UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

Prime Communications, Inc.,
Plaintiff

V.

AT&T Corp., AT&T Broadband LLC, and
AT&T Media Services
Defendants.

CIVIL ACTION NO.

COMPLAINT
(And Jury Demand)

NATURE AND BASIS OF ACTION

1. This is an action for monopolization under Section 2 of the Sherman Act, 15 U.S.C. §2 (hereinafter referred to as the "Sherman Act, §2"), for unfair methods of competition in violation of G.L.M. c.93A, §11, and for tortious interference with advantageous relations and prospective advantage.

PARTIES

2. Plaintiff Prime Communications, Inc. ("Prime"), is a Massachusetts corporation with its principal place of business in Wakefield, County of Middlesex, Massachusetts.

3. Defendant AT&T Corp. is a duly organized Delaware corporation with its principal place of business in Basking Ridge, New Jersey.

4. Defendant AT&T Broadband, LLC ("AT&T Broadband") is a Delaware limited liability corporation with a principal place of business in Englewood, Colorado and a usual place

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NMS COMMUNICATIONS CORPORATION
100 Crossing Boulevard
Framingham, Massachusetts 01702

Plaintiff,

v.

CONNECTEL LLC
2031 North Bay Road
Miami Beach, Florida 33140-4564

Defendant.

Civil Action No. _____

01-11396 DE
GAO

COMPLAINT

The Plaintiff, NMS Communications Corporation ("NMS"), brings this action for a declaratory judgment and other relief against the defendant, Connectel, LLC ("Connectel"), and alleges as follows:

Parties

1. NMS is a Delaware corporation having a place of business at 100 Crossing Boulevard, Framingham, Massachusetts 01702.

2. On information and belief, Connectel is a Delaware corporation having a place of business at 2031 North Bay Road, Miami Beach, Florida 33140-4564 and a place of business at 202 Welsh Road, Horsham, Pennsylvania.

Jurisdiction And Venue

3. Connectel is currently plaintiff in a case styled *Connectel, LLC v. Natural MicroSystems Corporation*, Civ. No. 00-CV-12140-GAO, pending in this district.

4. Connectel has alleged that it is the owner by assignment of U.S. Patent No. 6,016,307 ("the '307 patent") and U.S. Patent No. 6,144,641 ("the '641 patent"). Connectel has further asserted that NMS is infringing the '307 patent and the '641 patent. An actual justiciable controversy exists between Connectel and NMS with respect to infringement and validity of the '307 patent and the '641 patent.

5. The jurisdiction of this Court is proper under 28 U.S.C. §§1331, 1338(a) and 2201.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

COUNT I

DECLARATORY JUDGMENT OF PATENT INVALIDITY

7. The claims of the '307 patent are invalid for failure to comply with one or more of the conditions for patentability set forth in 35 U.S.C. §§102, 103, and/or 112.

8. The claims of the '641 patent are invalid for failure to comply with one or more of the conditions for patentability set forth in 35 U.S.C. §§102, 103, and/or 112.

COUNT II

DECLARATORY JUDGMENT OF NON-INFRINGEMENT

9. The NMS Fusion4 IP Telephony Development Platform, Fusioin3, HearSay, ArTeMux, AG 2000 and CG6000 Series Platform products do not infringe any valid and enforceable claim of the '307 patent either literally or under the doctrine of equivalents;

10. The NMS Fusion4 IP Telephony Development Platform, Fusioin3, HearSay, ArTeMux, AG 2000 and CG6000 Series Platform products do not infringe any valid and enforceable claim of the '641 patent either literally or under the doctrine of equivalents.

11. NMS has not induced or contributed to the infringement of any valid and enforceable claim of the '307 patent.

12. NMS has not induced or contributed to the infringement of any valid and enforceable claim of the '641 patent.

Wherefore, Natural Microsystems Corp., prays that this Court:

A. Declare the '307 Patent invalid and/or unenforceable;

B. Declare the '641 Patent invalid and/or unenforceable;

C. Declare that NMS has not infringed the '307 Patent;

D. Declare that NMS has not infringed the '641 Patent;

E. Declare this case exceptional, pursuant to 35 U.S.C. § 285 and grant Natural MicroSystems Corp. its attorneys' fees and costs incurred in this action; and

F. Grant NMS such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues triable of right by jury.

Respectfully submitted,

Rosemary M. Allen (BBO #549,746)
A. Jason Mirabito (BBO #349,040)
MINTZ, LEVIN COHN, FERRIS,
GLOVSKY and POPEO, P.C.
One Financial Center
Boston, Massachusetts 02111
(617) 542-6000

Attorneys for Plaintiff

Dated: August 10, 2001

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CAPE COD HOSPITAL,

Plaintiff,

v.

MARYANNE BARBOZA,

Defendant.

Civil Action No.

01 CV 11395 GAO

COMPLAINT

1. This action is brought pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, and arises out of the breach of an October 8, 1999 Settlement Agreement among Cape Cod Hospital (the "Hospital"), Maryann Barboza and Hospital Workers Union, Local 767, Service Employees International Union, AFL-CIO (the "Union").

2. The Hospital is a Massachusetts corporation with its principal place of business at 27 Park Street, Hyannis, Massachusetts.

3. The Union is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act, 29 U.S.C. § 152(5).

4. Maryann Barboza ("Ms. Barboza") is an individual who, on information and belief, resides in the town of Mashpee, Massachusetts.

5. Jurisdiction is proper in this Court pursuant to 29 U.S.C. § 1331 and Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a). Venue is proper in this Court pursuant to 29 U.S.C. § 1391(b) and Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a).

6. Ms. Barboza was employed at the Hospital from August 28, 1987 until April 28, 1998. Subsequent to the termination of her employment with the Hospital, Ms. Barboza filed against the Hospital: (a) a Charge of Discrimination with the Massachusetts Commission Against Discrimination ("MCAD"); and (b) in conjunction with the Union, of which she was then a represented member, a grievance alleging that the Hospital had violated the terms of a collective bargaining agreement by discharging Ms. Barboza from her employment without just cause.

7. On October 8, 1999, Ms. Barboza, the Union and the Hospital entered into a Settlement Agreement, resolving all of the matters that Ms. Barboza and the Union had brought against the Hospital. A copy of that Settlement Agreement is attached hereto as Exhibit A.

8. Pursuant to the terms of the Settlement Agreement, the Hospital paid Ms. Barboza the sum of $42,500.00 in full and complete settlement of her claims. Ms. Barboza accepted and cashed that payment without reservation.

9. As consideration for the Hospital's $42,500.00 payment, Ms. Barboza and the Union fully and finally settled any and all claims against the Hospital regarding Ms. Barboza's employment and the circumstances of her separation from the Hospital. Ms. Barboza and the Union further released the Hospital, its employees and affiliated organizations from – and covenanted not to bring suit upon – any and all claims regarding Ms. Barboza's employment and her separation from the Hospital.

10. On February 13, 2001, Ms. Barboza filed Civil Action No. 2001-00098 against the Hospital, Cape Cod Healthcare, Inc. and Beverly Flanagan ("Ms. Flanagan") in Massachusetts Superior Court (Barnstable County). A copy of the Complaint filed in Ms. Barboza's action is attached hereto as Exhibit B.

19. The Hospital has been damaged economically by Ms. Barboza's breach of contract.

JURY DEMAND

A trial by jury on all issues so triable is hereby demanded, pursuant to Fed. R. Civ. P. 38(b).

REQUEST

WHEREFORE, plaintiff Cape Cod Hospital respectfully prays:

1. That it be made whole for any and all damages incurred as a result of its defense of Ms. Barboza's civil action, No. 2001-00098, filed in Barnstable County Superior Court on February 13, 2001;

2. That it be awarded its costs and expenses, including reasonable attorneys' fees; and

3. That this Court grant the Hospital such other and further relief as it may deem just and proper.

Respectfully submitted,

Cape Cod Hospital

By its attorneys,

Robert B. Gordon (BBO #549248)
Sean M. Becker (BBO# 641763)
ROPES & GRAY
One International Place
Boston, MA 02110-2624
(617) 951-7000

Dated: August 10, 2001

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RONALD ALMAN, as he is TRUSTEE of the EASTERN STATES HEALTH AND WELFARE FUND and HEALTH SERVICES PLAN; and as he is TRUSTEE of the I.L.G.W.U. NATIONAL RETIREMENT FUND,
Plaintiffs

vs.

FASHION B, INC. and its alter ego ASIAN AMERICAN APPAREL, INC.,
Defendants

and

BANKBOSTON,
Trustee

C.A. No.

01 11406 GAO

COMPLAINT

NATURE OF ACTION

1. This is an action brought pursuant to §§502 and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§1132 (a) (3) and (d) (1) and 1145, by employee benefit plans to enforce the obligations to make contributions to such plans due under the terms of collective bargaining agreements and the plans.

JURISDICTION

2. The Court has exclusive jurisdiction of this action pursuant to §502 (a), (e) and (f) of ERISA, 29 U.S.C. §1132 (a), (e) and (f), without respect to the amount in controversy or the citizenship of the parties.

(1)

PARTIES

3. Plaintiff Ronald Alman is a Trustee of the Eastern States Health and Welfare Fund. The Eastern States Health and Welfare Fund is an "employee welfare benefit plan" within the meaning of §3 (3) of ERISA, 29 U.S.C. §1002 (3). The Health and Welfare Fund maintains its principal place of business at 275 Seventh Avenue, New York, New York.

4. Plaintiff Ronald Alman is a Trustee of the I.L.G.W.U. National Retirement Fund. The I.L.G.W.U. National Retirement Fund is an "employee benefit plan" within the meaning of §3 (2) of ERISA, 29 U.S.C. §1002 (2) (A). The Retirement Fund maintains its principal place of business at 218 West 40th Street, New York, New York.

5. The Health and Welfare, Retirement and Health Services Funds are multi-employer plans within the meaning of §3 (37) of ERISA, 29 U.S.C. §1002 (2) (A). They are hereinafter collectively referred to as "the Funds".

6. Plaintiff Trustee ("the Trustee" or "Plaintiff") is a fiduciary within the meaning of §3 (21) of ERISA.

7. Defendant Fashion B, Inc. ("Fashion B") is a now-dissolved corporation which had a principal place of business at 118 Holmes Street, Quincy, Massachusetts. Fashion B was an employer engaged in commerce within the meaning of §3 (5) and (12) of ERISA, 29 U.S.C. §1002 (5) and (12).

8. Defendant Asian American Apparel, Inc. ("Asian American Apparel") is a Massachusetts corporation with a principal place of business at 118 Holmes Street, Quincy, Massachusetts, and is an employer engaged in commerce within the meaning of §3 (5) and (12) of ERISA, 29 U.S.C. §1002 (5) and (12).

9. BankBoston is a banking institution holding assets of Asian American Apparel.

GENERAL ALLEGATIONS OF FACT

10. Fashion B was signatory to a series of collective bargaining agreements with the Joint Board of Cloak, Skirt and Dressmakers' Union I.L.G.W.U. (now "UNITE"), requiring contributions to the Funds from on or about May 24, 1993 through June 15, 2000. A copy of the relevant pages of the most recent collective bargaining agreement is attached hereto as Exhibit A.

11. The Agreements required Fashion B to make monthly payments to the Funds of sums, equivalent to percentages specified in the agreements, of its total gross weekly factory payroll and/or for a specified percentage of the gross amount which Fashion B owed to contractors performing work on its garments.

12. On or about December 21, 1998, Defendant Huang notified Plaintiff by letter that Fashion B had changed its name to Asian American Apparel, Inc. and had moved to Quincy, Massachusetts. A copy of that letter is attached hereto as Exhibit B.

13. On or about February 1, 1999, Defendant Huang signed a letter from UNITE, on behalf of Defendant Asian American Apparel, confirming that Asian American Apparel agreed to be bound by, subscribe to, and become a party to the collective bargaining agreement between Fashion B and UNITE. Defendant Huang further agreed that Asian American Apparel was the successor of and to, and was liable for the contractual obligations of Fashion B. The February 1, 1999 agreement letter signed by Huang is appended hereto as Exhibit C.

14. Except for the change of name and location, defendant Asian American has continued Fashion B's operations. It has the same owner; employs the same employees and supervisors; uses the same equipment and machinery; and has the same customers.

COUNT I - VIOLATION OF ERISA
DELINQUENT CONTRIBUTIONS
(against Fashion B, Inc. and Asian American Apparel)

15. Plaintiff Funds repeat and re-allege each and every allegation contained in paragraphs 1 through 14.

16. On or about May 10, 1999, an auditor conducted an audit, on behalf of the Funds, of Fashion B's books and records for the period October 3, 1998 through December 31, 1998.

17. The Funds determined that Fashion B owed $29,588.40 in unpaid contributions and interest for the period covered by the audit. A copy of that audit is attached hereto as Exhibit D.

18. That liability is in addition to the $243,910.05 that Fashion B already owed in unpaid contributions and interest for the period May 30, 1993 through September 26, 1998. Therefore, the total liability is $273,498.90 through December 31, 1998. A copy of the Funds' records showing the previous audit balance in attached hereto as Exhibit E.

19. Copies of the audit bills were sent to Fashion B. In addition, demand was made on Fashion B for payment, and no payment was received.

20. In or about June, 1999, an auditor conducted an audit, on behalf of the Funds, of Asian American Apparel, Inc.'s books and records for the period January 6, 1999 through May 22, 1999.

21. The Funds determined that Asian American Apparel owed $57,022.79 in unpaid contributions, plus interest, for the period covered by the audit.

22. On August 2, 1999, the Funds filed suit against Fashion B, Inc., Asian American Apparel, Inc. and Philip Huang in Ronald Alman, as he is Trustee of the Eastern States Health

and Welfare Fund, et al, C.A. 99-11628 GAO (U.S.D.C. 1999). Pursuant thereto, the Funds attached $18,732.84 in the defendant's bank accounts.

23. The parties settled, and dismissed the case without prejudice based on the defendants' agreement to release the attached 18,732.84, to the Funds; to pay their arrearages at the rate of $1,000.00 per month and to pay all current contributions as they came due beginning on April 14, 2000.

24. Defendants released the $18,732.84 and made one (1) $1,000.00 payment in February, 2000, but have made not further payment to the Funds, either toward reducing the arrearage or paying current contributions. As a result, Asian American now owes the Funds $290,238.71 for the period January, 1999 through January, 2001, plus interest and an as yet unliquidated amount for the period February to the present, 2001. It also owes $253,339.57 plus interest for Fashion B, for a total contribution liability of $543,578.28.

25. The failure of Fashion B and its continuation or alter ego, Asian American Apparel, to make these contributions on behalf of all covered employees as required by the terms of the Funds and the collective bargaining agreement and the letter agreement dated February 1, 1999 violates §515 of ERISA, 29 U.S.C. §1145.

26. Absent an order from the Court, the defendants will continue to refuse to pay the contributions they owe to the Funds, and the Funds and their participants will be irreparably damaged.

27. A copy of this Complaint is being served upon the Attorney General, the Secretary of Labor and the Secretary of the Treasury by certified mail as required by §502 (h) of ERISA, 29 U.S.C. §1132 (h).

RELIEF REQUESTED

WHEREFORE, Plaintiff Funds request this Court to grant the following relief:

a. Order the attachment by trustee process of any and all bank accounts of Fashion B and Asian American Apparel held by BankBoston;

b. Order the attachment of the machinery, inventory and accounts receivable of defendants Fashion B and Asian American Apparel;

c. Enter a preliminary and permanent injunction enjoining Fashion B and Asian American Apparel from refusing or failing to make contributions to Plaintiff;

d. Enter judgment in favor of Plaintiff Funds and against Fashion B and its successor and/or alter ego Asian American Apparel in the amount of $543,578.28, representing all unpaid contributions and interest owed for the period May 30, 1993 through January, 2001;

e. Enter judgment in favor of Plaintiff Funds and against both defendants for any additional amounts determined by the Court to be owed by the defendants or which may become due during the pendency of this action, together with interest on the unpaid contributions at the rate prescribed under §6621 of the Internal Revenue Code, liquidated damages, reasonable attorney's fees and costs, all pursuant to 29 U.S.C. §1132 (g) (2);

f. Such further relief as this Court deems appropriate.

Respectfully submitted,

RONALD ALMAN, as he is TRUSTEE,
I.L.G.W.U. EASTERN STATES HEALTH
AND WELFARE FUND, et al,

By their attorneys,

Anne R. Sills, Esquire
BBO #546576

Segal, Roitman & Coleman
11 Beacon Street
Suite #500
Boston, MA 02108
(617) 742-0208

Dated: August 9, 1999

ARS/ars&ts
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BOSTON UNIVERSITY MEDICAL CENTER RADIOLOGISTS, INC.,

Plaintiff,

v.

BRIAN DAVISON,

Defendant.

CIVIL ACTION NO. 01 11418 GAO

NOTICE OF REMOVAL OF CIVIL ACTION FROM THE TRIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Pursuant to 28 U.S.C. §§1441 and 1446, defendant Brian Davison ("Davison") files a notice of removal. In support thereof, Davison states as follows:

1. The above-captioned action was commenced on August 6, 2001 in the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts sitting in and for the County of Suffolk and is now pending in that Court as Civil Action No. 01-3562-C.

2. Service of the complaint and summons was made upon Davison on August 7, 2001.

3. In this action, plaintiff Boston University Medical Center Radiologists, Inc. ("BURA") seeks damages for alleged conversion, misappropriation and violation of Chapter 93A and for a declaratory judgment. BURA claims, *inter alia*, that Davison has "misappropriated the intellectual

property of BURA for his own commercial advantage" and seeks "a final and binding determination of the rights and responsibilities of the parties."

4. This Court has jurisdiction of this action because it arises under the Copyright Act. 28 U.S.C. §1338(a). Although the allegations purport to be grounded in state law, they in fact "arise under" the Copyright Act because the complaint is for a remedy expressly granted by the Copyright Act, asserts a claim requiring construction of the Act and/or presents a case where the distinctive policy of the Act requires that federal principles control the disposition of the claim.

5. BURA claims that it is entitled to a declaration of its rights in the "intellectual property" of a certain web site and related materials. BURA's claims appear to be disguised claims for copyright infringement, and any proper resolution of the parties' dispute will require application of the work-for-hire doctrine under the Copyright Act.

6. Copies of the summons and order of notice, complaint, civil action cover sheet, and motion for short order of notice – which are all of the processes, pleadings and orders served on Davison – are attached hereto as Exhibit A.

BRIAN DAVISON

By his attorneys,

Laurence H. Reece, III
BBO #414460
Marie A. Ryan
BBO #646813
Reece & Associates, P.C.
One Bowdoin Square
Boston, Massachusetts 02114
(617) 747-7550

Dated: August 14, 2001.

Certificate of Service

I hereby certify that I caused to be delivered by hand on James J. Marcellino, McDermott, Will & Emery, 28 State Street, Boston, Massachusetts 02109 a copy of this document on this 14th day of August 2001.

Marie A. Ryan

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

Prime Communications, Inc.,
Plaintiff

V.

AT&T Corp., AT&T Broadband LLC, and
AT&T Media Services
Defendants.

CIVIL ACTION NO.

COMPLAINT
(And Jury Demand)

NATURE AND BASIS OF ACTION

1. This is an action for monopolization under Section 2 of the Sherman Act, 15 U.S.C. §2 (hereinafter referred to as the "Sherman Act, §2"), for unfair methods of competition in violation of G.L.M. c.93A, §11, and for tortious interference with advantageous relations and prospective advantage.

PARTIES

2. Plaintiff Prime Communications, Inc. ("Prime"), is a Massachusetts corporation with its principal place of business in Wakefield, County of Middlesex, Massachusetts.

3. Defendant AT&T Corp. is a duly organized Delaware corporation with its principal place of business in Basking Ridge, New Jersey.

4. Defendant AT&T Broadband, LLC ("AT&T Broadband") is a Delaware limited liability corporation with a principal place of business in Englewood, Colorado and a usual place

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of business in Newton, Massachusetts. It describes itself as "one of the nation's leading providers of video and broadband data services," including cable television.

5. Defendant AT&T Media Services is the advertising sales division of AT&T Broadband.

6. Together, AT&T Corp., AT&T Broadband, and AT&T Media Services (collectively "AT&T") are the exclusive provider of cable television programming and advertising in a geographic territory including nearly all of eastern Massachusetts and portions of southern New Hampshire.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331 and 15 U.S.C. §4, as this case arises under the Sherman Act, 15 U.S.C. §2. Venue is proper in this Court pursuant to 28 U.S.C. §1391 and Local Rule 41.1.

FACTUAL ALLEGATIONS

8. Prime is a full-service advertising firm, which mainly serves automobile dealers in Eastern Massachusetts, Southern New Hampshire, Rhode Island and Connecticut. Its services include developing advertising strategies for clients, creation and production of ads in all media, making media purchases for clients and evaluating the results of such advertising. It has staff and facilities to produce ads for broadcast and cable television, among other media. It operates a highly successful web site called CableCars.com, which promotes automobile dealerships, describes their services, and enables customers to electronically search the inventories of participating dealers to find an appropriate car. Prime also creates and hosts web sites for clients. It represents over 100 of the nearly 700 auto dealerships in Massachusetts, and had revenues last year exceeding $20 million. It is recognized as one of the leading providers of advertising

services to auto dealerships in Eastern Massachusetts, Southern New Hampshire, Rhode Island and Connecticut.

9. Cable television is an essential advertising medium for some dealers, as part of an overall advertising mix. Its role is distinct from other media, including broadcast television. Unlike broadcast television, cable ads can be targeted to particular audiences by town, and by program preference. It is also less expensive. For auto dealers who want local television advertising targeted to particular audiences at an affordable price, there is no substitute for cable.

10. Under cable franchise laws, there is a single provider for each cable system. A system may include a single town, or a group of towns with a single cable authority. The cable provider has exclusive control over all programming and advertising on its system. Without cooperation from the cable provider, it is impossible for advertisers to reach the system's audience.

11. By virtue of its acquisition of Media One cable systems on June 15, 2000, AT&T became the provider for nearly all the cable systems in Eastern Massachusetts and Southern New Hampshire.

12. In addition to providing cable services, AT&T is a global communications company, which provides advertising services that compete with Prime. It produces cable advertising commercials, and maintains an in-house sales force that calls on auto dealer customer of Prime. It creates and hosts web sites for clients, and provides Internet advertising services that also compete with Prime. Unlike Prime, it is also an Internet service provider.

13. For approximately 15 years, Prime has been placing ads on cable systems now controlled by AT&T. The price is normally determined by published rates, subject to frequent discounts from cable providers to attract more advertisers. Advertising agencies are customarily

granted a 15% "agency discount," partly to compensate for the fact that they supply the cable operator with finished commercials which they have produced at their expense, relieving the cable operator of the cost of production. The gross amount billed by cable providers for media placements by Prime on systems now controlled by AT&T from January 2000 through April 2001 was $202,207.34.

14. Until April 2001, no cable operator had refused to runs ads placed by Prime for any reason.

15. On April 18, 2001, AT&T Media Services' Vice President/General Manager, James D. Sullivan ("Mr. Sullivan"), called on Prime's President, Neal Bocian ("Mr. Bocian"), to discuss ways to attract more cable advertising. He said that AT&T cable systems in other parts of the country attracted significantly more cable ads from auto dealers. He said, "You are the only anomaly. The reason we don't get more revenue is because of you. My hat is off to you, because you're doing such a great job securing these accounts, and we have problems securing this market share, but I'm going to do anything and everything necessary to get that market share."

16. Mr. Bocian responded that cable was an important media, but that Prime's loyalty was to its auto dealer clients, and that the key to more advertising was to find ways to increase the response rate of consumers. He told Mr. Sullivan that Prime was about to introduce a web based dealer management tool called Prime IQ, which might help increase cable advertising by auto dealers because it includes a feature that gathers and evaluates information about what ads led consumers to the dealership. By experimenting with new approaches to cable and monitoring the response, it might be possible to justify more cable ads, he told Mr. Sullivan.

17. Mr. Sullivan then said, "We have a new product called Vehix. I came to talk with you about it. It sounds like Prime IQ and has many of the same functions. I can't show you Vehix now because it sounds like it competes. How much have you spent on Prime IQ?" When told that it had cost $1 million to develop, Mr. Sullivan said, "We can buy it. I was hoping we could work together. We could buy you out. I'm comfortable talking in a price range of $1 to 2 million." Mr. Sullivan said he would call for an answer the following Monday, April 23.

18. Mr. Sullivan had also explained that Vehix is tied directly to AT&T cable television products. It is viewed as a client retention tool, not a revenue stream, and unlike Prime IQ is not sold on a stand-alone basis. It is given free to customers who commit to purchasing cable ads for one year. It includes an automobile advertising web site similar to Prime's CableCars.com. Unlike Prime IQ, it does not track consumer responses to different advertising media. AT&T takes the position that asking consumers about their responses to ads is not appropriate.

19. On April 23, 2001, Mr. Bocian told Mr. Sullivan that he did not want to sell Prime IQ to AT&T. Mr. Sullivan immediately sent a letter stating that AT&T would no longer accept ad placements from Prime, under any circumstances. The letter said in part:

> [Vehix] is tied directly to our television product through both on air promotion and client incentive. Prime's objective of marketing the Prime IQ product by tying it to CableCars and direct mail product is clearly intended to compete with AT&T ....
>
> * * *
>
> I understand your desire to continue with Prime IQ, although it is unfortunate in that I believe we could have mutually benefited through continuation of our business relationship.

20. Believing that the Sullivan letter was based on a misunderstanding, Mr. Bocian sent a letter to Mr. Sullivan on April 26, 2001, explaining that Prime IQ was a stand-alone product that is not tied to any other product of Prime, and that Prime would like to continue placing cable ads on the same basis as other advertising agencies.

21. On April 27, 2001, AT&T personnel refused a request by Prime to place cable ads.

22. On May 1, 2001, AT&T personnel removed from Prime's premises certain computer-based proposal/contract writing software that was intended to help Prime place cable ads.

23. Mr. Sullivan did not respond to the April 26, 2001 letter.

24. By refusing to accept cable-advertising placements by Prime on at least the same terms that are offered to other advertising agencies, AT&T will force Prime's clients who want cable to turn to AT&T directly or other advertising agencies. In competing for this business, AT&T's in-house sales staff will have the advantage, since it already knows the identities of Prime's clients and can target them for conversion. The refusal will destroy Prime's status as a full-service advertising firm, creating a disadvantage for clients who want to use one source for all advertising solutions.

25. By providing Vehix free of charge to auto dealers willing to purchase cable advertising on a one-year contract, which because of its control over cable advertising only AT&T can offer, AT&T will preempt the market for Prime IQ and other dealer management tools that compete with Vehix. Unlike Prime IQ, Vehix does not track consumer responses to different advertising media. By suppressing the market for Prime IQ, AT&T will deprive dealers of unbiased information that could influence their media purchases adversely to cable.

26. Finally, by tying Vehix "directly to our television product through both on air promotion and client incentive," while completely excluding Prime from cable advertising, AT&T will obtain an unfair advantage in web site design, and the development and sales of dealer management tools.

27. The harm to Prime from AT&T's termination is such that it will be difficult to calculate, because it includes damage to customer relationships, reputation and good will. It will be difficult or impossible to show why clients left, or to identify potential clients who did not choose Prime because it no longer offers a full range of advertising solutions.

COUNT I

(§2 of the Sherman Act)

28. Prime incorporates herein and realleges, as if fully set forth in this paragraph, the allegations of paragraphs 1 to 27 above.

29. AT&T enjoys monopoly power in the market for cable television advertising within its service area.

30. AT&T's refusal to permit Prime to continue purchasing advertising for its clients over AT&T's cable network harms and/or reduces competition in the markets for (a) the sale of cable advertising to auto dealers; (b) the sale of production services for the making of television commercials for auto dealers; (c) market research, and (d) the sale of Web-based services to auto dealers in Eastern Massachusetts and Southern New Hampshire, including without limitation the creation and hosting of websites for auto dealers, Web-based automobile advertising services such as CableCars.com and Vehix.com, and Web-based management tools for automobile dealerships, such as Vehix and Prime IQ.

31. AT&T's conduct affects interstate commerce and constitutes an abuse of monopoly power in violation of Section 2 of the Sherman Act, 15 U.S.C. §2.

COUNT II

(G.L.M. c.93A, §11)

32. Prime incorporates herein and realleges the allegations of paragraphs 1 to 31 above.

33. At all relevant times, Prime and AT&T have been engaged in the conduct of trade or commerce.

34. AT&T's conduct constitutes unfair methods of competition and a willful and knowing violation of G.L.M. c.93A, §11.

35. Prime has suffered a loss of money or property as a direct and proximate result of the unfair methods of competition employed by AT&T, which have occurred substantially and primarily within the Commonwealth of Massachusetts.

COUNT III

(Tortious Interference With Advantageous
Business Relations And Prospective Advantage)

36. Prime incorporates herein and realleges the allegations of paragraphs 1 to 35 above.

37. AT&T has unlawfully and tortuously interfered, and continues to unlawfully and tortuously interfere, with Prime's advantageous business relationships with its clients and with its prospective advantage with automobile dealerships that are not presently Prime's clients.

38. AT&T interference, in addition to being intentional, is also wrongful or improper in motive or means.

39. As a direct and proximate result of this tortious interference, Prime has sustained damages, including but not limited to injury to its business reputation, customer relationships, good will, lost profits and other monetary damages.

PRAYERS FOR RELIEF

WHEREFORE, Prime Communications, Inc. requests that this Court:

A. Issue a temporary restraining order, a preliminary injunction and thereafter a permanent injunction ordering AT&T and their respective officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, to:

(1) immediately resume accepting purchases by Prime of advertising on AT&T's network of cable systems in eastern Massachusetts and southern New Hampshire at AT&T's current rates applicable to advertising agencies; and

(2) immediately return to Prime the computer removed from Prime's premises loaded with the software that facilitates advertising placements by Prime on AT&T's cable network on behalf of Prime's clients.

B. Enter judgment that AT&T has engaged in exclusionary conduct in bad faith and in willful violation of 15 U.S.C. §2 and award the amount of damages suffered by Prime as a result of AT&T's antitrust violations, such amount to be trebled, plus interest, costs and reasonable attorneys' fees pursuant to 15 U.S.C. §15(a). In the event the Court awards only equitable relief in the form of an injunction, Prime requests that the Court award Prime its reasonable attorney's fees pursuant to 15 U.S.C. §26.

C. Enter judgment in its favor and against AT&T in the amount of damages suffered by Prime as a result of AT&T's tortious interference with Prime's contractual and advantageous business relationships and prospective advantage;

D. Enter judgment in its favor and against AT&T in the amount of damages suffered by Prime as a result of AT&T's unfair and deceptive business practices, such amount to be trebled, plus interest, costs and reasonable attorneys' fees pursuant to G.L.M. c. 93A, §11; and/or

E. Grant such other different and further relief that this Court deems appropriate.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES
THAT ARE TRIABLE BY JURY AS A MATTER OF RIGHT.

PRIME COMMUNICATIONS, INC.

By its attorneys,

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Dated: May 11, 2001

of business in Newton, Massachusetts. It describes itself as "one of the nation's leading providers of video and broadband data services," including cable television.

5. Defendant AT&T Media Services is the advertising sales division of AT&T Broadband.

6. Together, AT&T Corp., AT&T Broadband, and AT&T Media Services (collectively "AT&T") are the exclusive provider of cable television programming and advertising in a geographic territory including nearly all of eastern Massachusetts and portions of southern New Hampshire.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331 and 15 U.S.C. §4, as this case arises under the Sherman Act, 15 U.S.C. §2. Venue is proper in this Court pursuant to 28 U.S.C. §1391 and Local Rule 41.1.

FACTUAL ALLEGATIONS

8. Prime is a full-service advertising firm, which mainly serves automobile dealers in Eastern Massachusetts, Southern New Hampshire, Rhode Island and Connecticut. Its services include developing advertising strategies for clients, creation and production of ads in all media, making media purchases for clients and evaluating the results of such advertising. It has staff and facilities to produce ads for broadcast and cable television, among other media. It operates a highly successful web site called CableCars.com, which promotes automobile dealerships, describes their services, and enables customers to electronically search the inventories of participating dealers to find an appropriate car. Prime also creates and hosts web sites for clients. It represents over 100 of the nearly 700 auto dealerships in Massachusetts, and had revenues last year exceeding $20 million. It is recognized as one of the leading providers of advertising

services to auto dealerships in Eastern Massachusetts, Southern New Hampshire, Rhode Island and Connecticut.

9. Cable television is an essential advertising medium for some dealers, as part of an overall advertising mix. Its role is distinct from other media, including broadcast television. Unlike broadcast television, cable ads can be targeted to particular audiences by town, and by program preference. It is also less expensive. For auto dealers who want local television advertising targeted to particular audiences at an affordable price, there is no substitute for cable.

10. Under cable franchise laws, there is a single provider for each cable system. A system may include a single town, or a group of towns with a single cable authority. The cable provider has exclusive control over all programming and advertising on its system. Without cooperation from the cable provider, it is impossible for advertisers to reach the system's audience.

11. By virtue of its acquisition of Media One cable systems on June 15, 2000, AT&T became the provider for nearly all the cable systems in Eastern Massachusetts and Southern New Hampshire.

12. In addition to providing cable services, AT&T is a global communications company, which provides advertising services that compete with Prime. It produces cable advertising commercials, and maintains an in-house sales force that calls on auto dealer customer of Prime. It creates and hosts web sites for clients, and provides Internet advertising services that also compete with Prime. Unlike Prime, it is also an Internet service provider.

13. For approximately 15 years, Prime has been placing ads on cable systems now controlled by AT&T. The price is normally determined by published rates, subject to frequent discounts from cable providers to attract more advertisers. Advertising agencies are customarily

granted a 15% "agency discount," partly to compensate for the fact that they supply the cable operator with finished commercials which they have produced at their expense, relieving the cable operator of the cost of production. The gross amount billed by cable providers for media placements by Prime on systems now controlled by AT&T from January 2000 through April 2001 was $202,207.34.

14. Until April 2001, no cable operator had refused to runs ads placed by Prime for any reason.

15. On April 18, 2001, AT&T Media Services' Vice President/General Manager, James D. Sullivan ("Mr. Sullivan"), called on Prime's President, Neal Bocian ("Mr. Bocian"), to discuss ways to attract more cable advertising. He said that AT&T cable systems in other parts of the country attracted significantly more cable ads from auto dealers. He said, "You are the only anomaly. The reason we don't get more revenue is because of you. My hat is off to you, because you're doing such a great job securing these accounts, and we have problems securing this market share, but I'm going to do anything and everything necessary to get that market share."

16. Mr. Bocian responded that cable was an important media, but that Prime's loyalty was to its auto dealer clients, and that the key to more advertising was to find ways to increase the response rate of consumers. He told Mr. Sullivan that Prime was about to introduce a web based dealer management tool called Prime IQ, which might help increase cable advertising by auto dealers because it includes a feature that gathers and evaluates information about what ads led consumers to the dealership. By experimenting with new approaches to cable and monitoring the response, it might be possible to justify more cable ads, he told Mr. Sullivan.

17. Mr. Sullivan then said, "We have a new product called Vehix. I came to talk with you about it. It sounds like Prime IQ and has many of the same functions. I can't show you Vehix now because it sounds like it competes. How much have you spent on Prime IQ?" When told that it had cost $1 million to develop, Mr. Sullivan said, "We can buy it. I was hoping we could work together. We could buy you out. I'm comfortable talking in a price range of $1 to 2 million." Mr. Sullivan said he would call for an answer the following Monday, April 23.

18. Mr. Sullivan had also explained that Vehix is tied directly to AT&T cable television products. It is viewed as a client retention tool, not a revenue stream, and unlike Prime IQ is not sold on a stand-alone basis. It is given free to customers who commit to purchasing cable ads for one year. It includes an automobile advertising web site similar to Prime's CableCars.com. Unlike Prime IQ, it does not track consumer responses to different advertising media. AT&T takes the position that asking consumers about their responses to ads is not appropriate.

19. On April 23, 2001, Mr. Bocian told Mr. Sullivan that he did not want to sell Prime IQ to AT&T. Mr. Sullivan immediately sent a letter stating that AT&T would no longer accept ad placements from Prime, under any circumstances. The letter said in part:

> [Vehix] is tied directly to our television product through both on air promotion and client incentive. Prime's objective of marketing the Prime IQ product by tying it to CableCars and direct mail product is clearly intended to compete with AT&T ....
>
> * * *
>
> I understand your desire to continue with Prime IQ, although it is unfortunate in that I believe we could have mutually benefited through continuation of our business relationship.

20. Believing that the Sullivan letter was based on a misunderstanding, Mr. Bocian sent a letter to Mr. Sullivan on April 26, 2001, explaining that Prime IQ was a stand-alone product that is not tied to any other product of Prime, and that Prime would like to continue placing cable ads on the same basis as other advertising agencies.

21. On April 27, 2001, AT&T personnel refused a request by Prime to place cable ads.

22. On May 1, 2001, AT&T personnel removed from Prime's premises certain computer-based proposal/contract writing software that was intended to help Prime place cable ads.

23. Mr. Sullivan did not respond to the April 26, 2001 letter.

24. By refusing to accept cable-advertising placements by Prime on at least the same terms that are offered to other advertising agencies, AT&T will force Prime's clients who want cable to turn to AT&T directly or other advertising agencies. In competing for this business, AT&T's in-house sales staff will have the advantage, since it already knows the identities of Prime's clients and can target them for conversion. The refusal will destroy Prime's status as a full-service advertising firm, creating a disadvantage for clients who want to use one source for all advertising solutions.

25. By providing Vehix free of charge to auto dealers willing to purchase cable advertising on a one-year contract, which because of its control over cable advertising only AT&T can offer, AT&T will preempt the market for Prime IQ and other dealer management tools that compete with Vehix. Unlike Prime IQ, Vehix does not track consumer responses to different advertising media. By suppressing the market for Prime IQ, AT&T will deprive dealers of unbiased information that could influence their media purchases adversely to cable.

26. Finally, by tying Vehix "directly to our television product through both on air promotion and client incentive," while completely excluding Prime from cable advertising, AT&T will obtain an unfair advantage in web site design, and the development and sales of dealer management tools.

27. The harm to Prime from AT&T's termination is such that it will be difficult to calculate, because it includes damage to customer relationships, reputation and good will. It will be difficult or impossible to show why clients left, or to identify potential clients who did not choose Prime because it no longer offers a full range of advertising solutions.

COUNT I

(§2 of the Sherman Act)

28. Prime incorporates herein and realleges, as if fully set forth in this paragraph, the allegations of paragraphs 1 to 27 above.

29. AT&T enjoys monopoly power in the market for cable television advertising within its service area.

30. AT&T's refusal to permit Prime to continue purchasing advertising for its clients over AT&T's cable network harms and/or reduces competition in the markets for (a) the sale of cable advertising to auto dealers; (b) the sale of production services for the making of television commercials for auto dealers; (c) market research, and (d) the sale of Web-based services to auto dealers in Eastern Massachusetts and Southern New Hampshire, including without limitation the creation and hosting of websites for auto dealers, Web-based automobile advertising services such as CableCars.com and Vehix.com, and Web-based management tools for automobile dealerships, such as Vehix and Prime IQ.

31. AT&T's conduct affects interstate commerce and constitutes an abuse of monopoly power in violation of Section 2 of the Sherman Act, 15 U.S.C. §2.

COUNT II

(G.L.M. c.93A, §11)

32. Prime incorporates herein and realleges the allegations of paragraphs 1 to 31 above.

33. At all relevant times, Prime and AT&T have been engaged in the conduct of trade or commerce.

34. AT&T's conduct constitutes unfair methods of competition and a willful and knowing violation of G.L.M. c.93A, §11.

35. Prime has suffered a loss of money or property as a direct and proximate result of the unfair methods of competition employed by AT&T, which have occurred substantially and primarily within the Commonwealth of Massachusetts.

COUNT III

(Tortious Interference With Advantageous
Business Relations And Prospective Advantage)

36. Prime incorporates herein and realleges the allegations of paragraphs 1 to 35 above.

37. AT&T has unlawfully and tortuously interfered, and continues to unlawfully and tortuously interfere, with Prime's advantageous business relationships with its clients and with its prospective advantage with automobile dealerships that are not presently Prime's clients.

38. AT&T interference, in addition to being intentional, is also wrongful or improper in motive or means.

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B. Enter judgment that AT&T has engaged in exclusionary conduct in bad faith and in willful violation of 15 U.S.C. §2 and award the amount of damages suffered by Prime as a result of AT&T's antitrust violations, such amount to be trebled, plus interest, costs and reasonable attorneys' fees pursuant to 15 U.S.C. §15(a). In the event the Court awards only equitable relief in the form of an injunction, Prime requests that the Court award Prime its reasonable attorney's fees pursuant to 15 U.S.C. §26.

C. Enter judgment in its favor and against AT&T in the amount of damages suffered by Prime as a result of AT&T's tortious interference with Prime's contractual and advantageous business relationships and prospective advantage;

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Dated: May 11, 2001