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15 Attorneys for Defendants
16 Matthew Katzer and Kamind Associates, Inc.

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 ROBERT JACOBSEN, an individual,)
21)
22 Plaintiff,)
23)
24 vs.)
25)
26 MATTHEW KATZER, an individual, KAMIND)
27 ASSOCIATES, INC., an Oregon corporation dba)
28 KAM Industries, and KEVIN RUSSELL, an)
29 individual,)
30)
31 Defendants.)

Case Number C06-1905-JSW
DECLARATION OF R. SCOTT
JERGER IN SUPPORT OF MOTION
DEFENDANTS MATTHEW
KATZER AND KAMIND
ASSOCIATES, INC.'S MOTION TO
MOTION TO DISMISS FOR
FAILURE TO JOIN A PARTY
UNDER RULE 19 [Fed. R. Civ. P.
12(b)(7)]

32 I, R. Scott Jerger, declare:

- 33 1. I, R. Scott Jerger, am over the age of 18 and am competent to testify and make these
34 averments from my own knowledge and observations. I hereby state as follows:
35 2. I am the attorney for Matt Katzer and KAMIND Associates, Inc.

36 Case Number C 06 1905 JSW
37 Declaration of R. Scott Jerger

1 3. Attached as Exhibit A to this declaration is a true copy of Plaintiff's Initial
2 Disclosures received by the undersigned on September 5, 2006.

3 4. Attached as Exhibit B to this declaration is a true copy of a final judgment on consent
4 in the case styled *Barbara M. Dawson and Matthew A. Katzer v. Jerry R. Britton*,
5 entered in the United States District Court for the District of Oregon on April 7, 2005.

6 I declare under penalty of perjury under the laws of the United States of America that the
7 foregoing is true and correct.

8 Executed on September 28, 2006, in Portland, Oregon.

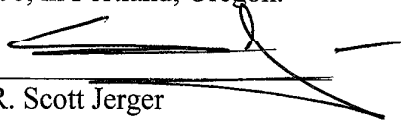
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10 R. Scott Jerger

EXHIBIT A TO DECLARATION OF R. SCOTT JERGER

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Attorney for Plaintiff
ROBERT JACOBSEN

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ROBERT JACOBSEN,

Plaintiff,

v.

MATTHEW KATZER, et al.,

Defendants.

No. C-06-1905-JSW

PLAINTIFF'S INITIAL DISCLOSURES

Courtroom: 2, 17th Floor
Judge: Hon. Jeffrey S. White

Pursuant to Rule 26(a) of the Federal Rules of Civil Procedure, plaintiff makes the following Initial Disclosures. These disclosures are based on the information available on this date, and are subject to additions, changes and deletions depending on the claims, defenses and counterclaims made in this case, as well as later discovered information.

1. Witnesses. The names and last-known address and telephone numbers, where available, of individuals who have discoverable information that plaintiff may use to support its claims are:

a. Stan Ames, 8 Higate Rd. Chelmsford MA 01824, 978-256-3062: Prior art that invalidates, makes

- 1 obvious, and/or makes unenforceable the Katzer patent claims.
- 2 b. Jerry Britton, 25 Maplewood Dr, Etters PA, 17319, 717-938-4270: Plaintiff's interest in
3 trademark "decoderpro" and proceedings in Dawson et al. v. Britton, C04-1627-JE (D. Or. 2004).
- 4 c. Strad Bushby, 515 Hexton Hill RD, Silver Spring, MD 20904, 301-384-3884:
5 Prior art that invalidates, makes obvious, and/or makes unenforceable the Katzer patent claims,
6 discussions with Katzer.
- 7 d. Glenn Butcher, Box 241, APO AP 96555, or c/o Boeing Corporation, Kwajalein Atoll, Republic
8 of the Marshall Islands, phone number unknown: Katzer's, and his and KAMIND Associates,
9 Inc.'s agents', contacts with him re removal of software from Butcher's website.
- 10 e. Dr. Bruce Chubb, address and phone number unknown: Prior art that invalidates, makes obvious,
11 and/or makes unenforceable the Katzer patent claims.
- 12 f. David Falkenburg, 5199 Bela Dr., San Jose, CA 95129, 408-974-5004: Plaintiff's rights in
13 decoderpro trademark.
- 14 g. Don Fiehmann, 2540 Nightingale Dr., San Jose, CA 95125, phone number unknown: Plaintiff's
15 rights in decoderpro trademark.
- 16 h. Rutger Friberg, Alt Om Hobby Publishing House, Box 90133, S-120 21, Stockholm Sweden.
17 (46) (8) 999 333: Prior art that invalidates, makes obvious, and/or makes unenforceable the Katzer
18 patent claims.
- 19 i. Juergen Friewald, Friewald Software, Kreuzberg 16 B, Egmatung D-85658, Germany, (49) 8095-
20 875381: Prior art which invalidates, makes obvious, and/or makes unenforceable the Katzer patent
21 claims, discussions with Katzer, and his and KAMIND Associates, Inc.'s, agents.
- 22 j. Kevin Hassett, Train Track Systems, 1048 Irvine Ave. # 471, Newport Beach CA 92660, 949-
23 752-8949: Prior art which invalidates, makes obvious, and/or makes unenforceable the Katzer
24 patent claims, discussions with Katzer, and his and KAMIND Associates, Inc.'s, agents.
- 25 k. A.J. Ireland, Digitrax Corporation, 450 Cemetery St, Norcross, GA 30071, 770-441-7992: Prior
26 art which invalidates, makes obvious, and/or makes unenforceable the Katzer patent claims,
27 discussion with Katzer re prior art.
- 28 l. Robert Jacobsen, 1927 Marin Ave. Berkeley CA 94707, 510-527-1927: Plaintiff's rights in

- 1 decoderpro trademark and Katzer's knowledge of those rights, prior art that invalidates, makes
- 2 obvious, and/or makes unenforceable the Katzer patent claims, discussions with Katzer's, and his
- 3 and KAMIND Associates, Inc.'s, agents.
- 4 m. John E. Kabat, Jr., 3341 Larkspur Dr., Longmont CO 80503, 303-917-0583: Prior art that
- 5 invalidates, makes obvious, and/or makes unenforceable the Katzer patent claims.
- 6 n. Jim Lemmond, address unknown, 281-910-0328: Plaintiff's rights in decoderpro trademark.
- 7 o. John Littman, address and phone number unknown: Prior art that invalidates and/or makes
- 8 obvious the Katzer patent claims.
- 9 p. Ed Loizeaux, 2221 Via Maderos, Los Altos, CA 94024, 650-962-1577: Prior art that invalidates,
- 10 makes obvious, and/or makes unenforceable the Katzer patent claims.
- 11 q. Heinrich Maile, Montiel 19, E-38439, El Amparo, Spain, phone number unknown: Prior art
- 12 which invalidates, makes obvious, and/or makes unenforceable the Katzer patent claims.
- 13 r. John McCormick, Computer Science Department, University of Northern Iowa, Cedar Falls IA
- 14 50614, 319-273-6056: Prior art which invalidates, makes obvious, and/or makes unenforceable the
- 15 Katzer patent claims.
- 16 s. Jon Miller, 42022 Roberts Ave, Fremont, CA, 510-657-7402: Plaintiff's rights in decoderpro
- 17 trademark.
- 18 t. Ken Rice, address unknown: Prior art which invalidates, makes obvious, and/or makes
- 19 unenforceable the Katzer patent claims, discussions with Katzer.
- 20 u. W. Schapels, SOFT-LOK Modellbahnsteuerung, An den Linden 2, D-87719 Mindelheim
- 21 Germany, (49) 08261-7399650: Prior art which invalidates, makes obvious, and/or makes
- 22 unenforceable the Katzer patent claims.
- 23 v. Alex Shepherd, 14 Admiral Crescent, Hamilton, New Zealand, (64) (7)854-0819: Prior art which
- 24 invalidates, makes obvious and/or makes unenforceable the Katzer patent claims, discussions with
- 25 Katzer.
- 26 w. Hans-Rudi Tanner, DigiToys Systems, 1645 Cheshire Ct, Lawrenceville GA 30043, 678-907-
- 27 4991: Prior art which invalidates, makes obvious and/or makes unenforceable the Katzer patent
- 28 claims, discussions with Katzer and his and KAMIND Associates, Inc.'s agents.

- 1 x. Richard Volz, Texas A&M University, College Station, TX 77843-3112, phone number
2 unknown: Prior art which invalidates and/or makes obvious the Katzer patent claims.
- 3 y. Roger Webster, address and phone number unknown: Prior art that invalidates, makes obvious,
4 and/or makes unenforceable the Katzer patent claims.
- 5 z. Defendant: Prior art which makes the Katzer patent claims invalid, obvious and/or
6 unenforceable, defendants and their agents' knowledge of other prior art, knowledge of plaintiff's
7 rights in decoderpro trademark, and knowledge of defendant's domain name registration activities.
- 8 aa. Kevin Russell, Chernoff, Vilhauer, McClung & Stenzel LLP, 1600 ODS Tower, 601 S.W.
9 Second Ave. Portland OR 97204, 503-227-5631: Katzer's, and his and KAMIND Associates,
10 Inc.'s agent's, knowledge of prior art which makes patent claims invalid, obvious and/or
11 unenforceable, and knowledge of Katzer's domain name registration activities.
- 12 2. Documents. The documents, data compilations, and tangible things, not privileged or protected
13 from disclosure, reasonably available to plaintiff which plaintiff may use to support its claims are
14 as follows:
- 15 a. Plaintiff's, defendants' and third party products at issue in this case.
- 16 b. Defendants' patent and trademark file wrappers.
- 17 c. Plaintiff's trademark registration for decoderpro.
- 18 d. Documentation of defendants' knowledge of plaintiff.
- 19 e. Documentation of defendants' domain registration activities.
- 20 f. Documentation of plaintiff's use of decoderpro trademark.
- 21 g. Correspondence between the parties and their agents.
- 22 h. Documentation of prior art and/or material references relating to the Katzer patents.
- 23 3. These documents are located at plaintiff's home at 1927 Marin Ave., Berkeley, CA 94707.
- 24 4. Damages. Plaintiff seeks primarily injunctive and declaratory relief, but also intends to seek
25 statutory and enhanced damages under the Lanham Act. Plaintiff cannot calculate these absent
26 discovery from defendants.
- 27 5. Insurance. Since plaintiff is the claimant, it has no insurance agreements to be furnished for
28 inspection and copying.

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DATED: September 5, 2006

By _____ /s/
Victoria K. Hall, Esq. (SBN 240602)
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Telephone: 301-738-7677
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ATTORNEY FOR PLAINTIFF

EXHIBIT B TO DECLARATION OF R. SCOTT JERGER

FILED '05 APR 08 10:00USDC-ORP



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FILED '05 APR 06 10:41:00USDC-ORP

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Barbara M. Dawson and Matthew A. Katzer, an Oregon partnership, d/b/a KAM Industries,

Case No. 04-1627-JE

Plaintiff,

FINAL JUDGMENT ON CONSENT

v.

Jerry R. Britton, an individual resident of Pennsylvania,

Defendant.

Plaintiffs Barbara M. Dawson and Matthew A. Katzer, an Oregon partnership d/b/a KAM Industries ("KAM") brought this action for trademark infringement and passing off under Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a), and under the common law, and for unlawful trade practices under ORS 646.605-652, accusing defendant Jerry R. Britton ("Britton") of operating a website at www.computerdispatcherpro.com that infringed KAM's rights in and to



KAM's trademarks COMPUTER DISPATCHER and COMPUTER DISPATCHER PRO. KAM and Britton, having settled their differences, and having entered into a Settlement Agreement and Release, on consent of KAM and Britton,

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS.

1. This Court has jurisdiction over the subject matter of this action and over the parties herein.

2. KAM has valid and enforceable rights in the trademarks COMPUTER DISPATCHER and COMPUTER DISPATCHER PRO for computer software for operating a model railroad (hereinafter "KAM's trademarks").

3. Britton was aware of KAM's trademarks when he registered the domain name computerdispatcherpro.com and when he set up a website under that name and, in so doing, willfully infringed one or both of KAM's trademarks by registering the domain name computerdispatcherpro.com, operating a website under that name devoted to operating model railroads by computer, and by developing and hosting materials on the site.

4. Britton, his successors and assigns, and all persons acting in concert with them or under their control who receive actual notice of this Judgment, are hereby permanently enjoined and restrained from using in any way the domain name computerdipsatcherpro.com, or any other domain names, trade names, trademarks or service marks that are confusingly similar to KAM's trademarks.

5. All claims by KAM against Britton related to computerdispatcherpro.com are hereby dismissed with prejudice.

6. The parties consent to the entry of this Final Judgment on Consent in the form set forth herein.

7. The Court retains jurisdiction over this matter for the purpose of enforcing the terms of this Final Judgment on Consent, and the Settlement Agreement and Release.

IT IS SO STIPULATED on the date indicated below.

CHERNOFF, VILHAUER, MCCLUNG & STENZEL, LLP



By: Kevin L. Russell, OSB No. 93485
Of Attorneys for Plaintiff


Dated: 3/15/2005



Jerry R. Britton

Dated: 2/25/2005

IT IS SO ORDERED this 7th day of April 2005.



United States District Judge