AO 120 (Rev. 08/10)

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

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 Western District of Texas, Austin Division on the following

☒ Trademarks or ☐ Patents. (☐ the patent action involves 35 U.S.C. § 292.):

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
1:11-CV-159-SS	3/1/2011	Western District of Texas, Austin Division

PLAINTIFF	DEFENDANT
Cenoplex, Inc.	David Shor

PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 see attached		
2 3,879,613		
3 3,896,756		
4		
5		

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

DATE INCLUDED	INCLUDED BY ☐ Amendment ☐ Answer ☐ Cross Bill ☐ Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE
William G. Putnicki		3/3/2011

Copy 1—Upon initiation of action, mail this copy to Director **Copy 3—Upon termination of action, mail this copy to Director**
Copy 2—Upon filing document adding patent(s), mail this copy to Director **Copy 4—Case file copy**

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
Austin Division

CENOPLEX, INC.,
a Delaware corporation,

Plaintiff,

CASE NO. 11-159

v.

JURY TRIAL DEMANDED

DAVID SHOR,

Defendant.
_____/

COMPLAINT FOR INJUCTIVE RELIEF AND DAMAGES

Plaintiff, CENOPLEX, INC. ("Cenoplex"), through its counsel, files this Complaint against Defendant DAVID SHOR ("Shor"), and states:

INTRODUCTION

1. This case arises from an over-the-top vendetta waged by Defendant against Plaintiff Cenoplex and its senior management following Defendant's removal from the company for his incompetence, disruption of operations, and unprofessional behavior. Defendant initially retaliated by hurling false and defamatory accusations against the company and its management via the internet through the creation of the website www.screwedbycenoplex.com, the contents of which prompted one company investor to individually bring a state court action against Defendant for personal defamation. Defendant has since attempted to give his destructive internet campaign the veneer of credibility by:

- infringing the Plaintiff's registered federal trademarks (the basis of Count I of this Complaint),
- counterfeiting the Plaintiff's registered federal trademarks (the basis of Count II of this Complaint),

- falsely promoting an affiliation with Plaintiff (the basis of Count III), and
- disclosing "insider" information about the Plaintiff's technology in violation of the Plaintiff's trade secret rights (the basis of Counts IV and V).

These activities – at root a smear campaign – threaten to compromise investor confidence in Plaintiff, divert management attention, and impair brand value. Accordingly, through this Complaint and Plaintiff's accompanying Verified Expedited Motion for Preliminary Injunction, Plaintiff seeks immediate relief from this Court to prevent Defendant from continuing to cause irreparable harm to Plaintiff's brand and reputation.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §§ 1114, 1116, 1117, 1118, and 1121; 28 U.S.C. § 1331; and 28 U.S.C. §§ 1338(a) and 1367, because Counts I, II, and III all involve a federal question arising under the Lanham Act, 15 U.S.C. § 1051, et seq.

3. This Court has supplemental jurisdiction over the trade secret claims asserted in Counts IV and V under 28 U.S.C. § 1367 because such state law claims are so related to a substantial and related federal claim arising under the Lanham Act. The state law claims form part of the same case or controversy as a claim under the Lanham Act.

4. Jurisdiction and venue is proper in this Court because Defendant committed tortious acts within this State and this District.

5. Plaintiff maintains its principal place of business in the State of Texas and this District, and is being harmed in the State of Texas in this District by the wrongful acts of Defendant.

THE PARTIES

6. Plaintiff Cenoplex is a company organized under the laws of the State of Delaware, having its principal place of business in Austin, Texas. In 2007 Plaintiff's predecessor-in-interest, Adsnip, LLC was founded as a Nevada limited liability company. In 2009 the company changed its name to Cenoplex, LLC. In 2010 Cenoplex, LLC merged into a newly-formed Delaware corporation named Cenoplex, Inc. (For ease of reference, Adsnip, LLC, Cenoplex, LLC, and Cenoplex, Inc. will be referred to as "Plaintiff" unless the context indicates otherwise.)

7. Defendant Shor is an individual residing in the state of California.

PLAINTIFF'S BUSINESS

8. Plaintiff Cenoplex is engaged in the business of providing cellular carriers with the technical capability of delivering audio messages during the pre-call set up of their customers' cell phone calls. These messages ("snips") are inserted during the brief "call sequencing gap" which occurs at the beginning of an outgoing cell phone call. Given the staggering magnitude of worldwide cellular usage, Plaintiff estimates that its messaging technology offers a promotional platform that can deliver *billions* of audio messages and advertisements *per day*. Plaintiff currently has four pending patent applications covering this messaging technology.

9. Founded in 2007 by Stephen Meade, Plaintiff depleted its initial capitalization of about $500,000 so rapidly that by late 2008 the company faced insolvency and suspension of operations.

10. To respond to the company's dire financial condition, Plaintiff named Greg Welch as its new CEO in January 2009. Mr. Welch had more than 20 years of management

experience in the telecommunications industry and numerous successes in leading start-up businesses to profitability. Shortly after his arrival at Plaintiff, Mr. Welch began recruiting technical and financial advisors for Plaintiff, and actively solicited investors to infuse new capital into the company. From March 2009 through May 2010, Mr. Welch was instrumental in raising $2.7 million in additional capital for Plaintiff.

11. In late 2010, Plaintiff entered into its first multi-million dollar contract with a Miami-based telecommunications provider, and Plaintiff anticipates that it will enter into several additional multi-million dollar contracts with major U.S. and International cellular providers in 2011.

12. In connection with its business, Plaintiff has registered and has the exclusive right to use the following trademarks (collectively, the "Registered Marks"):

Mark	U.S. Trademark Reg. No.	Goods/Services
CENOPLEX	3,879,613	Computer software for wireless content delivery
ACTIONABLE AUDIO MESSAGES	3,896,756	Transmission of messages over mobile devices

DEFENDANT'S INVOLVEMENT WITH THE COMPANY

13. Defendant joined Plaintiff in mid-2007. He contributed no capital to the Plaintiff upon his arrival and has contributed no capital to the company at any time since. Defendant worked with Plaintiff's Founder, Stephen Meade, and received a salary of up to $15,000 per month for part-time consulting outside of the office, vastly more than warranted for a company with a start-up capital of only $500,000.

14. Despite Plaintiff's near insolvency by late 2008, Defendant resisted the impending arrival of Greg Welch in January 2009. Indeed, Defendant sought a promotion within the company giving him the title of President or CEO to coincide with Mr. Welch's arrival. Mr.

Welch, however, refused to join Plaintiff unless given the position of its chief executive and the company's Board of Directors agreed to Mr. Welch's requirement over the objections of Defendant. Still, to placate Defendant, Plaintiff agreed to let Defendant identify himself as a "Co-Founder" of the company, a largely honorific title.

15. Once at the company, Mr. Welch thoroughly reviewed Defendant's business and technical capabilities, and found that Defendant's involvement had actually impaired the company's relationship with numerous advisors, consultants, and vendors. For instance, Defendant caused Plaintiff to enter into a sweetheart deal with one vendor, a software company operated by a friend of Defendant, that required the company to pay $30,000 to the vendor in cash and stock. Under Defendant's oversight, however, the cash portion of the arrangement ultimately escalated to over $130,000 and resulted in a dispute over the amount of stock subject to payment. Moreover, the software developed by this vendor never worked, requiring the company to engage a new vendor to develop new software at substantial additional cost.

16. By the later part of 2009, Defendant's deteriorating performance prompted Plaintiff to terminate all of Defendant's consulting work and any further compensation. Although Plaintiff offered him the option of participating in various management conference calls, he seldom participated.

17. Instead, Defendant continued to meddle in Plaintiff's day-to-day operations and used his title of "Co-Founder" to bind the company to unauthorized contractual arrangements with vendors. Finally, by early 2010, Plaintiff decided to terminate its relationship with Defendant and made demand on Defendant to stop using the title of "Co-Founder," to cease acting on behalf of the company in any manner, and to avoid any other involvement with the company whatsoever. In short, Defendant had become persona non grata at Plaintiff.

18. Defendant did not leave the company gracefully. On the contrary, beginning in the later part of 2010, Defendant engaged in a series of bizarre, even infantile, attacks against Plaintiff and its new management, including:

- Contacting a Board member of Plaintiff and threatening to "destroy" the company if the company prevented him from returning. When company management confronted Defendant about this conversation he denied ever making such threats.
- Making additional threats against the company to force Plaintiff to issue him stock Plaintiff supposedly owed him. When the company asked him for documentation to support the claim, Defendant produced no substantiation. To this day, Defendant's stock ownership in Plaintiff amounts to just 1.75% of the total.
- Creating a website with the domain name address of www.screwedbycenoplex.com. The website accused Plaintiff's senior management and one of Plaintiff's major investors of engaging in fraudulent and deceitful practices. Such false accusations prompted the investor to individually bring a defamation suit against Defendant in a Florida state court action. Defendant thereafter discontinued using the website.

19. By letter dated November 9, 2010, Plaintiff's corporate counsel sent Defendant a demand letter to cease and desist making false statements about the company.

20. Within the last month, however, Defendant has renewed his campaign against Plaintiff by infringing Plaintiff's registered trademarks and by falsely giving the impression of a continuing relationship with Plaintiff. These infringing and unauthorized activities include:

(a) Defendant's creation of the "AAMA – Actionable Audio Messaging Association," which apparently exists solely in cyberspace at the domain name of http://actionableaudiomessaging.org (a copy of the homepage is attached hereto as Exhibit "A"). Defendant uses a domain name to identify his pseudo "Association" that is nearly identical to Plaintiff's federally-registered ACTIONABLE AUDIO MESSAGES mark; such use is unauthorized by Plaintiff and therefore infringing;

(b) Defendant's promotion of the "AAMA" is accompanied by repeated and prominent identification of Defendant as Plaintiff's "Co-Founder" without any indication that Defendant is no longer associated with Plaintiff. Defendant's unqualified use of such unauthorized title creates the false impression that Defendant is still associated with Plaintiff or that Defendant's activities are somehow approved or sponsored by Plaintiff;

(c) Defendant's creation of a Facebook profile page for the AAMA titled "Actionable Audio Messages," which identifies Defendant as "Cenoplex cofounder" and includes a link to a website address displayed as "http://cenoplex-actionable-audio-messages.blogspot.com" (a copy of the "Info" page is attached hereto as Exhibit "B"). Defendant's unauthorized use of marks identical to the Registered Marks, along with unqualified use of the title "cofounder," creates the false impression that Defendant and the AAMA are affiliated with or approved by Plaintiff;

(d) Defendant's creation of a profile page at www.linkedin.com where Defendant prominently uses the "Co-founder" of Cenoplex title along with the false date range "June 2007 – *Present*" (emphasis added), and his inclusion of a link to Plaintiff's website, www.cenoplex.com, to falsely create the impression of continued association with or sponsorship by Plaintiff (copies of selected pages of the profile are attached hereto as Exhibit "C");

(e) Defendant's purchase of the "Cenoplex" adword from Google to give his LinkedIn account the first listing in a Google search using Plaintiff's trademark CENOPLEX as the sole search term (a copy of the search results is attached hereto as Exhibit "D"). Such use of the CENOPLEX mark by Defendant without Plaintiff's authorization further creates a false impression of association and sponsorship by Plaintiff, especially because Defendant's Google listing prominently identifies Defendant as "Cenoplex Cofounder, Mobile and Internet Marketing CEO, CTO;"

(f) Upon information and belief, Defendant's creation on February 22, 2011 of a fake Facebook profile page featuring a photograph of one of Plaintiff's senior managers bearing the screen name of "Scwewd [sic] Cenoplex" where the so-called manager boasts "We screw Cenoplex vendors, employees and partners out of their cash and equity. It's fun—like duck hunting!" Following demand by Plaintiff, Facebook removed the profile later the same day;

(g) Defendant's unauthorized and prejudicial disclosure of confidential trade secret information belonging to Plaintiff (the "Confidential Information and Trade Secrets"). By way of example only, Defendant has disclosed or has threatened to disclose the Confidential Information and Trade Secrets on the "Actionable Audio Messages" Facebook page, including but not limited to: (i) financial models that Plaintiff has developed in order to predict the effectiveness of snips, which models are marked with a "Confidential" legend, and (ii) a case study of the capabilities of snips, commissioned by Plaintiff and entitled "The CRM Case for Unavoidable Wireless Messaging Deployment," which is marked with a "Confidential" legend; and

(h) Defendant's falsely claiming sole inventorship of the company's principal pending patents.

21. Plaintiff has complied with all conditions precedent to bringing this action.

22. Plaintiff has engaged the undersigned law firm and is obligated to pay a reasonable fee.

JURY DEMAND

23. Plaintiff requests a jury determination of all issues so triable.

COUNT I

INFRINGEMENT OF FEDERALLY REGISTERED MARK (15 U.S.C. § 1114)

24. Plaintiff repeats and realleges each of the allegations contained in Paragraphs 1 through 23 of this Complaint as if fully set forth herein.

25. Plaintiff owns the federal registrations for the ACTIONABLE AUDIO MESSAGES and CENOPLEX marks.

26. Defendant has infringed Plaintiff's rights in the registered ACTIONABLE AUDIO MESSAGES and CENOPLEX marks in violation of 15 U.S.C. § 1114.

27. These willful and intentional acts of infringement have caused and are causing great and irreparable injury and damage to Plaintiff's business and its goodwill and reputation in an amount that cannot be ascertained at this time and, unless restrained, will cause further irreparable injury and damage, leaving Plaintiff with no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendant for the following:

(a) a preliminary and permanent injunction enjoining Defendant, and those parties acting in concert or participating with him, from using any more marks confusingly similar to Plaintiff's Registered Marks;

(b) an accounting of profits Defendant has wrongfully obtained from his use of the infringing marks, 15 U.S.C. § 1117(a);

(c) compensatory damages, costs, and attorneys' fees, 15 U.S.C. § 1117(a); and

(d) such other relief as this Court deems proper.

COUNT II

COUNTERFEITING OF FEDERALLY REGISTERED MARK
15 U.S.C. § 1116(d)

28. Plaintiff repeats and realleges each of the allegations contained in Paragraphs 1 through 23 of this Complaint as if fully set forth herein.

29. This is an action for counterfeiting of federally-registered marks under 15 U.S.C. § 1116(d).

30. Defendant's unauthorized use of the registered ACTIONABLE AUDIO MESSAGES and CENOPLEX marks constitutes counterfeiting as defined by 15 U.S.C. § 1116(d)(1)(B).

WHEREFORE, Plaintiff demands judgment against Defendant for the following:

(a) a preliminary and permanent injunction enjoining Defendant, and those parties acting in concert or participating with him, from using any more marks confusingly similar to Plaintiff's Registered Marks;

(b) an accounting of profits Defendant has wrongfully obtained from his use of the infringing marks, 15 U.S.C. § 1117(a);

(c) compensatory damages, treble damages, costs, and attorneys' fees, 15 U.S.C. § 1117(a)(b);

(d) statutory damages between $1,000 and $200,000 per counterfeit mark, and up to $2,000,000 per counterfeit mark for willful use, U.S.C. § 1117(a); and

(e) such other relief as this Court deems proper.

COUNT III

STATUTORY INFRINGEMENT OF MARK
15 U.S.C. § 1125

31. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 23 of this Complaint as if fully set forth herein.

32. This is an action for false designation of origin in violation of 15 U.S.C. § 1125(a).

33. Defendant's unauthorized use of the title "Co-Founder" constitutes a false designation of origin and/or false description or representation, which is likely to deceive consumers and prospective customers into believing that Defendant's services originate from, or are licensed by, sanctioned by, sponsored by, or in some way affiliated with Plaintiff in violation of 15 U.S.C. § 1125(a).

WHEREFORE, Plaintiff demands judgment against Defendant for the following:

(a) a preliminary and permanent injunction enjoining Defendant, and those parties acting in concert or participating with him, from using any more marks confusingly similar to Plaintiff's Registered Marks, and from representing himself in such a way as to falsely suggest that he is currently affiliated with, connected with or sponsored by Plaintiff;

(b) an accounting of profits Defendant has wrongfully obtained from his use of the infringing marks, 15 U.S.C. § 1117(a);

(c) compensatory damages, costs, and attorneys' fees 15 U.S.C. § 1117(a); and

(d) such other relief as this Court deems proper.

COUNT IV

MISAPPROPRIATION OF CONFIDENTIAL INFORMATION AND TRADE SECRETS

34. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 23 of this Complaint as if fully set forth herein.

35. Plaintiff is the owner of the Confidential Information and Trade Secrets, which derive independent economic value from not being generally known to nor readily ascertainable by proper means by the public, and which are the subject of reasonable efforts to maintain their secrecy.

36. Defendant has disclosed and/or threatened to disclose elements of the Confidential Information and Trade Secrets without Plaintiff's consent.

37. At the time of disclosure or threatened disclosure, Defendant knew or had reason to know that his knowledge of the Confidential Information and Trade Secrets was acquired under circumstances giving rise to a duty to maintain their secrecy or limit their use.

WHEREFORE, Plaintiff demands judgment against Defendant for the following:

(a) a preliminary and permanent injunction enjoining Defendant, and those parties acting in concert or participating with him, from using any more marks confusingly similar to Plaintiff's Registered Marks, and from representing himself in such a way as to falsely suggest that he is currently affiliated with, connected with or sponsored by Plaintiff;

(b) an accounting of profits Defendant has wrongfully obtained from his use of the infringing marks, 15 U.S.C. § 1117(a);

(c) compensatory damages, costs, and attorneys' fees 15 U.S.C. § 1117(a); and

(d) such other relief as this Court deems proper.

COUNT V

VIOLATION OF TEXAS THEFT LIABILITY ACT, TEX. CIV. PRAC. & REM. CODE §§134.001-134.005

38. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 23 of this Complaint as if fully set forth herein.

39. Plaintiff has a possessory right to its Confidential Information and Trade Secrets.

40. Defendant has unlawfully converted and appropriated Plaintiff's Confidential Information and Trade Secrets.

41. Defendant has misappropriated Plaintiff's Confidential Information and Trade Secrets with the intent to profit from such information without expending the necessary resources and time to develop the technology.

42. Plaintiff has sustained damages from Defendants' theft of its Confidential Information and Trade Secrets.

43. Pursuant to TEX. CIV. PRAC. & REM. CODE § 134.005(b), Plaintiff is entitled to recover its attorneys' fees.

WHEREFORE, Plaintiff demands judgment against Defendant for the following:

(a) a preliminary and permanent injunction enjoining Defendant, and those parties acting in concert or participating with him, from disclosing any of Plaintiff's Confidential Information and Trade Secrets;

(b) an accounting of profits Defendant has wrongfully obtained from his use of the Confidential Information and Trade Secrets;

(c) compensatory damages, costs, and attorneys' fees; and

(d) such other relief as this Court deems proper.

DATED this 1st day of March, 2011.

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