members of the DVD
2 Forum.

3 33. Ecma publishes and provides as a free download on its website its
4 Standard ECMA 267 (3rd Edition, April 2001), which specifies formats for four
5 types of DVD-Read-Only discs. The Ecma Standard was also adopted by the
6 International Standardization Organization (“ISO”) as International Standard
7 ISO/IEC 16448.

8 DVD Replicators

9 34. The use of DVD standards, whether those in the public domain, or
10 offered by associations such as the DVD Forum, pertain, for purposes of this action,
11 to the replication of DVD discs. DVD disc replicators create DVD discs by an
12 injection-molding process, using stampers to create the discs on which the content
13 is then embedded. A DVD disc replicator is entrusted with content by a content
14 provider. The replicator may provide a mastering service and create the stampers
15 from the original source input or the replicator may purchase stampers from a third
16 party. The stampers are placed in the mold and the disc pressed based on the mold.
17 The finished pre-recorded DVD disc is then metalized, printed and packaged and
18 then sold to the content provider in the quantities ordered. The replicator may itself
19 offer a distribution service for the content provider. The content may include video,
20 audio, games, business software, and other uses. The process of DVD replication is
21 different from that of the duplication of DVD discs. A DVD duplicator will take
22 recordable or rewritable discs, which are blanks, and burn the content onto the
23 discs.

24 35. The replication market involves both the manufacture of products,
25 such as pre-recorded DVD-5 and DVD-9 discs, and the provision of a service for
26 content providers who entrust content to replicators in return for the provision of
27 mass-replicated copies of the content embedded in DVD discs. DVD FLLC reports
28 that it has more than 400 license agreements with replicators.

1 CO² emissions. The standard DVD disc uses a non-biodegradable, toxic resin as
2 the epoxy to bond the two halves of the DVD. The EcoDisc is engineered so that
3 its impact on the environment is friendly. The EcoDisc is not only thinner, lighter,
4 and more flexible than a standard DVD, it is also free of toxic bonder. The
5 EcoDisc consists of approximately 50% less polycarbonate, an oil derivative used
6 as the main material to form the disc in a standard DVD. By halving the amount of
7 raw material, the manufacturing of the EcoDisc also needs approximately 50% less
8 energy for production. The EcoDisc, compared to a standard DVD, provides a
9 reduction in carbon dioxide emissions by approximately 52%. In addition, the
10 thinner EcoDisc reduces the transport volume from factory to the consumer and
11 thereby reduces freight costs and conserves fuel. The EcoDisc increases warehouse
12 storage capacity and its lighter weight saves on shipping costs. In addition, the
13 EcoDisc's flexibility provides stronger durability when it is being handled,
14 packaged or mailed to consumers. The EcoDisc can be recycled, due to the absence
15 of any toxic bonder. A standard DVD cannot be recycled because of the toxic
16 bonder.

17 41. The EcoDisc was invented in 2006 and manufacturing of EcoDiscs
18 started in Europe during the Summer of 2007. Since 2007, tens of millions of
19 EcoDisc DVDs have been produced and distributed. EcoDiscs have also been
20 distributed in mass quantities with magazines and newspapers. Currently, the
21 EcoDisc has the same data structure and same data layer as a conventional DVD-5
22 (4.7 gigabytes). DVD-5's are commonly used for promotional, educational,
23 children's, enterprise, government, newspaper and magazine cover-mounts. The
24 DVD-5 currently represents about 70% of the market for DVDs. A dual-layer
25 EcoDisc, which would be equivalent in storage to a DVD-9, is currently under
26 development and is expected to be released in 2010.

27 42. The EcoDisc does not use the DVD Logo, but rather uses the EcoDisc
28 Logo. An EcoDisc does not use any of the Format standards of the DVD Forum

1 and is not compliant with any DVD Format. The EcoDisc is not a standard DVD.
2 A number of patents of different patent pools are used in the manufacture of an
3 EcoDisc and EcoDisc manufacturers are to pay royalties to these patent pools for
4 the manufacture of an EcoDisc.

5 43. In or about December 2008, EcoDisc AG entered into an EcoDisc
6 Single Layer DVD-Video and DVD-ROM License Agreement (the "EcoDisc
7 License Agreement") with U-Tech Media USA, LLC ("U-Tech"), which is located
8 in Milpitas, California, and its affiliate D-Tech USA, LLC, which is located in
9 Plano, Texas. The EcoDisc License Agreement provides for the payment of an
10 annual minimum royalty for each injection mold used to make EcoDiscs, as well as
11 a fixed per-unit royalty for each EcoDisc manufactured, sold or otherwise disposed
12 of by licensees. The EcoDisc License Agreement has an effective date of July 1,
13 2008, and has an initial term of five years, to be extended for further one-year
14 periods, unless the License Agreement is terminated by giving six months' written
15 notice. U-Tech is a disc replicator that also makes Blu-ray discs, standard DVDs
16 under license with DVD FLLC, CDs, and other optical discs. The U-Tech DVD
17 FLLC license was entered into with an effective date as of December 15, 2000.
18 There is a successor license agreement dated as of March 15, 2005.

19 44. As part of EcoDisc AG's efforts in the United States, it has entered
20 into contracts with a number of entities and persons, including a Los Angeles based
21 advertising and public relations company, a commissioned salesperson for the sales
22 of EcoDiscs, and a commissioned salesperson to arrange for EcoDisc licenses with
23 optical disc replicators in the United States. In March 2008, EcoDisc AG also was
24 an exhibitor in Los Angeles at the main trade show based in the United States.

25 **Defendants' Efforts To Suppress EcoDisc Technology And EcoDiscs**

26 45. Defendants DVD Forum and DVD FLLC have, along with certain of
27 their respective members and shareholders, taken intentional acts in order to
28 suppress the use of the innovative EcoDisc Technology and prevent EcoDiscs from

1 competing with the standard DVD of the DVD Forum and DVD FLLC. While the
2 thin DVD has been in existence for a number of years, the EcoDisc's early success
3 in Europe resulted in defendants taking note of the EcoDisc. DVD FLLC has
4 acknowledged in writing that it "strive[s] to contain the non-compliant products
5 [EcoDisc] from appearing in the market."

6 46. One of the Working Groups of the DVD Forum is WG-2 (physical
7 specifications for DVD-ROM). This is a DVD Forum Working Group responsible
8 for developing physical specifications for the DVD-ROM Format used by the DVD
9 Forum and licensed by and through DVD FLLC.

10 47. In 2008, the DVD Forum WG-2 claims to have conducted a technical
11 study of 0.6mm discs. At the September 17, 2008 Steering Committee meeting of
12 the DVD Forum, the DVD FLLC representative in attendance reported that DVD
13 FLLC was awaiting the DVD Forum WG-2's final report on its technical study to
14 determine what should be done as to 0.6mm discs. The DVD Forum Steering
15 Committee, on November 19, 2008, met and heard a report on WG-2's technical
16 study of 0.6mm discs and discussed "this issue." At this Steering Committee
17 meeting there was also an update provided by the representative from DVD FLLC,
18 which reported that, "There was a further discussion of the issue of 0.6 mm discs in
19 the marketplace in Europe."

20 48. In March 2009, DVD FLLC sent a written communication to all of its
21 licensed replicators throughout the world, including U-Tech. This written
22 communication was a threat to each replicator with a DVD FLLC License
23 Agreement, that if the replicator manufactures any 0.6mm discs, including an
24 EcoDisc, the manufacture of such products would be a serious breach of the DVD
25 FLLC License Agreement and may lead to early termination of the replicator's
26 DVD FLLC License Agreement. The March 2009 DVD FLLC written
27 communication stated, as follows:

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DAAR & NEWMAN, PLC

“Message from DVD FLLC

**“0.6mm Optical Discs are Not DVD Format
Compliant**

“Dear Licensed Replicators,

“Thank you for your continued support of the DVD
Format/Logo License Program. As you may know, there
are companies that have been trying to market and/or
promote 0.6mm thick optical discs.

“This is a reminder that 0.6mm discs are not Format
compliant. We have received information that, in some
instances, such 0.6mm discs have caused damages to the
playback apparatus.

“Since 2002, DVD FLLC has alerted Licensees that such
discs are not Format compliant, and additionally has
made such information available on DVD FLLC’s
website. Separately in 2003 we sent a notice regarding
such non-compliant discs to our replicating Licensees.
Licensees are therefore on notice that 0.6mm discs are
not Format compliant.

“The License Agreement requires that all DVD products
manufactured by Licensees comply with the
specifications set forth in the applicable DVD Format

DAAR & NEWMAN, PLLC

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Books. (Art. 2.8.) The manufacturer of non-compliant products, including but not limited to the manufacture of 0.6mm discs, is a serious breach of the DVD Format/Logo License Agreement and may lead to early termination of the DVD Format/Logo License Agreement.

“Thank you in advance for your attention and cooperation.

“Sincerely yours,

“Kaoru Saito

“Manager, Licensing”

49. DVD FLLC also put on its website, in or about March 2009, the following information regarding 0.6mm discs:

“Q.2 Is 0.6mm Thick Optical Disc DVD Format?”

“A.2 0.6mm Thick Optical Discs does not use DVD Format in a proper manner. It is only imperfectly and inappropriately using the Format. The DVD Forum judged that such a Disc is not compliant with the DVD Specifications. To use DVD Formats for products that do not conform to the Specifications is NOT admissible.”

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1 **“Q.3 Is it alright to manufacture them?”**

2

3 **“A.3 Manufacturing 0.6mm Thick Optical Discs is**

4 misusing the Format and is considered to be a

5 violation of the DVD Format/Logo License, since

6 the products are clearly not compliant with the

7 DVD Specifications. It is reported that such Discs

8 are re-appearing in the market, bundled to

9 magazines or as free gifts. Because of their non-

10 compliance, they often cannot be properly played

11 on existing players and drives, and there have been

12 reports of damages to the discs and/or the

13 hardware. In some cases the disc did not eject

14 properly and the player had to be serviced.

15 Licensees are warned that manufacturing non-

16 compliant DVD Products could lead to termination

17 of the License.”

18 50. DVD FLLC is making express, clear threats to its licensees that if they

19 make an EcoDisc (which uses different molds, different specifications, is subject to

20 different patents and patents pending, does not use the DVD Logo, and does not

21 claim to be compliant with any of the specifications of the DVD Forum), they are in

22 violation of the DVD FLLC License Agreement and may have their DVD FLLC

23 License Agreement terminated. The DVD FLLC License Agreement is not

24 exclusive and expressly does not prevent the manufacture of any other formats,

25 such as Blu-ray discs or DVD+RW discs.

26 51. DVD FLLC disseminated information does not refer to any test results

27 of the WG-2 working group of the DVD Forum, even though it is reported that the

28 DVD Forum judged that an EcoDisc is not compliant with the DVD specifications

1 of the DVD Forum. The reference to 0.6mm discs reappearing in the market
2 bundled to magazines or free gifts is a reference to the EcoDisc and its success in
3 Europe.

4 52. The EcoDisc has been subjected to testing and certification by a third
5 party, Professional Multimedia Test Centre, and was awarded a 99.2% playability
6 rating. The Professional Multimedia Test Centre did intensive testing, including
7 testing on 132 different DVD playback systems. The EcoDisc can be played on any
8 standard DVD player, computer, laptop or in-car entertainment drive. EcoDisc AG
9 is unaware of a single bona fide report that an EcoDisc cannot properly be played
10 on existing DVD playback devices and is unaware of any bona fide report that
11 EcoDisc has caused any damage to an EcoDisc being played or to any DVD
12 playback device. EcoDisc AG is aware that certain Apple Mac notebook computers
13 were made with a Matshita DVD slot-in drive that did have an ejection problem of
14 the drive with specific discs, including but not limited to the EcoDisc. However,
15 the EcoDisc was playable on the Matshita DVD slot-in drive and the EcoDisc did
16 not cause any damage to this drive. Upon information and belief, these Matshita
17 slot-in drives do not meet the specifications of slot-in mechanisms defined in
18 standards issued by principal members of the DVD Forum and certain DVDs using
19 the DVD Forum standards have the same ejection problem as with the EcoDisc.
20 Unlike these DVDs, the EcoDisc has a printed visual warning placed on each
21 EcoDisc showing that the EcoDisc should not be used on an Apple Mac slot-in
22 drive. EcoDisc AG has taken steps to change the design of the EcoDisc to avoid
23 the minimal, only issue known with regard to the ejection of the EcoDisc on these
24 Matshita slot-in drives.

25 53. The DVD Forum also prominently lists on its website, at its homepage,
26 under "Announcements," as follows:

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“Announcements

“Please note that the “+RW” format, also known as DVD+RW was neither developed nor approved by the DVD Forum. The approved recordable formats are DVD-R, DVD-RW and DVD-RAM.

“IMPORTANT NOTICE ABOUT ‘0.6mm Disk’

“0.6mm Thick Optical Disc does not use DVD Format in a proper manner. It is only imperfectly and inappropriately using the Format. The DVD Forum judged that such a disc is not compliant with the DVD Specifications.”

54. Upon information and belief, defendants do not act to suppress the use of the technology and products of the DVD+RW Alliance and the Blu-ray Disc Alliance, because both of these alliances are comprised of prominent principal members of the DVD Forum and shareholders of DVD FLLC. On the other hand, the DVD Forum and DVD FLLC have determined that they can suppress and prevent competition from the EcoDisc Technology and EcoDiscs, by making knowingly unfounded and unwarranted statements about the reliability of the EcoDiscs and, more importantly, by threatening all of DVD FLLC’s licensed replicators that if they make an EcoDisc, they may lose the ability to make standard DVD discs and use the DVD logo. The DVD Forum and DVD FLLC is not known to have made such threats or claims as to other competing formats, such as Blu-ray discs and the DVD+RW discs.

55. When replicators have contacted the DVD FLLC with regard to making EcoDiscs, at least on one recent occasion, DVD FLLC responded in writing as follows:

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“Thank you for your e-mail regarding our letter.

“As you may be aware, the DVD Forum has determined that 0.6mm discs to be non-compliant.

www.dvdforum.org/forum.shtml ‘Announcements’

“IMPORTANT NOTICE ABOUT ‘0.6mm Disk’

“0.6mm Thick Optical Disc does not use DVD Format in a proper manner. It is only imperfectly and inappropriately using the Format. The DVD Forum judged that such a disc is not compliant with the DVD Specifications.”

“At DVD FLLC, we license the DVD Formats that were created by the DVD Forum, and strive to contain the non-compliant products from appearing in the market. Therefore, in order to maintain the healthy market and to minimize the problems between disc products and hardware, DVD FLLC must instruct our licensees to manufacture compliant DVD Products.

“We request that all Licensees aim to manufacture Format compliant DVD Products, as stipulated in Article 2.8 and 2.9 of the License Agreement.

“Thanking you in advance for your cooperation and understanding, as well as your efforts in avoiding any breach of the Agreement.

1 "Regards,

2

3 "Kaoru Saito

4 "DVD FLLC"

5 56. Articles 2.8 and 2.9 of the DVD FLLC License Agreement do not
6 restrict licensees from making EcoDiscs or any other disc that does not use a DVD
7 Forum format. Article 2.8 provides that the licensee agrees that all discs that use
8 information disclosed in a DVD Format Book shall comply with the specifications
9 set forth in the applicable DVD Format Book. Article 2.9 provides that the license
10 provided to replicators does not apply to any disc that uses information disclosed in
11 a DVD Format Book that does not comply with the specifications in the format
12 book.

13 57. Philips, one of the founders and principal members of the DVD Forum
14 and a shareholder of DVD FLLC, had agreed to provide patent licenses to users of
15 the Ecma DVD standards. Philips has expressly recognized that EcoDiscs and
16 other 0.6mm discs are "Non-Standard DVD Discs." Philips, in an apparent
17 standard side letter agreement regarding a patent license of its AC-3 technology to
18 make 0.6mm discs, refers to EcoDiscs as an example of a "Non-standard DVD
19 Disc". The Philips side letter also requires the licensee to acknowledge and agree
20 that the DVD Logo is proprietary to DVD FLLC. The side letter further requires
21 the licensee to agree to refrain from using the DVD Logo on "Non-Standard DVD
22 Discs", such as EcoDiscs, as well as in literature and advertising materials in
23 connection with "Non-Standard DVD Discs" without the express written agreement
24 of DVD FLLC. The licensee is also required to acknowledge that the Non-
25 Standard DVD Discs, ". . . may cause playability problems on DVD Players and
26 other playback equipment. Licensee undertakes to ensure that a clear and legible
27 warning message, of prominent dimensions and in a non-removable form, is placed
28 on the outer packaging (preferably printed on the art work) of the Non-Standard

1 DVD Discs sold by Licensee and undertakes to ensure that such warning message
2 shall reach the ultimate user of the Non-Standard DVD Discs.” The side letter also
3 requires the licensee to indemnify and hold harmless Philips from any damage
4 caused by “Non-Standard DVD Discs” manufactured and/or sold by the licensee.

5 58. The DVD Forum and DVD FLLC have disregarded the DVD Forum’s
6 own Antitrust Guidelines, which provide in part, “Do not issue a ‘call to action’ or
7 tell participants that they should or should not do something. . . . “Discussions
8 should be restricted to technical issues and should not involve business or
9 competitive strategies that would be implemented by individual participants or by
10 the group. . . . There should be no discussions of . . . entities with which
11 participants will or will not deal. . . . [I]ndividual companies shall adopt their own
12 technologies and business strategies in making products that use or do not use the
13 DVD format Attending the forum does not preclude participants from using
14 other formats in addition to or instead of the DVD format”

15 59. On April 2, 2009, the Regional Court of Hamburg, Germany, issued a
16 preliminary injunction at the request of EcoDisc AG against DVD FLLC, enjoining
17 DVD FLLC from stating to replicators domiciled in member states of the European
18 Union that are licensees of DVD FLLC that the manufacture of 0.6mm discs is in
19 breach of the DVD FLLC License Agreement and may lead to termination of the
20 License Agreement. For each case of a violation by DVD FLLC of the injunction,
21 the court can order DVD FLLC to pay a fine of up to € 250,000 or subject it to
22 arrest for contempt of court. The court issued the injunction without a prior hearing
23 and notice to DVD FLLC. DVD FLLC has not yet challenged the injunction.

24 60. On June 12, 2009, DVD FLLC filed a complaint in the United States
25 District Court, Southern District of New York, against U-Tech and a company that
26 makes a 0.6mm DVD different from the EcoDisc. With regard to U-Tech, DVD
27 FLLC claims it was entitled to an injunction and damages and alleges in part as
28 follows:

1 “27. A DVD manufactured according to the
2 specifications in the DVD Format Books is 1.2 mm thick.
3 By complying with the specifications in this regard, both
4 DVD replicators and hardware manufacturers can ensure
5 the inter-operability of their DVD products with other
6 DVD products on the market – that is, other thing being
7 equal, the compliant disc will fit into the specification-
8 compliant DVD disc drives found in consumer
9 electronics products, and the disc drives designed for
10 compliant DVD discs in the consumer electronics
11 products will read and process the information on those
12 discs properly.

13 * * *

14 “30. Upon information and belief, U-Tech has
15 manufactured and distributed in the United States DVD
16 discs that are 0.6 mm thick, or is prepared to do so
17 imminently. According to press reports, U-Tech has
18 entered into license agreements with a European firm,
19 EcoDisc Technology AG (‘EcoDisc’), regarding the
20 technology to manufacture DVD discs that are only 0.6
21 mm thick. EcoDisc markets and promotes these discs as
22 identical to standard DVD discs in all other respects.

23
24 “31. Furthermore, EcoDisc has acknowledged in a
25 pleading filed in a German court (1) that ‘DVD FLLC
26 publishes the books (so-called “DVD Format Books”)
27 where the respective specifications of individual DVD
28 formats, namely DVD-ROM, DVD-Video and DVD-

1 Audio are printed,’ and (2) that ‘[t]he specifications for
2 the DVD formats DVD-ROM, DVD-Video and DVD-
3 Audio are standards applicable throughout the world
4 which, in particular, ensure that the DVDs are readable
5 and can be played in standard players.’ In addition,
6 EcoDisc has represented that, except for its physical
7 dimensions, ‘[b]oth with regard to its data storage
8 capacity and the playability on DVD players,’ the 0.6
9 mm disc ‘corresponds to the conventional DVD of the
10 common type “DVD-5”.’”

11
12 “32. Upon information and belief, use of non-compliant
13 0.6 mm discs has caused, and will continue to cause,
14 malfunctions in DVD-related consumer electronics
15 products. Reports in the press, on websites, and on
16 EcoDisc’s own promotional materials tell of
17 malfunctions in which non-compliant 0.6 mm discs jam
18 in a disc drive, causing malfunctions. These results have
19 been confirmed by industry studies. In addition, industry
20 studies show that the physical features of the non-
21 compliant 0.6 mm discs can and will affect the ability of
22 a DVD player to read the information on the disc, and to
23 process that information correctly – in some instances,
24 causing disruption in the video display.

25 * * *

26 “37. Unless Defendants are restrained by this Court,
27 DVD FLLC will suffer substantial, imminent and
28 irreparable injury. Among other things, DVD FLLC has

1 made a substantial investment in its licensing program, a
2 principal objective of which is to ensure the consistency
3 and compatibility of DVD products. DVD FLLC enjoys
4 substantial goodwill among members of the DVD
5 industry and among consumers as a result of the success
6 of its licensing program, including its success to date in
7 achieving its consistency and compatibility objectives.
8 Because the introduction of non-compliant products,
9 including 0.6 mm discs, can and does interfere with the
10 operation of DVD products, Defendants' introduction
11 and further distribution of non-compliant discs into the
12 DVD market poses an imminent threat to that goodwill.
13 The introduction of non-compliant products will
14 undermine industry and consumer confidence in DVD
15 technology generally, and will interfere with DVD
16 FLLC's efforts to continue to promote and expand a
17 licensing program that is premised on the common
18 benefits that derive from licensees' compliance with a
19 common set of specifications. . . ."

20
21 61. DVD FLLC also requested that the United States District Court for the
22 Southern District of New York issue an order requiring U-Tech to destroy its stock
23 or inventory of EcoDiscs and any other 0.6mm discs that DVD FLLC claims are
24 non-compliant DVD products as well as destroy any equipment used in the
25 production of EcoDiscs and any other non-compliant DVD products and to recall
26 from its customers, distributors and any recipients any non-compliant DVD
27 products.

28 ///

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1 62. Upon information and belief, active participants in the DVD Forum
2 and shareholders of DVD FLLC have distributed copies of the DVD FLLC
3 complaint against U-Tech to replicators in the United States and elsewhere.

4 63. EcoDisc AG is informed and believes, and thereon alleges, that DVD
5 FLLC filed its complaint against U-Tech not in a genuine attempt to obtain an
6 injunction or damages, or to otherwise influence governmental decision making,
7 but for the improper purpose of preventing U-Tech and other replicators from
8 making EcoDiscs. DVD FLLC's allegations in its complaint as to U-Tech are
9 baseless, false and a sham.

10 64. On August 7, 2009, the United States District Court for the Southern
11 District of New York dismissed U-Tech without prejudice from DVD FLLC's
12 lawsuit based upon a stipulation by DVD FLLC and U-Tech.

13 65. As a result of the conduct of defendants herein, replicators will not do
14 business with EcoDisc AG under the threat of a cancellation of their License
15 Agreement with DVD FLLC.

16 66. U-Tech did not start manufacturing EcoDiscs after being threatened
17 and then sued by DVD FLLC.

18 67. Defendants caused EcoDisc AG to stop its planned marketing rollout
19 to enter the United States market since EcoDisc AG cannot license the replicators
20 needed to enter the United States market.

21 68. Defendants also caused EcoDisc AG to lose key staff in the United
22 States. For example, the Vice President of Licensing of North America for EcoDisc
23 AG resigned as of July 31, 2009, based on his inability to have replicators enter into
24 licensing agreements with EcoDisc AG.

25 69. EcoDisc AG does not seek in this action any relief or damages based
26 on any type of communications or other conduct by defendants DVD FLLC or
27 DVD Forum directed to any third parties domiciled in Member States of the
28 European Union. Any such relief or damages would be the subject of the

1 proceedings initiated by EcoDisc AG in the Regional Court of Hamburg, Germany.

2
3 **CLAIMS FOR RELIEF**

4
5 **CLAIM 1**

6 **Violation of Sherman Act, Section 1**

7 70. EcoDisc AG realleges and incorporates by reference the allegations set
8 forth in paragraphs 1 through 69.

9 71. The actions of defendants the DVD Forum and DVD FLLC, as alleged
10 hereinabove, constitute one or more unlawful contracts, combinations or
11 conspiracies to restrain trade and interstate commerce in the United States market
12 comprised of the manufacture and sale of 1.2mm DVDs and EcoDiscs. Such
13 contracts, combination and conspiracy consist of a continuing agreement, scheme,
14 plan and concert of action among the DVD Forum and DVD FLLC to suppress
15 innovative products and the competition that those products provide and
16 increasingly do and will provide. Defendants have agreed and acted in furtherance
17 of such contracts, combination and conspiracy with the intent and for the specific
18 purpose of excluding EcoDiscs from the United States market.

19 72. The effects of the acts of defendants is to wrongfully and unlawfully
20 suppress innovation and competition in DVD discs, including the new and
21 innovative EcoDisc. The public will be deprived of the benefits of fully recyclable,
22 more environmentally-friendly and lower cost DVD discs. EcoDiscs have a carbon
23 emission in raw material and manufacturing process, which is approximately 52%
24 less than the standard DVD. EcoDiscs would contribute to the reduction of
25 greenhouse gases. In addition, the reduction of competition and the exclusion and
26 suppression of EcoDiscs from the United States market suppresses price
27 competition in DVD discs and results in artificially higher price levels for DVD
28 products to consumers.

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73. The action of defendants caused injury not only to competition, but to EcoDisc AG, individually, by reason of which EcoDisc AG has suffered actual damages in an amount to be proved at trial, which damages shall be trebled and awarded to EcoDisc AG as provided in Section 4 of the Clayton Act, 15 U.S.C. § 15.

74. Unless the actions of defendants, as alleged hereinabove, are enjoined, competition in the relevant markets will continue to be irreparably harmed in a manner that cannot be compensated in monetary damages.

CLAIM 2

Violation of the Cartwright Act

75. EcoDisc AG realleges and incorporates by reference the allegations set forth in paragraphs 1 through 74.

76. The actions of defendants, as alleged hereinabove, constitute one or more unlawful combinations of capital, skill or acts, by two or more persons that have the effect of unreasonably restraining trade.

77. The action of defendants, as alleged hereinabove, caused injury not only to competition, but to EcoDisc AG individually, by reason of which EcoDisc AG has suffered actual damages in an amount to be proved at trial, which damages shall be trebled and awarded to EcoDisc AG as provided in Section 16750(a) of the Cartwright Act, California Business & Professions Code § 16750(a).

78. Unless the actions of defendants, as alleged hereinabove, are enjoined, competition in the relevant markets will continue to be irreparably harmed in a manner that cannot be compensated in monetary damages.

CLAIM 3

False Advertising in Violation of Section 43(a) of the Lanham Act

79. EcoDisc AG realleges and incorporates by reference the allegations set forth in paragraphs 1 through 78.

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1 88. Defendants were and are aware of the EcoDisc License Agreement
2 between EcoDisc AG and U-Tech.

3 89. Defendants acted in a manner designed to induce U-Tech not to
4 perform under the EcoDisc License Agreement and defendants' actions succeeded.

5 90. As a direct and proximate result of the actions of defendants, EcoDisc
6 AG has suffered damages in an amount to be proved at trial.

7 91. The actions of defendants, as alleged hereinabove, were done with
8 oppression, fraud or malice within the meaning of California Civil Code § 3294,
9 such that an award of punitive or exemplary damages is appropriate.

10 **CLAIM 5**

11 **Tortious Interference With Prospective Economic Advantage**

12 92. EcoDisc AG realleges and incorporates by reference the allegations set
13 forth in paragraphs 1 through 91.

14 93. EcoDisc AG has economic relationships with DVD replicators and
15 others and was in the process of developing economic relationships with DVD
16 replicators in the United States and elsewhere. EcoDisc AG was likely to benefit
17 economically in the future from these economic relationships.

18 94. Defendants had knowledge of EcoDisc AG's relationships and
19 prospective relationships with DVD replicators and others.

20 95. Defendants engaged in intentional, unlawful and deceptive acts
21 designed to disrupt these economic relationships and the development of additional
22 economic relationships. Defendants intended to induce replicators and others to
23 refrain from doing business with EcoDisc AG and to induce them to do business
24 with defendants and further defendants' business interests.

25 96. As a direct and proximate result of the actions of defendants, EcoDisc
26 AG has suffered damages in an amount to be proved at trial.

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1 entitled to restitution of the benefits wrongfully obtained by defendants' unlawful,
2 unfair or fraudulent business practices, as alleged hereinabove.

3 107. By reason of defendants' unlawful, unfair and fraudulent business
4 practices, defendant should be enjoined from continuing their unlawful, unfair
5 and/or fraudulent business practices.

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, EcoDisc AG prays for relief against defendants, and each of
9 them, as follows:

10 A. A finding that defendants have violated Section 1 of the Sherman Act
11 and the Cartwright Act, and award EcoDisc AG treble damages in an amount to be
12 proven at trial;

13 B. A finding that defendants have engaged in false advertising under the
14 Lanham Act and pursuant thereto award EcoDisc AG damages in an amount to be
15 proven at trial;

16 C. A finding that defendants have intentionally interfered with valuable
17 contractual relations and prospective economic relationships of EcoDisc AG to
18 EcoDisc AG's economic detriment, and award EcoDisc AG damages in an amount
19 to be proven at trial for its resulting losses, as well as punitive damages, as
20 permitted by law;

21 D. A finding that defendants have committed trade libel and award
22 EcoDisc AG damages in an amount to be proven at trial for its resulting losses, as
23 well as punitive damages, as permitted by law;

24 E. A finding that defendants have violated the California Unfair
25 Competition Laws and provide EcoDisc AG with restitution of the benefits
26 defendants wrongfully obtained through their unlawful, unfair and/or fraudulent
27 business practices;

28 ///

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1 F. Grant injunctive relief prohibiting defendants, and all persons, firms
 2 and corporations acting on their behalf or on their direction or control, from
 3 engaging in any further unlawful conduct under Section 1 of the Sherman Act, the
 4 Cartwright Act, the Lanham Act, or the California Unfair Competition Laws, and
 5 order defendants to post and disseminate corrective advertising on their websites
 6 and to send corrective advertising to all of the DVD replicators with a DVD FLLC
 7 License Agreement ;

8 G. Award EcoDisc AG attorneys' fees and costs of the action; and

9 H. Award EcoDisc AG such other, further and different relief as may be
 10 necessary and as the Court deems proper and just.

11 DATED: October 26, 2009

12 DAAR & NEWMAN
 13 a Professional Law Corporation
 14 Jeffery J. Daar
 15 Michael R. Newman

16 By: 

17 Jeffery J. Daar
 18 Attorneys for Plaintiff
 19 ECODISC TECHNOLOGY AG
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DAAR & NEWMAN, PLC

JURY DEMAND

EcoDisc AG hereby demands trial by jury on all issues triable to a jury.

DATED: October 26, 2009

DAAR & NEWMAN
a Professional Law Corporation
Jeffery J. Daar
Michael R. Newman

By:


Jeffery J. Daar
Attorneys for Plaintiff
ECODISC TECHNOLOGY AG

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself)
ECODISC TECHNOLOGY AG, a corporation

DEFENDANTS
DVD FORMAT/LOGO LICENSING CORPORATION, a corporation; and DVD FORUM, an association

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Jeffery J. Daar / Michael R. Newman / Daar & Newman PLC
865 South Figueroa Street, Suite 2300
Los Angeles, CA 90017-2565

TEL: 213/892-0999

Attorneys (If Known)

ORIGINAL

II. BASIS OF JURISDICTION (Place an X in one box only.)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN (Place an X in one box only.)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify):
- 6 Multi-District Litigation
- 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No

MONEY DEMANDED IN COMPLAINT: \$ Not specified.

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
15 U.S.C. § 1 - Violations of Sherman Act; 15 U.S.C. § 4, False Advertising.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL PROPERTY	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act
<input checked="" type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	FORFEITURE / PENALTY	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 630 Liquor Laws	SOCIAL SECURITY
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	IMMIGRATION	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 660 Occupational Safety /Health	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 465 Other Immigration Actions			FEDERAL TAX SUITS
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

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FOR OFFICE USE ONLY: Case Number:

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Foreign Country: Switzerland

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	DVD FLLC - Foreign Country: Japan DVD Fourm - Foreign Country: Japan

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Los Angeles County and elsewhere.

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ Date October 26, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))