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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

Harrell Graham,

Plaintiff,

v.

Computer Gear, Inc. a Washington  
Corporation, Terry Powers, an  
individual,

Defendants.

Case No. **CV '07 - 1163 - HA**

**COMPLAINT**

**COPYRIGHT INFRINGEMENT**

**DEMAND FOR A JURY TRIAL**

**JURISDICTION AND VENUE**

1. This is an action for copyright infringement arising under the Copyright Act, 17 USC § 101 *et seq.* This court has jurisdiction over these federal claims pursuant to 28 USC §§ 1331 and 1338 (a).

2. Venue is proper in this district under 28 USC §§ 1391 (b)(1), (c) and § 1400(a) because

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Defendant is deemed to reside in the District of Oregon as it is subject to personal jurisdiction in Oregon at the time this case was commenced.

### **FACTUAL BACKGROUND**

3. Plaintiff Mr. Harrell Graham is an individual in the business of manufacturing and selling items with the “You are here – Milky Way galaxy” design. Plaintiff’s place of business is located in Portland, Oregon. Mr. Graham works in various media including in artwork that is then transferred to the t-shirts, and various printed materials.

4. Mr. Graham has been selling reproductions of this “You are here – Milky Way galaxy design” since its creation in 1981. The work was registered with the copyright office in 1981 with Copyright Registration Number VA 113-657.

5. Plaintiff is informed and believes that Defendant Computer Gear, Inc. (“Computer Gear”) is a Washington based mail order catalog company doing business in interstate commerce as Computer Gear Inc, with its principle place of business in Redmond Washington and is engaged in the business of manufacture and sales of t-shirts and various novelty items.

6. Defendant Computer Gear sells their wares by catalog sales which are mailed to residents of the state of Oregon for the purpose of soliciting sales and also through a web site – [www.ComputerGear.com](http://www.ComputerGear.com)

7. On information and belief defendant Computer Gear has sold goods in the state of Oregon since their formation in 1992 and purposefully directs its catalog to Oregon by mailing catalogs to Oregon residents.

8. Plaintiff is informed and believes that at all relevant times Defendant Powers resided in Redmond, Washington and that Terry Powers is the President of Computer Gear.

9. During 2005 Plaintiff discovered that the Defendant was printing and selling t-shirts with an image that is substantially similar to Plaintiff’s copyrighted work. A copy of an image from Defendants web site of the infringing t-shirt is attached as Exhibit 1.

10. Mr. Graham’s registered copyright “You are here -- Milky Way galaxy” was the basis for

the design applied to the Computer Gear infringing shirt.

### **FIRST CLAIM FOR RELIEF**

**(Copyright Infringement - 17 USC § 101 *et seq*)**

**(Against Defendants Computer Gear and Terry Powers)**

11. Plaintiff realleges and incorporates by reference each and every allegation of paragraphs 1 through 10 inclusive.

12. Plaintiff is the owner of all right, title and interest to the original artwork from which the shirt sold by Defendants was created.

13. Defendants, Computer Gear and Powers, have copied, reproduced, distributed, adapted and/or publicly displayed Plaintiff's Copyrighted Work without the consent, permission or authority of Plaintiff thereby directly infringing Plaintiff's Copyright.

14. In June 2005, Plaintiff advised Defendant that he was the registered owner of Copyright Registration Number VA 113-657 for a visual work entitled "You are here--Milky Way galaxy". He advised the Defendant that the t-shirt shown in Exhibit 2 infringed Plaintiff's copyright.

15. Computer Gear has continued to advertise and sell the infringing t-shirts since being advised of Plaintiff's copyright.

16. Defendants Computer Gear and Powers' conduct constitutes infringement of Plaintiff's copyright and exclusive rights under Copyright in violation of Sections 106 and 501 of the Copyright Act 17 USC §§ 106 and 501.

17. Each infringement of Plaintiff's rights in and to the Copyrighted work constitutes a separate and distinct act of infringement.

18. As a direct and proximate result of the infringements by Defendants Computer Gear and Powers of Plaintiff's Copyright and exclusive rights under Copyright, Plaintiff is entitled to his actual damages and Defendants Computer Gear's and Powers' profits pursuant to 17 USC § 504

(b). Plaintiff is also entitled to prejudgment interest on any damage award.

19. The acts of infringement by Defendant have been willful, intentional and purposeful, in

reckless disregard of and with indifference to the rights of Plaintiff and therefore Plaintiff is also entitled to an award of statutory damages in a sum of not more than \$150,000 pursuant to 17 USC § 504 (c).

20. The conduct of Defendants Computer Gear and Powers is causing, and unless enjoined and restrained by this Court, will continue to cause irreparable injury that cannot be fully compensated in money. Plaintiff has no adequate remedy at law. Pursuant to 17 USC § 502, Plaintiff is entitled to injunctive relief prohibiting further infringements of his Copyright.

### **SECOND CLAIM FOR RELIEF**

#### **(Contributory Copyright Infringement - 17 USC § 101 *et seq*)**

#### **(Against Defendant Terry Powers)**

21. Plaintiff realleges and incorporates by reference each and every allegation of paragraphs 1 through 20.

22. Plaintiff is informed and believes that Defendant Terry Powers participated in the creation and marketing of the infringing t-shirts by Defendant Computer Gear.

23. Defendant Powers' conduct induced, caused or materially contributed to the unauthorized reproduction, adaptation, public display and/or distribution of copies of the Plaintiff's Copyrighted Work without the consent or authority of Plaintiff in violation of Sections 106 and 501 of the Copyright Act 17 USC §§ 106 and 501.

24. Defendant Powers' conduct constitutes contributory infringement of Plaintiff's copyright and exclusive rights under Copyright in violation of Sections 106 and 501 of the Copyright Act 17 USC §§ 106 and 501.

25. Each infringement of Plaintiff's rights in and to the Copyrighted Work constitutes a separate and distinct act of infringement.

26. The acts of infringement by the Defendants have been willful, intentional and purposeful, in reckless disregard of and with indifference to the rights of Plaintiff.

27. As a direct and proximate result of the infringements by Defendants of Plaintiff's

Copyright and exclusive rights under copyright, Plaintiff is entitled to damages of \$150,000 per infringement pursuant to 17 USC § 504 (c) or in the alternative his actual damages and Defendants' profits pursuant to 17 USC § 504 (b). Plaintiff is also entitled to prejudgment interest on any damage award.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for Relief as follows:

**On Plaintiff's First Claim for Relief against Defendants Computer Gear and Powers for:**

1. The full amount of Plaintiff's Statutory Damages of \$150,000 per intentional and willful infringement pursuant to 17 USC § 504 (c) 2.
2. Alternatively Computer Gear's and Powers' profits pursuant to 17 USC § 504 (b).
3. Plaintiff's reasonable attorney fees.
4. Prejudgment interest on any damages awarded.
5. Defendants Computer Gear and Powers be permanently enjoined from engaging in any conduct constituting an infringement of Plaintiff's Copyright pursuant to 17 USC § 502.
6. For Plaintiff's costs and disbursements incurred herein pursuant to 17 USC § 502.

**On Plaintiff's Second Claim for Relief against Defendant Terry Powers for:**

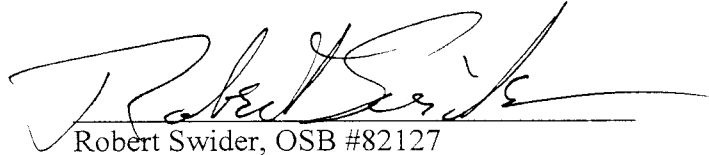
1. Plaintiff's Actual Damages and Defendants Powers' and Computer Gear's profits pursuant to 17 USC § 504 (b).
2. Statutory Damages of \$150,000 per intentional and willful infringement pursuant to 17 USC § 504 (c) 2.
3. Plaintiff's reasonable attorney fees.
4. Prejudgment interest on any damages awarded.
5. For Plaintiff's costs and disbursements incurred herein.

### **JURY DEMAND**

Plaintiff demands a trial by jury of all issues so triable.

August 7, 2007.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert Swider", written over a horizontal line.

Robert Swider, OSB #82127  
Swider Medeiros Haver LLP  
of Attorneys for Plaintiff

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