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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91176716
Party	Plaintiff CBT Supply, Inc., JeffreyKorber
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Date	08/08/2007
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Trademark Application Serial No.: 78/751976

CBT SUPPLY, INC. and JEFFREY KORBER Opposers, v. PETER J. STENGEL Applicant.	))))))))))	Opposition No. 91176716

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

MOTION TO SUSPEND OPPOSITION

Pursuant to Section 510.02(a) of the TBMP, Opposers hereby request that this opposition proceeding be suspended pending final determination of a federal district court action involving issues in common with those in this proceeding.

As noted in the Notice of Opposition and Applicant's Answer, the mark at issue in this proceeding also is the subject of pending litigation before the United States District Court for the District of Maryland, Civil Action No. 1:05-CV-03456 MJG ("District Court action"), including claims by Applicant and counterclaims by Opposers relating to ownership of and the right to use the SMARTdesks word mark and logo. Both the Applicant and Opposers make allegations and assert claims or counterclaims in the District Court action regarding ownership, use and control of the trademarks in Application Serial Nos. 78/768870 and 78/751976. See First Amended Complaint (attached hereto as Exhibit 1) at pp. 16-19 and Answer to First Amended Complaint and Defendants' Second Amended Counterclaim (attached hereto as Exhibit 2) at pp. 16, 19-21.

More specifically, Opposers' counterclaim in the District Court action even addresses Applicant's application which is the subject of this opposition. Exhibit 2 at 20-21, 27.

Clearly, the District Court action involves some of the same issues as those in this opposition proceeding, so that the final determination of the District Court action will have a bearing on the issues before the Board and may be binding upon the Board. In these circumstances, the Board has discretion to suspend the opposition proceeding and ordinarily will do so. TBMP Section 510.02(a), citing 37 CFR §2.117(a) and *General Motors Corp. v. Cadillac Club Fashions, Inc.*, 22 USPQ 1933 (TTAB 1992).

The Notice of Opposition also notes that ownership of the relevant trademarks is at issue in pending litigation before the Circuit Court for Howard County, Maryland, Case No. 13-C-05-064158 ("State Court action").

In view of the foregoing, Opposers respectfully request that this proceeding be suspended pending a final determination of the District Court action and/or the State Court action, with discovery and testimony periods to be reset upon resumption.

Dated: August 8, 2007

Respectfully submitted,

Bruce Haraguchi
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Certificate of Service

I hereby certify that this correspondence is being served on the attorney for Applicant by first class mail on August 8, 2007, addressed to:

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Bruce Haraguchi

EXHIBIT 1

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Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

SMARTDESKS, INC. 10717 Faulkner Ridge Circle Columbia, MD 21044, and PETER J. STENGEL 10717 Faulkner Ridge Circle Columbia, MD 21044, Plaintiffs, - against - CBT SUPPLY, INC. 10599 Bluebell Way Cockeysville, MD 21030, Serve on Resident Agent: Jeffrey Korber 83 Jacobs Road Rockaway, NJ 07866, and JEFFREY KORBER, individually 83 Jacobs Road Rockaway, NJ 07866 Defendants.	CIVIL ACTION NO.: MJG-05-3456 COMPLAINT: JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Plaintiffs, SMARTDESKS, INC. (hereinafter "Plaintiff Smartdesks"), and PETER J. STENGEL (hereinafter "Plaintiff Stengel") by Marcia Stengel, Peter J. Stengel's personal representative (collectively, hereinafter "Plaintiffs"), by and through their undersigned attorneys Conwell, LLC, sue Defendants, CBT SUPPLY, INC. (hereinafter "Defendant CBT Supply") and JEFFREY KORBER (hereinafter "Defendant Korber") (collectively, hereinafter "Defendants"), for injunctive relief, seizure and impoundment and damages, and other relief as stated, stating that this is a civil action for cyberpiracy for the theft of the SMARTDESKS.COM internet domain name and theft of associated electronic mail and for copyright, trademark and trade dress infringement for the unauthorized use of the name "Smartdesks" and other copyrighted and trademarked material, including drawings and specifications of the SMARTdesks line of ergonomic computer furniture, trade dress of the SMARTdesks Internet Marketing System and furniture products and other intellectual property authored and owned by Plaintiff Peter J. Stengel for the benefit of Plaintiff Smartdesks, Inc., and further states.

I. JURISDICTION AND VENUE

1. This action arises under the Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 *et seq.* This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 (federal question), 1338 (a) (copyrights and trademarks), and 1338(b)(unfair competition related to claims of copyright and trademark).

2. This action also arises under the Anticybersquatting Consumer Protection Act, P.L. 106-113, which includes criminal and civil components, the civil part of which was codified at 15 U.S.C. § 1125(d)(cyberpiracy), and trade dress infringement and false designation of origin pursuant to 15 U.S.C. § 1125.

3. This Court has supplemental jurisdiction over the state law and common law claims

under 28 U.S.C. §1367(a).

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(a) as an action where the principal offices of the Plaintiffs and Defendant CBT Supply and the resident agent for Defendant CBT Supply are registered.

II. PARTIES

5. Plaintiff Smartdesks, Inc., with a principal place of business at 10717 Faulkner Ridge Circle, Columbia, Maryland 21044, is a corporation charted by the State of Maryland in good standing. Undersigned counsel is the resident agent for the corporation. Plaintiff Smartdesks, Inc. is the beneficiary of an exclusive license and/or assignment for all Smartdesks-related copyrighted and trademarked property and materials authored and owned by Plaintiff Stengel.

6. Plaintiff Peter J. Stengel, residing at 10717 Faulkner Ridge Circle, Columbia, Maryland 21044, is the author and owner of copyrighted property and material associated with "Smartdesks",[1] the original and rightful owner of the SMARTDESKS.COM internet domain name, the owner of the "Smartdesks" common law trademark and Maryland state trade name, the owner of the SMARTdesks logo, and the pending owner of two "Smartdesks" U.S. trademarks whose applications are pending with the U.S. Patent and Trademark Office. Plaintiff Stengel is the founder and a co-owner of Smartdesks, Inc.

7. Defendant CBT Supply, Inc. is a corporation registered in the state of Maryland. The Maryland State Department of Assessments and Taxation currently describes it in good standing. It has a principal address listing as 10599 Bluebell Way, Cockeysville, Maryland 21030. It has a resident agent listed as Jeffrey Korber with and address listing as 10599 Bluebell Way, Cockeysville, Maryland 21030. Upon information and belief, the only Director of Defendant

1 The Smartdesks-line may be noted in this pleading by the word "Smartdesks", the logo "SMARTdesks," or the internet domain "SMARTDESKS.COM."

CBT Supply is Defendant Korber. Upon information and belief, resident agent Korber no longer resides at this address and instead resides at 83 Jacobs Road, Rockaway, New Jersey 07866. The New Jersey Corporate and Business Information Reporting lists a foreign company registration for CBT Supply, Inc. with a main and principal address at 83 Jacobs Road, Rockaway, New Jersey 07866 and a resident agent Jeffrey Korber at the same address.

8. Upon information and belief, Defendant Jeffrey Korber resides at 83 Jacobs Road, Rockaway, New Jersey 07866. Defendant Korber is listed as the sole Director and resident agent for Defendant CBT Supply for its Maryland principal office and for the New Jersey foreign entity registrations.

III. FACTS COMMON TO ALL COUNTS

9. Plaintiff Peter J. Stengel has had a successful career designing and marketing commercial and residential furniture for 40 years.

10. During the period between 1992 and 1996, the Plaintiff designed, sold and installed technology classrooms and designed and supplied specialized technology furniture the Plaintiff called "smart desks" throughout the mid-Atlantic region. The Plaintiff subcontracted with a number of manufacturers to produce furniture for the Plaintiff to complete projects. Some jobs were manufactured by Design Form, Inc, a Baltimore cabinet shop owned by Defendant Jeffrey Korber.

11. In early 1996, Plaintiff produced renderings of his most popular computer desk designs and set up a web site called WorkSpace Rescources. This line of classroom workstations and lecterns were labeled and marketed as "SMARTdesk" with a stylized name and font viewable in web-based standard html language on all internet browsers. This was later changed by Plaintiff Stengel to "SMARTdesks" and the racetrack oval logo added. See Plaintiff's business card with

logo at Exhibit (1).

12. The Plaintiff continued to develop the content of his web site creating a resource to address the problems faced by facilities managers, educators, corporate trainers, government clients, designers and architects, administrators and instructors charged with designing wired training environments. The Plaintiff created numerous drawings, associated comprehensive product descriptions, marketing information and a set of specifications for every item offered.

13. To expand his growing national business, the Plaintiff approached several of his suppliers, including Defendant Korber. Defendant Korber had expressed an interest in producing a steady line of furniture to supplement his existing factory orders and had recently leased a new CNC boring machine that was ideally suited to this type of furniture production.

14. In late 1997, Defendant Korber offered to pay Plaintiff $1,000 per month to set up, host and manage a website for Defendant Korber's company, Design Form, Inc., using Defendant Korber's existing printed and photographic content. Defendant Korber offered the Plaintiff the opportunity to include SMARTdesks products on the site in which Defendant Korber would manufacture and receive a share of the profits. At that time, the Defendant's hospitality furnishings product line and custom cabinet business were floundering while demand for the Plaintiff's SMARTdesks product line was expanding.

15. At about this time, the Plaintiff learned that Defendant Korber, unwilling and/or unable to pay his creditors, decided to file for bankruptcy for his Design Form, Inc. manufacturing business. By 2001, Design Form, Inc. had failed to file property returns and the entity was declared forfeited by the state of Maryland. The Design Form website was abandoned by Defendant Korber.

16. In 1998, Plaintiff Stengel approached Defendant Korber about Defendant Korber

investing in the Plaintiff's business because Defendant Korber had stated that he had sheltered a portion of his income over the years in a profit sharing plan that he managed for his former company and claimed his portion to be worth over half a million dollars ($0.5M).

17. Plaintiff Stengel and Defendant Korber agreed to a joint business venture wherein the parties would share equally in sales profits from the Plaintiff's SMARTdesks product line and Defendant Korber's manufacturing and production and with Defendant Korber agreeing to be responsible for new costs associated with generating business growth.

18. It was later revealed to the Plaintiff through a stray email that Defendant Korber had attempted to incorporate Smartdesks, Ltd. as a Maryland entity and set up a Smartdesks, Ltd., bank account in Pennsylvania. When confronted by Plaintiff Stengel, Defendant Korber claimed a mistake was made and that his purpose was to prevent the attachment of any assets related to Smartdesks by his former creditors of Design Form, Inc and that he needed an account to cash checks from the product sales. He eventually agreed to abandon Smartdesks, Ltd and to establish the Maryland entity CBT Supply, Inc. in December 2000 to "plan and equip computer friendly classrooms, and to engage in any other lawful purpose and/or business."

19. By the fall of 2000, the Plaintiff authored and created the bulk of the SMARTDESKS.COM site content as it exists today. The Plaintiff had completed designing the format for pricing structure, product coding and file-naming and had begun to develop the product database that was intended to become the core of the automated quoting and management system to be implemented in 2006. The Plaintiff had written all of the catalog pages touting and comparing product benefits, all of the design pages with their traffic-building and sales-generating content, and all of the product pages then sold.

20. In approximately the summer of 2001, the parties agreed to a more formal distribution of

the profits. In addition, as a result of a dispute over Defendant Korber's miscalculation of earlier profits, Defendant Korber offered and Plaintiff Stengel accepted an additional lump sum payment.

21. Under the advice and direction of the former lawyer for Defendant Korber, who stated that he would represent both parties, Plaintiff Stengel established NicheDirect.Com, Inc. as a Maryland corporate entity for tax and business purposes. Plaintiff Stengel later abandoned that structure and resumed doing business as a sole proprietor under his own name.

22. On June 6, 2001, Defendants and Plaintiff entered a more formal three-part agreement to share equally as officers in the business, provide the Plaintiff with a monthly income, split profits of CBT Supply biannually, be a principal officer of Defendant CBT Supply, and divide profits upon sale of CBT Supply. See Exhibit (2).

23. Plaintiff Stengel provided his continued services in support of the joint business venture and provided a non-exclusive license to SMARTdesks-related intellectual property. This implied license was acknowledged in various correspondence, including a December 7, 2005 letter discussed *infra*.

24. In January 2005, the parties met, and Plaintiff Stengel proposed altering the joint business venture to achieve a more equitable distribution of the business profits. Plaintiff expressed the concern that past profits calculations by Defendant Korber were performed incorrectly and again requested an accounting, which had been an integral requirement of the parties' agreement. The Plaintiff's requests were again repeatedly ignored by the Defendant.

25. Subsequently, on August 17, 2005, Defendant Korber attempted to renege on payments due and owing to Plaintiff Stengel, specifically refusing to pay commissions and account for revenues, expenses and profits that would be due upon sale of the business. See Exhibits (3) and

(4). On September 15, 2005, Defendant Korber attempted to get Plaintiff Stengel to sign away all his intellectual property in return for obtaining the payments that were already due to him.

26. In October 2005, Plaintiff Stengel, through his attorneys, informed Defendant Korber, through his attorneys, that the first issue that needs to be resolved is related to payments that are past due. In response, Defendant Korber, through his attorneys, again attempted to get Plaintiff Stengel to sign away all his intellectual property in return for obtaining the payments that were already due to him.

27. In a letter dated November 21, 2005, Plaintiff Stengel expressed the desire to continue working with the Defendant, stating, "We very much anticipate resolving past issues and negotiating a future agreement that will ensure the great success of the business and parties." But the Plaintiff was firm that "we cannot negotiate a future agreement without first obtaining payment for the past and present services and rights [Mr. Stengel] has provided." The Plaintiff demanded that, "If [] we have not received a check for *full payment* by that time [November 30, 2005], and we have not *agreed in writing* to any substitute timeframe or procedures, this letter will also serve as a cease and desist letter to require your client to stop using all material authored and owned by Mr. Stengel. It is our belief that this material constitutes much of the intellectual property used by the company." (emphasis in original). The intellectual property was described as "all drawings, website material and other copyrights authored and owned by Mr. Stengel." The Plaintiff stated that he wanted to be flexible, stating "If [Mr. Korber] requires some special procedures, we are willing to be flexible and discuss any reasonable request."

28. Late in the evening the day before the deadline, a new law firm hired by Defendant Korber stated that they were preparing a response, but gave no indication that they had any intention of paying the Plaintiff for past due amounts or otherwise complying with the terms of

the Plaintiff's letter.

29. Despite doubts about Defendant Korber's willingness to make good on past payments or his intent to continue the joint business relationship, in a letter dated November 30, 2005, Plaintiff Stengel stated, "We very much want to move forward and work to the future success of the parties in a good and equal working relationship" and extended the deadline to achieve compliance until December 7, 2005.

30. Late in the day on December 7, 2005, Defendants wrote back and expressed the clear intent to not make any payments that were past due and stated the intent that a joint business relationship would not continue. Incredulously, the Defendants argued that a joint business relationship had not occurred for the last two (2) years and that Mr. Stengel would be legally required to return payments received under this joint business relationship. The letter from the Defendants provided "At this point we believe there are only two options available to reach a resolution between our clients. The first option would be to explore a future relationship between Mr. Peter Stengel and CBT Supply, Inc. conditioned upon very clear understandings." The "very clear understandings" demanded by the Defendants were that "Mr. Stengel will execute a general release" as to future copyrights and existing trademarks, and, although it is not clear, likely existing copyrights.

31. The Defendants' December 7, 2005 letter then provided "The second option would be for the parties to part company and pursue a path of litigation." The letter provided no negotiating room, stating "Finally, please note that we are not seeking to invite or engage in any debate or discussion of our clients' relative positions."

32. The Defendants' demand for the Plaintiff give to the Defendants all of his intellectual property that comprises a lifetime of his work and effort and attempt to coerce the Plaintiff into

signing a bad agreement in order to get paid a portion of the money and share of the business that the Defendants owe him constitutes extortion and blackmail. The Plaintiff refuses to capitulate to Defendants' blackmail.

33. Upon information and belief, Defendants planned and undertook a course of action to defraud Plaintiff out of his percentage share of the annual gross business profits, his share of the joint business venture and the share of profits upon the anticipated sale of the business. The timing of the letter the Defendants gave to the Plaintiff on August 17, 2005 should be noted as it was after huge annual profits had been calculated, wherein revenues rose by thirty-three percent (33%) or more over 2004, but only two weeks before the Defendants were required to pay the Plaintiff his share. It is estimated that the Defendants owe approximately a quarter million dollars ($250,000.00) or more to Plaintiff Stengel.

34. Upon information and belief, the plan by the Defendants anticipated that either the Plaintiff would succumb to blackmail and hand over all his intellectual property or the Plaintiff would be forced out of the joint business venture and the Defendant would not pay the Plaintiff for earned profits, or both.

35. Therefore, Plaintiff Stengel seeks to revoke any former or existing license or right of Defendants Korber and CBT Supply to any and all intellectual property authored and owned by Plaintiff Stengel and to enjoin their use by any party pursuant to Plaintiff's Stengel's rights under the law.

Count I
Copyright Infringement

36. Plaintiffs incorporate by reference as though fully set forth herein all allegations contained in Paragraphs one (1) through thirty five (35).

37. Plaintiff Stengel filed the following copyrights with the United States Copyright Office: SMARTdesks Internet Marketing System Design Drawings, see Exhibit (5), SMARTdesks Internet Marketing System, 1999, see Exhibit (6), SMARTdesks Internet Marketing System, 2003, see Exhibit (7), and SMARTdesks Internet Marketing System, 2005, see Exhibit (8). All the copyrights represent online works and included a compact disk with the work published over the internet.

38. Plaintiff Stengel, through his personal representative Marcia Stengel, filed the following copyright applications with the United States Copyright Office: WorkSpace Resources Internet Marketing System, see Exhibit (17); SMARTdesks Internet Marketing System, 2000, see Exhibit (18); and Piano Conference Table, see Exhibit (19). The WorkSpace Resources Internet Marketing System and SMARTdesks Internet Marketing System, 2000 represent online works and include a compact disk with work published over the internet.

39. The WorkSpace Resources Internet Marketing System copyright at Exhibit (17) was created before April 19, 1996. On this internet site, prior to April 19, 1996, Plaintiff Stengel was offering for sale to the public a series of single and multiple station computer desks under the trade name "Smartdesk." Exhibit (17) includes a web page of multimedia desks titled "SMART*desk*", notice to the public that "Graphic images of SMART*desk* products are under construction and will be ready shortly", a desk clearly labeled as a "SMARTdesk" and a computer drawing of multiple station computer desk.

40. The SMARTdesks Internet Marketing System, 2000 copyright at Exhibit (18) was created before August 1, 2000 as a derivative related to copyrights filed for the years 1999, 2003 and 2005. See Exhibits (6), (7) and (8). On this internet site, prior to August 1, 2000, Plaintiff Stengel had described in a web page entitled "About Us – SMART*desks*™ Company History" the role of the parties Plaintiff Stengel and Defendant Korber. The web page specifically confirms Plaintiff Stengel's statement of facts as to the history of SMARTdesks. Plaintiff Stengel was prominently featured as being the creator, designer and marketer of SMARTdesks, had developed the web site, and had "launched" the "SMARTdesks brand name". The SMARTdesks History notes that Defendant Korber was brought into SMARTdesks by Plaintiff Stengel as a manufacturer to assist with production, sales and photography. This web page existed with this content until the second half of 2004.

41. Exhibit (18) also includes a lengthy list of recent SMARTdesks clients, a page listing Peter Stengel as "VP Design, SMARTdesks, Ltd.", a page listing Jeffrey Korber as "VP Sales, SMARTdesks, Ltd.", and one of many pages in which Plaintiff Stengel utilized and identified the capital letters "CBT" with the furniture industry in general and Smartdesks and computer desks with recessed monitors in particular.

42. The Piano Conference Table copyright at Exhibit (19) consists of technical drawings and a graphic depiction of a three-dimensional sculptural work. This copyright was filed jointly by Peter J. Stengel, through his Personal Representative Marcia Stengel, and Jasen Stengel, co-authors of the work.

43. All copyrights mentioned herein by the Plaintiffs have been assigned by their authors or personal representative to Plaintiff Smartdesks, Inc.

44. Plaintiff Stengel coined the term "SMARTdesks" and created the SMARTdesks design

and racetrack oval logo and is the owner by common law of the Smartdesks word trademark and SMARTdesks logo. See Exhibit (1) for the SMARTdesks logo.

45. The subject copyrights, trade name and logo are original works of authorship fixed in tangible form by Plaintiff and constitute copyrightable subject matter under the laws of the United States.

46. Plaintiff Stengel is the registered owner of the trade name and mark "Smartdesks" in the State of Maryland. See Exhibit (9).

47. Plaintiff Stengel has submitted applications with the U.S. Patent and Trademark Office for a U.S. trademark of the "Smartdesks" name and for a trademark of the SMARTdesks logo. See Exhibits (10) and (11).

48. Since the Plaintiff coined the marks "Smartdesks" and the SMARTdesks design and logo, the Plaintiff has used the trademarks continuously in Maryland and in interstate commerce. The Plaintiff's copyrights, including the SMARTdesks Internet Marketing System Design Drawings, see Exhibit (5), SMARTdesks Internet Marketing System, 1999, see Exhibit (6), WorkSpace Resources Internet Marketing System, see Exhibit (17), SMARTdesks Internet Marketing System, 2000, see Exhibit (18), and Piano Conference Table, see Exhibit (19), all are closely identified with the Smartdesks mark. The SMARTdesks logo, drawings, text, design and other content authored by Plaintiff Stengel, have been promoted for sale over the internet in commerce since at least 1996.

49. The Plaintiff has sold his SMARTdesks line of ergonomic furniture throughout the United States since 1996. The SMARTdesks marks have generated extensive goodwill and provided a distinctive identity for the brand and design of furniture.

50. At all times relevant hereto, Plaintiff Stengel has been and still is the owner and

proprietor of all rights, title and interest in all copyrighted works and the trademarks.

51. At all times relevant hereto, under information and belief, Defendant Korber was aware of Plaintiff Stengel's authorship, ownership and rights in material authored and created by Plaintiff Stengel.

52. Defendant Korber was made aware of Plaintiff Stengel's rights by letter on November 21, 2005 that he was given a deadline to comply with the contract and make payments under the contract. Based on Defendant Korber's stated intentions to breach the contract and failure to make payments under the contract, Defendant Korber was made aware that Plaintiff Stengel did not authorize Defendant Korber to use any such material upon the passing of the deadline . Defendants were aware that any and all rights that had existed or were then existing expired at the close of business on December 7, 2005.

53. Defendant Korber was and is aware of Plaintiff Stengel's common law rights to the trademark name Smartdesks and its associated logo.

54. Defendant Korber is aware of Plaintiff Stengel's Maryland state rights to the trade name and mark Smartdesks.

55. Defendant Korber is aware that Plaintiff Stengel has submitted applications with the U.S. Patent and Trademark Office for a U.S. trademark of the Smartdesks name and for a trademark of the SMARTdesks logo.

56. With full knowledge of Plaintiff's rights herein, Defendants have infringed and continue to infringe Plaintiff Stengel's copyrights by:

A. operating and doing business under the internet domain name SMARTDESKS.COM (which was stolen from the Plaintiff, see *infra*) and stealing email associated with that domain name, see Exhibits (20) for a recent screen capture of the splash page at

smartdesks.com, and

B. purchasing other SMARTdesks-related internet domain names with an intent to harm and mislead, and

C. selling and distributing products using the Plaintiff's SMARTdesks name and logo on the internet site and in marketing and administrative materials, see Exhibit (20), and

D. publishing Plaintiff's Stengel's copyrighted and trademarked materials on the internet and in marketing materials and purporting to own "All graphics, images, copy, designs, products, systems, methods and processes on this [Smartdesks web] site, see Exhibits (21) and (22), and

E. purporting to do business as "dba SMARTdesks", see Exhibits (21) and (22) and

F. utilizing and copying Plaintiff Stengel's text, designs and drawings and other intellectual property in the Defendant's materials, products and business information, and

G. authorizing third parties such as subcontractors or business associates to copy and produce derivative works from Plaintiff Stengel's copyrighted works,

H. producing derivative drawings and derivative sculptural works and authorizing third parties to do the same without the consent of the Plaintiffs, the copyright owners, and

I. falsely identifying the Plaintiffs' designs as being created and owned by the Defendants, see Exhibits (21) and (22), and

J. and providing false copyright information to the public, see Exhibits (21) and (22).

57. Such unauthorized uses are being done by the Defendants without the consent, approval or license of Plaintiff Stengel. Defendant's products, marketing and administrative materials contain

copies of Plaintiff Stengel's works, all in violation of his copyrights.

58. Defendants' acts violate Plaintiff Stengel's exclusive rights under §106 of the Copyright Act of 1976, 17 U.S.C. §106, and constitute infringement of his copyrights. Defendant's past and continuing unauthorized use and copying, distribution and sale of content and products using Plaintiff Stengel's copyrighted and trademarked material constitutes a willful and deliberate infringement of Plaintiff Stengel's copyrights and is causing irreparable harm and damage to Plaintiff.

Count II
False Designation of Origin Under the Lanham Act, 15 U.S.C. § 1125

59. Plaintiffs incorporate by reference as though fully set forth herein all allegations contained in Paragraphs one (1) through fifty eight (58).

60. Plaintiffs Stengel and Smartdesks created and own the following trademarks and trade names and use such trademarks and trade names to designate the source of their products and services:

i. "SMARTDESK" word

ii. "SMARTDESK" design

SMART*desk*

iii. "SMARTDESKS" word

iv. "SMARTDESKS" design

SMART*desks*

v. "SMARTDESKS" logo, includes word, design and racetrack oval

SMART*desks*

vi. "SMARTCHAIRS" and "SMART"-related word and designs

SMART*chairs*

61. The Plaintiff's trademarks and trade names are famous and distinctive and closely associated with the very successful SMARTdesks line of ergonomic computer furniture.

62. Defendant's use of the SMARTdesks name and logo trademarks and stolen SMARTDESKS.COM domain name and email, see *infra*, constitutes a false designation of origin which has deceived and is likely to deceive customers and prospective customers into believing that Defendant's products are those of the Plaintiffs, and as a consequence, are likely to divert and have diverted customers away from Plaintiffs.

63. Defendants state on the SMARTdesks "Who We Are" web page, see Exhibit (23), that it is "SMARTdesks" that "designs, manufacturers and supplies" Defendant CBT Supply's ergonomic computer furniture without noting that SMARTdesks has revoked any permission to utilize the SMARTdesks furniture designs and that it is Defendant CBT Supply who is currently manufacturing and supplying the computer furniture.

64. Defendants state on the "SMARTdesks Policies" web page, see Exhibit (21):

> 5. Copyright, trademark and patent information:
>
> All graphics, images, copy, designs, products, systems, methods and processes on this site are copyright © 1997 - 2006 by CBT Supply, Inc. dba SMARTdesks unless protected in some other way by patent or trademark. Any trademarks, graphics, logos and designs by others are used with their expressed permission.

65. Defendants state on a "Pop-up" web linked to several other pages, see Exhibit

(22)(emphasis in original):

Copyright, trademark and patent information:

All graphics, images, copy, designs, products, systems, methods and processes on this site are copyright © 1997 - 2006 by CBT Supply, Inc. dba SMARTdesks unless protected in some other way by patent or trademark. Any trademarks, graphics, logos and designs by others are used with their expressed permission.

66. The Defendants' statements on the SMARTdesks "Who We Are", "Policies" and "Pop-up" web pages and throughout the Defendants' web site:

A. falsely designate the source of the manufacturing and supplying as being provided by SMARTdesks rather than Defendant CBT Supply, Inc.; and

B. falsely claim that SMARTdesks is a creation of or owned by Defendant CBT Supply; and

C. fail to attribute the creation and ownership of the SMARTdesks designs to Plaintiff Stengel or Smartdesks, Inc.; and

D. falsely claim ownership of the intellectual property described; and

E. falsely claim that the described intellectual property is used with the owner's express permission.

67. Plaintiffs have no control over the quality of the products sold and distributed by Defendant. Any failure, neglect or default by Defendant or related support Services or in illegal or unethical conduct will reflect adversely on Plaintiff as the believed source of origin of such faulty products and Services. Plaintiff's efforts to continue to protect its reputation as a creator of high quality ergonomic computer furniture will therefore be hindered, as will its significant efforts to date to promote its products under the SMARTdesks marks, all to the irreparable harm of Plaintiff.

68. Defendant's false designation of origin will continue unless enjoined by this court.

Count III
Cyberpiracy Under 15 U.S.C. § 1125(d)

69. Plaintiffs incorporate by reference as though fully set forth herein all allegations contained in Paragraphs one (1) through sixty eight (68).

70. On December 12, 1997, Plaintiff Stengel ordered the purchase of the SMARTDESKS.COM domain name. See "123 Go Global Online Store Order Confirmation" at Exhibit (12). On December 19, 1997, Plaintiff Stengel received an email invoice from Network Solutions, Inc., the registrar, confirming payment and the registration for the SMARTDESKS.COM domain name. See Exhibit (13).

71. On December 19, 1997, Plaintiff Stengel paid and began to establish an internet site to be located at WWW.SMARTDESKS.COM to promote his SMARTdesks product line. See confirmation at Exhibit (14) ("We have the SMARTDESKS.COM site up and running.").

72. In the fall of 2000, there were difficulties with the website ISP located in Canada. Defendant Korber suggested moving the websites to a service in Rhode Island owned by his brother. Despite initial objections, Plaintiff Stengel eventually agreed and relocated the site himself to the new Rhode Island ISP.

73. Upon information and belief, some time thereafter, the Defendant illegally, without any authorization from Plaintiff Stengel, and without informing Plaintiff Stengel, had the new ISP, which was owned and controlled by the brother of Defendant Korber, change the primary contact for the SMARTDESKS.COM domain name from Plaintiff Stengel to Defendant Korber and/or take other actions to obtain control of the domain name.

74. Upon information and belief, the Defendants provided material and misleading false

contact and ownership information when renewing the registration of the domain name SMARTDESKS.COM. The current record for the SMARDESKS.COM domain name is provided at Exhibit (15).

75. The Defendants' actions constitute domain name highjacking and theft.

76. On information and belief, on or about May 9, 2005, Defendants registered the domain name SMARTDESKS.NET with the bad faith intent to harm Plaintiff Stengel, profit from Plaintiff's Smartdesks mark, and mislead consumers.

77. On or about September 26, 2005, Plaintiff Stengel registered the domain names SMARTDESKSDESIGN.COM and SMARTDESKSDESIGNSTUDIO.COM.

78. On information and belief, on or about November 23, 2005, less than two (2) days after receiving a letter from the Plaintiffs informing the Defendants about the Plaintiffs' rights, the Defendants registered the domain name SMARTDESKSCLASSROOMDESIGN.COM, SMARTDESKSDESIGNSERVICES.COM, and SMARTDESKSDESIGNSERVICE.COM and other SMARTdesks-related domain names with the bad faith intent to harm Plaintiff Stengel, profit from Plaintiff's Smartdesks mark, and mislead consumers.

79. Upon information and belief, Defendant Korber has never designed any part of the SMARTdesks product line or provided any design services.

80. Defendant CBT Supply, Inc., P.O. Box 391, Hibernia, NJ 07842 is currently listed as the "Registrant" for the following domain names: SMARTDESKS.COM, SMARTDESKS.NET, SMARTDESKSCLASSROOMDESIGN.COM, SMARTDESKSDESIGNSERVICES.COM, SMARTDESKSDESIGNSERVICE.COM, and other potential Smartdesks-related domain names. See Exhibit (15) for current SMARTDESKS.COM registration.

81. Upon information and belief, Defendant Korber is currently listed as the "Administrative

Contact", operating as JKORBER@SMARTDESKS.COM, for the following domain names: SMARTDESKS.COM, SMARTDESKS.NET, SMARTDESKSCLASSROOMDESIGN.COM, SMARTDESKSDESIGNSERVICES.COM, SMARTDESKSDESIGNSERVICE.COM, and other potential Smartdesks-related domain names. See Exhibit (15) for current SMARTDESKS.COM registration.

82. Upon information and belief, on or before December 21, 2005, using unauthorized and illegal control over the SMARTDESKS.COM domain name, Defendants changed the DESIGN@SMARTDESKS.COM email account used by Plaintiff Stengel to steal his emails. One email stolen by the Defendants was an email containing extensive attorney-client communications. See Exhibit (16) for confirmation of the altered account and stolen email.

83. Non-party Network Solutions, LLC is the registry of SMARTDESKS.COM, SMARTDESKS.NET, SMARTDESKSCLASSROOMDESIGN.COM, SMARTDESKSDESIGNSERVICES.COM, SMARTDESKSDESIGNSERVICE.COM.

84. Upon information and belief, no Defendant has any trademark or other intellectual property rights and the following domain names do not constitute the legal name of any person involved in the registration or use of the domain names SMARTDESKS.COM, SMARTDESKS.NET, SMARTDESKSCLASSROOMDESIGN.COM, SMARTDESKSDESIGNSERVICES.COM, SMARTDESKSDESIGNSERVICE.COM.

85. Upon information and belief, the registrants of the domain names SMARTDESKS.COM, SMARTDESKS.NET, SMARTDESKSCLASSROOMDESIGN.COM, SMARTDESKSDESIGNSERVICES.COM, SMARTDESKSDESIGNSERVICE.COM made no *bona fide* offering of any goods or services under the Smartdesks mark prior to Plaintiff Stengel's adoption and use of the Smartdesks mark to market and promote his goods and

services.

86. Plaintiff Stengel's Smartdesks mark was famous and distinctive prior to the Defendants' registration of the domain names SMARTDESKS.COM, SMARTDESKS.NET, SMARTDESKSCLASSROOMDESIGN.COM, SMARTDESKSDESIGNSERVICES.COM, SMARTDESKSDESIGNSERVICE.COM.

87. Defendants Jeffrey Korber and CBT Supply, Inc. are liable to Plaintiff Stengel for cyberpiracy in violation of 15 U.S.C. § 1125(d).

Count IV
Wrongful Taking

88. Plaintiffs incorporate by reference as though fully set forth herein all allegations contained in Paragraphs one (1) through eighty seven (87).

89. Defendants intentionally and wrongfully took, dispossessed, used and interfered with the Plaintiff's ownership and control of the SMARTDESKS.COM domain name and associated email without any permission or justification and not only refuse to relinquish said domain name, but have purchased other similar domain names to confuse and mislead.

Count V
Nullify Fraudulent Conveyances

90. Plaintiffs incorporate by reference as though fully set forth herein all allegations contained in Paragraphs one (1) through eighty nine (89).

91. Upon information and belief, Defendant Korber may have authorized conveyance or actually conveyed the SMARTDESKS.COM domain name to Defendant CBT Supply or another party.

92. Any conveyance of the SMARTDESKS.COM domain name subsequent to Defendant Korber obtaining unauthorized control through fraud was also fraudulent and requires

nullification.

Count VI
Common Law Unfair Competition, Trademark Infringement and Deceptive Trade Practices

93. Plaintiffs incorporate by reference as though fully set forth herein all allegations contained in Paragraphs one (1) through ninety two (92).

94. The acts of the Defendants are and were willful and constitute unfair methods of competition and unfair or deceptive acts or practices.

95. The acts of the Defendants have been fraudulent and intended to deceive and harm.

96. Defendant's false designation of origin will continue unless enjoined by this court.

Count VII
Maryland State Unfair Competition, Trademark Infringement and Deceptive Trade Practices

97. Plaintiffs incorporate by reference as though fully set forth herein all allegations contained in Paragraphs one (1) through ninety six (96).

98. The Defendants have and are using without the consent of the registrant Plaintiff Stengel, the Smartdesks mark in connection with the sale, offering for sale, and advertising for goods and services and such use is likely to confuse and deceive about the origin of goods and services.

99. The acts of the Defendants are and were willful and constitute unfair methods of competition and unfair or deceptive acts or practices in violation of the Maryland Business Regulation Article § 1-401 *et seq.*

Count VIII
Trade Dress Infringement Under the Lanham Act, 15 U.S.C. § 1125

100. Plaintiffs incorporate by reference as though fully set forth herein all allegations contained in Paragraphs one (1) through ninety nine (99).

101. Plaintiff Stengel created and owns the trade dress that exists in the Smartdesks Internet Marketing System and Smartdesks products, specifically the Piano Conference Table.

102. Plaintiff Stengel was one of the nation's foremost furniture designers, marketers and innovators. His reputation continued to increase over his four-decade involvement in the furniture industry.

103. In 1977, Plaintiff Stengel founded and was the President of a business called "Lifestyles-Mobilier," a new concept in retail furniture stores featuring commercial and residential furnishings as well as one-of-a-kind furniture and accessories pieces made by premier American crafts artists. This business was located next to Lord & Taylor and Neiman Marcus in the Jennifer Mall in northwest Washington, D.C. The new store and its founder were notably featured in "Home/Life" section of The Washington Star on August 7, 1977. See Exhibit (24). The article described the two founders as "The young, dynamic duo, who thought up the whole concept." The article noted that the business "will have as a feature an 'in-store' furniture reference library." The article went on to state, "This useful and quite unique idea is basic to this store's total concept which president Peter Stengel and operations manager Fred Zielinski describe as educational in nature."

104. In 1977, prior to the advent of computerized designs and graphics, Plaintiff Stengel created a logo and graphic design for the company featured in The Washington Star. The logo and graphics created by Plaintiff Stengel consisted of the company name in a "racetrack oval"

and superimposed on a graph paper-type background. See Exhibit (25). Peter Stengel designed his corporate business cards and stationary to market his business services and products utilizing the same logo and graphic design that is also provided at Exhibit (25). The described logo and graphic design comprise Plaintiff Stengel's trade dress.

105. The features in Exhibit (25) constitute trade dress that Plaintiff Stengel would later incorporate in his concept of "Smartdesks" and Smartdesks Internet Marketing System. Defendant CBT Supply continues to use Plaintiff Stengel's trade dress, which is the issue of this suit. For example, the internet splash page at Exhibit (20) and other web page exhibits herein, see Exhibits (21) - (23), (27) - (30), demonstrate the use by Defendants of the racetrack oval and graph paper-type background graphics.

106. Recognizing the early potential of internet marketing, Peter Stengel began to market furniture over the internet continuing the concept as described in Exhibit (24) to design and market furniture that is "educational in nature." He began providing internet based marketing of furniture first in the mid-1990s as Workspace Resources, which featured "Smartdesks" products. Later in 1996, after Plaintiff Stengel purchased the www.smartdesks.com domain name, he marketed all his products at this domain and used the Workspace Resources website to provide links and drive business traffic to the Smartdesks.com website.

107. Plaintiff Stengel was the sole author and creator of the Smartdesks Internet Marketing System and associated SMARTdesks product line that are related to seven (7) copyright applications. Defendant Korber created and produced certain photographs of Stengel's Smartdesks products for Plaintiff Stengel that Stengel incorporated in the web site.

108. The trade dress of the Smartdesks Internet Marketing System is inherently distinctive.

109. The Smartdesks Internet Marketing System is the entire focus of the marketing of the

Smartdesks product line and has been adopted as an innovative and comprehensive system for advertising furniture products and services.

110. The Smartdesks Internet Marketing System is extremely effective and distinctive in identifying the source of the goods, which is Smartdesks, and identification with its innovative creator, Plaintiff Stengel. As previously stated, Exhibit (18) confirms that Plaintiff Stengel was the creator, designer and marketer of SMARTdesks, had developed the web site, and had "launched" the "SMARTdesks brand name".

111. The entire success of the Smartdesks business is due to the Smartdesks Internet Marketing System and strength of its innovative products created and designed by Plaintiff Stengel.

112. The features of the Smartdesks Internet Marketing System have been under the exclusive use of Plaintiff Stengel since their creation. Some features have been under the exclusive use of Plaintiff Stengel for three decades. Plaintiff Stengel provided a license to support joint business arrangements, such as a contractual arrangement in effect with the Defendants from 2001 to 2005. At no time has the Plaintiff ever relinquished any ownership control or other exclusivity concerning the subject trade dress.

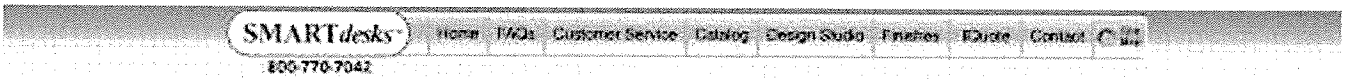
113. The trade dress of the Smartdesks Internet Marketing System consists of the following:

A. The trade name "Smartdesks".

B. The design of the trade name "SMART*desks*".

C. The design of the trade name located within a racetrack oval logo.

D. The racetrack oval logo superimposed over a graph-paper-like graphics background.



E. Marketing furniture through a concept that is educational in nature.

F. Ergonomic computer-based furniture description and marketing.

G. The use and design of trade names for identification of products, product lines, and services, including:

i. "SMART"-related trademarks, trade names, designs and logos.

ii. "MPLEX," "SPEX "DEMI," "DLSEMINAR," and "CTINTERACTIVE".

iii. "PIANO" word and design

PIANO

iv. PIANO SERIES: "CONCERTO," "SONATA," "SOLO", DUET word and design

PIANO CONCERTO SERIES PIANO SONATA SERIES

PIANO SOLO PIANO DUET

v. "TRIAD" word

vi. "SNAPFLEX" word and design

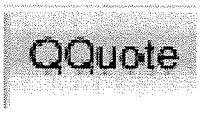
Snapflex™

vii. "MOTIF" word and design

Motif fi series

viii. "FLIP IT" design

ix. "QQuote" Internet quotation system, word and design.



x. "CBT"

xi. "CBT Learning Environment"

xii. "CBT Training"

xiii. "Learning Ergonomics"

H. The use and design of slogans for marketing and product and service descriptions and identification, including the slogans provided at Exhibit 26.

I. Classroom, conference room and all work space design planning features integrated with products.

J. Smartdesks Design Studio.

K. Electronic Classroom Environment.

L. Archive of plans of classrooms, conference rooms, offices and product designs.

M. The style and composition of the Smartdesks Internet Marketing System.

N. The colors of the Smartdesks Internet Marketing System.

O. The exterior design, appearance and overall look of the Smartdesks Internet Marketing System.

114. The web site currently under the control of the Defendants includes the Plaintiffs' trade

dress. For example, see screen shots of the web site at Exhibit (27)("SMARTdesks Design Studio" page containing the SMARTdesks logo, graphics, numerous trademarks, the Electronic Classroom Environment, classroom and conference room design planning, etc.), Exhibit (28)("Conference Room Computer Tables" page containing the SMARTdesks logo, graphics, numerous trademarks, products and the design of the FLIP IT trademark, etc.) and Exhibit (29)("SMARTdesks Classroom Design Archives" page containing the SMARTdesks logo, graphics, SMARTdesks Design Studio, numerous trademarks, and classroom and conference room design planning, etc.).

115. Exhibit (29) purports to offer classroom designs and contains a link entitled "Click here for copyright info." that brings up the "SMARTdesks Pop-up" page at Exhibit (22). As previously described, the Pop-up page falsely provides the source of intellectual property and makes other false statements.

116. An infinite number of marketing and internet alternatives to the Smartdesks Internet Marketing System exist and are feasible and cost-effective.

117. The Defendants have and are using without the consent of the creator Plaintiff Stengel, the described Smartdesks Internet Marketing System trade dress in connection with the sale, offering for sale, and advertising for goods and services and production of products and such use is likely to confuse and deceive about the origin of goods and services that is related to Smartdesks and Plaintiff Stengel. As examples, see Exhibits (20) - (23), (27) - (30).

118. Plaintiff Stengel and Jasen Stengel, who both assigned their rights to Plaintiff Smartdesks, were the sole creators of what would eventually become known as the Piano Conference Table. The name "Piano" and its identification with this product was a creation of Plaintiff Stengel's. Working with Plaintiff Peter J. Stengel, Jasen Stengel drafted the initial

drawings for the Piano Conference Table that are the subject of the copyright in Exhibit (19). Plaintiffs went on to create various versions of the Piano Conference Table design, which formed a line of related products.

119. The trade dress of the Piano Conference Table is inherently distinctive.

120. The Piano Conference Table has been extensively advertised on the Smartdesks Internet Marketing System. See Exhibits (20), (28) and (30).

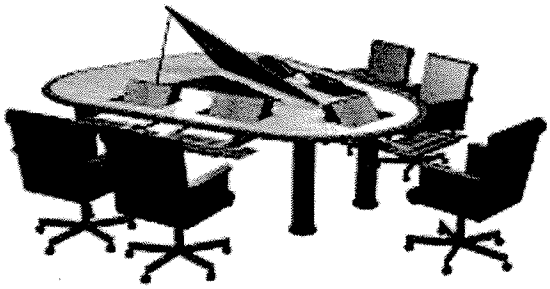
121. The Piano Conference Table features are extremely distinctive in identifying the source of the goods, which is Smartdesks, and identification with its innovative creator, Plaintiff Stengel.

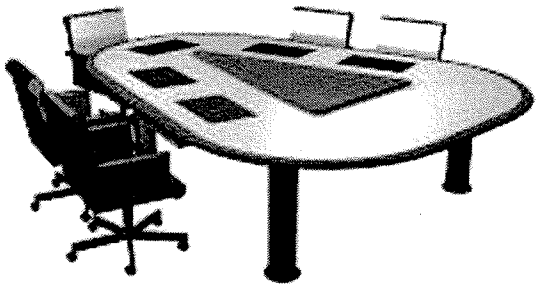
122. The Piano Conference Table sells at a very large premium over other comparable conference tables of similar quality and cost to manufacture and even at a large premium over other desk and conference tables that perform the same or similar functions and were also innovatively created by Plaintiff Stengel.

123. At no time has Plaintiff Stengel ever relinquished any ownership, control or other exclusivity concerning the subject trade dress. Plaintiff Stengel did authorize participation in a joint business venture with Defendant CBT Supply that existed from the time the Piano Conference Table was created in 2003 until the joint business venture dissolved in 2005. Plaintiff Stengel has made every attempt to retain exclusivity.

124. The trade dress of the Piano Conference Table consists of the following:

A. Exterior design and overall look of the conference table including the shape, style and composition of features.





B. The similarity in appearance to a grand piano. Whether the lid of the Piano Conference Table is down or up, the product gives the appearance of a grand piano.

C. The table lid distinctively provides and appealing location to hide a center well that provides a location for multiple functions, including a projector or document camera.

D. The association of the Piano Conference Table series products and features with classical music-related names, themes and images, including: "CONCERTO," "SONATA," "SOLO," and "DUET."

E. Identification with a focus on ergonomics, group dynamics and body language.

F. Identical number of computer work stations directly across from each other and one at the apex of the wedge.

G. Color, style, shape and materials of the computer stations, lid and surrounding conference table are coordinated.

H. Executive-type distinguished look for what is a multi-person computer work station and conference table.

I. Distinctive appealingly rounded corners are combined with a table wedge shape.

J. Triangular lid coordinated with the edge of the table.

K. Tubular Doric column legs.

L. "Piano is the new shape in conferencing."

M. "A concerto is a mixture of materials in concert: wood grain laminates for the top surfaces, solid wood edging and leather laminate blotters backing the flipIT stations."

125. The combination of features and total overall image of the Piano Conference Table is unique, unusual, arbitrary and fanciful.

126. Many design and functional alternatives to the Piano Conference Table exist, including design and functional alternatives within the remainder of the Smartdesks product lines. These alternatives are feasible for a consumer whose primary concern is utility and function. For an example of other potential conference tables, see Exhibit (28). Because the Piano line of conference tables sells at a premium price, many other cost-effective alternatives exist.

127. The Defendants have and are using without the consent of the creator Plaintiff Stengel, the described Piano Conference Table trade dress in connection with the sale, offering for sale, and advertising for goods and services and production of products and such use is likely to confuse and deceive about the origin of goods and services that is related to Smartdesks and Plaintiff Stengel. As examples, see Exhibits (20), (28) and (30).

128. The Defendants have misappropriated the goodwill built by Plaintiff Stengel over four decades of service in the furniture industry.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs requests that this Honorable Court grant them the following

relief:

A. Grant preliminary and permanent injunctions enjoining and restraining the Defendants, officers, directors, principals, agents, servants, employees, successors and assigns, and all individuals acting in concert or participation with it, from infringing Plaintiff Peter Stengel's copyrights and other proprietary rights associated with or related to the SMARTdesks product line and the Smartdesks name and logo; and

B. Order that any of the Defendants' copyright registrations related to Smartdesks services and products be forfeited or cancelled by the U.S. Copyright Office; and

C. Grant preliminary and permanent injunctions enjoining and restraining the Defendants, officers, directors, principals, agents, servants, employees, successors and assigns, and all individuals acting in concert or participation with it, from infringing Plaintiff Peter Stengel's trade dress associated with the Smartdesks Internet Marketing System and Piano Conference Table; and

D. Order Defendants to transfer the domain names SMARTDESKS.COM and SMARTDESKS.NET to Plaintiff Stengel; and

E. Order Defendants to account for all emails stolen from the DESIGN@SMARTDESKS.COM email account and use their best efforts to describe and recall all such emails sent to third parties; and

F. Grant preliminary and permanent injunctions enjoining and restraining the Defendants from using any information or forwarding any information from emails stolen from the DESIGN@SMARTDESKS.COM email account , including attorney-client privileged information sent to the DESIGN@SMARTDESKS.COM email account; and

G. Order that any registrations of the domain names

SMARTDESKSCLASSROOMDESIGN.COM, SMARTDESKSDESIGNSERVICES.COM, SMARTDESKSDESIGNSERVICE.COM or other SMARTdesks-related domain names by Defendants, any transferee or any party acting in concert with the Defendants be forfeited, cancelled, or deleted by non-party Network Solutions, LLC, the registry of the domain names; and

H. Order Defendants to be fined the maximum $100,000 per domain name for their cyberpiracy; and

I. Order the impoundment of all products and materials containing the Smartdesks name, SMARTdesks logo, or any copyrighted material or material derived from copyrighted material; and

J. Order the Defendant to pay to the Plaintiffs actual damages as they have sustained as a result of Defendant's copyright infringement pursuant to 17 U.S.C. §504(b); and

K. Order that Defendants be required to account for and disgorge to Plaintiffs all gains, profits, and advantages derived by its copyright infringement pursuant to 17 U.S.C. 504(b); and

L. Order that Defendants account to Plaintiff for Defendants' profits attributable to any joint copyrighted works and that the Defendants pay a legal and equitable share; and

M. Order Defendants to pay Plaintiff statutory damages pursuant to 17 U.S.C. §504(c); and

N. Order Defendants to pay Plaintiff an increase in the award of statutory damages due to Defendant's willful infringement pursuant to 17 U.S.C. §504(c)(2); and

O. Grant preliminary and permanent injunctions enjoining and restraining the Defendants, officers, directors, principals, agents, servants, employees, successors and assigns, and all individuals acting in concert or participation with it, from (i) infringing Smartdesks name and

logo trademarks (ii) diluting Plaintiff's trademark rights, (iii) infringing the Smartdesks Internet Marketing System and Piano Conference Table trade dress, and (iv) injuring Plaintiff's business reputation; and

P. Order that Defendants account to Plaintiff for Defendants' profits, and to pay to Plaintiff the actual damages suffered by Plaintiff as a result of Defendant's trademark and trade dress infringement and false designation of origin; and

Q. Order Defendants to surrender for destruction all materials constituting infringement of Plaintiff's designation of origin; and

R. Order Defendants to use their best efforts to recall from the trade and other third parties any and all infringing materials and any marketing, advertising and administrative materials used in connection therewith; and

S. Order Defendants Jeffrey Korber and CBT Supply, Inc. to file with the Court and serve on counsel for Plaintiffs, within thirty days after entry of any injunction issued by the Court in this action, a sworn statement as provided in 15 U.S.C. § 1116 setting forth in detail the manner and form in which Defendants have complied with the injunction; and

T. Award Plaintiff a monetary judgment against Defendants for Plaintiff's damages and Defendants' profits pursuant to 15 U.S.C. § 1117; and

U. Order trebling the amount of such award on account of Defendants' willful, intentional, and bad faith conduct pursuant to 15 U.S.C. § 1117; and

V. Award Plaintiff its reasonable attorneys' fees, costs and disbursements incurred herein in view of Defendants' intentional and willful infringement, pursuant to 15 U.S.C. § 1117; and

W. Award Plaintiff profits, actual damages and punitive damages pursuant to Maryland state

law; and

X. Grant the Plaintiffs such further relief as the Court deems just.

Respectfully submitted,

CONWELL, LLC

SCOTT A. CONWELL
U.S. Dist. Ct. Bar No. 15008

2138 Priest Bridge Court, Suite No. 4
Crofton, MD 21114
(410) 451-2707
FAX: (410) 451-2706

Counsel for Plaintiffs

Dated: May 14, 2006

EXHIBIT 2

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

SMARTDESKS, INC., et. al., Plaintiffs / Counterclaim Defendants, v. CBT SUPPLY, INC., et. al., Defendants / Counterclaim Plaintiffs.	)	Civil Action No.: 1:05-CV-03456 MJG

ANSWER TO FIRST AMENDED COMPLAINT
AND DEFENDANTS' SECOND AMENDED COUNTERCLAIM

COME NOW Defendants CBT SUPPLY, INC. d/b/a SMARTDESKS ("CBT") and Jeffrey Korber ("Korber") (hereinafter referred to collectively as "Defendants") and file this Answer To First Amended Complaint And Defendants' Second Amended Counterclaim against SMARTDESKS, INC. ("Smartdesks, Inc.") and Peter J. Stengel ("Stengel") by and through his personal representative, Marcia Stengel (hereinafter referred to collectively as "Plaintiffs").

ANSWER

Defendants deny each and every allegation contained in Plaintiffs' First Amended Complaint ("Complaint") and their prayers for relief unless the same has been expressly admitted herein. Answering the specific allegations of Plaintiffs' Complaint, in accordance with the order and number of the paragraphs in which they are set out, Defendants respond as follows:

I. JURISDICTION AND VENUE

1. As the averments set forth in Paragraph 1 of the Complaint call for a legal conclusion, no response is required; to the extent a response is required, Defendants deny such averments.

2. As the averments set forth in Paragraph 2 of the Complaint call for a legal conclusion, no response is required; to the extent a response is required, Defendants deny such averments.

3. As the averments set forth in Paragraph 3 of the Complaint call for a legal conclusion, no response is required; to the extent a response is required, Defendants deny such averments.

4. As the averments set forth in Paragraph 4 of the Complaint call for a legal conclusion, no response is required; to the extent a response is required, Defendants deny such averments.

II. PARTIES

5. Defendants admit that, according to the Maryland Department of Assessments and Taxation, Plaintiff Smartdesks, Inc. is a corporation in good standing with a principal place of business at 10717 Faulkner Ridge Circle, Columbia, Maryland 21044. Defendants further admit that, according to the Maryland Department of Assessments and Taxation, Scott A. Conwell is the resident agent for Smartdesks, Inc. Defendants are without sufficient information or knowledge to either admit or deny the remaining allegations set forth in Paragraph 5 of the Complaint, and therefore deny same and demand strict proof thereof.

6. Upon information and belief, Defendants admit that Stengel resides at 10717 Faulkner Ridge Circle, Columbia, Maryland 21044, and that Stengel is the founder and a co-owner of Smartdesks, Inc. Defendants expressly deny that Stengel is the original and rightful owner of the SMARTDESKS.COM internet domain name, the owner of the "Smartdesks" common law trademark and Maryland state trade name, and the owner of the SMARTdesks logo. Defendants are without sufficient information or knowledge to either admit or deny the remaining allegations set forth in Paragraph 6 of the Complaint, and therefore deny same and demand strict proof thereof.

7. Defendants deny that Jeffrey Korber is the registered agent of Defendant CBT Supply, Inc. Defendants admit the remaining allegations in Paragraph 7 of the Complaint.

8. Defendants deny that Jeffrey Korber is the registered agent of Defendant CBT Supply, Inc. Defendants admit the remaining allegations in Paragraph 8 of the Complaint.

III. FACTS COMMON TO ALL COUNTS

9. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 9 of the Complaint, and therefore deny same.

10. Defendants admit that Stengel, doing business as Workspace Resources, contracted with Design Form, Inc., a company owned by Korber, to manufacture a limited number of furniture pieces. Defendants are without sufficient information or knowledge to either admit or deny the remaining allegations set forth in Paragraph 10 of the Complaint, and therefore deny same.

11. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 11 of the Complaint, and therefore deny same and demand strict proof thereof.

12. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 12 of the Complaint, and therefore deny same and demand strict proof thereof.

13. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in the first sentence of Paragraph 13 of the Complaint, and therefore deny same and demand strict proof thereof. Defendants admit the allegations set forth in the second sentence of Paragraph 13 of the Complaint.

14. Defendants admit that, in or around late 1997, Design Form, Inc. contracted with Stengel to develop an internet web site for Design Form, Inc. Defendants deny the remaining allegations of Paragraph 14 of the Complaint.

15. Defendants deny that Korber filed for bankruptcy protection for Design Form, Inc. Defendants admit the remaining allegations set forth in Paragraph 15 of the Complaint.

16. Defendants deny the allegations set forth in Paragraph 16 of the Complaint.

17. Defendants deny the allegations set forth in Paragraph 17 of the Complaint.

18. Defendants deny the allegations set forth in Paragraph 18 of the Complaint.

19. Defendants deny the allegations set forth in Paragraph 19 of the Complaint.

20. Defendants admit that in June 2001, CBT and Niche Direct.Com., Inc. entered an agreement, CBT and Stengel entered another agreement, and Niche Direct.Com., Inc. and Korber entered a separate agreement, which agreements speak for themselves. Defendants further admit that on or about December 29, 2000, Stengel signed a release and agreement to indemnify and save harmless, which document speaks for itself. Except as specifically admitted, Defendants deny the remaining allegations set forth in Paragraph 20 of the Complaint.

21. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 21 of the Complaint, and therefore deny same and demand strict proof thereof.

22. Defendants admit that Exhibit 2 appears to be a June 6, 2001 agreement between Defendant CBT Supply, Inc. and Niche Direct.Com., Inc.; a June 6, 2001 agreement between Defendant CBT Supply, Inc. and Plaintiff Stengel; and a June 6, 2001 agreement between Niche Direct.Com., Inc. and Defendant Korber. Defendants deny the allegations set forth in Paragraph 22 of the Complaint to the extent they

are contrary to the express terms of the foregoing agreements, which are written documents that speak for themselves.

23. Defendants deny the allegations set forth in Paragraph 23 of the Complaint.

24. Defendants admit that in or around January 2005, Korber and Stengel met to discuss an agreement whereby Stengel would continue to provide web development and other services for Defendants. Defendants deny the remaining allegations set forth in Paragraph 24 of the Complaint.

25. Defendants deny the allegations set forth in Paragraph 25 of the Complaint.

26. Defendants admit that they received a letter dated October 2005 from Stengel's attorneys. Defendants deny the allegations set forth in Paragraph 26 of the Complaint to the extent they are contrary to the express terms of the letter, which is a written document that speaks for itself. Defendants deny the remaining allegations set forth in Paragraph 26 of the Complaint.

27. Defendants admit that they received a letter dated November 21, 2005 from Stengel's counsel. Defendants deny the allegations set forth in Paragraph 27 of the Complaint to the extent they are contrary to the express terms of this November 21, 2005 letter, which is a written document that speaks for itself. Defendants deny the remaining allegations set forth in Paragraph 27 of the Complaint.

28. Defendants admit that they retained new counsel and sent a letter to Stengel's counsel dated December 29, 2005. Defendants deny the allegations set forth in Paragraph 28 of the Complaint to the extent they are contrary to the express terms of this December 29, 2005 letter, which is a written document that speaks for itself. Defendants deny the remaining allegations set forth in Paragraph 28 of the Complaint.

29. Defendants admit that they received a letter from Stengel's counsel dated November 30, 2005. Defendants deny the allegations set forth in Paragraph 29 of the Complaint to the extent they are

contrary to the express terms of this November 30, 2005 letter, which is a written document that speaks for itself. Defendants are without sufficient information or knowledge to either admit or deny the remaining allegations set forth in Paragraph 29 of the Complaint, and therefore deny same.

30. Defendants admit that Defendants' counsel sent a letter to Stengel's counsel on December 7, 2005. Defendants deny the allegations set forth in Paragraph 30 of the Complaint to the extent they are contrary to the express terms of this December 7, 2005 letter, which is a written document that speaks for itself. Defendants deny the remaining allegations set forth in Paragraph 30 of the Complaint.

31. Defendants deny the allegations set forth in Paragraph 31 of the Complaint to the extent they are contrary to the express terms of the letter dated December 7, 2005, from Defendants' attorneys, which is a written document that speaks for itself. Defendants deny the remaining allegations set forth in Paragraph 31 of the Complaint.

32. Defendants deny the allegations set forth in Paragraph 32 of the Complaint.

33. Defendants deny the allegations set forth in Paragraph 33 of the Complaint.

34. Defendants deny the allegations set forth in Paragraph 34 of the Complaint.

35. The allegations of Paragraph 35 of the Complaint are not directed towards Defendants, and therefore no response from Defendants is necessary. To the extent a response is required, Defendants lack knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 35 of the Complaint, and therefore deny same.

COUNT I
COPYRIGHT INFRINGEMENT

36. Defendants incorporate by reference their responses to the preceding allegations of the Complaint.

37. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 37 of the Complaint, and therefore deny same.

38. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 38 of the Complaint, and therefore deny same.

39. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 39 of the Complaint, and therefore deny same.

40. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 40 of the Complaint, and therefore deny same.

41. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 41 of the Complaint, and therefore deny same.

42. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 42 of the Complaint, and therefore deny same.

43. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 43 of the Complaint, and therefore deny same.

44. Defendants deny the allegations set forth in Paragraph 44 of the Complaint.

45. As the averments set forth in Paragraph 45 of the Complaint call for a legal conclusion, no response is required; to the extent a response is required, Defendants deny such averments.

46. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 46 of the Complaint, and therefore deny same.

47. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 47 of the Complaint, and therefore deny same.

48. Defendants deny the allegations set forth in Paragraph 48 of the Complaint.

49. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 49 of the Complaint, and therefore deny same.

50. Defendants deny the allegations set forth in Paragraph 50 of the Complaint.

51. Defendants deny the allegations set forth in Paragraph 51 of the Complaint.

52. Defendants deny the allegations set forth in Paragraph 52 of the Complaint to the extent they are contrary to the express terms of the letter dated November 21, 2005, which is a written document that speaks for itself. Defendants deny the remaining allegations set forth in Paragraph 46 of the Complaint.

53. Defendants deny the allegations set forth in Paragraph 53 of the Complaint.

54. Defendants deny the allegations set forth in Paragraph 54 of the Complaint.

55. Defendants admit the allegations set forth in Paragraph 55 of the Complaint.

56. Defendants deny the allegations set forth in Paragraph 56 of the Complaint, including each and every allegation in subparts (a) through (g) of Paragraph 56 of the Complaint.

57. Defendants deny the allegations set forth in Paragraph 57 of the Complaint.

58. Defendants deny the allegations set forth in Paragraph 58 of the Complaint.

COUNT II
FALSE DESIGNATION OF ORIGIN UNDER THE LANHAM ACT, 15 U.S.C. § 1125

59. Defendants incorporate by reference their responses to the preceding allegations of the Complaint.

60. Defendants deny the allegations set forth in Paragraph 60 of the Complaint.

61. Defendants deny the allegations set forth in Paragraph 61 of the Complaint.

62. Defendants deny the allegations set forth in Paragraph 62 of the Complaint.

63. Defendants deny the allegations set forth in Paragraph 63 of the Complaint.

64. Defendants admit the allegations set forth in Paragraph 64 of the Complaint.

65. Defendants admit the allegations set forth in Paragraph 65 of the Complaint.

66. Defendants deny the allegations set forth in Paragraph 66 of the Complaint.

67. Defendants admit that Plaintiffs have no control over the quality of the products sold and distributed by Defendants. Defendants deny the remaining allegations set forth in Paragraph 67 of the Complaint.

68. Defendants deny the allegations set forth in Paragraph 68 of the Complaint.

COUNT III
CYBERPIRACY UNDER 15 U.S.C. § 1125(d)

69. Defendants incorporate by reference their responses to the preceding allegations of the Complaint.

70. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 70 of the Complaint, and therefore deny same.

71. Defendants deny the allegations set forth in Paragraph 71 of the Complaint.

72. Defendants admit that the ISP hosting its website at <smartdesks.com> in Canada experienced difficulties, and that, as a result, Defendants switched to an ISP located in Rhode Island. Defendants admit that the ISP in Rhode Island was partially owned by Defendant Korber's brother. Defendants deny the remaining allegations set forth in Paragraph 72 of the Complaint.

73. Defendants deny the allegations set forth in Paragraph 73 of the Complaint.

74. Defendants deny the allegations set forth in Paragraph 74 of the Complaint.

75. Defendants deny the allegations set forth in Paragraph 75 of the Complaint.

76. Defendants deny the allegations set forth in Paragraph 76 of the Complaint.

77. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 77 of the Complaint, and therefore deny same.

78. Defendants deny the allegations set forth in Paragraph 78 of the Complaint.

79. Defendants deny the allegations set forth in Paragraph 79 of the Complaint.

80. Defendants admit that CBT Supply, Inc., P.O. Box 391, Hibernia, NN is currently listed as the "Registrant" for the following domain names: SMARTDESKS.COM, SMARTDESKS.NET, SMARTDESKSCLASSROOMDESIGN.COM, SMARTDESKSDESIGNSERVICES.COM, and SMARTDESKSDESIGNERSERVICE.COM. Defendants are without sufficient information or knowledge to either admit or deny the remaining allegations set forth in Paragraph 80 of the Complaint, and therefore deny same.

81. Defendants admit that Korber is currently listed as the "Administrative Contact," operating as JKORBER@SMARTDESKS.COM, for the following domain names: SMARTDESKS.COM, SMARTDESKS.NET, SMARTDESKSCLASSROOMDESIGN.COM, SMARTDESKSDESIGNSERVICES.COM, and SMARTDESKSDESIGNERSERVICE.COM. Defendants are without sufficient information or knowledge to either admit or deny the remaining allegations set forth in Paragraph 81 of the Complaint, and therefore deny same.

82. Defendants deny the allegations set forth in Paragraph 82 of the Complaint.

83. Defendants are without sufficient information or knowledge to either admit or deny the remaining allegations set forth in Paragraph 83 of the Complaint, and therefore deny same.

84. Defendants deny the allegations set forth in Paragraph 84 of the Complaint.

85. Defendants deny the allegations set forth in Paragraph 85 of the Complaint.

86. Defendants deny the allegations set forth in Paragraph 86 of the Complaint.

87. Defendants deny the allegations set forth in Paragraph 87 of the Complaint.

COUNT IV
WRONGFUL TAKING

88. Defendants incorporate by reference their responses to the preceding allegations of the Complaint.

89. Defendants deny the allegations set forth in Paragraph 89 of the Complaint.

COUNT V
NULLIFY FRAUDULENT CONVEYANCES

90. Defendants incorporate by reference their responses to the preceding allegations of the Complaint.

91. Defendants deny the allegations set forth in Paragraph 91 of the Complaint.

92. Defendants deny the allegations set forth in Paragraph 92 of the Complaint.

COUNT VI
COMMON LAW UNFAIR COMPETITION, TRADEMARK INFRINGEMENT AND DECEPTIVE TRADE PRACTICES

93. Defendants incorporate by reference their responses to the preceding allegations of the Complaint.

94. Defendants deny the allegations set forth in Paragraph 94 of the Complaint.

95. Defendants deny the allegations set forth in Paragraph 95 of the Complaint.

96. Defendants deny the allegations set forth in Paragraph 96 of the Complaint.

COUNT VII
MARYLAND STATE UNFAIR COMPETITION, TRADEMARK INFRINGEMENT AND DECEPTIVE TRADE PRACTICES

97. Defendants incorporate by reference their responses to the preceding allegations of the Complaint.

98. Defendants deny the allegations set forth in Paragraph 98 of the Complaint.

99. Defendants deny the allegations set forth in Paragraph 99 of the Complaint.

COUNT VIII
TRADE DRESS INFRINGEMENT UNDER THE LANHAM ACT, 15 U.S.C. § 1125

100. Defendants incorporate by reference their responses to the preceding allegations of the Complaint.

101. Defendants deny the allegations set forth in Paragraph 101 of the Complaint.

102. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 102 of the Complaint, and therefore deny same.

103. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 103 of the Complaint, and therefore deny same.

104. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 104 of the Complaint, and therefore deny same.

105. Defendants deny the allegations set forth in Paragraph 105 of the Complaint.

106. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 106 of the Complaint, and therefore deny same.

107. Defendants deny the allegations set forth in Paragraph 107 of the Complaint.

108. Defendants deny the allegations set forth in Paragraph 108 of the Complaint.

109. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 109 of the Complaint, and therefore deny same.

110. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 110 of the Complaint, and therefore deny same.

111. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 111 of the Complaint, and therefore deny same.

112. Defendants deny the allegations set forth in Paragraph 112 of the Complaint.

113. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 113 of the Complaint, and therefore deny same.

114. Defendants deny the allegations set forth in Paragraph 114 of the Complaint.

115. Defendants deny the allegations in the second sentence of Paragraph 115 of the Complaint. Defendants are without sufficient information or knowledge to either admit or deny the remaining allegations set forth in Paragraph 115 of the Complaint, and therefore deny same.

116. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 116 of the Complaint, and therefore deny same.

117. Defendants deny the allegations set forth in Paragraph 117 of the Complaint.

118. Defendants deny the allegations set forth in Paragraph 118 of the Complaint.

119. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 119 of the Complaint, and therefore deny same.

120. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 120 of the Complaint, and therefore deny same.

121. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 121 of the Complaint, and therefore deny same.

122. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 122 of the Complaint, and therefore deny same.

123. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 123 of the Complaint, and therefore deny same.

124. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 124 of the Complaint, and therefore deny same.

125. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 125 of the Complaint, and therefore deny same.

126. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 126 of the Complaint, and therefore deny same.

127. Defendants deny the allegations set forth in Paragraph 127 of the Complaint.

128. Defendants deny the allegations set forth in Paragraph 128 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of laches.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of estoppel.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of release.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of acquiescence.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of implied license.

WHEREFORE, Defendants pray for judgment against Plaintiffs, holding that Plaintiffs shall take nothing, and that Plaintiffs shall pay Defendants' costs, interest and attorneys' fees, and granting Defendants such other relief as this Court deems just and proper.

SECOND AMENDED COUNTERCLAIM

THE PARTIES

1. CBT SUPPLY, INC. d/b/a SMARTDESKS ("CBT") is a Maryland corporation with its principal place of business at 83 Jacobs Road, Rockaway, New Jersey 07866.

2. JEFFREY KORBER ("Korber") is an individual domiciled and residing in the State of New Jersey. (CBT and Korber hereinafter referred to collectively as "Defendants.")

3. Upon information and belief, SMARTDESKS, INC. ("Smartdesks, Inc.") is a Maryland corporation with its principal place of business at 10717 Faulkner Ridge Circle, Columbia, Maryland 21044.

4. Upon information and belief, PETER J. STENGEL ("Stengel") is an individual domiciled and residing at 10717 Faulkner Ridge Circle, Columbia, Maryland 21044. (Smartdesks, Inc. and Stengel hereinafter referred to collectively as "Plaintiffs.")

JURISDICTION & VENUE

5. This is an action for copyright infringement, federal trademark counterfeiting, federal trademark infringement, federal unfair competition, federal cybersquatting, common law unfair competition, and common law contract and tort claims. This Court has jurisdiction over the federal

claims pursuant to 28 U.S.C. §§ 1331 and 1338, and supplemental jurisdiction over the related state and common law claims pursuant to 28 U.S.C. § 1367.

6. Defendants submit itself to the jurisdiction of this Court.

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

FACTS

CBT's Trademarks and Copyrighted Works

8. CBT, directly and through its predecessors-in-interest, has been and is now engaged in the business of manufacturing and marketing in interstate commerce a wide variety of desks, lecterns and other office furniture products, and marketing and selling design services related to its furniture products.

9. Since at least as early as 1998, CBT, directly and through its predecessors-in-interest, has marketed and sold its office furniture products and related design services under the trademark and service mark SMARTDESKS and SMARTDESKS (and Design) (collectively the "SMARTDESKS Marks").

10. CBT, directly and through its predecessors-in-interest, has widely advertised and extensively offered its office furniture products and design services under the SMARTDESKS Marks throughout the United States, and the SMARTDESKS Marks have become, through widespread and favorable public acceptance and recognition, an asset of substantial value as a symbol of CBT, its quality products and its good will.

11. In addition to the SMARTDESKS Marks, CBT has adopted and used in interstate commerce numerous additional trademarks for office furniture and related products, including FLIP IT, MPLEX, SPEX, SNAPFLEX, SMARTCHAIRS, DEMI, PIANO, PIANO SERIES: CONCERTO,

SONATA, TRIAD, MOTIF, DLSEMINAR, and CTINTERACTIVE (collectively "CBT's Marks").

12. On May 11, 2004, the United States Patent and Trademark Office granted federal trademark registration to CBT for the trademark FLIP IT for "ergonomically designed office furniture, namely, integrated workstations that incorporate computers, video display terminals, electronic telecommunications devices, audio visual equipment and controls, and electronic data storage supplies and apparatus with furniture as a single unit for use in offices and classrooms" as registration number 2,839,887. Said registration is in full force and effect and is owned by CBT. CBT uses the registration symbol (R) on its goods and in advertising in association with said trademark.

13. CBT is the owner of the Internet domain name <smartdesks.com>, and has advertised its office furniture products and related design services via the Internet on its Internet Web Site located at the URL http://www.smartdesks.com ("CBT's Web Site") since at least as early as January 1998.

14. CBT is the author of numerous photographs of its furniture and related products. CBT owns the copyrights to the photographs, and has applied to register the copyrights with the U.S. Copyright Office. True and correct copies of the applications for registration are attached hereto as Exhibit "A." The Copyright Office has issued Certificates of Registration for the group of Defendants' photographs published in 2003 ("2003 Group Photographs") as well as the Korber Glasses Photo.

15. In addition to the copyrighted photographs, CBT is the author of numerous other copyrighted works, including FLIP IT Installation Instructions and a FLIP IT Marketing Brochure. CBT owns the copyrights to the Installation Instructions and Marketing Brochure, and has applied to register the copyrights with the U.S. Copyright Office. True and correct copies of the applications for registration are attached hereto as Exhibit "B." (Collectively referred to, together with CBT's copyrighted photographs, as the "Copyrighted Works.") Attached hereto as Exhibit "C" are true and

correct copies of receipts confirming that the Copyright Office has received the foregoing copyright applications, required deposits, and application fees.

Release And Agreement To Indemnify And Save Harmless

16. On December 29, 2000, Stengel signed a "Release and Agreement to Indemnify and Save Harmless" agreement ("Release") in which Stengel released Korber, Smartdesks Ltd., and their assigns from any and all claims, demands, suits or other proceedings which Stengel then had or may have in the future arising from or relating to any work or services, including inventions, ideas, designs or improvements that Stengel performed for or at the request of Korber or Smartdesks Ltd. A true and correct copy of the Release is attached as Exhibit "D."

17. In the Release, Stengel also agreed to indemnify and hold Korber and Smartdesks Ltd. harmless from any and all claims of others arising out of any claims of any ownership, or other rights, in or to the works, inventions, ideas, designs or improvements created by Stengel for Korber and/or Smartdesks Ltd.

18. Smartdesks Inc. was not a party to the December 2000 Release.

Piano Trade Dress

19. Since at least as early as 2004, Defendants have manufactured and sold a line of computer conference tables under the trademark PIANO (herein "PIANO Conference Tables").

20. The shape and configuration of Defendants' PIANO Conference Table is unique.

21. As a result of the extensive marketing and sales of Defendants' PIANO Conference Tables, consumers have come to associate the shape and configuration Defendants' PIANO conference tables exclusively with Defendants.

22. Defendants exercise sole control over the manufacture of all PIANO Conference Tables.

23. The shape and configuration of Defendants' PIANO Conference Tables is non-functional.

24. The shape and configuration of Defendants PIANO Conference Tables constitutes protectable trade dress owned by Defendants (herein "PIANO Trade Dress").

Plaintiffs' Infringing Conduct

25. On or about September 23, 2005, Stengel registered the Internet domain name <smartdesksdesign.com>.

26. On information and belief, Stengel obtained a copy of CBT's Web Site as it appeared prior to January 26, 2005, including copies of many of CBT's Copyrighted Works.

27. On information and belief, in or about November 2005, Plaintiffs began using this unauthorized copy of CBT's Web Site to advertise and promote office furniture products and related design services via the URL http://www.smartdesksdesign.com ("Infringing Web Site").

28. Beginning as early as November 2005, Plaintiffs reproduced, distributed, and publicly displayed one or more of CBT's Copyrighted Works on the Infringing Web Site.

29. At no time has CBT authorized Plaintiffs to reproduce, distribute or publicly display any of CBT's Copyrighted Works.

30. Beginning as early as November 2005, Plaintiffs adopted and began using CBT's Marks in interstate commerce to advertise and promote office furniture products and related design services on the Infringing Web Site.

31. Beginning as early as November 2005, Plaintiffs advertised and promoted conference tables incorporating the PIANO Trade Dress on the Infringing Web Site without the permission or approval of Defendants.

32. Beginning as early as November 2005, Plaintiffs attempted to pass themselves off as CBT on the Infringing Web Site by, among other things, listing CBT's name, address, and telephone number on the Infringing Web Site as their own, referencing CBT's Federal General Services Administration contracting number on the Infringing Web Site as their own, and listing CBT's customers as their own customers.

33. On information and belief, on December 7, 2005, Stengel filed two applications to register the marks "SMARTdesks" and "SMARTdesks (and Design)" with the U.S. Patent and Trademark Office ("Stengel Trademark Applications").

34. On information and belief, each of the Stengel Trademark Applications includes the following sworn declaration: "The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true."

35. On information and belief, Scott A. Conwell ("Conwell"), as attorney for Stengel, signed the foregoing sworn declarations in the Stengel Trademark Applications.

36. On information and belief, Plaintiffs knew, at the time Conwell signed the sworn declarations in the Stengel Trademark Applications, that Defendants owned all right, title and interest in and to the SMARTDESKS Marks.

37. On or about January 6, 2006, after the commencement of this lawsuit, Plaintiffs registered the Internet domain name <smartdesksinc.com>. The web page hosted at the <smartdesksinc.com> domain name states "SMART*desks*, Inc. Coming Soon."

38. On or about January 18, 2006, Plaintiffs, by and through their attorney, sent letters to a number of third parties, many of whom manufacture furniture components for Defendants (herein referred to as "Letters"). A true and correct copy of the Letter is attached hereto as Exhibit "E."

39. The Letters allege that Stengel "is the owner of all right, title and interest in and to the SMARTdesk product line as described herein."

40. Stengel is not the "owner of all right, title and interest in and to the SMARTdesk product line" as described in the Letters.

41. The Letters further allege that Stengel owns the copyrights to certain product drawings, purportedly identified on a list entitled "SMARTdesks, Inc. Product Drawings" that was enclosed with the Letters.

42. The Letters do not include copies of any drawings or images purportedly authored by Stengel.

43. The Letters further allege that the third party recipients may be infringing Stengel's alleged copyrights by "utilizing Mr. Stengel's copyrighted drawings and material . . . to develop other drawings, create physical and computer-based models, and/or manufacture products."

44. On information and belief, none of Defendants' vendors utilize any drawings or images allegedly authored by Stengel to develop other drawings, create physical and computer-based models, and/or manufacture products.

45. The Letters include allegations of fact and/or law that are false and misleading.

46. On information and belief, the Letters were sent to Defendants' vendors with knowledge that they contained false statements of fact and allegations of law, and with the intent to interfere with existing and potential economic relationships between Defendants and their vendors.

COUNT I
COPYRIGHT INFRINGEMENT
PURSUANT TO 17 U.S.C. §101 *et. seq.*

47. Defendants incorporate by reference the allegations contained in Paragraphs 1 through 46 of this Counterclaim.

48. Plaintiffs' reproduction, distribution and/or public display of CBT's Copyrighted Works constitutes copyright infringement in violation of 17 U.S.C. § 501.

49. Unless enjoined and restrained, Plaintiffs' conduct threatens to further infringe CBT's copyright interests.

50. By virtue of Plaintiffs' conduct, Defendants are entitled to recover their actual damages as a result of the infringement, and any profits of Plaintiffs attributable to the infringement.

COUNT II
FEDERAL TRADEMARK INFRINGEMENT AND COUNTERFEITING PURSUANT TO 15 U.S.C. §1114

51. Defendants incorporate by reference the allegations contained in Paragraphs 1 through 50 of this Counterclaim.

52. Plaintiffs have used in commerce counterfeit copies or colorable imitations of CBT's Registered FLIP IT mark in connection with the sale, offering for sale, distribution, or advertising of goods and services on or in connection with which such use is likely to cause confusion, to cause mistake, or to deceive in violation of 15 U.S.C. §1114(1)(a).

53. Plaintiffs have reproduced counterfeit copies or colorable imitations of CBT's Registered Mark and applied such counterfeits or colorable imitations to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive in violation of 15 U.S.C. §1114(1)(b).

54. Defendants will suffer irreparable harm unless Plaintiffs are permanently enjoined from continuing to infringe upon Defendants' trademarks.

55. Upon information and belief, Plaintiffs' aforementioned conduct has been willful and intentional.

COUNT III
FEDERAL TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION PURSUANT TO 15 U.S.C. §1125(a)

56. Defendants incorporate by reference the allegations contained in Paragraphs 1 through 55 of this Counterclaim.

57. Plaintiffs have been using in commerce words, terms, names, symbols, or devices, or combinations thereof, as well as false designations of origin, false or misleading descriptions of fact, or false or misleading representations of fact, which

a. are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Plaintiffs with Defendants, or as to the origin, sponsorship, or approval of Plaintiffs' goods, services, or commercial activities by Defendants; and

b. in commercial advertising or promotion, misrepresent the nature, characteristics, qualities, or origin of Plaintiffs' and/or Defendants' goods, services or commercial activities.

58. Plaintiffs have attempted to pass off their goods and services as those of CBT by holding themselves out as CBT Supply, Inc., by claiming CBT Supply, Inc.'s customers as their own, and by identifying CBT Supply, Inc.'s Federal General Services Administration contracting number as their own, which acts are likely to cause consumer confusion, mistake or deception, and therefore constitute unfair competition in violation of 35 U.S.C. § 1125(a).

59. Plaintiffs' adoption and use of counterfeit or colorable imitations of CBT's Marks in commerce is likely to cause consumer confusion, mistake or deception, and therefore constitutes unfair competition in violation of 35 U.S.C. § 1125(a).

60. Defendants will suffer irreparable harm unless Plaintiffs are permanently enjoined from continuing to infringe upon Defendants' trademarks

61. Upon information and belief, Plaintiffs' aforementioned conduct has been willful and intentional.

COUNT IV
FEDERAL TRADE DRESS INFRINGEMENT
PURSUANT TO 15 U.S.C. §1125(a)

62. Defendants incorporate by reference the allegations contained in Paragraphs 1 through 61 of this Counterclaim

63. The distinctive shape and configuration of Defendants' PIANO line of furniture products has come to identify Defendants as the source of those products, and therefore constitutes protectable trade dress.

64. Plaintiffs' advertising and offering for sale in commerce conference tables that incorporate the identical shape and configuration of Defendants' PIANO furniture products is likely to cause consumer confusion, mistake or deception with Defendants, and therefore constitutes Federal trade dress infringement in violation of 35 U.S.C. §1125(a).

65. Defendants will suffer irreparable harm unless Plaintiffs are permanently enjoined from continuing to infringe upon Defendants' valuable trade dress.

66. On information and belief, Plaintiffs' aforementioned conduct as been willful and intentional.

COUNT V
FEDERAL DOMAIN NAME CYBERPIRACY
PURSUANT TO 15 U.S.C. §1125(d)

67. Defendants incorporate by reference the allegations contained in Paragraphs 1 through 66 of this Counterclaim.

68. Plaintiffs registered and/or used the domain names <smartdesksdesign.com> and <smartdesksinc.com> ("Infringing Domain Names") which are identical or confusingly similar to CBT's SMARTDESKS Mark.

69. CBT's SMARTDESKS Mark was distinctive at the time Plaintiffs registered and began using the Infringing Domain Name.

70. Plaintiffs registered the Infringing Domain Names with a bad faith intent to profit from CBT's SMARTDESKS Mark in violation of 15 U.S.C. § 1125(d).

71. Upon information and belief, Plaintiffs' aforementioned conduct has been willful and intentional.

COUNT VI
COMMON LAW UNFAIR COMPETITION
AND TRADE LIBEL

72. CBT incorporates by reference the allegations contained in Paragraphs 1 through 71 of this Counterclaim.

73. Plaintiffs have attempted to pass off their goods and services as those of CBT by holding themselves out as CBT Supply, Inc., by claiming CBT Supply, Inc.'s customers as their own, and by identifying CBT Supply, Inc.'s Federal General Services Administration contracting number as their own, which acts are likely to cause consumer confusion, mistake or deception, and therefore constitute unfair competition.

74. Plaintiffs' adoption and use of counterfeit or colorable imitations of CBT's Marks in commerce is likely to cause consumer confusion, mistake or deception, and therefore constitutes unfair competition.

75. Plaintiffs' advertising and offering for sale conference tables that incorporate the PIANO Trade Dress in commerce is likely to cause consumer confusion, mistake or deception, and therefore constitutes unfair competition.

76. Plaintiffs' false representations of fact and allegations of law to vendors of Defendants constitute false and misleading statements or representations regarding Plaintiff's products and/or Defendants' products, and therefore constitute unfair competition and trade libel in violation of the Maryland Common Law.

COUNT VII
INDEMNIFICATION AGAINST STENGEL

77. Defendants incorporate by reference the allegations contained in Paragraphs 1 through 76 of this Counterclaim.

78. Pursuant to the terms of the Release, Stengel must indemnify and hold Defendants harmless against the claims brought by Smartdesks, Inc. in this case.

COUNT VIII
FRAUD ON THE U.S. PATENT AND TRADEMARK OFFICE

79. Defendants incorporate by reference the allegations contained in Paragraphs 1 through 78 of this Counterclaim.

80. By their conduct above, Plaintiffs have committed fraud on the U.S. Patent and Trademark Office.

COUNT IX
INTERFERENCE WITH ACTUAL OR PROSPECTIVE BUSINESS RELATIONS

81. Defendants incorporate by reference the allegations contained in Paragraphs 1 through 80 of this Counterclaim.

82. By their conduct above, Plaintiffs have interfered with Defendants' actual and prospective economic relationships with the intent to cause damage to the Defendants in their lawful business.

83. Plaintiffs have no right or justifiable cause for their willful and intentional conduct.

84. As a result of Plaintiffs' willful and intentional conduct, Defendants have suffered actual damage and loss, and are likely to continue to suffer further damage and loss if Defendants and their counsel are not enjoined from engaging in such conduct.

PRAYER FOR RELIEF

WHEREFORE Defendants/Counterclaimant CBT Supply, Inc. and Jeffrey Korber requests that the Court:

a. Issue a preliminary and permanent injunction ordering that Plaintiffs' immediately and permanently be enjoined from reproducing, distributing, publicly displaying, and creating derivative works based upon Defendants' Copyrighted Works, pursuant to 17 U.S.C. §502.

b. Issue a preliminary and permanent injunction ordering that Plaintiffs' immediately and permanently be enjoined from using any trademark, word, name, symbol, device, logo, or internet domain name that is a counterfeit or colorable imitation of any of Defendants' Marks, or that is likely to be confused with any of Defendants' Marks, pursuant to 15 U.S.C. § 1116.

c. Issue a preliminary and permanent injunction ordering that Plaintiffs' immediately and permanently be enjoined from manufacturing, advertising, offering for sale, selling or distributing any furniture products that incorporate Defendants' PIANO Trade Dress or that are otherwise likely to cause confusion with Defendants' PIANO Trade Dress, pursuant to 15 U.S.C. § 1116.

d. Order that Stengel expressly abandon the Stengel Trademark Applications now pending before the U.S. Trademark Office.

e. Award Defendants their actual damages suffered as a result of Plaintiffs' infringement of the Copyrighted Works, together with any profits of Plaintiffs attributable to the infringement, pursuant to 17 U.S.C. § 504(b).

f. Award Defendants their actual damages, an accounting of Defendants' profits, and Defendants' costs of this action pursuant to 15 U.S.C. § 1117(a).

g. Award Defendants three times their actual damages, an enhancement of Plaintiffs' profits, and Defendants' reasonable attorneys' fees due to the willful and intentional nature of Plaintiffs' infringing conduct, pursuant to 15 U.S.C. §1117(a) and (b).

h. Award Defendants, in lieu of its actual damages and an accounting of Plaintiffs' profits, an award of statutory damages of up to $1,000,000, if so elected by Defendants, pursuant to 15 U.S.C. §1117(c).

i. For Plaintiffs' violation of 15 U.S.C. §1125(d), award Defendants, in lieu of their actual damages and Plaintiffs' profits, an award of statutory damages of up to $100,000, pursuant to 15 U.S.C. §1117(d) for each Infringing Domain Name.

j. Order that the <smartdesksdesign.com> and <smartdesksinc.com> domain names be transferred to Defendants or, in the alternative, cancelled.

k. Order that Stengel indemnify and hold harmless Korber and CBT for their all of their costs and legal fees incurred in defending the claims brought by Smartdesks, Inc. in this suit, pursuant to the December 2000 Release.

l. Issue a preliminary and permanent injunction ordering that Plaintiffs immediately be enjoined from making any additional false or misleading claims regarding Stengel's alleged copyrights in furniture designs, or the alleged infringement of such copyrights by Defendants' vendors.

m. Award Defendants their actual damages resulting from Plaintiffs' intentional interference with Defendants' actual and prospective business relationships;

n. Award Defendants punitive damages and their attorney fees for Plaintiffs' willful and malicious conduct.

o. Award any other relief the Court deems just.

JURY DEMAND

CBT and Korber demand a jury trial on all issues so triable.

Respectfully submitted, July 3, 2006,

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UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

SMARTDESKS, INC., et. al., Plaintiffs / Counterclaim Defendants, v. CBT SUPPLY, INC., et. al., Defendants / Counterclaim Plaintiffs.	)	Civil Action No.: 1:05-CV-03456 MJG

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2006, 2006 a copy of the ***Answer to First Amended Complaint and Defendants' Second Amended Counterclaim*** was filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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