

To:	Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court United States District Court for the Western District of Washington on the following: Patents or X Trademarks:

DOCKET NO.	DATE FILED	US District Court United States District Court for the Western District of Washington
2:08-cv-01287-RSL	8/27/08	
PLAINTIFF		DEFENDANT
Bungie LLC		Xtreme Beverages LLC et al.
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.
1. See attached	6.	11.
2.	7.	12.
3. 2,038,273	8.	13.
4.	9.	14.
5.	10.	15.

In the above-entitled case, the following patents(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY		
	Amendment	Answer	Cross Bill
		Other Pleading	
PATENT OR TRADEMARK NO.			
1.	6.		11.
2.	7.		12.
3.	8.		13.
4.	9.		14.
5.	10.		15.

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT

CLERK Bruce Rifkin	(BY) DEPUTY CLERK PM	DATE 8/29/08
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUNGIE, LLC, a Delaware limited liability
company,

Plaintiff,

v.

XTREME BEVERAGES, LLC, a New Jersey
limited liability company, and JOHN DOE,

Defendants.

CASE NO.:

**COMPLAINT FOR FEDERAL
TRADEMARK LAW VIOLATIONS**

DEMAND FOR JURY TRIAL

1 Plaintiff Bungie, LLC ("Plaintiff" or "Bungie") hereby complains against defendant
2 Xtreme Beverages, LLC ("Xtreme") and unknown defendant "John Doe" ("Doe") (collectively
3 "Defendants"), on personal knowledge as to its own actions and on information and belief as to
4 the actions of others, as follows:

5 **PARTIES**

6 1. Plaintiff is a limited liability company organized and existing under the laws of
7 the State of Delaware, with its principal place of business in Kirkland, Washington.

8 2. Plaintiff is informed and believes, and on that basis alleges, that Xtreme is a
9 limited liability company organized and existing under the laws of the State of New Jersey, with
10 its principal place of business in New Jersey.

11 3. The true name and capacity of defendant Doe are unknown to Plaintiff at this
12 time, and Plaintiff therefore is asserting claims against that defendant by that fictitious name.
13 Plaintiff is informed and believes, and on that basis alleges, that Doe has purchased, acquired, or
14 otherwise assumed the rights and liabilities of Xtreme. Plaintiff will seek leave to amend this
15 Complaint to identify Doe by its legal name once Plaintiff has determined Doe's name.

16 **JURISDICTION AND VENUE**

17 4. This Court has original jurisdiction over the subject matter of this action pursuant
18 to 28 U.S.C. §§ 1331 and 1338.

19 5. This Court has personal jurisdiction over Defendants because Defendants operate
20 an interactive website viewable from Washington which contains the contested mark, the harm
21 caused by Defendants' use of the contested mark is felt in Washington, and Defendants have
22 offered and agreed to ship beverages bearing the contested mark into Washington.

23 6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a
24 substantial part of the events or omissions giving rise to the claim occurred in this district,
25 including but not limited to the harm done to Plaintiff's business in this district by Defendants'
26 conduct, Defendants' advertising in this district via their website, and Defendants' offer and
27 agreement to sell product bearing the disputed mark into this district.

1 GENERAL ALLEGATIONS

2 Plaintiff's Product and Brand

3 7. Plaintiff develops video games under the federally registered trademark BUNGIE.

4 8. Plaintiff has used the BUNGIE™ mark in commerce continuously and
5 extensively since at least 1995 in conjunction with a number of video game products that have
6 received national recognition and sold millions of copies. Plaintiff's most recent video game,
7 "HALO 3," exceeded \$300 million in sales during its first week of release. Over eight million
8 units of HALO 3 have been sold, and each unit included the BUNGIE™ mark on its packaging.

9 9. Plaintiff's first federal registration of the BUNGIE™ mark with the U.S. Patent
10 and Trademark Office ("PTO"), registration number 2038273, became registered on February
11 18, 1997. See Exhibit A, attached hereto (hereafter, attached exhibits will be referenced as "Ex.
12 _").

13 10. Plaintiff has other federally-registered trademarks covering BUNGIE™ and
14 BUNGIE.NET™.

15 11. On information and belief, at present, all inactive trademarks that are registered or
16 have been registered by the PTO consisting solely of the word mark BUNGIE are, or were,
17 owned by Plaintiff, Plaintiff's parent company or an affiliate thereof.

18 12. On information and belief, all currently active trademarks registered with the PTO
19 containing the word BUNGIE are owned by Plaintiff.

20 13. Through Plaintiff's extensive and continuous use and promotion of the
21 BUNGIE™ mark since at least 1995, the public has come to strongly associate the BUNGIE™
22 mark with Plaintiff.

23 14. The BUNGIE mark has appeared on beverages sold commercially by PepsiCo.,
24 Inc. In connection with cross-promotional activities related to the release of "Halo 3,"
25 PepsiCo.'s Mountain Dew-branded "Game Fuel" drink was distributed throughout the United
26 States with the BUNGIE™ mark on its packaging. Plaintiff intends to pursue similar cross-
27 promotional activities in the future.

1 15. The BUNGIE™ mark currently appears on the Mountain Dew website in
2 connection with cross-promotional activities for “Halo 3,” at:
3 <http://www.mountaindew.com/#/gaming/halo3/aboutthegame.php>. See Ex. B.

4 Defendants’ Infringing Conduct

5 16. Plaintiff is informed and believes and on that basis alleges that Defendants sell
6 beverages under the name “Bungie Energy Drink” and “Bungie Sugar-Free Energy Drink.”

7 17. On information and belief, Xtreme filed for federal trademark protection of the
8 mark BUNGIE in January 2008 relating to uses in connection with the beverage industry. See
9 Ex. C.

10 18. On information and belief, Defendants advertise the beverages they sell with the
11 “Bungie” name on their website www.drinkbungie.com (“Defendant’s website”), which
12 incorporates Plaintiff’s BUNGIE™ mark in the domain name. See Ex. D.

13 19. On information and belief, Defendants’ website contains interactive features,
14 advertises its beverages bearing Plaintiff’s BUNGIE™ mark, provides contact information for
15 Xtreme, provides a means for submitting requests for distributor information, and solicits for the
16 submission of pictures and contact information to become a “Bungie Girl.” See Ex. E.

17 20. On information and belief, Defendants operate a webpage on MySpace.com at:
18 <http://www.myspace.com/395585724>, which contains Plaintiff’s BUNGIE™ mark. See Ex. F.

19 21. On information and belief, Defendants have offered and agreed to sell beverages
20 bearing Plaintiff’s BUNGIE™ mark into Washington State.

21 22. Defendants’ website can be accessed by consumers in Washington State and
22 worldwide.

23 Defendants’ Conduct is Likely to Cause Confusion and Dilution to Plaintiff’s Mark

24 23. Plaintiff’s BUNGIE™ mark and Defendants’ “Bungie” name are both spelled
25 identically and used in the beverage market. Some of the products on which Plaintiff’s
26 BUNGIE™ mark is used, and all of the products on which Defendants’ “Bungie” name is used,
27 are sold through similar channels of trade to similar customer bases. As a result, Defendants’ use

1 of the name "Bungie," which is confusingly similar to Plaintiff's BUNGIE™ mark, is likely to
2 cause confusion among the relevant consuming public.

3 24. Given the identical spelling of Plaintiff's BUNGIE™ mark and Defendants'
4 "Bungie" product names, Defendants' use of "Bungie" is likely to weaken the association the
5 public has formed between Plaintiff and the BUNGIE™ mark, thereby causing dilution.

6 25. On information and belief, Plaintiff's BUNGIE™ mark is famous as a result of its
7 extensive use in commerce, distinctive nature, and Plaintiff's sole ownership of all currently
8 active registered trademarks containing the word BUNGIE.

9 26. On information and belief, Plaintiff's BUNGIE™ mark was famous before
10 Defendant began using the "Bungie" name in connection with its beverages.

11 Xtreme's Refusal to Cease Its Infringement

12 27. On or about June 24, 2008, shortly after it came to Plaintiff's attention that
13 Xtreme was seeking to register BUNGIE as a mark with the PTO for beverages, Plaintiff sent
14 Xtreme's counsel a letter outlining Plaintiff's ownership and use of the BUNGIE™ mark in
15 connection with Plaintiff's business and requesting that Xtreme withdraw its application for
16 federal trademark protection of BUNGIE.

17 28. On or about July 3, 2008, Xtreme's counsel responded that Xtreme did not intend
18 to withdraw its trademark application.

19 29. On or about August 15, 2008, Plaintiff learned that Xtreme was publicly
20 representing that it had been acquired by another corporate entity, which it identified only as
21 "National Beer." Plaintiff does not know the truth of these assertions and has named the
22 acquiring entity of Xtreme as a "John Doe" to this matter in the event that such an acquisition
23 has occurred.

24 30. On information and belief, Defendants continue to sell beverages under the
25 BUNGIE mark as of the time of this filing.

1 likely to cause confusion, mistake or deception as to Defendants' association with Plaintiff
2 and/or Defendants' approval or sponsorship of Plaintiff's products.

3 39. As a consequence of Defendants' unauthorized use of the BUNGIE™ mark,
4 Plaintiff is entitled to an injunction as set forth below, an order of destruction of all of
5 Defendants' infringing materials and products, Defendants' profits, Plaintiff's damages, and
6 Plaintiff's costs of action.

7 40. As a result of Defendants' willful and unauthorized use of the BUNGIE™ mark,
8 the Plaintiff does not possess adequate remedies at law to compensate for the damage done and
9 continuing to be done to the BUNGIE™ mark. Defendants' acts have caused and will continue
10 to cause Plaintiff irreparable harm. Plaintiff is therefore entitled to an injunction as well as
11 damages for an amount to be proven at trial.

12 41. As a consequence of Defendants' willful infringement, Plaintiff is entitled to
13 recover treble damages or profits.

14 **THIRD CAUSE OF ACTION: DILUTION**

15 **(LANHAM ACT SECTION 43(c), 15 U.S.C. § 1125(c))**

16 42. Plaintiff incorporates and realleges Paragraphs 1-41 above, herein.

17 43. Plaintiff's BUNGIE™ mark is a famous mark and was a famous mark prior to
18 Defendants' use of the BUNGIE mark in connection with the sale of beverages.

19 44. As such, Plaintiff's BUNGIE™ mark is entitled to protection as a famous mark
20 from dilution by the Defendants' acts described above, including their use in commerce of
21 product names identical to Plaintiff's BUNGIE™ mark and the concurrent use of Plaintiff's
22 BUNGIE™ mark and Defendants' "Bungie" product names in connection with the beverage
23 industry, which acts are likely to weaken and damage the distinctive nature of the BUNGIE™
24 mark and the public's strong association of the BUNGIE™ mark with Plaintiff.

25 45. Defendants' acts may also harm the reputation of Plaintiff's mark.

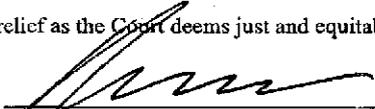
26 46. As a result of Defendants' unauthorized use of the BUNGIE™ mark, Plaintiff is
27 entitled to an injunction preventing all future use of the BUNGIE™ mark by Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

1. That this Court grant a preliminary and permanent injunction enjoining Defendants, their subsidiaries, parent and affiliated companies, successors, assigns, officers, directors, agents, partners, servants, and employees, and all others acting in concert with them, from using and infringing Plaintiff's BUNGIE™ mark, and from doing any acts or making any representations that are likely to cause public confusion, mistake, or deception with respect to any relationship between Plaintiff and Defendants or their respective goods, services, or commercial activities (including by selling goods bearing the BUNGIE™ mark);
2. For an order requiring Defendants to pay Plaintiff damages in the form of disgorged profits from Defendants' infringement and/or the actual damages Plaintiff has sustained as a result of Defendants' trademark infringement and dilution;
3. For an order requiring Defendants to pay Plaintiff its attorney's fees incurred in this action and all other costs of the action; and
4. For an order granting such other relief as the Court deems just and equitable.

Dated: August 27, 2008



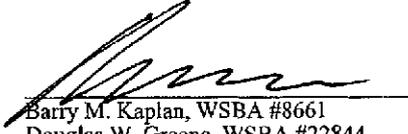
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Attorneys for Plaintiff,
BUNGIE, LLC

JURY DEMANDED

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff respectfully demands a trial by jury of all issues in this action so triable.

Dated: August 27, 2008



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Attorneys for Plaintiff,
BUNGIE, LLC

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EXHIBIT A



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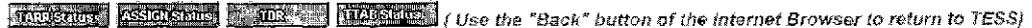
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List At: OR to record: **Record 17 out of 17**



Typed Drawing

Word Mark **BUNGIE**

Goods and Services IC 009. US 021 023 026 038 038. G & S: [computer software engine for creating entertainment and educational software]. FIRST USE: 19940630. FIRST USE IN COMMERCE: 19940630

IC 028. US 022 023 038 050. G & S: computer game programs. FIRST USE: 19900910. FIRST USE IN COMMERCE: 19900910

Mark Drawing Code (1) TYPED DRAWING

Serial Number 74710157

Filing Date August 2, 1995

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition November 26, 1996

Registration Number 2038273

Registration Date February 18, 1997

Owner (REGISTRANT) BUNGIE SOFTWARE PRODUCTS CORPORATION CORPORATION ILLINOIS 1935 S Halsted, #204 Chicago ILLINOIS 60608

(LAST LISTED OWNER) BUNGIE, LLC LTD LIAB CO DELAWARE 434 KIRKLAND WAY KIRKLAND WASHINGTON 98033

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Aaron Hendelman

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (8-YR). SECTION 8(10-YR) 20070823.

Renewal 1ST RENEWAL 20070823

Live/Dead Indicator LIVE



EXHIBIT B

EXHIBIT C



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Trademarks > Trademark Electronic Search System (TESS)

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BUNGIE

Word Mark BUNGIE

Goods and Services IC 032. US 045 046 048. G & S: Beverages, namely, energy beverages, energy drinks, and energy shots

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 77369715

Filing Date January 11, 2008

Current Filing Basis 1B

Original Filing Basis 1B

Published for Opposition May 27, 2008

Owner (APPLICANT) XTREME BEVERAGES LLC LTD LIAB CO NEW JERSEY P.O. BOX 264 MARLBORO NEW JERSEY 07746

Attorney of Record Stephen L. Baker

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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EXHIBIT D

HOWA PRODUCTS PROMOTIONS HISTORY COMMERCIAL CONTACTS
STRETCH YOUR ENERGY TO THE EXTREME
BUNGIE ENERGY DRINK

© 2008 Xtreme Beverages, LLC.

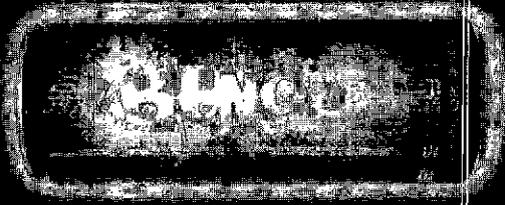
EXHIBIT E



HOME PRODUCTS PROMOTIONS HISTORY COMMERCIAL CONTACTS

8.4OZ. BUNGIE ENERGY DRINK

Energy



Great Tasting

A refreshing blend of antioxidants, b vitamins and energizing supplements.

Effective

0 Crash

© 2008 Xtreme Beverages, LLC.



HOME PRODUCTS PROMOTIONS HISTORY COMMERCIAL CONTACTS
COMPANY CONTACTS

Xtreme Beverages, LLC.
PO Box 264
Marlboro NJ 07746
732-792-6300
promotions@drinkbungie.com

© 2008 Xtreme Beverages, LLC.



HOME PRODUCTS PROMOTIONS HISTORY COMMERCIAL CONTACTS

DISTRIBUTOR INFO

Name: _____

Email: _____

Message:

© 2008 Xtreme Beverages, LLC.



WOMEN PRODUCTS PROMOTIONS HISTORY COMMERCIAL CONTACTS
BUNGIE GIRLS

Bungie is scanning New York and New Jersey for our next upcoming events. If you have what it takes to be a Bungee Girl, send us your best picture and contact information to promotions@drinkbungie.com. Must be between 18-28. Thanks for your interest. We will do our best to get back to you soon.

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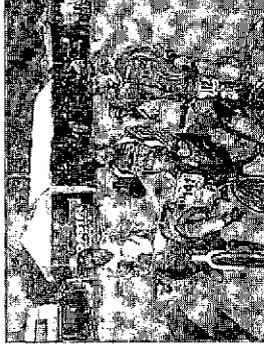
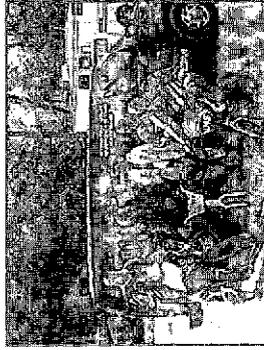
HOME PRODUCTS PROMOTIONS

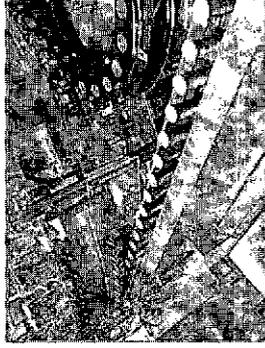
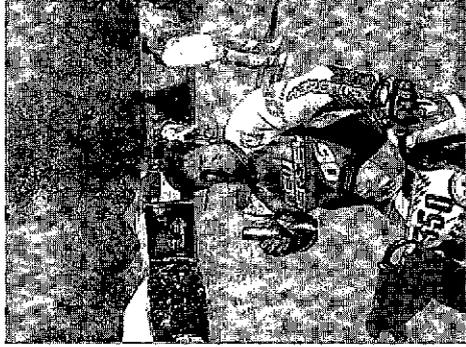
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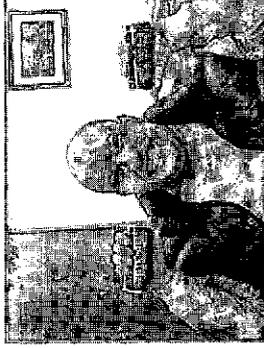
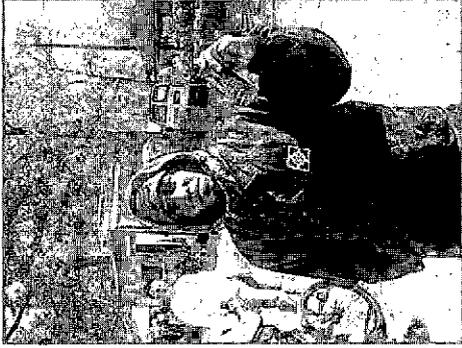
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CONTACTS

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EXHIBIT F



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Bungie

"Bungie" The Energy Drink that has "Bored"



Male
 22 years old
 MARLBORO, New Jersey
 United States

Last Login: 7/30/2008

Moods: energetic
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Contacting Bungie

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MySpace URL:
<http://www.myspace.com/drinkbungie>



Bungie is inviting everyone to Buoy Bar this Saturday for Happy Hour! Check our blog for details!

Bungie's Latest Blog Entry (Subscribe to this Blog):
 Check out this event: Bungie Happy Hour! THIS WEEKEND! JULY 26th! (view more)
[\[View All Blog Entries\]](#)

Bungie's Blurbs

About me:
www.drinkbungie.com Bungie Energy Drink is not your average energy drink. It focuses on getting you exactly what you need. Energy without the jitters, and the usual, with an incredible taste. Bungie Energy Drink is currently in NY and NJ and is performing earth shattering (pun intended) in a single Energy Drink and outfit your energy drink to the extreme.

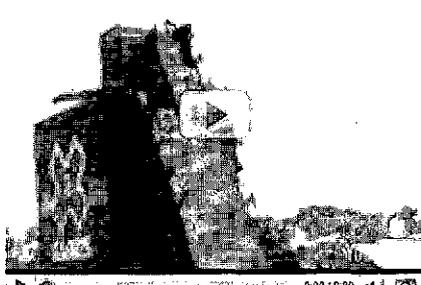
Who I'd like to meet:
 Bungie is searching New York and New Jersey for our next upcoming events. If you have what it takes to be a Bungie Girl, send us your best picture and contact information to princess@drinkbungie.com. Must be between 18-25. Thanks for your interest, we will do our best to get back to you soon.

Bungie's Interests

General



X Games 12 Big Air BMX Biking - Sponsorships Available with Bungie
<https://www.youtube.com/watch?v=utwE0C8hikw>



5:00 / 0:00

Movies

THE DARK KNIGHT - OSCAR FOR JOKER? [Health Ledger](#)
<https://www.youtube.com/watch?v=326zAVt8-A>

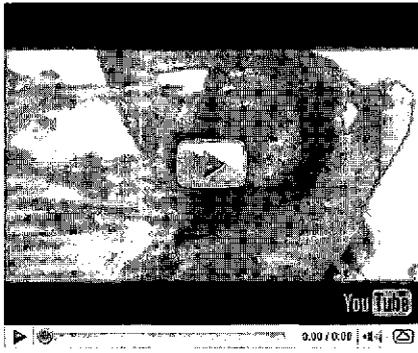
Bungie's Friend Space (Top 14)

Bungie has 314 friends.



Television
Heroes

31 Swimsuit: Jessica Gomes
Body Painting
http://www.youtube.com/watch?v=YOuKd3Hug



Bungie's Details
Status: Single
Here for: Networking, Friends
Zodiac Sign: Taurus

Bungie's Networking
Marketing - Advertising/PK - Other
www.brikkangels.com

Bungie's Companies
Stream: Beverages LLC
Rarickco, NJ US



View Bungie's Friends: All | Online | New

Bungie's Friends Comments

Displaying 11 of 11 comments (View All | Add Comment)

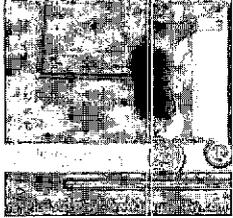
LamonaAngel

Aug 2 2008 11:25 AM



My newest dance video with Si Ak. That's (:) for love to have fun :))

Hope you are fine. Wish there's nice week :)
xxx
LamonaAngel



rabyn1



Jul 24 2008 3:51 AM

Bungie why change your life!!? better see all you guys at the Guzy Bar Saturday

Kevin Keenan™
www.KevinKeenan.com

Jul 16 2008 3:52 AM



Hi Bungie :)

big friends or baka friends and have a nice week :))

I would love to hear from you sometime...

Kevin
www.KevinKeenan.com
myspace.com/kevinkeenan

Shane Forrester

Jul 15 2008 11:30 PM:

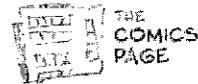
Thanks for the request have a great day and keep in touch



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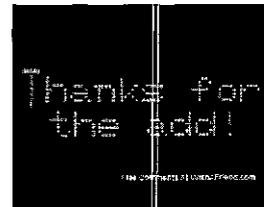


Thanks for the gift, be sure to keep an touch, bill me up & ill get back to you. God bless.

H2O
Bonyte Woodside-Fat.

MARDI

Jul 15 2008 2:15 PM



MySpace Comment at Whiffrancit.com

The Good Old Boys [new song on 30th august]

Jul 15 2008 6:31 AM



Greets
The Good Old Boys

Rissy Face Crazy

Jul 14 2008 11:49 PM



This drink is rocking amazing!

Rissa Castella Jul 14 2008 12:35 PM
what does dymonds for the add?



J Dymonds HGSTIN B. PERFORMER FLYST SNOW AUG. 19TH Jul 14 2008 10:09 AM
What's up, make sure you come through and check out the music. (Kien is the latest jam!) See there's something I tell us what you think. Sign our guestbook with your secret address and be down before the sun. Also support the movement and demand her to perform in your city. Thanks for the add and get spread the word!
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