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8 ANTHONY KIEDIS; CHAD SMITH;  
9 JOHN FRUSCIANTE; MICHAEL "FLEA" BALZARY,  
10 dba RED HOT CHILI PEPPERS.

CONSUMER FILE COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

NOV 1 2007

John A. Clarke, Executive Officer/Clerk

By \_\_\_\_\_, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES - CENTRAL

10 BC380894

11 ANTHONY KIEDIS; CHAD SMITH; JOHN )  
12 FRUSCIANTE; MICHAEL "FLEA" BALZARY, )  
13 dba RED HOT CHILI PEPPERS, )

14 Plaintiffs, )

15 vs. )

16 SHOWTIME NETWORKS INC., a Delaware )  
17 corporation; TWILIGHT TIME FILMS, INC., a )  
18 California corporation; AGGRESSIVE )  
19 MEDIOCRITY, INC., a California corporation; )  
20 TOM KAPINOS; DOES 1-100 )

21 Defendants. )

CASE NO.

COMPLAINT FOR:

1. Unfair Competition (Lanham Act)
2. Unfair Competition (Cal. B&P §17200)
3. Dilution (Lanham Act)
4. Dilution (Cal. B & P § 14330)
5. Unjust Enrichment

**DEMAND FOR JURY TRIAL**

22 PARTIES

23 1. Plaintiff Anthony Kiedis is, and at all relevant times herein has been, an  
24 individual residing in Los Angeles County, California.

25 2. Plaintiff Chad Smith is, and at all relevant times herein has been, an individual  
26 residing in Los Angeles County, California.

27 3. Plaintiff John Frusciante is, and at all relevant times herein has been, an  
28 individual residing in Los Angeles County, California.

1. Plaintiff Michael "Flea" Balzary is, and at all relevant times herein has been, an

1 individual residing in Los Angeles County, California.

2 5. Plaintiffs are, and at all relevant times herein, have been doing business as the  
3 Red Hot Chili Peppers.

4 6. Plaintiffs are informed and believe, and thereon allege, that Defendant Showtime  
5 Networks Inc., is and at all relevant times was, a Delaware Corporation and is, and at all  
6 relevant times herein has been, a wholly owned subsidiary of C.B.S.

7 7. Plaintiffs are informed and believe, and thereon allege, that Defendant Twilight  
8 Time Films, Inc., is and at all relevant times was, a California Corporation.

9 8. Plaintiffs are informed and believe, and thereon allege, that Defendant Aggressive  
10 Mediocrity, Inc., is and at all relevant times was, a California Corporation.

11 9. Plaintiffs are informed and believe, and thereon allege, that Defendant Tom  
12 Kapinos is, and at all relevant times herein has been, an individual residing in Los Angeles  
13 County, California. Plaintiffs are further informed and believe that Defendant Kapinos is the  
14 creator, writer, and executive producer of a television show titled "Californication."

15 10. Plaintiffs do not know the true names or capacities, whether individuals,  
16 associates, corporate or otherwise, of defendants DOES 1 through 100, inclusive, and therefore,  
17 Plaintiffs sue said DOE defendants by such fictitious names and will seek leave of this Court to  
18 amend this complaint to show their true names and capacities when the same has been  
19 ascertained. Plaintiffs are informed and believe and based thereon allege, that defendants  
20 DOES 1 through 100 inclusive, and each of them, were in some way responsible for the wrongs  
21 alleged herein.

22 11. Plaintiffs are informed and believe and based thereon allege, that except as  
23 otherwise alleged, each defendant, including those referred to herein as DOES 1 through 100,  
24 inclusive, is and at all relevant times was, the agent, employee, partner, joint venturer,  
25 subsidiary or affiliate of each of the other defendants and, in doing the things alleged herein,  
26 was acting within the course and scope of such positions with the permission, knowledge and  
27 consent of each of the other defendants.

1 GENERAL ALLEGATIONS

2 12. Anthony Kiedis, Chad Smith, John Frusciante, and Michael "Flea" Balzary, dba  
3 Red Hot Chili Peppers, are sole authors of the composition titled "Californication" (the  
4 "Composition"). Indeed, the Composition is registered with BMI as "Californication."

5 13. In 1999, the Composition was recorded by The Red Hot Chili Peppers, initially  
6 exploited on their album entitled "Californication" (the "Album") and was later released as a  
7 single.

8 14. From 1999 to the present the Composition and Album have enjoyed extraordinary  
9 critical and commercial recognition in a variety of media, including but not limited to retail  
10 sales, digital downloads, acclaimed music videos, extensive radio play, and garnered a variety  
11 of prestigious awards, both nationally and internationally.

12 15. The Album has sold in excess of 14 million copies, received a Grammy  
13 nomination for Best Rock Album of the Year in 1999 and received the Best Album nomination  
14 at the 1999 MTV Europe Music Awards. Since then, the Album's popularity and relevance has  
15 endured as illustrated by its listing on Rolling Stone's List of the Top 500 Albums of All Time,  
16 inclusion on 'The Definitive 200' which represents the 200 most influential and popular albums  
17 of all time, as selected by the National Association of Recording Merchandisers and the Rock &  
18 Roll Hall of Fame, as well as receipt of the Must-Have Album at the My VH-1 Awards held in  
19 2000, among other awards.<sup>1</sup>

20  
21 <sup>1</sup> The Album's sales figures represent tremendous popularity in the United States and  
22 internationally. The Album's certifications throughout the world are as follows:  
23 United States (5 times platinum); Australia (8 times platinum); New Zealand  
24 (platinum); Japan (double platinum); Hong Kong (Gold); Indonesia (7 times  
25 platinum); Korea (Gold); Malaysia (double platinum); Philippines (4 times platinum);  
26 Singapore (double platinum); Taiwan (platinum); Thailand (triple platinum); Canada  
27 (6 times platinum); Austria (6 times platinum); Czech (five times platinum); Hungary  
28 (three times platinum); Poland (seven times platinum); Belgium (two times platinum);  
Denmark (seven times platinum); Finland (double platinum); Germany (eight times  
platinum); Holland (three times platinum); Norway (three times platinum); Sweden  
(six times platinum); Switzerland (four times platinum); Ireland (twelve times  
platinum); United Kingdom (three times platinum); France (double platinum); Greece  
(double platinum); Italy (diamond); Portugal (five times platinum); Spain (double  
platinum); Argentina (three times platinum); Brazil (two times diamond); Chile (four  
times platinum); Columbia (platinum); Mexico (three times platinum).

1           16.     Multiple singles off the Album were nominated for Grammy and other industry  
2 awards, including the single that captured the 1999 Grammy Award for Best Rock Song. Songs  
3 on the Album have been played on domestic radio alone well over one (1) million times.

4           17.     The Composition itself was a tremendous commercial and critical success. The  
5 Composition has been digitally downloaded (legally) nearly a half million times in the last two  
6 (2) years (despite being released in 1999). Further, the Composition has been played on  
7 domestic radio alone nearly 200,000 times and was nominated for the 2001 Grammy Award for  
8 best performance by a duo or group with vocal.

9           18.     In addition, the Composition also received significant publicity, acclaim, and  
10 commercial and critical praise as a result of its popular music video. The music video for the  
11 Composition has been played on domestic television in excess of 1500 times in the U.S. alone,  
12 was voted the 35<sup>th</sup> Greatest Video of All Time by VH-1, was nominated for four MTV Video  
13 Music Awards in 2000 winning for Best Direction and Best Art Direction, was named Best  
14 International Video at MuchMusic Video Awards and won Best Modern Rock Clip of the Year  
15 at the Billboard Music Awards in 2000, among many other accolades.

16           19.     Plaintiffs are informed and believe, and thereon allege, that beginning in late  
17 2007, Defendants began, producing, creating, distributing, and airing, a television series also  
18 entitled "Californication." (hereinafter "the Show").

19           20.     In addition, a recurring character in the Show is named or nicknamed and/or  
20 referred to as "Dani California." 'Dani California' is also the name of a character who is the  
21 subject of or mentioned in three Red Hot Chili Pepper songs (all critically and commercially  
22 very successful), including the Composition. More specifically, 'Dani California' is the title of  
23 another multiple Grammy winning hit single by the Red Hot Chili Peppers that was released in  
24 February 2006 and reached No.1 on numerous U.S. and International charts.

25           21.     Plaintiffs are informed and believe, and thereon allege, that Defendants have  
26 made use of the internet, billboards, print media, and television, for purposes of advertising the  
27 Show and have done or will do the same with DVD copies of the Show for sale.

28           22.     In addition to distribution of DVD versions of the Show, Defendants have

1 distributed and, on information and belief, will continue to distribute music compilation albums  
2 consisting only of songs used on the Show. On information and belief, these musical  
3 compilation albums recently became available on iTunes bearing the word "Californication" in  
4 the title(s).

5 23. The musical compilation albums are available for sale on the popular music retail  
6 site, iTunes, as are the Album and the Composition, along with other songs written and  
7 performed by the Red Hot Chili Peppers. In fact, when one enters the search term  
8 "Californication" in iTunes, the search retrieves both the Album and other songs written and  
9 performed by the Red Hot Chili Peppers, but also the compilation albums from the Show and  
10 the individual tracks appearing thereon.

11  
12 **FIRST CLAIM FOR RELIEF**

13 (Violation of Section 43(a) of the Lanham Act, Against All Defendants)

14 24. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 23 as if  
15 fully set forth herein.

16 25. The title of the Composition is inherently distinctive, famous, and has been the  
17 subject of the substantial advertising and promotion, has been used and advertised throughout  
18 the United States and the world, is widely recognized by consumers and those in the trade, and  
19 immediately associated in the mind of the consumer and those in the trade, with Plaintiffs, their  
20 Composition, and the Album. The title "Californication" has therefore acquired secondary  
21 meaning. The actions and conduct of Defendants, as set forth below, have occurred long after  
22 Plaintiffs' title acquired secondary meaning.

23 26. Defendants' actions of creating, marketing, promoting, offering for distribution,  
24 and distributing the television series "Californication" constitutes a false designation of origin,  
25 and has caused and continues to cause a likelihood of confusion, mistake, and deception as to  
26 source, sponsorship, affiliation, and/or connection in the minds of the public.

27 27. The foregoing applies with equal force with regard to the distribution,  
28 advertising, and sale of compilations of music from the Show which is also labeled with the title

1 "Californication."

2 28. Defendants' false designation of origin has violated Section 43(a) of the Lanham  
3 Act, 15 U.S.C. §1125(a) in that Defendants have used in connection with goods and services a  
4 false designation of origin, a false or misleading description which is likely to cause confusion  
5 and to cause mistake, and to deceive as to the affiliation, connection, or association of the Show  
6 with Plaintiffs and as to the origin, sponsorship, and approval by Plaintiffs of the Show and its  
7 related material.

8 29. By reason of the foregoing, Plaintiffs have been injured in an amount not yet  
9 fully ascertained, according to proof at trial. In addition, as a result of Defendants' violations  
10 of the Lanham Act, Plaintiffs have suffered, and continue to suffer, irreparable harm, and  
11 Plaintiffs' have no adequate remedy at law with respect to this injury.

12 30. Plaintiffs are informed and believe, and thereon allege, that Defendants' actions  
13 have been fraudulent, knowing, willful, and wanton, entitling Plaintiffs to damages, treble  
14 damages, profits, attorney's fees, and the costs of this action.

15  
16 **SECOND CLAIM FOR RELIEF**

17 (Claim for Unfair Competition Under Business and Professions

18 Code § 17200, Against All Defendants)

19 31. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 30 as if  
20 fully set forth herein.

21 32. The title of the Composition is inherently distinctive, famous, and has been the  
22 subject of substantial advertising and promotion, has been used and advertised throughout the  
23 United States and the world, is widely recognized by consumers and those in the trade, and  
24 immediately associated in the mind of the consumer and those in the trade, with Plaintiffs, their  
25 Composition, and the Album. The title "Californication" has therefore acquired secondary  
26 meaning. The actions and conduct of Defendants, as set forth below, have occurred long after  
27 Plaintiffs' title acquired secondary meaning.

28 33. Defendants' actions of creating, marketing, promoting, offering for distribution,

1 and distributing the television series "Californication" constitutes a false designation of origin,  
2 and has caused and continues to cause a likelihood of confusion, mistake, and deception as to  
3 source, sponsorship, affiliation, and/or connection in the minds of the public.

4 34. The foregoing applies with equal force with regard to the distribution,  
5 advertising, and sale of compilations of music from the show which is also labeled with the title  
6 "Californication."

7 35. Defendants' false designation of origin has violated Section 43(a) of the Lanham  
8 Act, 15 U.S.C. § 1125(a) in that Defendants have used in connection with goods and services a  
9 false designation of origin, a false or misleading description which is likely to cause confusion  
10 and to cause mistake, and to deceive as to the affiliation, connection, or association of the Show  
11 with Plaintiffs and as to the origin, sponsorship, and approval by Plaintiffs of the Show and its  
12 related material.

13 36. By reason of the foregoing, Plaintiffs have been injured in an amount not yet  
14 fully ascertained, according to proof at trial. In addition, as a result of Defendants' violations  
15 of the Lanham Act, Plaintiffs have suffered, and continue to suffer, irreparable harm, and  
16 Plaintiffs' have no adequate remedy at law with respect to this injury.

17 37. Plaintiffs are informed and believe, and thereon allege, that Defendants' actions  
18 have been fraudulent, knowing, willful, and wanton, entitling Plaintiffs to equitable relief  
19 including disgorgement and restitution.

20  
21 **THIRD CLAIM FOR RELIEF**

22 (Violation of Section 43(a) of the Lanham Act For  
23 Dilution, Against All Defendants)

24 38. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 37 as if  
25 fully set forth herein.

26 39. As set forth in Paragraphs 14-18 above, the "Californication" mark is a famous  
27 mark and was so prior to Defendants' use thereof.

28 40. Further, Defendants' use of the "Californication" mark dilutes the quality of the

1 mark by diminishing the capacity of the mark to identify and distinguish goods, services,  
2 sponsorship, and affiliation.

3 41. This is true with equal force as to Defendants' use of the Californication mark in  
4 the sale of music from the Show bearing the word "Californication" because said use constitutes  
5 use of the identical mark, in the identical media (music), in the identical retail space (including  
6 but limited to the iTunes music store.).

7 42. By reason of the foregoing, Plaintiffs have been injured in an amount not yet  
8 fully ascertained, according to proof at trial. In addition, as a result of Defendants' violations  
9 of the Lanham Act, Plaintiffs have suffered, and continue to suffer, irreparable harm, and  
10 Plaintiffs' have no adequate remedy at law with respect to this injury.

11 43. Plaintiffs are informed and believe, and thereon allege, that Defendants' actions  
12 have been fraudulent, knowing, willful, and wanton, entitling Plaintiffs to damages, treble  
13 damages, profits, attorney's fees, and the costs of this action.

14  
15 **FOURTH CLAIM FOR RELIEF**

16 (Violation of Cal. Business And Professions Code §14330

17 For Dilution, Against All Defendants)

18 44. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 43 as if  
19 fully set forth herein.

20 45. As set forth in Paragraphs 14-18 above, the "Californication" mark is a famous  
21 mark and was so prior to Defendants' use thereof.

22 46. Further, Defendants' use of the "Californication" mark dilutes the quality of the  
23 mark by diminishing the capacity of the mark to identify and distinguish goods, services,  
24 sponsorship, and affiliation.

25 47. This is true with equal force as to Defendants' use of the Californication mark in  
26 the sale of music from the Show bearing the word "Californication" because said use constitutes  
27 use of the identical mark, in the identical media (music), in the identical retail space (including  
28 but limited to the iTunes music store.).



1 48. By reason of the foregoing, Plaintiffs have been injured in an amount not yet  
2 fully ascertained, according to proof at trial. In addition, as a result of Defendants' violations  
3 of Business And Professions Code § 14330, Plaintiffs have suffered, and continue to suffer,  
4 irreparable harm, and Plaintiffs' have no adequate remedy at law with respect to this injury.

5 49. Plaintiffs are informed and believe, and thereon allege, that Defendants' actions  
6 have been fraudulent, knowing, willful, and wanton, entitling Plaintiffs to damages, treble  
7 damages, profits, attorney's fees, and the costs of this action.

8  
9 **FIFTH CLAIM FOR RELIEF**

10 (Unjust Enrichment, Against All Defendants)

11 50. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 49 as if  
12 fully set forth herein.

13 51. As a result of the wrongful acts of Defendants, as set forth above, Defendants  
14 have been unjustly enriched and benefitted.

15 52. Defendants, and each of them, have an obligation to pay Plaintiffs the entire  
16 amount to which they have been unjustly enriched, and Plaintiffs are entitled to the imposition  
17 of a constructive trust, such that Defendants, and each of them, are involuntarily trustees  
18 holding all such sums in their possession for Plaintiffs' benefit with a duty to transfer such sums  
19 to Plaintiffs forthwith.

20  
21 **WHEREFORE, Plaintiffs pray for relief as follows:**

22 1. For a permanent injunction enjoining Defendants, its officers, directors,  
23 managing agents, and all those acting at its direction or on its behalf, from using the title  
24 "Californication" as the title to its television show (and any music or other memorabilia  
25 associated therewith), or any confusingly similar title;

26 2. For actual damages, according to proof, to be trebled;


27 3. For an accounting, restitution, and disgorgement of all profits derived by  
28 Defendants;

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- 4. For punitive damages according to proof;
- 5. For attorney's fees and costs of suit incurred herein;
- 6. For such other and further relief as the Court deems just and proper.

DATED: November 19, 2007

THE LAW OFFICES OF IAN HERZOG  
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