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8 Attorneys for Plaintiffs MM&R, Inc.  
9 and Tré Milano, LLC

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CLERK, U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

FILED

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **WESTERN DIVISION**

13 MM&R, INC., a California )  
14 corporation, and TRE MILANO, )  
15 LLC, a California LLC, )  
16 Plaintiffs, )  
17 v. )  
18 SALLY BEAUTY SUPPLY, LLC, )  
19 a Delaware limited liability )  
20 company; DEMAND )  
21 INDUSTRIES, INC. dba Server )  
22 Central Network, an Illinois )  
23 corporation; ISO BEAUTY, INC., a )  
24 California corporation; WEB.COM, )  
25 INC., a Florida corporation; )  
26 STITCH N' GENIUS, INC., a )  
27 California corporation; HOME )  
28 SHOPPING NETWORK, INC., a )  
Delaware corporation; TRULIFT )  
CORPORATION, a Florida )  
corporaitonand DOES 1 – 10, )  
Defendants. )

CASE NO.: 2:10-cv-00158-  
RGK(CTx)  
FIRST AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT,  
DECLARATORY RELIEF,  
FALSE ADVERTISING UNDER  
15 U.S.C. § 1125, AND UNFAIR  
COMPETITION.  
REQUEST FOR JURY TRIAL

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Through their attorneys, Swanson & Associates, Plaintiffs allege:

**I. JURISDICTION AND VENUE**

1. This action for patent infringement arises under, among other things, the United States Patent Laws, 35 U.S.C. § 101, et seq. Subject matter jurisdiction is therefore based upon 28 U.S.C. §§ 1331 and 1338(a), providing for federal question jurisdiction of patent infringement actions and exclusive jurisdiction of patent infringement actions in the U.S. district courts.

2. This is also an action for Declaratory Judgment that the Covenant Not to Sue entered into between Plaintiffs and Defendant STITCH N’ GENIUS does not bar the present infringement claims based on U.S. Patent No. 7,631,646 pursuant to 28 U.S.C. §2201, et seq. This Court has Subject Matter Jurisdiction of this Declaratory Judgment action pursuant to 28 U.S.C. 2201(a), as the Declaratory Relief claim herein relates to federal questions involving questions or rights and responsibility pursuant to the federal patent laws.

3. Pursuant to 28 U.S.C. § 1331, the court has subject matter jurisdiction over Plaintiff’s federal claims for violation of the Lanham Act.

4. This Court has either general or specific personal jurisdiction, or both, over each of the defendants as each one either resides, regularly conducts business, or has committed acts of patent infringement within the State of California, including within this judicial district.

5. Plaintiffs are also informed and believe that this Court has personal jurisdiction over each of the other defendants, including those sued as Doe defendants, because each of them either resides, has a place of business, has committed acts of infringement, or has sufficient contacts with the State of California to create either general or specific personal jurisdiction, or both, within California.

1           6.     Venue is proper in this judicial district under 28 U.S.C. 1391(b) and  
2 (c) and 1400(b) because, on information and belief, all defendants either reside  
3 within this judicial district, may be found within this judicial district, have a  
4 regular and established place of business in this judicial district, and/or have  
5 committed infringing acts within this judicial district, and/or because a substantial  
6 part of the events giving rise to these claims occurred within this judicial district  
7 including within the County of Los Angeles.

8  
9     **II.    PARTIES**

10           7.     Plaintiff MM&R, INC. is a corporation existing under and by virtue  
11 of the laws of the state of California whose principal place of business is located  
12 in Calabasas, California.

13           8.     Plaintiff TRE MILANO, LLC is a corporation existing under and by  
14 virtue of the laws of the state of California whose principal place of business is  
15 located in Culver City, California.

16           9.     Plaintiffs are informed and believe, and on this basis allege that  
17 Defendant STITCH N' GENIUS, INC. is a corporation existing under and by  
18 virtue of the laws of the state of California whose principal place of business is  
19 located in Beverly Hills, California.

20           10.    Plaintiffs are informed and believe, and on this basis allege that  
21 Defendant SALLY BEAUTY SUPPLY, LLC is a limited liability company  
22 existing under and by virtue of the laws of the state of Delaware with a principal  
23 place of business in Denton, Texas.

24           11.    Plaintiffs are informed and believe, and on this basis allege that  
25 Defendant DEMAND INDUSTRIES, INC. is a corporation existing under and by  
26 virtue of the laws of the State of Illinois with a principal place of business in  
27 Chicago, Illinois.

28



1 rights in the '646 patent, including the right to sue patent infringers for past,  
2 present and future damages.

3 18. The defendants have infringed and are still infringing the Patent by  
4 making, selling, importing and/or using hair styling tools that embody the  
5 patented invention, and the defendants will continue to do so unless enjoined by  
6 this court.

7 19. Plaintiffs have given Defendants written notice of the infringement  
8 and defendants have not ceased their infringing acts.

9 20. On information and belief, Defendants' infringement of the '646  
10 patent has been and is willful, wanton and deliberate, without license and with full  
11 knowledge of Plaintiffs' rights in the '646 patent.

12  
13 **SECOND CLAIM FOR RELIEF**

14 **DECLARATORY JUDGMENT**

15 (Against Defendant STITCH N' GENIUS, INC. and Does 1-5)

16 21. Plaintiff repeats, realleges and incorporates by reference in this  
17 paragraph the allegations contained in paragraphs 1 to 20 of this Complaint as if  
18 fully set forth herein.

19 22. On June 8, 2009, Plaintiffs MM&R, INC. and TRE MILANO, INC.  
20 filed Case No. CV 09-4082 against Defendant STITCH N' GENIUS, INC. and  
21 against Elias Amkie for Infringement of U.S. Patent No. 7,681,228 ("the '228  
22 Patent"), False Marking, Trademark Infringement, False Designation of Origin,  
23 False Advertising Under the Lanham Act; False Advertising Under Business &  
24 Professions Code 17500; Unfair Competition under California Business and  
25 Profession Code 17200 and Common Law Unfair Competition.

26 23. While that case was being litigated, a pending application for a  
27 second patent filed by plaintiff was prosecuted before the United States Patent and  
28 Trademark Office under serial number 12/270,091. On October 29, 2009, the

1 United States Patent and Trademark Office mailed a Notice of Allowance for that  
2 application. The scope of the Allowed Claims was disclosed to Defendants.

3 24. A few weeks after the Issue Notification, the parties agreed (i) to  
4 settle Case No. CV 09-4082 (“the ‘228 settlement”).

5 25. U.S. Patent Application No. 12/270.091 issued as U.S. Patent No.  
6 7,631,646 on December 15, 2009.

7 26. As part of the ‘228 settlement, Plaintiffs granted Defendant STITCH  
8 N’ GENIUS, INC. a covenant not to sue under the ‘228 patent only.

9 27. The settlement agreement expressly provided that it did not pertain to  
10 any patent other than the ‘228 Patent.

11 28. Accordingly, when plaintiffs became aware that Defendant STITCH  
12 N’ GENIUS, INC. was infringing the newly issued patent, namely U.S. Patent No.  
13 7,631,646 (“the ‘646 patent”), plaintiffs sued Defendant SNGI based on the ‘646  
14 patent.

15 29. Plaintiffs in this case never intended to release any claim that could  
16 be brought under the ‘646 patent and plaintiffs have not released any such claim.

17 30. After plaintiffs sued under the ‘646 patent, Defendant SNG filed a  
18 counterclaim alleging breach of contract and violation of the ‘228 settlement  
19 agreement.

20 31. On information and belief, Defendants attempted to induce Plaintiffs  
21 into releasing claims that were not contemplated by the ‘228 settlement and were  
22 in direct contravention of the letter and spirit of the parties’ settlement  
23 negotiations.

24 32. On information and belief, Defendants intended to induce Plaintiffs  
25 into releasing claims on the ‘646 Patent under the guise that the parties were  
26 settling claims regarding the ‘228 Patent.

27 33. Even if the parties did enter into an agreement regarding the ‘646  
28 Patent or any claim in this matter, the agreement was void or voidable for, *inter*

1 *alia*, fraud, failure of consideration, indefiniteness, duress, lack of mutuality and  
2 mistake..

3 34. Therefore, an actual case or controversy exists regarding a matter  
4 within the jurisdiction of the federal courts.

5 35. For these reasons, it is appropriate that the Court enter an order  
6 declaring that there is no contract, release or covenant not to sue regarding any of  
7 the claims asserted by Plaintiffs herein.

8  
9 **THIRD CLAIM FOR RELIEF**

10 **FALSE ADVERTISING UNDER 15 U.S.C. § 1125**

11 (Against Defendant HOME SHOPPING NETWORK, INC. and Does 1-5)

12 36. Plaintiff repeats, realleges and incorporates by reference in this  
13 paragraph the allegations contained in paragraphs 1 to 35 of this Complaint as if  
14 fully set forth herein.

15 37. Defendant HOME SHOPPING NETWORK, INC. (“HSN”), sells on  
16 its website a hair styling product entitled “TruLift Rolling Styler Item 560-295”.  
17 In connection with the sale of the “TruLift Rolling Styler” on its website  
18 <http://www.hsn.com>, Defendant HSN provides a video which contains false or  
19 misleading descriptions of facts, false or misleading representations of facts,  
20 literally false representations, statements, and product comparisons.

21  
22 38. The actionable false and misleading representations and descriptions  
23 include, but are not limited to, statements regarding the use of plastic in the  
24 TruLift Rolling Styler and statements as to whether the TruLift Rolling Styler is  
25 the only comparable product that includes a switch for the rolling mechanism.

26 39. The false and misleading representations and descriptions are  
27 available via the Internet to consumers in this District. On information and belief,  
28 Defendant HSN has sold products into this District.








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- C. An accounting for damages;
- D. The Court treble the damages award to Plaintiffs as a consequence of Defendants' willful infringement;
- E. A determination and order declaring that the covenant not to sue between Plaintiffs and Defendant STITCH N' GENIUS does not extend to the '646 Patent or legal claim in this case;
- F. An order prohibiting Defendant HSN from making any further misrepresentations of the nature, characteristics, or quality of Plaintiffs' or Defendants' goods;
- G. A finding that case is exceptional under the Patent Act and/or the Lanham Act;
- H. Attorneys' fees;
- I. Interests and costs;
- J. For an order requiring that all infringing goods be delivered to Plaintiffs for destruction; and
- K. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

SWANSON & ASSOCIATES

By:   
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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demands trial by jury on all issues triable by right to a jury.

Respectfully submitted,  
SWANSON & ASSOCIATES

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