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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

Attorneys for Plaintiff
HOTTRIX LLC

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Hottrix LLC, a Nevada limited liability company

Plaintiff,

vs.

Molson Coors Brewing Company, a Delaware Corporation; Coors Brewers Limited; Beattie McGuinness Bungay Limited; DOES 1 to 10,

Defendants.

Case No. **CV08-06695PSG (SSX)**

**COMPLAINT FOR:
1) COPYRIGHT INFRINGEMENT
2) UNFAIR COMPETITION
3) TRADE DRESS**

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff complains of defendants as follows:

1. Plaintiff Hottrix LLC is a Nevada limited liability company, having a principal place of business at 4528 W Diablo Dr. Unit C-109, Las Vegas, NV 89118 ("Plaintiff" or "Hottrix"). Hottrix was formed on or about July 18, 2008 in Nevada. Steve Sheraton, an individual residing in Las Vegas, Nevada ("Sheraton" or "Original Author") has used the name "Hottrix" since approximately May 1, 1998; and until July 18, 2008 had done business as "Hottrix." On or about July 18, 2008, Sheraton granted all his intellectual property rights in the copyrighted works

1 mentioned herein to Hottrix. Hottrix, is in the business of, inter alia, creating
2 content and software for use on handheld mobile devices such as the Apple iPhone
3 and Apple iPod Touch (collectively “iPhone”) and Palm Pilot.

4 2. Plaintiff is informed and believes that Defendant Molson Coors
5 Brewing Company is a Delaware corporation with a principal place of business at
6 1225 17th Street, Denver, Colorado 80202 (“MCBC”). Plaintiff is informed and
7 believes that MCBC produces and sells beer and other beverages. It offers its
8 products under the Coors Light, Molson Canadian, Molson Dry, Molson Export,
9 Creemore Springs, Rickard's Red Ale and other Rickard's brands, **Carling**, Pilsner,
10 Coors, Coors Non-Alcoholic, Blue Moon Belgian White Ale and seasonal Blue
11 Moon brands, George Killian's Irish Red? Lager, Keystone, Keystone Light,
12 Keystone Ice, and Zima brands, among others. Plaintiff is informed and believes
13 that MCBC is the corporate parent and controls and coordinates the operations of
14 Defendant Coors Brewers Limited in the United Kingdom (“CBL”) and shares
15 operating, advertising and related resources therewith to create a commonality of
16 interest therewith. Furthermore, MCBC has the right and ability to supervise the
17 conduct complained of herein and has an obvious and direct financial interest in the
18 conduct complained of herein, making MCBC vicariously liable for the actions of
19 CBL.

20 3. Plaintiff is informed and believes that CBL is an entity of unknown
21 type in the United Kingdom that is owned and/or controlled by MCBC and shares
22 operating advertising and related resources therewith to create a commonality of
23 interest. (CBL and MCBC are hereinafter sometimes referred to as “Coors”).

24 4. Plaintiff is informed and believes that Beattie McGuinness Bungay
25 Limited (“BMBL”) is an entity of unknown type in the United Kingdom that does
26 the advertising and marketing for CBL and MCBC, at the direct request and under
27 the direct control and supervision of and for the financial benefit of Coors, making
28 Coors vicariously liable for the actions of BMBL.

1 5. DOES 1 to 10 are presently unidentified entities who may be liable
2 under one or more of the claims in the matter complained of herein. Plaintiff is
3 currently unaware of their identities.

4 6. The Court has subject matter jurisdiction over this action pursuant to
5 28 U.S.C. §§ 1331, 1332 and 1338.

6 7. Venue is proper pursuant to 28 U.S.C. §1391(b) because Plaintiff's
7 claims arose in this District as Defendants offered their product for download to
8 residents of this District.

9 8. On or about August 1, 2007, Sheraton authored a version of the "iBeer
10 Video" that consisted in part of creating visual and sound material (including
11 editing for new visual format, sound remixing, re-sequencing, and balancing) and
12 the addition of new sound material and visual material, which as a whole can be
13 described as a video of a beverage (seemingly beer) magically rising inside a glass
14 that constituted the full screen of the video and the eventual tipping of the beverage
15 to empty the glass, so as to imitate a glass of beer magically rising inside an iPhone
16 and then drank shortly thereafter ("iBeer 1.0"). iBeer 1.0 was wholly original with
17 Sheraton and is copyrightable subject matter. iBeer 1.0 was first published on
18 August 1, 2007. iBeer was published on the Internet and made available to the
19 world as a whole and made available for sale for \$2.99 per copy at Sheraton's
20 website located at: <http://www.hottrixdownload.com>.

21 9. On or about November 5, 2007, BMBL contacted Sheraton via the
22 Internet after having seen iBeer 1.0 requesting (1) a license to use iBeer 1.0 for
23 marketing purposes for its client(s), and/or (2) a license to create a derivative work
24 of iBeer 1.0 to create a functional iBeer application that can be used for marketing
25 purposes for its client(s) on "jailbroken" iPhones ("BMBL Contact"). Throughout
26 the BMBL Contact, none of the Defendants were granted a license or any rights to
27 copy or create derivative works of iBeer 1.0. To date, no license nor any rights
28 have been granted by Sheraton to Defendants.

1 10. On information and belief, the BMBL Contact was made on behalf and
2 at the behest of all other Defendants.

3 11. On or about May 9, 2008, Sheraton registered iBeer 1.0 under the title
4 “iBeer Video” with the Register of Copyrights. The Certificate of Registration
5 bears the number PA 1-598-062, and is attached hereto as Exhibit “1” to this
6 Complaint and incorporated herein as though set forth in full.

7 12. Throughout approximately Q1 and Q2 2008, Sheraton authored a
8 derivative work of iBeer 1.0 called “iBeer 2.0”, which is an interactive application
9 that simulates beer magically rising into a glass (the size of an iPhone) and uses the
10 iPhone’s accelerometer to sense the movement of the user and simulates a beverage
11 (seemingly beer) being poured out, to be used on the iPhone when applications
12 were enabled for the iPhone’s use (“iBeer 2.0” iBeer 1.0 and iBeer 2.0 are
13 hereinafter collectively referred to as the “iBeer Content”).

14 13. Sheraton and Hotrix have expended substantial resources in
15 designing, promoting, manufacturing and selling the iBeer Content and built a
16 valuable business based on demand for its distinctively-styled, quality iBeer
17 Content. Hotrix sells the iBeer Content via the Internet (through the iTunes
18 service) and also is in negotiations to license the iBeer Content to beverage
19 manufacturers and distributors for “free end-user downloads” worldwide via a cost-
20 per-download fee. Hotrix has become identified in the minds of the public as the
21 provider of the same.

22 14. On information and belief, after being denied the right to lawfully
23 license iBeer 1.0 by Plaintiff, in or about July 2008, Defendants copied, created and
24 offered for copying and downloading, a copy and derivative work of iBeer 1.0
25 which constitutes a software application with functionality and a “look and feel”
26 nearly identical to iBeer 2.0 (and video of iBeer 1.0) and entitled it iPint
27 (“Infringing App”). The Infringing App similarly allows a user to pour and drink a
28 digital beer using video application of the drink magically rising that is

1 substantially similar to that of iBeer 1.0 and iBeer 2.0. As an aside, the Infringing
2 App has added a small game, which is optional to play (in reality, on information
3 and belief, most users just press the button to go right to the “beer” rather than play
4 the small game), which consists of moving a digital beer down a digital bar for
5 approximately 10-20 seconds by using the iPhone’s accelerometer sensors (“Mini-
6 Game”) – upon moving the digital beer across the bar, the end-user then is given
7 the “digital beer” to “drink.” Both the Mini-Game and the beer-drinking section of
8 the Infringing App advertise the Carling brand of beer. On information and belief,
9 the Mini-Game was added to create a false distinction between the Infringing App
10 and the iBeer Content. On information and belief, the Mini-Game without the
11 “beer drinking” section of the Infringing App – the content that infringes the iBeer
12 Content - would be of significantly less value, would receive significantly less
13 downloads, and be of less advertising efficacy, to Defendants and the Carling
14 brand.

15 15. On or about July 11, 2008, Apple, Inc. opened its “App Store” to allow
16 its iPhone users to download applications to their iPhones in certain geographic
17 markets. In the “App Store”, there was then and are now currently two types of
18 downloads: (1) “free downloads” available at no charge to the end-user; and (2)
19 “paid downloads,” available at a fixed price to the end-user. iBeer 2.0 was made
20 available worldwide as a paid download for \$2.99 in the App Store. The Infringing
21 App was made available worldwide for free (\$0) in the App Store in direct
22 competition with iBeer 2.0. On information and belief, rather than directly
23 charging for the Infringing App, Defendants made revenue from its use by using the
24 Infringing App as a marketing tool for the Carling brand of beer.

25 16. iBeer 2.0 became one of the most popular “paid downloads” on the
26 App Store, reaching top-10 in many international markets. iPint became one of the
27 most popular “free downloads” in the App Store, reaching top-10 in many
28 international markets. On information and belief, as iPint increased in popularity,

1 iBeer 2.0 decreased in popularity since end-users could get ostensibly the same
2 application without a direct cost (besides viewing the Carling advertising) of paying
3 \$2.99 for iBeer 2.0.

4 17. On or about July 17, 2008, Counsel for Hottrix send Defendants a
5 cease and desist letter regarding the alleged infringement by Defendants. On or
6 about August 4, 2008 the Infringing App was removed from the Apple, Inc. App
7 Store in the United States only. On information and belief, the Infringing App is
8 still available in other markets worldwide, specifically the United Kingdom, Asia,
9 Australia, South America, the Middle East, and throughout Europe. Shortly
10 thereafter iBeer 2.0 reached its highest rating ever in the United States, in the top-5
11 of most paid downloads. On information and belief, there have been over
12 6,000,000 downloads of the Infringing App worldwide and said downloads
13 significantly impair the downloading of the iBeer Content.

14 CLAIM 1

15 COPYRIGHT INFRINGEMENT

16 Against all Defendants

17 18. Paragraphs 1 through 17 are incorporated herein as though set forth in
18 their entirety.

19 19. Defendants unlawfully and willfully copied all or part of the iBeer
20 Content, in violation of Hottrix's copyright.

21 20. The Infringing App infringes Hottrix's copyright in the iBeer Content.

22 21. Defendants' Infringing App is not only substantially similar, but is
23 strikingly similar to Hottrix's iBeer Content exuding the same "look and feel" as
24 Hottrix's copyrighted material.

25 22. Hottrix has lost substantial revenue from Defendants' unlawful and
26 willful copying of the copyrighted material and Defendants have been unjustly
27 enriched by increased branding and sales of the Carling brand.

28 23. Defendants' Infringing App dilutes the market and serves to destroy

1 the distinctiveness of Hottrix's copyrighted works.

2 24. Defendants' copying and creation of derivative works of the iBeer
3 Content destroys the public's identification of the iBeer Content to Hottrix as
4 Hottrix's exclusive property, thereby confusing the public and causing Hottrix to
5 suffer irreparable damages and lost profits.

6 25. Hottrix's sales and licensing of its own works and derivative works are
7 prejudiced by Defendants' copyright infringements.

8
9 CLAIM 2

10 UNFAIR COMPETITION

11 Against All Defendants

12
13 26. Paragraphs 1 through 25 are incorporated herein as though set forth in
14 their entirety.

15 27. This action for unfair competition is a substantial and related claim to
16 Defendants' infringement of Sheraton's copyrights and pursuant to §1338(b) of
17 Title 28 of the United States Code, the court has and should assume pendent
18 jurisdiction of this claim.

19 28. Defendants, in unlawfully and willfully copying and creating
20 derivative works of Hottrix's iBeer Content and offering the Infringing App for
21 download created a likelihood of confusion among the public as to the original
22 source of Hottrix's iBeer Content and have contributed to the dilution of the
23 distinctive quality of Hottrix's work in the marketplace.

24 29. Defendants, by their unauthorized appropriation and use of Sheraton's
25 copyrighted works, have in the past and are currently engaging in acts of unfair
26 competition, unlawful appropriation, unjust enrichment, wrongful deception of the
27 downloading and purchasing public, and unlawful trading on Hottrix's good will
28 and the public's acceptance of Hottrix's copyrighted works, all to Hottrix's

1 irreparable damage.

2 CLAIM 3

3 TRADE DRESS

4 Against all Defendants

5 30. Paragraphs 1 through 29 are incorporated herein as though set forth in
6 their entirety.

7 31. When designing and producing the iBeer Content, Plaintiff has
8 adopted a particular dress, design and combination of features to produce a
9 particular visual appearance for the purpose of presenting his goods to the public.

10 32. Defendants have attempted to imitate Hottrix's particular dress, design
11 and combination of features, as they pertain to the iBeer Content, in such a way as
12 to mislead the public.

13 33. The multiplicity of similarities between Hottrix's copyrighted iBeer
14 Content and the Infringing App produced by Defendants and the correspondence
15 between BMBL and Hottrix, evidence a conscious intent by Defendants to imitate
16 and copy Hottrix.

17 34. Defendants' actions are intended and/or operate to confuse the public
18 into believing that Hottrix licensed the iBeer Content to Defendants or that Hottrix
19 in some manner authorized the Infringing App.

20 35. Hottrix's sale of his own works and derivative works are prejudiced by
21 Defendants' imitation and copying of the iBeer Content, all to Sheraton's
22 irreparable damage.

23 WHEREFORE, Plaintiff prays as follows on all claims:

24 A. For a temporary restraining order, preliminary and permanent injunction
25 enjoining and restraining Defendants and all persons acting in concert with them
26 from producing or allowing for download the Infringing App or any content
27 substantially similar to the copyrighted work, and to deliver to the Court for
28 destruction or other reasonable disposition any such materials.

1 B. For actual damages calculated as Defendants' profits, ill-gotten gain
2 and/or Plaintiff's lost profits, in an amount in excess of \$12,540,000.00 to be
3 determined at trial plus interest, or in the alternative statutory damages plus interest,
4 or in the alternative restitution, whichever is higher.


5 C. For its reasonable attorneys' fees and costs.

6 D. For such other and further relief as the Court deems just and proper.

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DATED: October 6, 2008

JASON H. FISHER OF
BUCHALTER NEMER
A Professional Corporation

By: 

JASON H. FISHER
Attorneys for Plaintiff
HOTTRIX LLC


DEMAND FOR A JURY TRIAL

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Pursuant to F.R.C.P. 38(b), HOTTRIX LLC hereby demands a trial by jury in this action of any issues triable by jury.

DATED: October 8, 2008

JASON H. FISHER OF
BUCHALTER NEMER
A Professional Corporation

By: 

JASON H. FISHER
Attorney for Plaintiff
HOTTRIX LLC

EXHIBIT "1"

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

Registration Number:

PA 1-598-062

Effective date of registration:

May 9, 2008

Title

Title of Work: iBeer Video

Completion/ Publication

Year of Completion: 2007

Date of 1st Publication: August 1, 2007

Nation of 1st Publication: United States

Author

Author: Steve Sheraton

Author Created: Video and sound

Work made for hire: No

Domiciled in: United States

Year Born: 1969

Copyright claimant

Copyright Claimant: Steve Sheraton

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Rights and Permissions

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Certification

Name: Jason H. Fisher

Date: May 9, 2008