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3:04-CV-02478 DIRECTED ELECTRONICS V. ETRONICS INC

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 DIRECTED ELECTRONICS, INC., a
California corporation

12 Plaintiff,

13 v.

14 ETRONICS, INC., a New York corporation

15 Defendant.

Case No. **04 CV 2478 JM** (AJB)

COMPLAINT FOR:

- 1) Federal Patent Infringement (35 U.S.C. § 271);
- 2) Federal Trademark Infringement (15 U.S.C. § 1114);
- 3) Federal Unfair Competition, False Designation of Origin, and Dilution (15 U.S.C. § 1125(2));
- 4) Tortious Interference with Contract;
- 5) State Unfair Competition (Cal. Bus. & Prof. Code § 17200);
- 6) State Trademark Infringement (Cal. Bus. & Prof. Code § 14335);
- 7) Dilution and Injury to Business Reputation (Cal Bus. & Prof. Code §§ 14320, 14330); and
- 8) Common Law Unfair Competition

JURY TRIAL DEMANDED

ORIGINAL

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1 Plaintiff DIRECTED ELECTRONICS, INC., (“DIRECTED”) alleges as follows:

2 **THE PARTIES**

3 1. DIRECTED is a California corporation with its principal place of business at
4 One Viper Way, Vista, California 92083. DIRECTED is engaged in the business of
5 designing, manufacturing and selling, through non-exclusive authorized dealers, vehicle
6 security and remote start systems including the VIPER®, CLIFFORD®, AVITAL® and
7 PYTHON® systems.

8 2. DIRECTED is informed and believes that DEFENDANT ETRONICS, INC.
9 (hereinafter “DEFENDANT”) is a New York corporation doing business as Supreme Video and
10 also as Etronics and is engaged in the business of selling goods in California and throughout the
11 United States through the website address etronics.com and at the physical addresses of 31 Essex
12 Street, New York, New York 10002 and/or 216 Maspeth Avenue, Brooklyn, New York 11211.

13 **JURISDICTION AND VENUE**

14 3. Pursuant to 28 U.S.C. sections 1331 and 1338(a), this Court has original and
15 exclusive jurisdiction in this matter over each of the following claims:

- 16 a. Patent infringement pursuant to 35 U.S.C. section 27;
17 b. Trademark infringement pursuant to 15 U.S.C. sections 1051, *et*
18 *seq.*; and
19 c. False designation of origin, false description or representation, and
20 dilution in violation of the Lanham Act section 43(a), 15 U.S.C.
21 section 1125(a).

22 4. Pursuant to 28 U.S.C. sections 1331 and 1338(b), this Court has original
23 jurisdiction in this matter over each of the following claims:

- 24 a. Unfair competition; and
25 b. Unfair business practices in violation of California’s Business and
26 Professions Code section 17200.

27 5. Pursuant to 28 U.S.C. section 1367, this Court has supplemental jurisdiction in
28 this matter over each of the following claims:

- a. State Trademark Infringement in violation of California Business & Professions Code section 14335;
- b. State dilution and injury to business reputation in violation of California Business & Professions Code section 14330; and
- c. Interference with contract.

6. Venue properly lies in this district pursuant to 28 U.S.C. section 1391(a)(2).

DIRECTED is informed and believes that DEFENDANT is selling and/or offering to sell within this judicial district vehicle security and remote start systems which infringe one or more of the patents identified herein.

GENERAL ALLEGATIONS

7. DIRECTED has been engaged in the business of manufacturing and distributing vehicle security systems for more than 14 years and was a pioneer in the field of manufacturing and distributing vehicle remote start products. DIRECTED's CLIFFORD®, PYTHON®, VIPER® and other vehicle security/remote start products have a reputation in the industry for being of extremely high quality.

8. DIRECTED also is engaged in the business of manufacturing and distributing vehicle audio systems and components under the trademarks DIRECTED®, PRECISION POWER™, ADS®, and ORION®. DIRECTED's car audio systems and components have a reputation in the industry for being of extremely high quality.

Trademarks

9. DIRECTED is the owner of and is using the following federally registered trademarks to promote, distinguish and sell its vehicle security systems:

- CLIFFORD®, United States Trademark Registration No. 1,674,046, issued on February 4, 1992, with first use in commerce claimed as of June 1979.
- AVITAL®, United States Trademark Registration No. 1717916 issued on September 22, 1992.

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- 1 • PYTHON®, United States Trademark Registration No. 1,822,606,
2 issued on February 22, 1994, with first use in commerce claimed as
3 of April 16, 1986.
- 4 • VIPER®, United States Trademark Registration No. 1,756,693,
5 issued on March 9, 1993.
- 6 • ORION®, United States Trademark Registration No. 2,763,024
7 issued on September 16, 2003, with first use in commerce claimed as
8 of January 1, 1991.
- 9 • ADS®, United States Trademark Registration No. 1,231,758 issued
10 on March 22, 1983, with first use in commerce claimed as of
11 December 31, 1969.
- 12 • DIRECTED®, United States Trademark Registration No. 2,740,977
13 issued on July 29, 2003, with first use in commerce claimed as of
14 May 28, 1999.
- 15 • DEI®, United States Trademark Registration No. 1,873,747, issued
16 on January 17, 1995.

17 10. DIRECTED additionally is the owner and uses the trademark MATRIX in
18 connection with its vehicle security systems and the mark PRECISION POWER
19 INTERNATIONAL in connection with its vehicle audio products. Federal registrations of these
20 marks are pending.

21 11. Hereinafter, DIRECTED's trademarks identified above shall be referred to
22 collectively as "DIRECTED's trademarks."

23 12. DIRECTED is informed and believes that DIRECTED, either itself or its
24 predecessor-in-interest, has continually promoted the sale, through interstate commerce, of its
25 vehicle security, remote start and vehicle audio products bearing some or all of the above
26 trademarks since the claimed first use of such marks. Among other things, DIRECTED's
27 trademarks are placed on its product packaging, on its product brochures and pamphlets, on
28 banners and window decals, and on miscellaneous promotional merchandise including cups,

1 coffee mugs, posters, t-shirts, etc. DIRECTED also uses its trademarks in television, newspaper
2 and magazine advertisements.

3 13. As a result of DIRECTED's advertising, marketing and other promotional efforts,
4 DIRECTED's trademarks have become widely known and extremely valuable goodwill has
5 developed in each. By virtue of this advertising, marketing and promotion, and the extensive use
6 of these marks, the DIRECTED trademarks also have become distinctive of DIRECTED's
7 goods, and are closely identified with DIRECTED's goodwill and reputation.

8 **Patents**

9 14. Many of the components of DIRECTED's CLIFFORD®, AVITAL®,
10 PYTHON® and VIPER® lines of vehicle security and remote start systems are covered by
11 utility patents issued by the United States Patent and Trademark Office.

12 15. DIRECTED owns or is a licensee of the following active patents, among others,
13 relating to vehicle security and/or remote start systems:

- 14 • Electronically programmable remote control for vehicle security
15 system, United States Patent No. 5,146,215 issued September 8,
16 1992.
- 17 • Electronically programmable remote control access system, United
18 States Patent No. 5,650,774 issued July 22, 1997.
- 19 • Multi-Featured Security System With Self-Diagnostic Capability,
20 United States Patent No. 4,887,064 issued December 12, 1989.
- 21 • Electronic Vehicle Security System, United States Patent No.
22 5,157,375 issued October 20, 1992.
- 23 • Advanced Automotive Automation and Security System, United
24 States Patent No. 5,534,845 issued July 9, 1996.
- 25 • Advanced Method of Indicating Incoming Threat Level to an
26 Electronically Secured Vehicle and Apparatus Therefore, United
27 States Patent No. 5,646,591 issued July 8, 1997.

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- 1 • Vehicle Alarm Case Module, United States Patent No. Des. 345,711
2 issued April 5, 1994.
- 3 • Motion Sensitive Security System, United States Patent No.
4 4,584,569 issued April 22, 1986 (Reexamination No. B1 4,584,569
5 issued June 19, 1990).
- 6 • Method of Indicating the Threat Level of an Incoming Shock to an
7 Electronically Secured Vehicle and Apparatus Therefore, United
8 States Patent No. 5,532,670 issued July 2, 1996.
- 9 • Remote Control Transmitter, United States Patent No. Des. 419,474
10 issued January 25, 2000.
- 11 • Siren, United States Patent No. 345,317 issued March 22, 1994.
- 12 • Car Alarm Having A Soft Chirp Arming Signal, United States Patent
13 No. 5,572,185 issued November 5, 1996.
- 14 • User-Programmable Voice Notification Device for Security Alarm
15 Systems, United States Patent No. 5,245,694 issued September 14,
16 1993.
- 17 • Advanced Embedded Code Hopping System, United States Patent
18 No. 5,872,519 issued February 16, 1999.
- 19 • Alarm Sensor Multiplexing, United States Patent No. 5,783,989
20 issued July 21, 1998.

21 16. DIRECTED's CLIFFORD®, AVITAL®, PYTHON® and VIPER® products are
22 covered by one or more claims of the above listed patents.

23 17. DIRECTED is informed and believes that sellers and purchasers of
24 DIRECTED's CLIFFORD®, AVITAL®, PYTHON® and VIPER® products have actual
25 or constructive notice of the applicable patents. For example, DIRECTED gives notice to
26 the public of the patents covering its vehicle security systems by placing a card or piece of
27 paper in each product box which lists all of DIRECTED's patents by number and states that
28 "This product is covered by one or more of the following U.S. patents...."

1 **Authorized Distribution Only**

2 18. DIRECTED permits its CLIFFORD®, AVITAL®, PYTHON® and VIPER®
3 vehicle security and remote start systems to be advertised, sold and installed only by its
4 contractually authorized dealers. DIRECTED's dealers are trained, supported and monitored by
5 DIRECTED and its representatives. DIRECTED's dealers are chosen, in part, because they have
6 appropriate facilities and installation equipment and because they have skilled and trained
7 vehicle security system installers.

8 19. DIRECTED has expended, and continues to expend, substantial financial
9 and other resources in an effort to control the quality of the installation of its vehicle
10 security and remote start products. In addition to being highly selective when choosing its
11 dealers, DIRECTED spends significant time, effort and money educating its dealers with
12 respect to DIRECTED's products, and training its dealers with respect to the installation of
13 its vehicle security systems. DIRECTED, at considerable expense, further provides its
14 dealers with "real-time" telephone support and access to computerized information
15 regarding the detailed electrical systems of, and installation and wiring requirements for,
16 numerous domestic and foreign automobiles sold in the United States.

17 20. DIRECTED also visually monitors its authorized dealers from time to time
18 to make sure they are maintaining the necessary quality standards for the sale and
19 installation of DIRECTED's products.

20 21. DIRECTED often terminates authorized dealers if it finds they have violated the
21 terms of their agreement.

22 22. If a CLIFFORD®, AVITAL®, PYTHON® or VIPER® vehicle security system is
23 not installed properly, it will not adequately protect against theft of the vehicle.

24 23. If a CLIFFORD®, AVITAL®, PYTHON® or VIPER® vehicle remote start
25 system is not installed properly, it will not properly turn the vehicle on and off.

26 24. More importantly, faulty installation of security or remote start systems may
27 interfere with the proper functioning of the vehicle and, as a result, pose a safety risk to the
28 customer and others, including creating a fire hazard. It is for these reasons, among others, that

1 DIRECTED spends considerable time, effort and resources educating, training and supporting its
2 authorized dealers with respect to the sale and installation of its CLIFFORD®, AVITAL®,
3 PYTHON® and VIPER® vehicle security and remote start systems.

4 25. Maintaining control over the quality of the installation of CLIFFORD®,
5 AVITAL®, PYTHON® and VIPER® vehicle security and remote start systems is further crucial
6 to DIRECTED because the failure of the system to operate properly -- even though that failure is
7 due to faulty installation as opposed to a defect in the product itself -- will cause the consumer to
8 believe that the product itself is defective. The goodwill and reputation, that DIRECTED has
9 spent substantial time, effort and money developing, will thereby be tarnished and damaged,
10 particularly where the failure of the system to operate properly causes a theft of either the
11 consumer's vehicle or personal property located inside the vehicle. It is for this additional
12 reason, as well as those stated above, that in addition to providing extensive training for its
13 authorized dealers, DIRECTED contractually obligates its authorized dealers to install the
14 vehicle security and remote start systems on the dealer's premises, occasionally visits its
15 authorized dealers to observe the quality of installation of its products, makes available to its
16 authorized dealers, by telephone, the technical representatives capable of assisting the dealers
17 with installation problems as they arise, and provides the computer software to its authorized
18 dealers containing the electronic circuitry for numerous domestic and foreign vehicles sold in the
19 United States and abroad.

20 26. To further maintain control over the quality of its product installation,
21 DIRECTED does not permit its authorized dealers to sell DIRECTED's CLIFFORD®,
22 AVITAL®, PYTHON® or VIPER® vehicle security and remote start systems to anyone who is
23 not an ultimate consumer, and they are not permitted to sell CLIFFORD®, AVITAL®,
24 PYTHON® or VIPER® vehicle security and remote start systems to an ultimate consumer
25 unless the alarm/remote start is installed by the authorized dealer on the authorized dealer's
26 premises.

27 27. Like its vehicle security and remote start products, DIRECTED uses only
28 contractually authorized dealers to distribute its vehicle audio products, including its ADS®,

1 ORION® and PRECISION POWER INTERNATIONAL™ lines. By contract, these dealers are
2 permitted to sell DIRECTED's vehicle audio products only to end use consumers, but the
3 products may be sold with or without installation.

4 28. At the time of the actions complained of herein, DEFENDANT was not an
5 authorized dealer of any DIRECTED products.

6 **Warranty**

7 29. As one of its primary marketing tools, DIRECTED includes with each
8 CLIFFORD®, AVITAL®, PYTHON® and VIPER® vehicle security/remote start system its
9 limited lifetime consumer warranty. DIRECTED will not honor its limited lifetime warranty on
10 products purchased from unauthorized dealers.

11 30. DIRECTED's vehicle security/remote start warranty specifically states in the
12 warranty that it is valid if "the unit was professionally installed and serviced by an authorized
13 Directed dealer." Thus, anyone purchasing a CLIFFORD®, AVITAL®, PYTHON®, or
14 VIPER® vehicle security/remote start system from an unauthorized dealer or an authorized
15 dealer who sold the product without installation does not receive any warranty or guarantee of
16 the product from DIRECTED.

17 31. DIRECTED's ongoing business depends heavily upon the proper functioning of
18 its CLIFFORD®, AVITAL®, PYTHON® and VIPER® vehicle security/remote start systems in
19 vehicles in which it is installed, on the valuable reputation it has developed as a result of the
20 quality of its product and its installation, and on the goodwill it has developed through the sale,
21 promotion and marketing of its products and its trademarks. The limited lifetime warranty has
22 further contributed to the excellent reputation DIRECTED enjoys with the general public with
23 respect to its vehicle security and remote start products.

24 32. On its ADS®, ORION®, and PRECISION POWER INTERNATIONAL™
25 vehicle audio products, DIRECTED provides a two year limited consumer warranty if the
26 consumer purchased the product with installation from an authorized dealer. If the consumer
27 purchases the DIRECTED vehicle audio product without installation, DIRECTED provides a

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1 one year limited consumer warranty. DIRECTED will not honor its two year or one year limited
2 warranties on vehicle audio products purchased from unauthorized dealers.

3 33. DIRECTED has expended substantial time and money in making the general
4 public aware of the benefits of its warranties.

5 **Defendant's Conduct**

6 34. DIRECTED is informed and believes that, subsequent to the adoption and use by
7 DIRECTED of its DIRECTED trademarks, DEFENDANT, who is not a DIRECTED authorized
8 dealer, commenced advertising and marketing vehicle security and remote start systems by using
9 the trademarks to draw in customers. DIRECTED is informed and believes that DEFENDANT
10 is continuing to advertise using DIRECTED's registered trademarks.

11 35. DIRECTED is informed and believes that DEFENDANT has falsely represented
12 to the public through advertising with the CLIFFORD®, AVITAL®, PYTHON® and VIPER®
13 marks that DEFENDANT is authorized by DIRECTED to sell and/or advertise CLIFFORD®,
14 AVITAL®, PYTHON® and VIPER® products.

15 36. DIRECTED is informed and believes that, despite not being an authorized dealer,
16 DEFENDANT has sold and offered for sale CLIFFORD®, AVITAL®, PYTHON® and/or
17 VIPER® vehicle security and remote start systems to end user customers and/or to distributors,
18 including within California.

19 37. DEFENDANT has sold CLIFFORD®, AVITAL®, PYTHON® and/or VIPER®
20 vehicle security and remote start systems uninstalled and, thus, without any knowledge, concern
21 or control as to whether the vehicle security or remote start system is ever installed, and, if so,
22 whether the system is installed correctly.

23 38. DIRECTED is informed and believes that DEFENDANT knows or by the
24 exercise of reasonable care should know that DIRECTED sells its CLIFFORD®, AVITAL®,
25 PYTHON® and VIPER® vehicle security and remote start systems through authorized dealers
26 only and they are permitted to resell only with installation. This fact is generally known in the
27 vehicle security industry. And, DIRECTED expressly informed DEFENDANT that
28 DIRECTED's CLIFFORD®, AVITAL®, PYTHON® and VIPER® vehicle security and remote

1 start systems are sold only through authorized dealers and only to end users in an installed
2 condition. DIRECTED has demanded that DEFENDANT stop selling DIRECTED's
3 CLIFFORD®, AVITAL®, PYTHON® and VIPER® vehicle security and remote start systems
4 and using its registered trademarks to promote the sale of products. DIRECTED is informed and
5 believes that DEFENDANT has refused to stop his improper activities and continues to use
6 DIRECTED's registered trademarks and sell its products without DIRECTED's authority or
7 consent.

8 39. The unauthorized promotion and sale of DIRECTED's CLIFFORD®,
9 AVITAL®, PYTHON® and VIPER® vehicle security and remote start systems by
10 DEFENDANT, his failure to maintain control over the quality of the installation of the systems,
11 and his use of DIRECTED's registered trademarks and patented materials without DIRECTED's
12 authorization or consent, have caused damage to DIRECTED's reputation and goodwill and to
13 the value of DIRECTED's CLIFFORD®, AVITAL®, PYTHON®, VIPER®, and other
14 trademarks and its patents.

15 40. DIRECTED is informed and believes that DEFENDANT is selling DIRECTED's
16 ORION®, ADS®, and PRECISION POWER INTERNATIONAL™ vehicle audio products
17 without authorization, including using DIRECTED's trademarks to advertise such products.
18 DIRECTED is further informed and believes that DEFENDANT is not informing consumers
19 purchasing DIRECTED's audio products from DEFENDANT that such products are not covered
20 by warranty, but rather is fostering the false belief by consumers that products purchased from
21 DEFENDANT are covered by DIRECTED's warranty, which they are not.

22 **First Cause of Action**

23 **Federal Patent Infringement**

24 **35 U.S.C. Section 271**

25 41. DIRECTED refers to and incorporates herein by reference paragraphs 1
26 through 40 of this Complaint as though set forth in full herein.

27 42. DIRECTED sells its CLIFFORD®, AVITAL®, PYTHON® and VIPER®
28 vehicle security and remote start systems only through authorized dealers who have entered

1 into a written agreement with DIRECTED which expressly prohibits the authorized dealer
2 from reselling CLIFFORD®, AVITAL®, PYTHON® and VIPER® products to anyone
3 other than the end user in an installed condition. DIRECTED is informed and believes that
4 the terms and conditions of DIRECTED's authorized dealer agreements, including the
5 resale restrictions, are known in the car alarm retail industry and are or should in the
6 exercise of reasonable care be known to DEFENDANT. True and correct copies of
7 DIRECTED's form authorized dealer agreement, as it currently exists, is incorporated
8 herein by reference and attached hereto as Exhibit A.

9 43. DEFENDANT has infringed and is believed to be directly infringing,
10 literally or under the doctrine of equivalents, Patent Nos. 5,146,215 (electronically
11 programmable remote control for vehicle security system); 5,650,774 (electronically
12 programmable remote control access system); 4,887,064 (multi-featured security system
13 with self-diagnostic capability); 5,157,375 (electronic vehicle security system); 5,534,845
14 (advanced automotive and security system); and 5,646,591 (advanced method of indicating
15 threat), within the United States in violation of 35 U.S.C. section 271(a) by selling and/or
16 offering for sale within this judicial district, without license from DIRECTED, products
17 which incorporate and utilize the inventions and/or designs claimed in the patents listed
18 previously in this paragraph.

19 44. DIRECTED is informed and believes that DEFENDANT has contributed to
20 and is contributing to the infringement of Patent Nos. 5,146,215 (electronically
21 programmable remote control for vehicle security system); 5,650,774 (electronically
22 programmable remote control access system); 4,887,064 (multi-featured security system
23 with self-diagnostic capability); 5,157,375 (electronic vehicle security system); 5,534,845
24 (advanced automotive and security system); and 5,646,591 (advanced method of indicating
25 threat) in violation of 35 U.S.C. section 271(c). DIRECTED is informed and believes that
26 DEFENDANT has induced and is continuing to induce one or more of DIRECTED's
27 authorized dealers and/or end users to infringe the patents listed previously in this
28 paragraph in violation of 35 U.S.C. § 271(b).

1 45. DIRECTED has no adequate remedy at law and is, therefore, entitled to a
2 preliminary and permanent injunction prohibiting further infringement by DEFENDANT.

3 46. DEFENDANT's infringing activities have been and are willful and
4 deliberate. DIRECTED is entitled to recover treble damages pursuant to 35 U.S.C. section
5 284, reasonable attorneys' fees and expenses of litigation pursuant to 35 U.S.C. section 285,
6 and prejudgment interest pursuant to 35 U.S.C. section 284.

7 47. As a result of DEFENDANT's infringing activities, DIRECTED has been
8 damaged in an amount to be proved at trial, but believed to be in excess of \$100,000. At a
9 minimum, DIRECTED is entitled to recover a reasonable royalty for the acts of
10 infringement by DEFENDANT.

11 **Second Cause of Action**

12 **Federal Trademark Infringement**

13 **15 U.S.C. Section 1114**

14 48. DIRECTED refers to and incorporates herein by reference paragraphs 1
15 through 47 of this Complaint as though set forth in full herein.

16 49. DEFENDANT has been using, in interstate commerce, DIRECTED's
17 registered trademarks, including CLIFFORD®, AVITAL®, VIPER®, and PYTHON®,
18 without DIRECTED's consent, in connection with the sale, offering for sale, distribution
19 and/or advertising of vehicle security and remote start systems, including the unauthorized
20 sale and offering for sale of vehicle security and remote start systems manufactured by
21 DIRECTED.

22 50. The use of DIRECTED's trademarks in connection with the promotion, sale,
23 offering for sale and advertising of vehicle security and remote start systems by
24 DEFENDANT likely causes confusion, mistake and/or deception, and has caused
25 confusion, mistake and/or deception, in that such use is likely to, and does, deceive the
26 public into believing that there is an association between DIRECTED and DEFENDANT,
27 that the CLIFFORD®, AVITAL®, VIPER®, or PYTHON® product the consumer
28 purchases is a complete product with all of its component parts and literature, that the

1 control DIRECTED exercises over the quality of the installation of the CLIFFORD®,
2 AVITAL®, VIPER®, and PYTHON® vehicle security and remote start systems is being
3 exercised in connection with the purchase and installation of such a security/remote start
4 system from DEFENDANT, and that DIRECTED's standard warranties and guarantees
5 apply, when in fact there is no such association, there is no quality control of the product by
6 DEFENDANT, there is no such exercise of control by DIRECTED over the installation of
7 the vehicle security/remote start system, and DIRECTED's limited lifetime warranty does
8 not apply.

9 51. To further the confusion, mistake and/or deception caused by
10 DEFENDANT's unauthorized use of DIRECTED's registered trademarks, DIRECTED is
11 informed and believes that DEFENDANT, when selling CLIFFORD®, AVITAL®,
12 VIPER®, and PYTHON® products, includes therewith DIRECTED's standard limited
13 lifetime warranty. In fact, the limited lifetime warranty is not applicable because the
14 product is not being sold and/or installed by a DIRECTED authorized dealer.

15 52. DEFENDANT has been using, in interstate commerce, DIRECTED's
16 registered trademarks, including ADS® and ORION®, without DIRECTED's consent, in
17 connection with the sale, offering for sale, distribution and/or advertising of vehicle audio
18 components manufactured by DIRECTED.

19 53. The use of DIRECTED's trademarks in connection with the promotion, sale,
20 offering for sale and advertising of vehicle audio components by DEFENDANT likely
21 causes confusion, mistake and/or deception, and has caused confusion, mistake and/or
22 deception, in that such use is likely to, and does, deceive the public into believing that there
23 is an association between DIRECTED and DEFENDANT, and that DIRECTED's standard
24 warranties and guarantees apply, when in fact there is no such association and
25 DIRECTED's limited warranty does not apply.

26 54. To further the confusion, mistake and/or deception caused by
27 DEFENDANT's unauthorized use of DIRECTED's registered trademarks, DIRECTED is
28 informed and believes that DEFENDANT, when selling ADS® and ORION® products,

1 includes therewith DIRECTED's standard limited warranty. In fact, the limited warranty is
2 not applicable because the product is not being sold and/or installed by a DIRECTED
3 authorized dealer.

4 55. DEFENDANT's unauthorized use of DIRECTED's trademarks in the
5 advertising of vehicle security, remote start and vehicle audio products constitutes unlawful
6 infringement under the Lanham Act, 15 U.S.C. section 1114.

7 56. DEFENDANT's acts herein alleged were willful, entitling DIRECTED to
8 recover DEFENDANT's profits, damages sustained by DIRECTED, treble damages and
9 costs.

10 57. As a result of DEFENDANT's improper and unauthorized activities,
11 DIRECTED has suffered, and will continue to suffer damages in an amount to be proved at
12 trial, but believed to be in excess of \$100,000.

13 58. DIRECTED has incurred and will continue to incur attorneys' fees in the
14 prosecution of this action and is entitled to recover such fees pursuant to 15 U.S.C. section
15 1117(a).

16 59. Unless and until this Court restrains and enjoins DEFENDANT from using
17 DIRECTED's trademarks and from selling, offering for sale and advertising DIRECTED's
18 CLIFFORD®, AVITAL®, VIPER® and PYTHON® vehicle security and remote start
19 systems, DEFENDANT will continue his unauthorized and improper activities.

20 **Third Cause of Action**

21 **Federal Unfair Competition/False Designation of Origin**

22 **15 U.S.C. Section 1125(a)**

23 60. DIRECTED refers to and incorporates herein by reference paragraphs 1
24 through 59 of this Complaint as though set forth in full herein.

25 61. DEFENDANT's unauthorized use of DIRECTED's trademarks and patented
26 technology, and DEFENDANT's express or implied misrepresentations concerning his
27 affiliation with DIRECTED and/or the applicability of DIRECTED's warranties in
28 connection with the promotion, offering for sale and sale of vehicle security systems,

1 remote start systems, and/or audio components constitutes a false designation of origin
2 and/or false and misleading representations, works and symbols in violation of section
3 43(a) of the Lanham Act, 15 U.S.C. section 1125(a).

4 62. As a result of DEFENDANT's improper and unauthorized activities,
5 DIRECTED has suffered and will suffer damages in an amount to be proved at trial, but
6 believed to be in excess of \$100,000.

7 63. DIRECTED has incurred and will continue to incur attorneys' fees and costs
8 in the prosecution of this lawsuit.

9 **Fourth Cause of Action**

10 **Tortious Interference with Contract**

11 64. DIRECTED refers to and incorporates herein by reference paragraphs 1
12 through 63 of this Complaint as though set forth in full herein.

13 65. DIRECTED is informed and believes that DEFENDANT knows, or by the
14 exercise of reasonable care should know, that DIRECTED sells CLIFFORD®, AVITAL®,
15 VIPER®, and PYTHON® products only to authorized dealers who are contractually
16 obligated to resell the products in an installed condition, to ultimate consumers, and over
17 whom DIRECTED can exercise control with respect to the content and installation of its
18 products.

19 66. DIRECTED is informed and believes that DEFENDANT knows, or by the
20 exercise of reasonable care should know, that DIRECTED sells ORION®, ADS®, and
21 PRECISION POWER INTERNATIONAL™ products only to authorized dealers who are
22 contractually obligated to resell the products to ultimate consumers, and over whom
23 DIRECTED can exercise control with respect to the content and installation of its products.

24 67. DIRECTED is informed and believes that by purchasing DIRECTED
25 products for resale from parties other than DIRECTED, DEFENDANT intentionally,
26 recklessly, or negligently committed acts designed to cause and encourage the breach of
27 contract by one of more of DIRECTED's authorized dealers.

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1 68. DEFENDANT's sale of CLIFFORD®, AVITAL®, PYTHON® and
2 VIPER® vehicle security and remote start systems, which are not installed by an authorized
3 dealer and which carry no warranty as a result of not being sold and installed by an
4 authorized dealer, in addition to interfering with DIRECTED's contracts with its authorized
5 dealers, will injure the goodwill associated with DIRECTED's CLIFFORD®, AVITAL®,
6 PYTHON®, VIPER® and related trademarks, and the valuable reputation DIRECTED has
7 developed with respect to vehicle security and remote start systems, all to DIRECTED's
8 damage in an amount to be proved at trial but believed to be in excess of \$100,000.

9 69. DEFENDANT's sale of ORION®, ADS®, and PRECISION POWER
10 INTERNATIONAL™ audio components, which carry no warranty as a result of not being
11 sold by an authorized dealer, in addition to interfering with DIRECTED's contracts with its
12 authorized dealers, will injure the goodwill associated with DIRECTED's trademarks, and
13 the valuable reputation DIRECTED has developed with respect to vehicle audio
14 components, all to DIRECTED's damage in an amount to be proved at trial but believed to
15 be in excess of \$100,000.

16 70. DIRECTED is informed and believes that each of the acts and omissions by
17 DEFENDANT complained of in this cause of action constitutes an act done willfully and
18 with malice, thereby supporting the award of exemplary damages.

19 **Fifth Cause of Action**

20 **Unfair Competition/Unfair Business Practices**

21 **Cal. Bus. & Prof. Code Section 17200**

22 71. DIRECTED refers to and incorporates herein by reference paragraphs 1
23 through 70 of this Complaint as though set forth in full herein.

24 72. DEFENDANT's unauthorized sale of DIRECTED's CLIFFORD®,
25 AVITAL®, PYTHON® and VIPER® vehicle security and remote start systems and
26 ADS®, ORION®, and PRECISION POWER INTERNATIONAL™ audio components,
27 DEFENDANT's representations, express or implied, concerning any affiliation with
28 DIRECTED, and/or DEFENDANT's express or implied representations concerning the

1 applicability of DIRECTED's limited warranties in connection with the sale of
2 DIRECTED's products constitute unfair and fraudulent business practices within the
3 meaning of California's Unfair Trade Practices Act, California Business & Professions
4 Code sections 17200 *et. seq.*

5 73. DEFENDANT's unfair and deceptive business practices have damaged
6 DIRECTED in an amount to be proved at trial, but believed to be in excess of \$100,000.

7 74. DEFENDANT's unfair and deceptive business practices have and will
8 continue to injure DIRECTED, its authorized dealers and the public unless and until they
9 are enjoined by this Court.

10 **Sixth Cause of Action**

11 **State Trademark Infringement**

12 **Cal. Bus. & Prof. Code Section 14335**

13 75. DIRECTED refers to and incorporates herein by reference paragraphs 1
14 through 74 of this Complaint as though set forth in full herein.

15 76. DEFENDANT, without DIRECTED's authority or consent, has used, and
16 continues to use, DIRECTED's registered and common law trademarks for the purpose of
17 enhancing the commercial value of, selling and soliciting the sale of products, merchandise
18 and goods in California, in violation of California Business and Professions Code section
19 14335.

20 77. DEFENDANT's acts and omissions will continue unless and until enjoined
21 by this Court.

22 **Seventh Cause of Action**

23 **Dilution and Injury to Business Reputation**

24 **Cal. Bus. & Prof. Code Section 14330**

25 78. DIRECTED refers to and incorporates herein by reference paragraphs 1
26 through 77 of this Complaint as though set forth in full herein.

27 79. DIRECTED's registration under Title 15 of the United States Code and
28 extensive, prominent and continued promotion and use of its CLIFFORD®, AVITAL®,

1 PYTHON®, ADS®, ORION®, and VIPER®, trademarks have caused these trademarks to
2 become distinctive in the mind of the public, and have further caused DIRECTED's
3 products, including the high quality of those products, to be distinguished from the products
4 of others.

5 80. DEFENDANT's unauthorized use of DIRECTED's registered trademarks
6 and/or unauthorized sale of DIRECTED's CLIFFORD®, AVITAL®, PYTHON® and
7 VIPER® vehicle security and remote start systems and DIRECTED's ADS® and ORION®
8 audio components, dilutes the distinctive quality, and tarnishes the valuable image, of
9 DIRECTED's trademarks, and, further, creates a likelihood of injury to the business
10 reputation of DIRECTED all in violation of California Business and Professions Code
11 section 14330.

12 81. DEFENDANT's acts have harmed DIRECTED in an amount to be proved at
13 trial, but believed to be in excess of \$100,000.

14 82. DEFENDANT's acts and omissions will continue unless and until enjoined
15 by this Court.

16 **Eighth Cause of Action**

17 **Common Law Unfair Competition**

18 83. DIRECTED refers to and incorporates herein by reference paragraphs 1
19 through 82 of this Complaint as though set forth in full herein.

20 84. DEFENDANT has attempted to and has obtained economic benefit from,
21 and has further competed with DIRECTED's authorized dealers acting within the scope of
22 such authorization and taken business away from them, and consequently from
23 DIRECTED, by trading upon the goodwill and reputation that DIRECTED has established
24 through the expenditure of substantial sums of time, effort and money. DEFENDANT has,
25 without authorization, used DIRECTED's registered trademarks and patented material to
26 promote the sale of vehicle security systems, and/or he has made misrepresentations to
27 customers with respect to his affiliation and/or association with DIRECTED, and/or he has
28 made misrepresentations to customers concerning the applicability of DIRECTED's limited

1 lifetime warranty on DIRECTED CLIFFORD®, AVITAL®, PYTHON® and VIPER®
2 vehicle security and/or remote start systems which he has sold, and/or he has made
3 misrepresentations to customers concerning the applicability of DIRECTED's limited
4 consumer warranty on DIRECTED's ADS®, ORION® and PRECISION POWER
5 INTERNATIONAL stereo components which he has sold.

6 85. As a result of the acts and omissions of DEFENDANT as alleged herein,
7 DIRECTED has suffered, and will continue to suffer, monetary damages in an amount to be
8 proved at trial, but believed to be in excess of \$100,000. Additionally, DIRECTED has
9 incurred, and will incur, further attorney's fees and costs in connection with the prosecution
10 of this lawsuit against DEFENDANT.

11 86. DIRECTED is informed and believes that each of the acts and omissions by
12 DEFENDANT complained of in this cause of action constitutes an act done willfully and
13 with malice, thereby supporting the award of exemplary damages.

14 **PRAYER**

15 WHEREFORE, DIRECTED prays for relief as follows:

16 **As to the first, second, third, fifth, sixth, and seventh causes of action:**

17 87. For an injunction enjoining DEFENDANT, his agents, affiliates, employees, and
18 those persons in active concert or participation or privity with them who receive actual notice of
19 the order by personal service or otherwise, from infringing DIRECTED's patents, including but
20 not limited to the following: Patent Nos. 5,146,215 (electronically programmable remote control
21 for vehicle security system); 5,650,774 (electronically programmable remote control access
22 system); 4,887,064 (multi-featured security system with self-diagnostic capability); 5,157,375
23 (electronic vehicle security system); 5,534,845 (advanced automotive and security system); and
24 5,646,591 (advanced method of indicating threat);

25 88. For an injunction enjoining DEFENDANT, his agents, affiliates, employees, and
26 those persons in active concert or participation or privity with them who receive actual notice of
27 the order by personal service or otherwise, from selling or advertising DIRECTED's vehicle
28 security and/or remote start systems and/or audio components without authorization, or using

1 DIRECTED's CLIFFORD®, AVITAL®, PYTHON®, ADS®, ORION®, VIPER® or other
2 trademarks;

3 89. For an order requiring DEFENDANT to immediately cease all advertising
4 containing DIRECTED's CLIFFORD®, AVITAL®, PYTHON®, ADS®, ORION® and
5 VIPER® trademarks and immediately deliver such items to DIRECTED;

6 90. For an order requiring DEFENDANT to deliver to DIRECTED all CLIFFORD®,
7 AVITAL®, PYTHON® and VIPER® vehicle security and remote start systems within his
8 possession;

9 91. For an order precluding DEFENDANT from using any false designation of origin
10 or false description, including DIRECTED's CLIFFORD®, AVITAL®, PYTHON®, ADS®,
11 ORION® and VIPER® trademarks, that can, or is likely, to lead the consuming public, or
12 individual members thereof, to believe that any product manufactured, distributed or sold by
13 DEFENDANT is in any manner associated or connected with DIRECTED, or is sold, licensed,
14 warranted, sponsored, approved or authorized by DIRECTED;

15 92. For a judgment and order that DEFENDANT be required to supply DIRECTED
16 with a complete record of all transactions, agreement, and other activities involving or connected
17 with the purchase, making, using, or selling of infringing devices or activities;

18 93. For an order directing DEFENDANT to file with the Court and serve upon
19 DIRECTED's counsel within thirty days after entry of the order of injunction, a report setting
20 forth the manner and form in which the DEFENDANT has complied with the above specified
21 terms of injunction; and

22 94. For an order awarding to DIRECTED all of DEFENDANT's profits or gains of
23 any kind resulting from DEFENDANT's unauthorized sale and/or advertising of DIRECTED's
24 products, and/or DIRECTED's lost profits and other damages as may be proven, and/or a
25 reasonable royalty for DEFENDANT's unauthorized sales and/or advertising of DIRECTED's
26 products.

27 ///

28 ///

1 **As to all causes of action:**

2 95. For monetary damages in an amount according to proof; and

3 96. For interest on said damages at the legal rate from and after the date such
4 damages were incurred.

5 **As to the first, second, fourth, and eighth causes of action:**

6 97. For punitive and exemplary damages.


7 **As to all causes of action:**

8 98. For costs, including reasonable attorneys fees; and

9 99. For such other and further relief as the Court deems proper.

10
11 DATED: December 7, 2004

HENDERSON & CAVERLY LLP


12
13 By 
14 Kristen E. Caverly
15 Attorneys for Plaintiff Directed
16 Electronics, Inc.

17 **DEMAND FOR JURY TRIAL**

18
19 Plaintiff DIRECTED hereby demands trial by jury.

20 DATED: December 7, 2004

HENDERSON & CAVERLY LLP

21
22 By 
23 Kristen E. Caverly
24 Attorneys for Plaintiff Directed
25 Electronics, Inc.

AO 120 (3/85)

TO: Commissioner of Patents and Trademarks Washington, D.C. 20231	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT
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In compliance with the Act of July 19, 1952 (66 Stat. 814; 35 U.S.C. 290) you are hereby advised
 that a court action has been filed on the following patent(s) in the U.S. District Court:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
04cv2478JM(AJB)	12/14/04	United States District Court, Southern District of California
PLAINTIFF Directed Electronics, Inc		DEFENDANT Etronics, Inc
PATENT NO.	DATE OF PATENT	PATENTEE
1 See attached complaint		
2		
3		
4		
5		

In the above-entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY			
	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill	<input type="checkbox"/> Other Pleading
PATENT NO.	DATE OF PATENT	PATENTEE		
1				
2				
3				
4				
5				

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT		
CLERK	(BY) DEPUTY CLERK	DATE

Copy 1 - Upon initiation of action, mail this copy to Commissioner Copy 3 - Upon termination of action, mail this copy to Commissioner
 Copy 2 - Upon filing document adding patent(s), mail this copy to Commissioner Copy 4 - Case file copy

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

(a) PLAINTIFFS
Directed Electronics, Inc.
(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS
Etronics, Inc.
County of Residence of First Listed
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
FILED
DEC 14 AM 9:57
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

(c) Attorney's (Firm Name, Address, and Telephone Number)
Kristen E. Caverly
Henderson & Caverly LLP
P.O. Box 9144
Rancho Santa Fe, CA 92067

Attorneys (If Known)
'04 CV 2478 JM (AJB) DEPUTY

I. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
DEF 1
DEF 2
DEF 3
DEF 4
DEF 5
DEF 6
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various case categories and checkboxes.

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Recopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Patent Infringement (35 U.S.C. Section 271); Trademark Infringement (15 U.S.C. Section 1114)

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMANDS more than \$100,000
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) (See instructions):
IF ANY See Notice of Related Cases
JUDGE
DOCKET NUMBER

DATE December 10, 2004
SIGNATURE OF ATTORNEY OF RECORD Kristen E. Caverly

RECEIPT # 109474 AMOUNT \$50.00
APPLYING IFP JUDGE MAG. JUDGE
OR 12/14/04 VR