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Attorney(s) for Plaintiffs Centerpointe Research
Institute, Inc. and Bill Harris

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

**CENTERPOINTE RESEARCH INSTITUTE,
INC., an Oregon Corporation; and WILLIAM
HARRIS, and individual,**

Civil No.

CV '03

510

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Plaintiffs,

**COMPLAINT: DEFAMATION;
TRADE LIBEL; TRADEMARK
DISPARAGEMENT; BREACH OF
CONTRACT**

v.

**OLIVER "BUD" LOWREY, d/b/a SILENT
SOUNDS and d/b/a MEGABRAIN.COM, An
Individual,**

JURY DEMAND REQUESTED

Defendant.

Plaintiffs allege as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over Lanham Act claims and questions arising out of patent infringement claims pursuant to 28 U.S.C. § 1338. Additionally, the Court has

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jurisdiction over this case due to diversity of the parties, under 28 U.S.C. § 1332, as the amount in controversy exceeds \$75,000.

2. Venue and personal jurisdiction are proper in this judicial district, under 28 U.S.C. § 1391(b).

PARTIES

3. Plaintiff Centerpointe Research Institute, Inc. ("CRI") is an Oregon corporation, with a principle place of business at 4720 SW Washington, Suite 104, Beaverton, Oregon, 97005.

4. Plaintiff William Harris ("Harris") is an individual, who is the Director of CRI, and who resides in Hillsboro, Oregon.

5. Defendant is an individual, who does business as "Silent Sounds" and as "Megabrain.com" and who maintains a place of business in Norcross, Georgia. On information and belief, Defendant resides in the State of Georgia. Defendant has substantial, repeated, ongoing and systematic contacts with the State of Oregon, and who is otherwise present in this state for purposes of personal jurisdiction.

COMMON FACTS

6. Plaintiff CRI has for years produced and marketed audio tapes that play bi-aural tones in order to induce bi-aural "beats" in the brain. Plaintiff CRI is the owner of the trademark "Holosync" that is associated with this technology.

7. Plaintiff CRI also has developed a line of products based upon personal subliminal messages recorded onto compact disks containing *Holosync*® technology.

Hereinafter, these products are referred to as CRI Subliminal Products.

8. On or about April 1993, or somewhat prior to that date, Plaintiff CRI entered into a contract with Defendant, whereby Defendant would assist Plaintiff CRI with certain of the processes involved in producing the CRI Subliminal Products (the "Contract").

9. Defendant claims to own all rights in a patent, U.S. Patent No. 5,159,703 (the "'703 Patent"), which relates to a technology that can be generally described as a subliminal presentation system.

FIRST CLAIM FOR RELIEF
(Breach of Contract alleged by CRI against Defendant)

10. Plaintiff CRI realleges paragraphs 1 through 9 as if set forth fully herein.

11. Plaintiff CRI performed all of its conditions precedent under the Contract.

12. Defendant materially breached the Contract in one or more of the following particulars:

- a) Failure to perform in a satisfactory and workmanlike manner;
- b) Failure to meet specifications; and
- c) Failure to perform its duties under the Contract.

13. On or about February, 2003, Plaintiff Harris discovered the breach set forth above, and terminated the Contract with Defendant by providing notice of said termination to Defendant on or about February or March, 2003.

14. As a result of Defendant's breach, Plaintiff CRI has been damaged in an amount to be proved at trial. Further, Plaintiff CRI is entitled to a determination that the Contract is terminated.

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SECOND CLAIM FOR RELIEF
(in the alternative, RESCISSION OF CONTRACT)

15. As the alternative to its First Claim for Relief, Plaintiff CRI realleges paragraphs 1 through 13 as if set forth fully herein, and further alleges its alternative claim as follows.

16. Defendant's breach was material and went to the basis and the heart of the bargain between Defendant and Plaintiff CRI.

17. It would be unjust for Defendant to keep the money that has been paid to it by Plaintiff CRI.

18. Plaintiff CRI is entitled to receive back all money that it has paid to Defendant, together with its incidental costs, and the money it expended in reliance upon Defendant, said amounts to be proved at trial. Further, Plaintiff CRI is entitled to a determination that the Contract is null and void, and is of no further force or effect.

THIRD CLAIM FOR RELIEF
(Defamation)

19. Plaintiffs reallege paragraphs 1 through 13 as if fully set forth herein.

20. After being informed that Plaintiffs would no longer be using Defendant's services, Defendant made one or more of the following defamatory statements, namely:

a) Stating on its web sites at <http://silent.home.mindspring.com/menu.htm> and at <http://megabrain.com/menu.htm>, and other pages linked to such pages, in the period including early 2003 through the present, that:

- 1) Plaintiff CRI's products were useless;
- 2) Plaintiff CRI's products were fake and phony;

- 3) By inducement and innuendo, that Plaintiff CRI's products were phony and fake, as Defendant referenced Plaintiff CRI's web site which would lead a reasonable person to identify Centerpointe Research Institute, Inc., and a reasonable person would conclude that Defendant was asserting that Defendant CRI's products (including the CRI Subliminal Products) were useless, phony or fake, or any combination of the foregoing;
- 4) That the CRI Subliminal Products produce no neural network activity; and
- 5) By innuendo, that Plaintiff CRI is committing fraud, as a reasonable person would conclude that this statement is being made based upon the reference to Plaintiff CRI's web site, and the defamatory statements that the products were phony or fake.

b) Making oral statements to Plaintiff CRI's customers that the CRI Subliminal Products are worthless, and that Defendant's products have proven technology; that Plaintiffs' products are useless; that the *Holosync*® technology is worthless; and that Plaintiff CRI's products have no technological merit.

21. Each of the foregoing defamatory statements was published either by being exhibited on the publicly accessible web site, web site or by statements or writings to unrelated third persons.

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22. Each of the foregoing statements was made of and concerning Plaintiff CRI and its products, and by inducement and innuendo, the statements also were of and concerning Plaintiff Harris, as a reasonable person who was familiar with Plaintiff CRI's web site or Plaintiff CRI would make this conclusion.

23. The foregoing statements were libel per se (the written statements) or slander per se (the oral statements) as to Plaintiffs, and Plaintiffs, and each of them, have been generally damaged in an amount to be determined by the fact finder. Plaintiffs have also been damaged in their reputation, standing and business.

24. The foregoing statements have caused Plaintiffs special and economic damages in an amount to be proved at trial, but believed to be in excess of \$75,000.

25. The foregoing statements were made with malice aforethought; Defendant's conduct grossly exceeded the bounds of socially tolerable bounds of behavior, was malicious and made with an attempt to injure, and was willful and wanton. Plaintiff CRI is entitled to punitive damages in an amount to be determined at trial.

**FOURTH CLAIM FOR RELIEF
(Trade Libel)**

26. Plaintiff CRI realleges paragraphs 1 through 13 and 20 through 21, as if fully set forth herein.

27. A reasonable person with knowledge of the CRI Subliminal Products would conclude that the foregoing defamatory statements were of and concerning the CRI Subliminal Products.

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28. The foregoing defamatory statements caused injury to the reputation of the CRI Subliminal Products and to Plaintiff CRI.

29. As a result of Defendant's defamatory statements, Plaintiff CRI has suffered general and special damages in an amount to be proved at trial.

30. The foregoing statements were made with malice aforethought, and Defendant's conduct grossly exceeded the bounds of socially tolerable bounds of behavior, was malicious and made with an attempt to injure, and was willful and wanton. Plaintiffs are entitled to punitive damages in an amount to be determined at trial.

**FIFTH CLAIM FOR RELIEF
(Declaratory Judgment of No Patent Infringement)**

31. Plaintiff CRI realleges paragraphs 1 through 13, and 20 through 21 as if fully set forth herein.

32. On or about April 18 , 2003, Defendant told Plaintiff CRI that it was going to sue Plaintiff CRI for infringement of the '703 patent, claiming that Plaintiff CRI's production and sale of the CRI Subliminal Products infringe said patent.

33. Plaintiff CRI denies that it is infringing the '703 patent.

34. An actual controversy exists as to whether or not Plaintiff CRI is infringing the '703 patent.

35. Plaintiff CRI is entitled to a declaratory judgment that it is not infringing the '703 Patent, and that the CRI Subliminal Products are not within the scope of the '703 patent claims.

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36. Plaintiff CRI is entitled to its reasonable attorneys fees in bringing this action, and in bringing this claim.

**SIXTH CLAIM FOR RELIEF
(Declaratory Judgment of Patent Invalidity)**

37. Plaintiffs reallege paragraphs 1 through 13, 20, 21, and 32 through 36 as if fully set forth herein.

38. Plaintiff CRI contends that the '703 patent is invalid for one or more of the following reasons:

- a) On the grounds of indefiniteness;
- b) On the grounds that the claims, and each of them, are not supported by an enabling disclosure;
- c) Upon information and belief, that the claims read upon prior art and were anticipated by prior art;
- d) Upon information and belief, that the disclosed device was offered for sale more than a year before the date of application;
- e) Upon information and belief, that the disclosed device was offered for sale more than a year before the date of application; and
- f) Upon information and belief, that the invention would have been obvious, at the time of application, for one skilled in the relevant arts, and as an obvious extension of prior art.

39. An actual controversy exists as to the validity of the '703 patent.

40. Plaintiff CRI is entitled to a declaratory judgment that the '703 patent is invalid.

41. Plaintiff CRI is entitled to recover its reasonable attorneys' fees in bringing this action and in bringing this claim.

**SEVENTH CLAIM FOR RELIEF
(Interference with Business Relations)**

42. Plaintiff CRI realleges paragraphs 1 through 30, as if fully set forth herein.

43. Plaintiff CRI had and has a valid business expectancy of doing business with a great number of the public at large who are users of World Wide Web compatible devices and that growing segment of people who are interested in self-help, self-improvement, self-realization or spiritual growth.

44. Defendant knows that Plaintiff CRI does a very high volume of business with such people, and has a valid business expectation of selling very high volumes of the CRI Subliminal Products.

45. Defendant, through making the aforesaid defamatory statements has acted intentionally to interfere with Plaintiff CRI's valid business expectancy.

46. Plaintiff CRI is entitled to recover damages for the loss of its valid business expectancy in an amount to be proved at trial.

47. The foregoing statements of Defendant were made with malice aforethought; Defendant's conduct grossly exceeded the bounds of socially tolerable bounds of behavior, was malicious and made with an attempt to injure, and was willful and wanton. Plaintiffs are entitled to punitive damages in an amount to be determined at trial.

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EIGHTH CLAIM FOR RELIEF
(Dilution Under 15 U.S.C. §1125(c))

48. Plaintiff CRI realleges paragraphs 1 – 30 as if set forth fully herein.

49. Plaintiff CRI is the owner of all rights and goodwill in the mark *Holosyc*® (the “Mark”), which is registered with the U.S. Patent and Trademark Office, Trademark Reg. No. 1684823.

50. Plaintiff’s Mark is famous.

51. Defendant’s conduct, and defamatory statements, after Plaintiff CRI’s mark became famous. In making such statements, Defendant used Plaintiff’s Mark in an unfair and defamatory manner, caused dilution and tarnishment of Plaintiff CRI’s Mark.

52. Defendant willfully intended to cause dilution of Plaintiff CRI’s Mark.

53. Plaintiff CRI is entitled to an injunction restraining Defendant, its directors, officers, agents, employees, representatives and all persons acting in concert with it from engaging in any further acts of trademark dilution or tarnishment.

54. Plaintiff CRI is further entitled to recover from Defendant the actual damages it has sustained and will sustain, together with any gains, profits and advantages obtained by Defendant as a result of Defendant’s infringement as alleged, in an amount to be proven at trial.

55. Plaintiff CRI is further entitled to treble damages, pursuant to 15 U.S.C. Section 1117(b).

56. Defendant’s acts as alleged constitute an exceptional case under 15 U.S.C. Section 1117(a), entitling Plaintiff CRI to an award of its reasonable attorneys’ fees.

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**NINTH CLAIM FOR RELIEF
(Injunction)**

57. Plaintiffs reallege paragraphs 1 through 56, as if fully set forth herein.

58. If not restrained, Defendant's conduct will cause Plaintiffs irreparable injury to their business and reputation.

59. Plaintiffs, and each of them, have no other remedy at law.

60. Plaintiffs are entitled to an injunction permanently restraining Defendant, and any entity, partnership, organization or association in which Defendant has legal or de facto control, from:

a) Making injurious statements that the CRI Subliminal Products are phony, false or useless;

b) That the technology used in the CRI Subliminal Products is less valuable or is of a lower quality than the technology used in Defendant's products;

c) That *Holosync*® technology is useless, phony, false, or of a lesser quality than Defendant's technology; and

d) That Defendant has patent protection.

WHEREFORE, Plaintiffs pray for relief as follows:

That a judgment be entered as follows:

1. On Plaintiff CRI's first claim for relief, in favor of Plaintiff CRI and against Defendant; and for all of Plaintiff CRI's damage caused by Defendant's material breach, in an amount to be proved at trial;

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2. In the alternative to the First Claim for Relief, on Plaintiff CRI's Second Claim for Relief, in favor of Plaintiff CRI and against Defendant, and that judgment be entered that the Contract is null and void; and for restitution, and for the return of all money paid to Defendant for the services under the Contract, in an amount to be proved at trial, and all incidental costs, and money expended in reliance upon Defendant's performance;

3. On Plaintiffs' Third Claim for Relief, in favor of Plaintiffs, and each of them, and against Defendant; and for all general damage to reputation and special and economic damage caused by Defendant's defamation of Plaintiffs; and for punitive damages in such amount as the trier of fact shall determine is just;

4. On Plaintiff CRI's Fourth Claim for Relief, in favor of Plaintiff CRI and against Defendant; for all general damage to reputation of the CRI Subliminal Products and special and economic damage caused by Defendant's defamation of Plaintiffs; and for punitive damages in such amount as the trier of fact shall determine is just;

5. On Plaintiff CRI's Fifth Claim for Relief, a declaratory judgment in favor of Plaintiff CRI and against Defendant, that Plaintiff CRI has not infringed and is not infringing the '703 Patent, and for Plaintiff CRI's reasonable attorneys' fees;

6. On Plaintiff CRI's Sixth Claim for Relief, a declaratory judgment in favor of Plaintiff CRI and against Defendant, that the '703 Patent is invalid, and for Plaintiff CRI's reasonable attorneys' fees;

7. On Plaintiff CRI's Seventh Claim for Relief, in favor of Plaintiff CRI and against Defendant, for damages according to proof; and for punitive damages in such amount as the trier of fact shall determine is just;

8. On Plaintiff CRI's Seventh Claim for Relief, in favor of Plaintiff CRI and against Defendant, for damages according to proof; for an award of treble the actual damages, for an injunction restraining further trademark dilution, for an award of Plaintiffs' reasonable attorneys' fees incurred herein, and for punitive damages in such amount as the trier of fact shall determine is just;

9. On Plaintiffs' Ninth Claim for Relief, for an appropriate injunction restraining Defendant's wrongful activity and defamatory statements;

10. For Plaintiffs' costs and disbursements incurred herein; and

11. For such other relief as the Court deems just and proper.

DATED this 22nd day of April, 2003.

THE DUBOFF LAW GROUP, LLC



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Attorneys for Plaintiffs

JURY DEMAND REQUESTED

Plaintiffs request a jury trial.

DATED this 22nd day of April, 2003.

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