

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

MINNESOTA PUBLIC RADIO,)	
)	Court File No. _____
)	
Plaintiff,)	
)	
v.)	<u>COMPLAINT</u>
)	
VIRGINIA BEACH EDUCATIONAL)	(Jury Trial Demanded)
BROADCAST FOUNDATION INC.,)	
D/B/A POSITIVE HIT RADIO THE)	
CURRENT,)	
)	
Defendant.		

Plaintiff MINNESOTA PUBLIC RADIO (“MPR”), for its Complaint against Defendant Virginia Beach Educational Broadcast Foundation Inc. (“Defendant”), alleges as follows:

PRELIMINARY STATEMENT

1. In January of 2005, MPR introduced to the public THE CURRENT radio broadcast services, which MPR markets to consumers via radio stations and via a global computer network. MPR’s THE CURRENT broadcasts have received an enormous amount of popularity and media attention in Minnesota and throughout the United States.

2. After MPR introduced its services under its THE CURRENT mark, Defendant, with constructive and actual knowledge of MPR’s THE CURRENT brand, began advertising, promoting, selling and offering its radio services under the identical term, “THE CURRENT.”

3. Defendant’s promotional materials and advertising are distributed via similar distribution channels and to the same types of consumers as MPR’s services, promotional materials and advertising.

4. MPR seeks injunctive and monetary relief with respect to Defendant's activities that are likely to mislead and confuse consumers about the source, sponsorship, and affiliation of Defendant's services under the mark THE CURRENT and that trade upon the goodwill of MPR's THE CURRENT mark.

THE PARTIES

5. MPR is a non-profit corporation organized and existing under the laws of the State of Minnesota, with its principal place of business at 480 Cedar Street, St. Paul, MN 55101.

6. Defendant Virginia Beach Educational Broadcast Foundation Inc. is a corporation organized and existing under the laws of the State of Virginia with its principal place of business located at 3500 Virginia Beach Blvd., Suite 201, Virginia Beach, VA 23452. Defendant does business as "Positive Hit Radio The Current."

JURISDICTION AND VENUE

7. This is an action for unfair competition and cybersquatting under the Lanham Act, 15 U.S.C. §§ 1051 et seq., deceptive trade practices arising under the Minnesota Deceptive Trade Practices Act, Minn. Stat. § 325D.43 et seq., unlawful trade practices under the Minnesota Unlawful Trade Practices Act, Minn. Stat. § 325D.09 et seq., and common law trademark infringement and unfair competition. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1332 and 1338, as well as 15 U.S.C. § 1121, as well as supplemental jurisdiction under 28 U.S.C. § 1367. The amount in controversy, exclusive of costs and interest, exceeds Seventy-Five Thousand Dollars (\$75,000.00).

8. Venue is proper in this district under 28 U.S.C. § 1391.

THE BUSINESS OF PLAINTIFF

9. MPR is one of the premier public radio networks in the United States with a regional network of stations covering Minnesota and parts of Wisconsin, North and South

Dakota, Michigan, Iowa, and Idaho. MPR media broadcasts are also distributed nationally and internationally via MPR's streaming media on the Internet, satellite radio, Armed Forces Radio Network and other distribution platforms.

10. Since at least as early as January of 2005, MPR has used THE CURRENT mark in connection with its distribution of media content over radio stations, through the Internet and in printed materials.

11. Consumers are invited to visit MPR's online website located at thecurrent.org and listen to THE CURRENT media broadcast live using, among other devices, the Windows Media Player, which is capable of broadcasting both audio and video content via the Internet, including downloadable podcasts. Consumers may also watch videos, including live music performances, at MPR's online website under the Video section.

12. MPR has invested a significant amount of money to promote its media broadcasting services under its THE CURRENT mark. As a result, audiences across the world tune into the streaming content via the Internet.

13. MPR's THE CURRENT mark is distinctive as a service mark for MPR's services both to radio listeners and listeners via the Internet.

14. MPR's THE CURRENT mark is recognized and relied upon as identifying MPR as the sole source of services relating to the distribution of radio programs distributed over the radio and via a global computer network, and as distinguishing MPR's services from the services of others. As a result, MPR's THE CURRENT mark has acquired substantial goodwill and is an extremely valuable commercial asset.

15. On December 6, 2004, MPR applied for registration of the mark THE CURRENT, Application Ser. No. 78-527,303, in class 38 with the United States Patent and Trademark Office. MPR's application covered "educational and entertainment services, namely

production and distribution of radio programs distributed over the radio and via a global computer network.” On February 9, 2006, MPR amended its application to class 41 and amended the description of goods to cover “educational and entertainment services, namely, production of radio programs that are broadcast via radio and a global computer network, and distribution of radio programs for others.” A copy of a report from the Trademark Application and Registration Retrieval System regarding the mark THE CURRENT is attached hereto as **Exhibit 1**.

16. On February 24, 2005, MPR applied for registration of the mark CROSS CURRENTS, Application Ser. No. 78-574,491, in class 41 with the United States Patent and Trademark Office. MPR’s application covered “providing online newsletters in the field of music radio information.” A copy of a report from the Trademark Application and Registration Retrieval System regarding the mark CROSS CURRENTS is attached hereto as **Exhibit 2**.

17. On September 6, 2005, MPR applied for registration of the mark LIVE CURRENTS, Application Ser. No. 78-707,448, in class 9 with the United States Patent and Trademark Office. MPR’s application covered “Series of pre-recorded compact discs, audio tapes and downloadable recordings featuring music, and Series of pre-recorded compact discs, audio tapes and downloadable recordings featuring news and topics of general interest in the music entertainment industry, interviews with artists and personalities in the music entertainment industry, and performances by musicians and musical groups in the nature of pre-recorded excerpts from radio programs and recordings of studio sessions and live concerts.” A copy of a report from the Trademark Application and Registration Retrieval System regarding the mark CROSS CURRENTS is attached hereto as **Exhibit 3**.

18. On February 6, 2006, MPR applied for registration of the mark THE CURRENT, Application Ser. No. 78-808,250, in class 38 and 41 with the United States Patent and Trademark

Office. MPR's application covered "radio broadcasting" and "Entertainment services, namely, a series of continuing radio programs relating to music, culture, news, and the arts distributed over radio and via a global computer network; providing interactive online information services in the field of music." A copy of a report from the Trademark Application and Registration Retrieval System regarding the mark THE CURRENT is attached hereto as **Exhibit 4**.

19. On March 23, 2006, MPR applied for registration of the mark THE CURRENT HOOTENANNY, Application Ser. No. 78-844,510, in class 41 with the United States Patent and Trademark Office. MPR's application covered "Entertainment services, namely, organizing live musical concerts; and entertainment services, namely, the presentation of performances featuring music via radio and a global computer network; and internet radio services, namely, providing podcasts in the field of music and musical based entertainment; providing a website featuring musical artists and musical based entertainment; providing online music and musical based entertainment for downloading to computers, portable media players, telephones, cellular telephones, personal digital assistants, radios, mini disc players and MP3 players." A copy of a report from the Trademark Application and Registration Retrieval System regarding the mark THE CURRENT HOOTENANNY is attached hereto as **Exhibit 5**.

20. On July 31, 2006, MPR applied for registration of the mark THE CURRENT FAKEBOOK, Application Ser. No. 78-941,136, in class 41 with the United States Patent and Trademark Office. MPR's application covered "Entertainment in the nature of live performances featuring readings, panel discussions, interviews, commentary and live music in a theatre setting; and entertainment services, namely, the presentation of performances featuring readings, panel discussions, interviews, commentary and music via radio and a global computer network." A copy of a report from the Trademark Application and Registration Retrieval System regarding the mark THE CURRENT FAKEBOOK is attached hereto as **Exhibit 6**.

21. The trademarks represented in Paragraphs 15-20 represent MPR's family of THE CURRENT marks (hereinafter MPR's "THE CURRENT Marks").

UNLAWFUL CONDUCT BY DEFENDANT

22. Defendant had constructive notice of MPR's trademark rights in its THE CURRENT Marks as of December 6, 2004, based on MPR's application to register THE CURRENT as a federally registered trademark.

23. As of December 6, 2004, Defendant went by the name WJLZ Radio. At that time, Defendant did not use the designations THE CURRENT or CURRENT FM as trademarks.

24. Defendant registered the domain name currentfm.com on March 19, 2005. Thereafter, Defendant developed a website in connection with the domain name currentfm.com that incorporates the marks THE CURRENT and CURRENT FM.

25. MPR provided Defendant actual notice of its infringement at least as early as July 27, 2006, when MPR requested that Defendant cease use of the mark. MPR informed Defendant that MPR had superior rights in THE CURRENT mark and that Defendant's use of the marks THE CURRENT and CURRENT FM was likely to cause confusion.

26. Despite its knowledge regarding MPR's prior and superior rights in its mark THE CURRENT and without the authorization of MPR, Defendant continued to offer radio and Internet programming using the mark THE CURRENT and CURRENT FM.

27. Defendant provides its services under the marks THE CURRENT and CURRENT FM via terrestrial radio transmission throughout Virginia and offers streaming music to locations outside of Virginia, including Minnesota, via the Internet.

28. Defendant has and continues to offer its services in interstate commerce under the name "THE CURRENT" and "CURRENT FM" through their websites located at

www.currentfm.com and www.wjtz.com and other Internet networking channels like www.myspace.com.

29. Defendant intentionally offers music into Minnesota and every other jurisdiction. Defendant has a website located at www.myspace.com/currentfm that states, “Don’t live in Virginia Beach or the Hampton Roads area? NO WORRIES, check our out awesome streams online 24/7 at www.currentfm.com!”

30. Defendant is aware of the vast and valuable goodwill and reputation represented and symbolized by MPR’s THE CURRENT mark. Defendant is also aware that MPR’s listeners rely upon MPR’s THE CURRENT mark as distinguishing MPR’s services from the services of others.

31. Defendant’s continued use of the marks THE CURRENT and CURRENT FM as part of its radio and Internet programming is likely to diminish the goodwill associated with MPR’s THE CURRENT mark.

32. Defendant’s services under the marks THE CURRENT and CURRENT FM are offered and/or promoted in the same channels of trade as MPR’s services under its THE CURRENT mark. Defendant and MPR offer their services, including musical content, to consumers across the United States via the Internet through streaming media.

33. Defendant’s services under the mark THE CURRENT and CURRENT FM are being provided and/or promoted, and are likely to continue being provided and/or promoted, throughout the same geographic markets as MPR’s services. Defendant derives and will continue to derive substantial revenue from its services provided under its use of the marks THE CURRENT and CURRENT FM in interstate commerce, including Minnesota.

34. Defendant’s activities are likely to cause forward and/or reverse confusion or mistake or to deceive consumers into believing that the unauthorized THE CURRENT and

CURRENT FM services are sponsored, licensed or authorized by, or affiliated, connected or otherwise associated with MPR or its services or that MPR's services under its THE CURRENT mark are sponsored, licensed or authorized by, or affiliated, connected or otherwise associated with Defendant or its services.

35. Defendant's continued use of the marks THE CURRENT and CURRENT FM is with full knowledge of the prior ownership by MPR of its THE CURRENT mark and MPR's rights to use and control the use of that mark.

36. Defendant has acted and continues to act without regard to MPR's property rights and goodwill.

37. Defendant's unauthorized use of the marks THE CURRENT and CURRENT FM and the domain name currentfm.com in association with providing radio and Internet streaming content has significantly injured MPR's interests and will continue to do so unless immediately enjoined. Specifically, Defendant (a) has traded upon and threatens to further trade upon the significant and valuable goodwill in MPR's THE CURRENT service mark; (b) is likely to cause public confusion as to the source, sponsorship or affiliation of Defendant's services; (c) has damaged and threatens to further damage MPR's significant and valuable goodwill in its THE CURRENT mark; (d) has injured and threatens to further injure MPR's right to use its THE CURRENT mark as the exclusive indicia of origin of MPR's media services in Minnesota and throughout the United States; and (e) has lessened the capacity of MPR's THE CURRENT mark to indicate that its services are sponsored by MPR.

38. Upon information and belief, Defendant will continue unlawfully to use the marks THE CURRENT and CURRENT FM to promote and provide its services, unless enjoined by the Court.

39. MPR has no adequate remedy at law.

FIRST CLAIM FOR RELIEF
FEDERAL UNFAIR COMPETITION

40. Paragraphs 1 through 39 are incorporated and made a part of this Claim.

41. MPR's THE CURRENT mark is distinctive.

42. Defendant's services under the mark THE CURRENT and CURRENT FM are being advertised and/or offered in interstate commerce, including Minnesota.

43. Defendant's use of the designations THE CURRENT and CURRENT FM are likely to cause confusion, mistake, or deception as to the source of origin of Defendant's services in that customers and potential customers are likely to believe that the services provided under those designations are provided by, sponsored by, approved by, licensed by, affiliated or associated with, or in some other way legitimately connected to MPR or its services under its THE CURRENT Marks.

44. As a direct and proximate result of the likely confusion, mistake, or deception, MPR has suffered and will continue to suffer irreparable harm if the conduct of Defendant is not enjoined.

45. The likely confusion, mistake, or deception caused by Defendant is in violation of 15 U.S.C. § 1125(a).

46. Pursuant to 15 U.S.C. § 1117, MPR is entitled to recover the costs of this action. The nature of Defendant's unlawful acts renders this an "exceptional case," entitling MPR to an award of attorneys' fees under 15 U.S.C. § 1117(a).

SECOND CLAIM FOR RELIEF
VIOLATION OF ANTI-CYBERSQUATTING CONSUMER PROTECTION ACT

47. Paragraphs 1 through 46 are incorporated and made a part of this Claim.

48. Defendant, in bad faith, registered, used and continues to use the domain name currentfm.com, which is confusingly similar to MPR's THE CURRENT mark.

49. Defendant's registration and use of the domain name as described above constitutes cyberpiracy and trademark infringement of MPR's distinctive trademark THE CURRENT in violation of Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d).

50. As a result of Defendant's above-described conduct, MPR has suffered and continues to suffer damages including, without limitation, the loss of revenue MPR would have made but for Defendant's acts, in an amount to be proven at trial.

51. Defendant's acts of cyberpiracy have also caused and are causing irreparable injury to MPR and to the business reputation and goodwill represented by MPR and its THE CURRENT mark.

52. Unless enjoined by this court, Defendant's above-described conduct will cause further irreparable injury, for which MPR has no adequate remedy at law for the reasons: (1) that Defendant's use and control of the domain name currentfm.com prevents MPR from possessing the domain name that is rightfully MPR's; (2) current prospective customers who type the domain name when seeking to find MPR are directed elsewhere which will cause such prospective customers to become frustrated and discontinue seeking MPR; (3) customers attempting to reach MPR who are directed to the website now located at currentfm.com may now believe that MPR has added additional stations or changed locations.

THIRD CLAIM FOR RELIEF
DECEPTIVE TRADE PRACTICES

53. Paragraphs 1 through 52 are incorporated and made a part of this Claim.

54. Defendant has engaged in deceptive trade practices in violation of Minn. Stat. § 325D.44, including Minn. Stat. § 325D.44, subdivisions (1) through (5), because its use of the designations THE CURRENT and CURRENT FM is likely to cause confusion, mistake, or deception as to the source of origin of Defendant's services in that customers and potential

customers are likely to believe that the services provided under the designations THE CURRENT and CURRENT FM are provided by, sponsored by, approved by, licensed by, affiliated or associated with, or in some other way legitimately connected to MPR or its services under its THE CURRENT Marks.

55. As a direct and proximate result of the likely confusion, mistake, or deception, MPR has suffered and will continue to suffer irreparable harm if the conduct of Defendant is not enjoined.

56. Pursuant to Minn. Stat. § 325D.45, MPR is entitled to recover its costs and attorneys' fees.

FOURTH CLAIM FOR RELIEF
UNLAWFUL TRADE PRACTICES ACT

57. Paragraphs 1 through 56 are incorporated and made a part of this Claim.

58. Defendant has engaged in unlawful trade practices in violation of Minn. Stat. § 325D.09 *et seq.* because its use of the designations THE CURRENT and CURRENT FM is likely to cause confusion, mistake, or deception as to the source of origin of Defendant's services in that customers and potential customers are likely to believe that the services provided under Defendant's designations are provided by, sponsored by, approved by, licensed by, affiliated or associated with, or in some other way legitimately connected to MPR or its services under its THE CURRENT Marks.

59. As a direct and proximate result of the likely confusion, mistake, or deception, MPR has suffered and will continue to suffer irreparable harm if the conduct of Defendant is not enjoined.

60. Pursuant to Minn. Stat. § 325D.15 and § 8.31, subd. 3a, MPR is entitled to recover its costs, disbursements, and reasonable attorneys' fees.

FIFTH CLAIM FOR RELIEF
COMMON LAW TRADEMARK INFRINGEMENT

61. Paragraphs 1 through 60 are incorporated and made a part of this Claim.

62. MPR's THE CURRENT mark is distinctive.

63. Defendant's use of the designations THE CURRENT and CURRENT FM is likely to cause confusion, mistake, or deception as to the source of origin of Defendant's services in that customers and potential customers are likely to believe that the services provided under those designations are provided by, sponsored by, approved by, licensed by, affiliated or associated with, or in some other way legitimately connected to MPR or its services under its THE CURRENT Marks.

64. Defendant's acts constitute trademark infringement under the common law.

65. Defendant's acts were taken in willful, deliberate, and/or intentional disregard of MPR's rights.

66. MPR has suffered irreparable harm, for which it has no adequate remedy at law, and will continue to suffer irreparable injury unless and until Defendant's infringing acts are enjoined by this Court.

SIXTH CLAIM FOR RELIEF
COMMON LAW UNFAIR COMPETITION

67. Paragraphs 1 through 66 are incorporated and made a part of this Claim.

68. Defendant's conduct constitutes unfair competition in violation of the rights of MPR.

69. As a direct and proximate result of the unfair competition of Defendant, MPR has suffered and will continue to suffer irreparable harm if the conduct of Defendant is not enjoined.

70. Defendant's acts were taken in willful, deliberate and/or intentional disregard of MPR's rights.

71. MPR respectfully requests a jury trial for this matter.

PRAYER FOR RELIEF

WHEREFORE, MPR respectfully requests judgment against Defendant as follows:

A. Permanently enjoining and restraining Defendant and its respective partners, agents, servants, employees and attorneys, and those persons in active concert or participation with Defendant from:

1. Using on or in connection with the production, manufacture, advertisement, promotion, display (including on the Internet) or otherwise, displaying for sale, offering for sale, sale, or distribution of any product or service or for any purposes whatsoever, the mark THE CURRENT or CURRENT FM.

2. Representing by any means whatsoever, directly or indirectly, or doing any other acts or things calculated or likely to cause confusion, mistake or to deceive purchasers into believing that Defendant's services originate with or are the services of MPR or that there is any affiliation or connection between MPR and its services and Defendant and its services, and from otherwise competing unfairly with MPR;

B. Directing that Defendant, at its own expense, recall all the marketing, promotional and advertising materials and edit any websites that bear or incorporate any mark or design with THE CURRENT or CURRENT FM not in conformance with Section A(1) of MPR's Prayer For Relief, or any mark confusingly similar to MPR's THE CURRENT mark, which has distributed, sold or shipped by it;

C. Transferring the domain name currentfm.com to MPR.

D. Directing that Defendant deliver to MPR's attorneys or representatives for destruction all labels, signs, prints, packages, molds, plates, dies, wrappers, receptacles,

and advertisements in its possession or under its control, bearing the non-conforming THE CURRENT and CURRENT FM marks or any simulation, reproduction, copy or colorable imitation of MPR's THE CURRENT service mark, and all films, discs, plates, molds, matrices, and any other means of making the same.

E. Directing such other relief as the Court may deem appropriate to prevent the trade and public from forming any erroneous impression that any service promoted or provided by Defendant is authorized by MPR or related in any way to MPR's services.

F. Directing Defendant to file with this Court and to serve upon MPR within thirty (30) days after service upon Defendant of an injunction in this action, a written report by Defendant, under oath, setting forth in detail the manner in which Defendant has complied with the injunction.

G. Awarding MPR as damages Defendant's profits from its broadcast of programming while using the designations THE CURRENT and CURRENT FM.

H. Awarding MPR all damages permitted by 15 U.S.C. § 1117, including statutory damages under 15 U.S.C. § 1117(d) at the election of MPR.

I. Awarding MPR its damages by reason of Defendant's actions of common law trademark infringement in an amount to be established at trial.

J. Awarding MPR reasonable attorneys' fees and the costs of this action.

K. Awarding MPR such further relief as this Court deems just and proper.

MERCHANT & GOULD

Dated: November 28, 2006

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