

Honorable Marsha J. Pechman

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AUTODESK, INC., a Delaware  
corporation,

Plaintiff,

vs.

OPEN DESIGN ALLIANCE, a Washington  
non-profit corporation,

Defendant.

CV No.: C06-1637-MJP

**DEFENDANT OPEN DESIGN  
ALLIANCE'S OPPOSITION TO  
PLAINTIFF AUTODESK, INC.'S  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND  
ORDER TO SHOW CAUSE**

**(Oral Argument Requested)**

**Date: November 22, 2006  
Time: 1:30pm**

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**INTRODUCTION**

Plaintiff Autodesk, Inc.'s ("Autodesk") application for a temporary restraining order. Autodesk seeks to enjoin defendant Open Design Alliance ("ODA") from selling ODA's product even though ODA has widely distributed that product since 1998. ODA produces a popular computer utility that is used by architects, engineers, and other design professionals. ODA's computer utility allows otherwise incompatible design programs to read from and write to computer drawings that are saved in a .DWG format. DWG is short for "drawing," and is an industry standard much like the familiar .doc standard for word processing documents.

1 Prior to 1998 and dating back nearly to the genesis of the .DWG format, independent  
2 companies and developers have made programming tool kits for reading and writing DWG  
3 files. So the events of this lawsuit are nothing new to the CAD industry or to Autodesk.  
4 Likewise, Autodesk's attempts at eliminating competition, as it is attempting to do in this  
5 lawsuit, are nothing new to the CAD industry.

6 The new twist presented by this lawsuit is Autodesk's introduction of its  
7 "TrustedDWG Technology" in AutoCAD 2007 which was released in April 2006. This new  
8 release generates a warning message to the user whenever the user opens a DWG file that  
9 was created on any CAD program other than Autodesk. The message falsely warns the user  
10 that the DWG file may be "unstable," which can be particularly worrisome to a designer who  
11 has spent dozens or hundreds of hours creating a design.

12 On September 12, 2006, ODA announced that its DWG libraries could now support  
13 Autodesk's "TrustedDWG" functionality. DWG files opened in Autodesk with ODA's  
14 newest version of its conversion utility do not generate Autodesk's false warning message  
15 regarding instability. For the past several months, the public and the CAD industry has been  
16 using ODA's DWG libraries—as usual—and Autodesk has been aware of it—as usual.  
17 There has been no change in the status quo. In view of this, Autodesk's sudden rush to the  
18 courthouse last week claiming irreparable harm and seeking an emergency order to enjoin  
19 ODA from doing what it has been doing for the last eight years (and for the last months with  
20 respect to "TrustedDWG") is telling. Autodesk's application for a temporary restraining  
21 order is not to preserve the status quo; rather, it is an improper attempt to improperly restrain  
22 competition and to obtain a preliminary adjudication on the merits without the benefit of a  
23 full evidentiary hearing. This Court should deny Autodesk's application and should refuse to  
24 alter the status quo.

25 Moreover, Autodesk is unlikely to prevail on the merits of its claims because  
26 Autodesk, not ODA, is the party that has violated the Lanham Act. Autodesk's

1 “TrustedDWG Technology” sends false and misleading messages to customers who use  
 2 CAD programs other than Autodesk. A most important fact in this case is that ODA-created  
 3 DWG files opened in AutoCAD are no more unstable than Autodesk-created DWG files.  
 4 The purpose of Autodesk’s TrustedDWG Technology is not for authentication; instead, it is  
 5 actually designed to instill fear in users. Autodesk is guilty of the deceptive trade practices  
 6 of which it accuses ODA and, consequently, Autodesk is not likely to succeed on the merits  
 7 of its claims. The Court should deny temporary and preliminary relief.

## 8 MATERIAL FACTS

### 9 I. Autodesk and its relationship with the DWG format.

10 Autodesk is the world’s largest CAD software company. (Declaration of Shawn  
 11 Lindsay, ¶¶ 2-3, Exs. A and B.) It is not a fledgling company. Rather, it is a 25-year old  
 12 business with offices throughout the world, and its 7 million registered users are located in  
 13 approximately 160 countries. (*Id.*, Autodesk Application at 3:10-13.) Its net revenue for  
 14 fiscal 2006 was \$1.5 billion. (Lindsay Decl., ¶ 2, Ex. A.) Autodesk sells the leading CAD  
 15 engine, AutoCAD, and controls nearly 70 percent of the market. (*Id.* at Ex. B.) Since its  
 16 inception, Autodesk’s AutoCAD software has used a format called “DWG” for storing user  
 17 data files. (Declaration of Mauritz Botha ¶ 2.) Files stored in DWG format are often referred  
 18 to as “drawing files.” (*Id.*) When an AutoCAD user saves or stores a file in DWG format,  
 19 “.dwg” is the extension appended to the file name. (*Id.*) Autodesk did not create the DWG  
 20 file format but it has controlled and updated the DWG format for over twenty years. (*Id.*,  
 21 Autodesk App., 3:25-26.) “DWG” is not trademarked by Autodesk. (Botha Decl. ¶ 2.)

22 Autodesk finds itself stuck in the self-made position of declaring DWG the universal  
 23 standard for CAD drawings, yet refusing to document it. (*Id.* ¶ 3.) To “document” means to  
 24 open the format so that any user can read, use, modify or write a DWG file. (*Id.*) As a result  
 25 of Autodesk’s refusal to document DWG, users are required to first purchase an Autodesk  
 26 product to read a DWG file. (*Id.*) For example, if an interior designer wanted to open a

1 DWG drawing file from her architect, she would have to purchase AutoCAD for  
2 approximately \$3,000. (Id.) Despite requests from both Autodesk’s customers and third-  
3 party developers producing add-on products for AutoCAD, Autodesk has steadfastly refused  
4 to “document” or release specifications for the format of these files. (Id.)

5 While it provides its own set of DWG read and write tool-kits named RealDWG, Autodesk  
6 does not license it to competitors. “Autodesk reserves the right not to license the Autodesk  
7 RealDWG [software development tool-kit] for use in software applications that compete with  
8 existing Autodesk software applications or strategies.” (Lindsay Decl., ¶ 3, Ex. C.)

9 **II. The drive toward open file formats.**

10 There are over one billion drawing files stored in DWG format. (Botha Decl. ¶ 4.) If  
11 there is no other product to read or write these files, the only way to access those files is with  
12 Autodesk products. (Id. at ¶ 2.) Thus, the problem created by Autodesk’s refusal to  
13 “document” the DWG format is that there is no interoperability with or between other CAD  
14 programs. (Id.) Developers and end users in the CAD/CAM industry need to be able to read,  
15 write, query, and display their drawing files from their own programs, outside of Autodesk  
16 products. (Id.)

17 A drive towards working with open file formats is being orchestrated by governments  
18 on all continents. (Id.) They realize that documents created, for example, by AutoCAD  
19 might not be readable by computers in 20 or 50 years time. Why? Because the DWG format  
20 is undocumented. (Id.) Autodesk does not describe the way DWG documents are structured,  
21 and so they cannot be read except through their software—or inexact clones thereof. (Id.)  
22 The solution is legislation that requires documents to be stored in formats whose structure is  
23 known or documented. (Id.) Because most documents are created by word processors (e.g.,  
24 Microsoft Word), the formats most commonly specified are OpenDocument and PDF/A.  
25 (Id.) OpenDocument is an ISO standard, documented by the International Organization for  
26 Standards, while PDF/A is the open version of Adobe’s PDF designed for archiving

1 documents. (Id.) Because both formats are open documents, files can be read at any point in  
2 the future—long after Microsoft and Adobe may disappear as corporate entities. (Id.)

3 There is no analogous open format for drawings created by CAD programs. The problem is  
4 that CAD drawings are far more complex than any word processor document. (Id. at ¶ 2.)  
5 Numerous open standards have been proposed but none have been adopted. The names of some of  
6 these standards include IGES and STEP. (Id.) In the FTC’s action against Autodesk for  
7 anticompetitive conduct, the settlement statement says, “[u]sers of AutoCAD have a large number  
8 of drawings in the AutoCAD format and many users must share files they created with others who  
9 must be able to read and edit those files using their CAD software. This situation creates barriers  
10 to entry to CAD engines that cannot read AutoCAD files without losing data or information.”  
11 (Lindsay Decl., ¶ 3, Ex. B.) In short, an open format for reading drawings produced by all CAD  
12 programs has thus far been impossible to achieve. (Botha Decl. ¶ 6.)

### 13 **III. The Open Design Alliance solution.**

14 Seeing the need for read and write access to DWG files and being determined that the  
15 DWG format should become an open standard, a number of companies joined together in  
16 February 1998 to form the OpenDWG Alliance, an independent, non-profit corporation  
17 dedicated to making DWG an open, accessible standard format for storage of drawing data.  
18 (Id. at ¶ 7.) The formation of the alliance was done in light of the FTC’s complaint against  
19 Autodesk which claimed, “[t]he large installed base of AutoCAD users necessitates that any  
20 new CAD engine developed and offered in the market offer file compatibility and  
21 transferability with AutoCAD in order to be an effective competitor.” (Id.) (emphasis  
22 added.) Since its founding, the OpenDWG Alliance made toolkits and view kits available to  
23 all of its members for accessing AutoCAD DWG files. (Id.)

24 In 2002, the OpenDWG Alliance introduced a completely new set of libraries (e.g., a  
25 tool kit) called DWGdirect which allowed support for AutoCAD 2004. (Id. at ¶ 8.) In 2003,  
26 the Alliance changed its name to Open Design Alliance. (Id.) It also claimed “OpenDWG”

1 as a distinct standard, based on AutoCAD's DWG, but distinguished it by being documented  
2 (i.e., open), supported, and available to all users. (Id.) These DWGdirect libraries are  
3 downloaded from ODA's website (via username and password) and then implemented into a  
4 CAD application that accesses the DWGdirect libraries as a third party function. (Id.) In  
5 other words, the DWGdirect libraries are not a stand alone product. They are a tool that a  
6 CAD application uses to read and write DWG files. (Id.) Most CAD companies and other  
7 software firms dealing with CAD are members, including Adobe, Google, Boeing, GE,  
8 Oracle, and many other companies. The ODA has more than 3,000 members worldwide.  
9 ODA has invited Autodesk to join the alliance but it has refused to join in abidance with the  
10 terms and conditions agreed to by all other ODA members. (Id.)

#### 11 **IV. Autodesk's TrustedDWG.**

12 Despite Autodesk and ODA co-existing for years, Autodesk decided to advance  
13 measures to eliminate competition by implementing what it calls "TrustedDWG Technology." (Id.  
14 at ¶ 9.) Autodesk claims that it implemented this program because "Autodesk's customer support  
15 personnel had noted numerous instances of Autodesk customers receiving DWG files from  
16 outsiders, and then attempting to open the files with AutoCAD software, only to encounter serious  
17 errors." (Autodesk Application at 5:15-17.) Despite other explanations for Autodesk's allegations,  
18 a most important fact is that ODA-created DWG files are no more unstable than Autodesk-created  
19 DWG files. (Botha Decl. ¶ 9; Declaration of Neil Peterson ¶ 2.) Autodesk has provided no reports  
20 of corrupted data or complaints of AutoCAD customers who were working with ODA-created  
21 DWG files. (Botha Decl. ¶ 9.)

22 As explained in Autodesk's Application, AutoCAD embeds a string of code into every  
23 DWG file it writes that identifies the DWG file as written by an Autodesk product. (Autodesk  
24 Application at 6:18-26.) If this code string is not present in a DWG file and someone attempts to  
25 open the file with AutoCAD, the program will cause a warning message to pop up stating, "Non  
26 Autodesk DWG. This DWG file was saved by a software application not developed or licensed by

1 Autodesk. Use of this file with AutoCAD software may result in stability issues.” (Id. at 8:4-7). If  
 2 the code string is present in a DWG file and someone opens the file with AutoCAD, the program  
 3 will cause a message to be displayed stating, “Autodesk DWG. This file is a Trusted DWG last  
 4 saved by an Autodesk application or Autodesk licensed application.” (Id. at 7:1-3). To analogize,  
 5 this is the equivalent of Microsoft incorporating some code in Word that would detect a document  
 6 created in WordPerfect but “saved as” a .doc Word document and then having a dialogue box pop  
 7 up every time the WordPerfect-created .doc document is opened in Word saying: “This .doc file  
 8 was saved by a software application that was not developed or licensed by Microsoft. Use of this  
 9 file with Microsoft Word may result in stability issues. Do you want to continue?” (Botha Decl. ¶  
 10 10.) This function effectively acts as a “lock-out” string in ODA-created DWG files. (Id.)

11 Because of the misleading statement, “[u]se of this file with AutoCAD software may  
 12 result in stability issues” and the interference the dialogue box causes with interoperability  
 13 because the pop-up dialogue must be manually overridden, it disrupts many programs that  
 14 perform batch processing of DWG files, ODA determined it necessary to analyze the  
 15 TrustedDWG code string and simulate its functions in ODA-create DWG files. (Id. at ¶ 11.)  
 16 Had Autodesk simply identified the ODA-created DWG files as, for example, “Non  
 17 Autodesk DWG,” ODA would not need to support TrustedDWG functionality. (Id.) ODA  
 18 has offered this as a solution to the situation and Autodesk has failed to accept it.

### 19 STANDARD FOR TEMPORARY RESTRAINING ORDER

20 A temporary restraining order is an extraordinary remedy in equity. They are  
 21 potentially extremely powerful in that they may be issued without a full hearing of the facts  
 22 and are enforceable through the contempt power of the court. Dan B. Dobbs, Law of  
 23 Remedies, §2.9(1), at 223 (2d ed 1993). As such, the temporary restraining order is an  
 24 instrument of some danger in a free society, as well as an instrument of considerable power.  
 25 Thus, the underlying principle in the law governing temporary restraining orders is the need  
 26 for (1) procedural safeguards; (2) the presence of extraordinary circumstances to obtain

1 relief; and (3) orders that are narrowly tailored with respect to the scope of the activities that  
2 they address and the parties that they bind. (Id.)

3 Like a preliminary injunction, a temporary restraining order cannot be used as a  
4 preliminary adjudication on the merits. Rather, it is a device for preserving the status quo  
5 pending a final hearing on the merits. Sierra On-Line, Inc. v. Phoenix Software, Inc., 739  
6 F.2d 1415, 1422 (9th Cir. 1984). The movant bears the difficult burden of persuasion.  
7 Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (per curiam).

8 The standard for obtaining a temporary restraining order is the same as the standard  
9 for obtaining a preliminary injunction. Los Angeles Unified School Dist. v. U.S. Dist Ct.,  
10 650 F.2d 1004, 1007-08 (9th Cir. 1981). To obtain a preliminary injunction or temporary  
11 restraining order in the Ninth Circuit, the moving party must fulfill one of two standards,  
12 described as the “traditional” or “alternative” standards. Cassim v. Bowen, 824 F.2d 791,  
13 795 (9th Cir. 1987). The traditional test requires the movant to establish: (1) a strong  
14 probability of success on the merits; (2) irreparable injury if the relief is not granted; (3) that  
15 the balance of harm favors the movant; and, in certain cases, (4) that issuance of the relief is  
16 in the public interest. Miller For and On Behalf of N.L.R.B. v. California Pacific Medical  
17 Center, 19 F.3d 449, 456 (9th Cir. 1994) (en banc). The alternative test requires the movant  
18 to establish either (1) a probability of success on the merits and possible irreparable injury, or  
19 (2) serious questions going to the merits and that the balance of hardships tips sharply in its  
20 favor. United States v. Nutri-Cology, Inc., 982 F.2d 394, 397 (9th Cir. 1992).

21 These two prongs of the alternative test “represent two points on a sliding scale in  
22 which the required degree of irreparable harm increases as the probability of success  
23 decreases.” NutriCology, Inc., 982 F.2d at 397. In other words, the alternative test presents  
24 the standards to be applied at the two extremes of the traditional test. Sierra On-Line, 739  
25 F.2d at 1421. Under either the traditional or alternative tests, some balance of hardships must  
26 still be established by the movant in the record. Los Angeles Memorial Coliseum Comm’n,



1 634 F.2d at 1203. In addition, under either test, the moving party must demonstrate that “it  
2 will be exposed to some significant risk of irreparable injury.” Associated Gen. Contractors  
3 of California, Inc. v. Coalition for Economic Equity, 950 F.2d 1401, 1410 (9th Cir. 1991).

4 These same standards apply to trademark cases. Sardi’s Restaurant Corp. v. Sardie, 755 F.2d  
5 719, 723 (9th Cir. 1985).

## 6 POINTS AND AUTHORITIES

### 7 **I. It is Autodesk that has violated the Lanham Act through false and misleading** 8 **messages it sends to customers who use other CAD programs.**

9 A preliminary injunction can be denied if a plaintiff comes to equity with unclean hands.  
10 Big Time Worldwide Concert & Sport Club at Town Center, LLC v. Marriott International, Inc.,  
11 236 F.Supp.2d 791, 797 (E.D. Mich. 2003). “Unclean hands is a defense to a Lanham Act  
12 infringement suit. To prevail . . . [e]quity requires that those seeking its protection shall have acted  
13 fairly and without fraud or deceit as to the controversy in issue.” Fuddruckers, Inc. v. Doc’s B.R.  
14 Others, Inc. 826 F.2d 837, (9th Cir. 1987) (emphasis in original). The unclean hands doctrine  
15 “closes the door of equity to one tainted with inequity or bad faith relative to the matter in  
16 which he seeks relief.” Precision Instr. Mfg. Co. v. Automotive Maint. Mach. Co., 324 U.S. 806,  
17 814, 65 S.Ct 993 (1945). In applying the doctrine, “[w]hat is material is not that the plaintiff’s  
18 hands are dirty, but that he dirtied them in acquiring the right he now asserts, or that the manner of  
19 dirtying renders inequitable the assertion of such rights against the defendants.” Ellenberg v.  
20 Brockway, Inc., 763 F.2d 1091, 1097 (9th Cir. 1985) (quoting Republic Molding Corp. v. B.W.  
21 Photo Utilities, 319 F.2d 347, 349 (9th Cir. 1963)). In Bell v. Streetwise Records, Ltd., 616  
22 F.Supp. 4 (D. Mass. 1984), the court determined that the plaintiff’s were entitled to preliminary  
23 injunction, however, the court denied the relief on the ground that plaintiffs did not have clean  
24 hands. See also, Haagen-Dazs, Inc. v. Frujsen Gladje Ltd., 493 F.Supp 73, 76 (S.D.N.Y. 1980).

25 Here, after decades of interoperability between AutoCAD and other CAD programs  
26 by using Autodesk-created DWG files and ODA-created DWG files, Autodesk now causes  
warning to pop up in its AutoCAD program to alert users that instability may occur when any

1 competitor-supported file is imported into AutoCAD. Autodesk claims that it is simply part  
2 of its “authentication mechanism,” but the new warning goes far beyond authentication.  
3 Autodesk’s scheme—gussied up as seal of approval—is actually designed to provoke fear for  
4 users. As the industry giant, Autodesk would prefer that users—except for competitors—use  
5 Autodesk’s RealDWG libraries to create DWG files, rather than choose a competitor’s  
6 compatible product. Autodesk’s fear-tactic might have been justified if its DWG files were  
7 truly more stable than others and it was acting to protect users. But that is not the case.

8 The single most important fact in this case is that ODA-created DWG files on an  
9 AutoCAD platform are no more unstable than Autodesk’s own DWG files. (Botha Decl. ¶  
10 9.; Peterson Decl. ¶ 2.) AutoCAD’s pop-up window suggests otherwise in two ways. First,  
11 when an Autodesk file is imported its states: “This is a Trusted DWG last saved by an  
12 Autodesk application or Autodesk licensed application.” It’s coinage of the term “Trusted  
13 DWG” gives the warm impression that no harm can occur. Second, when a non-Autodesk  
14 file is imported, it states “Use of this file with AutoCad software may result in stability  
15 issues. Do you want to continue?” The intended message is obvious to the user: Autodesk  
16 products are safer; if you had used our product, you would not be putting your hard work in  
17 jeopardy with an incompatible inferior product.

18 Thus, Autodesk is the party that has violated the Lanham Act through the false and  
19 misleading message it sends to customers who use other products. In Castrol Inc. v Pennzoil  
20 Co., 987 F.2d 939, 947 (3d Cir. 1993) the defendant’s false suggestion of enhanced risk of  
21 engine failure was enough to find a Lanham Act violation over its oil product claims, even  
22 though there was no direct comparison with a competitor. The “necessary implication” of  
23 superiority in protection, without supporting test results, violates the Lanham Act. Id. at 946.

24 Anecdotal customer comments, such as those proffered by plaintiff, are insufficient to  
25 support the accuracy of claim. E.g., W.L. Gore & Assoc. v. Totes Inc., 788 F. Supp 800, 808  
26 (D. Del. 1992) (happy customer testimonials do not render a false claim true.) Autodesk has

1 offered no empirical evidence that its files are any more stable than others. Where such a  
2 thing is measurable, the party asserting superiority must offer comparison testing that  
3 supports the claim. *Id.* at 807.

4 Because it is Autodesk that has violated the Lanham Act by sending false and  
5 misleading messages to customers who use other CAD programs, Autodesk does not enjoy a  
6 strong probability of success on the merits of its claims. Consequently, the Court should  
7 deny Autodesk's application for a temporary restraining order.

8 **II. It is the AutoCAD application—not the ODA-created DWG file—that displays**  
9 **the Autodesk Name and Mark.**

10 To make its arguments, Autodesk mischaracterizes the nature of its claims. By  
11 describing this dispute as ODA-created DWG files causing Autodesk's TrustedDWG  
12 message to pop up, Autodesk hopes to persuade the Court that ODA is attempting to pass  
13 ODA-created DWG files off as Autodesk-created DWG files and that such actions create  
14 consumer confusion. This is not forthright. It is not ODA-created DWG files that cause  
15 Autodesk's TrustedDWG messages to pop up; rather, ODA's DWGdirect libraries insert a bit  
16 of code into a section of the ODA-created DWG file necessary to avoid the disruptive pop-up  
17 dialogue that is similar to the bit of code that is inserted by the AutoCAD program into a  
18 section of an Autodesk-created DWG file. When the bit of code in the ODA-created DWG  
19 file is read by the AutoCAD application, it is the AutoCAD application—not the ODA-  
20 created DWG file—that displays the Autodesk TrustedDWG message, beginning with the  
21 words "Autodesk DWG.". If there is any trademark issue created by this process (which  
22 ODA disputes), it is created by Autodesk themselves—not ODA.

23 **III. Autodesk does not face irreparable harm and the balance of hardship from an**  
24 **injunction falls on ODA.**

25 As noted above, Autodesk's claim on the merits is unlikely to succeed and,  
26 consequently, irreparable injury cannot be presumed. Further, ODA carries the balance of  
hardship from an injunction. The corrective action Autodesk seeks is burdensome and

1 impossible. Approximately 3,000 members have accessed the ODA DWGdirect libraries,  
2 incorporated them with their applications, and have distributed them to end users around the  
3 world. It is impossible for ODA to guarantee that all end users are not using the DWGdirect  
4 libraries. Further, it would require ODA to completely recode and re-tool its DWGdirect  
5 libraries. For these reasons, the balance of hardship from an injunction rests not on Autodesk  
6 but on ODA.

7 **CONCLUSION**

8 Because Autodesk's application for a temporary restraining is an attempt to obtain a  
9 preliminary adjudication on the merits, the Court should not alter the status quo. Further,  
10 because Autodesk is not likely to succeed on the merits of its claims, the Court should deny  
11 temporary and preliminary relief.

12 DATED this 20th day of November, 2006.

13 MARKOWITZ, HERBOLD, GLADE  
14 & MEHLHAF, P.C.

15 By: /s/ Jeffrey M. Edelson

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**ATTORNEY CERTIFICATE OF SERVICE**

I hereby certify that on November 21, 2006, I have made service of the foregoing **DEFENDANT OPEN DESIGN ALLIANCE'S OPPOSITION TO PLAINTIFF AUTODESK, INC.'S APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE** on the party/ies listed below in the manner indicated:

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DATED this 21st day of November, 2006.

/s/ Jeffrey M. Edelson  
Jeffrey M. Edelson, WSBA #37361  
Attorney for Defendant