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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

IRIZARRY J

KORG USA, INC.,

*Plaintiff,*

v.

MESA/BOOGIE, LTD. and  
Randall Smith

*Defendants.*

JURY TRIAL DEMANDED

Civil Action No. 05-

COMPLAINT

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
JUL 01 2005

BROOKLYN OFFICE ★  
MATSUMOTO, M.J.

Plaintiff Korg USA, Inc. ("Korg"), by its undersigned attorneys, for its Complaint herein alleges:

**THE PARTIES**

1. Plaintiff Korg USA, Inc. ("Korg") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business within the Eastern District of New York at 316 South Service Road, Melville, NY 11747-3201.

2. Defendant Mesa/Boogie, Ltd. ("Mesa") is a corporation organized and existing under the laws of the State of California with its principal place of business within the District of California at 1317 Ross Street, Petaluma, CA 94954.

3. Defendant Randall Smith ("Smith") is the owner of U.S. Patent 6,724,897 ("the '897 patent"), issued April 20, 2004. On information and belief Randall Smith is a resident of California. On information and belief, defendant Smith is the president and principal owner of Mesa/Boogie.

4. Defendant Mesa is the owner of U.S. Trademark Reg. No. 2,674,057 – RECT-O for "amplifier for musical instrument," registered January 14, 2003 ("The Mesa Mark").

3. Both Korg and Mesa sell guitar amplifiers and other related music products. Such

products are commonly employed in the music industry for both professional and private use.

#### JURISDICTION AND VENUE

4. This is a complaint for a declaratory judgment under 28 U.S.C. §§ 2201 et seq.
5. This court has jurisdiction over the subject matter of this action under 28 U.S.C. § 2201.
6. On information and belief, Mesa conducts business in New York and in this District.
7. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c).
8. Mesa, through one or more agents or representatives of the company, has made a direct written allegation of infringement against Korg on the '897 patent. Korg has a reasonable apprehension of being sued by Mesa for infringement of the '897 patent.
9. Mesa, through one or more agents or representatives of the company, has made a direct written allegation of infringement of The Mesa Mark against Korg. Korg has a reasonable apprehension of being sued by Mesa for infringement of The Mesa Mark.

#### COUNTY PATENT

10. The allegations of ¶¶ 1-9 are incorporated and realleged as if contained here in their entirety.
11. Plaintiff Korg brings this action under Title 28, United States Code, for a declaratory judgment, to declare that the claims of United States Letters Patent No. 6,724,897 are invalid and not infringed.
12. Korg is the exclusive United States distributor of guitar amplifiers made by Marshall Amplification, plc of Great Britain. Mesa has alleged that the Marshall "Mode Four" amplifier directly infringes one or more claims of the '897 patent.

13. The claims of the '897 patent are not infringed by any amplifier apparatus made, used, offered for sale, sold or advertised by Korg.

14. The claims of the '897 patent are invalid for being anticipated by prior art under 35 U.S.C. § 102.

15. The claims of the '897 patent are invalid for being obvious in view of prior art under 35 U.S.C. § 103.

16. The claims of the '897 patent are invalid for failing to comply with the requirements of 35 U.S.C. § 112.

### COUNT II TRADEMARK

17. The allegations of ¶¶ 1-9 are incorporated and realleged as if contained here in their entirety.

18. Plaintiff Korg brings this action under Title 28, United States Code, for a declaratory judgment, to declare that Korg does not infringe The Mesa Mark.

19. Mesa has alleged that Korg's use of the term "recto" in connection with its guitar amplifiers infringes The Mesa Mark.

20. Korg does not display the term "recto" as a mark to identify any product or service.

21. Korg does not display the term "recto" on any package or packaging for any product or service.

22. Korg does not display the term "recto" in any sales or advertising materials to promote the display of any product or service.

23. The only display of "recto" which occurs in connection with any product or service distributed by Korg constitutes fair descriptive use of the term pursuant to 15 U.S.C. § 1115(b)(4).

24. Korg does not infringe The Mesa Mark in connection with its use of any similar

term in connection with its musical products.

**COUNT III – CANCELLATION OF Reg. No. 2,674,057**

25. The allegations of ¶¶ 1- 23 are incorporated and realleged as if contained here in their entirety.

26. On information and belief, the term “recto” is displayed as a generic term by Registrant, is not a term which is entitled to trademark protection, and Mesa Boogie is not entitled to own and maintain Reg. No. 2,674,057.

27. On information and belief, Mesa Boogie did not have valid specimens of use of the term “rect-o” showing that it displayed this term as a mark to identify the source or origin of “amplifier for a musical instrument” as of the date it filed the application which matured to Reg. No. 2,674,057 – RECT-O.

28. On information and belief, Mesa Boogie did not have valid specimens of use of the term “rect-o” showing that it displayed this term as a mark to identify the source or origin of “amplifier for a musical instrument” as of the date it filed its Statement of Use in connection with the application which matured to Reg. No. 2,674,057 – RECT-O.

**WHEREFORE, KORG PRAYS FOR A JUDGMENT:**

a. Adjudging and declaring United States Letters Patent No. 6,724,897 to be not infringed by any amplifier apparatus made, used, offered for sale, sold or advertised by Korg;

b. Adjudging and declaring that the claims of United States Letters Patent No. 6,724,897 are invalid;

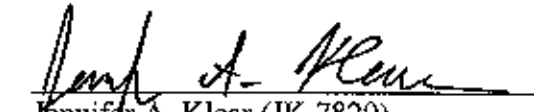
d. Adjudging and declaring that Korg does not infringe United States U.S. Trademark Reg. No. 2,674,057 – RECT-O;

e. Adjudging and declaring that Mesa Boogie is not entitled to own or maintain Federal Trademark Reg. No. 2,674,057 – RECT-O and ordering that the United States Patent and

Trademark Office cancel Reg. No. 2,674,057 -- RECT-O.

e. Awarding costs of this suit, and reasonable attorneys' fees, to plaintiff Korg; and granting of such other and further relief as the Court deems just and proper.

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