

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. **07-60811**

CIV-COHN

MERLE NORMAN COSMETICS, INC., a  
California corporation

Plaintiff,

vs

JOYCE LABARBERA and JANE DOE

Defendants.

**MAGISTRATE JUDGE**  
**SNOW**  
FILED BY                       
2007 JUN 12 PM 3:58  
MARSHALL MADDOX  
CLERK U.S. DIST. CT.  
S.D. OF FLA.-FT.L.  
DN

**COMPLAINT**

Plaintiff MERLE NORMAN COSMETICS, INC., a California corporation, for its  
Complaint, alleges as follows:

**THE PARTIES**

1. Merle Norman Cosmetics, Inc. (hereinafter "MNC") is a corporation organized and existing under the laws of the State of California with its headquarters and principal place of business located at 9130 Bellanca Avenue, Los Angeles, California 90045. For over seventy years, MNC's primary business has been the development, manufacture, and distribution of a proprietary line of skin care and color cosmetic products under the federally registered trademark MERLE NORMAN. MNC distributes its products exclusively through almost 2,000 independently owned and operated MERLE NORMAN studios in the United States and Canada. The MERLE NORMAN studios are small, single-location franchises. MERLE NORMAN Studio Owners are often small businesswomen with limited resources and capital. The operation

of each MERLE NORMAN Studio is governed by a Studio Agreement between the studio owner and MNC.

2. The defendant Jane Doe (“Doe”) is a MERLE NORMAN Studio Owner whose identity is currently unknown to MNC to any degree of certainty. On information and belief, Doe is supplying MERLE NORMAN products to LaBarbera at or about the wholesale price she pays to MNC, in breach of her agreement to sell MERLE NORMAN products only to retail customers who appear in person at her MERLE NORMAN Studio. By selling MERLE NORMAN products to the defendant Joyce LaBarbera (“LaBarbera”) outside the permitted channel of distribution, Doe is enabling LaBarbera to sell MERLE NORMAN products on the internet, which MNC prohibits, and thereby compete unfairly with MNC and its authorized Studio Owners.

3. LaBarbera is a citizen and resident of the State of Florida. As is more fully set forth below, LaBarbera is engaging in the unauthorized sale of MERLE NORMAN products on the internet, despite having been directed by MNC to cease that activity. LaBarbera’s activities are wrongful and intentional, are causing irreparable harm to the goodwill associated with the MERLE NORMAN brand, and are causing MNC to suffer monetary damages.

### **JURISDICTION**

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1332. The amount in controversy exceeds \$75,000 and the parties are of diverse citizenship.

5. Venue is appropriate in this district. The defendant LaBarbera is a resident of this district. The events forming the basis of this Complaint took place in this district.

### **THE MERLE NORMAN SYSTEM**

6. The MERLE NORMAN system was founded in 1931. A primary component of MNC’s system of distributing its products is the personal relationship between each customer

and her knowledgeable Merle Norman beauty consultant, who is typically the Studio Owner.

The cornerstone of the MERLE NORMAN system is its “Try Before You Buy” concept.

7. At no time since it began to license MERLE NORMAN Studios has MNC authorized the sale of its products through any channel other than the MERLE NORMAN Studio system. Studio owners are authorized to sell MERLE NORMAN products only to retail customers who appear in person at MERLE NORMAN Studios. Studio owners are prohibited from selling MERLE NORMAN products via mail order, the internet, or e-mail. This prohibition on the sale of MERLE NORMAN products through any channel other than the MERLE NORMAN Studio system or any other channel of distribution than through retail store is essential to MNC’s ability to ensure the safety and quality of its products. For example, Merle Norman beauty consultants are specially trained in proper hygienic practices through mandatory education which is designed to ensure the sanitary testing of MNC’s products by studio customers.

8. The advent and popularity of the internet in the 1990’s, particularly the various channels of e-commerce that arose at that time, caused MNC to reinforce its “Try Before You Buy” concept. At least as early as March 1997, MNC announced a policy prohibiting Studio Owners from selling MERLE NORMAN products on the internet. This policy was set forth in the Studio Resource Style Manual (“MNC Manual”), which was sent to all Studio Owners. The current version of the MNC Manual states:

You may not engage in sales of Merle Norman products via the Internet or e-mail without our written consent . . . .

Sales through the Internet, by mail order or telemarketing are contrary to the “Try Before You Buy” concept.

This language does not differ materially, if at all, from language appearing in the MNC Style Manual since March 1997.

9. The policy of “no internet sales” has been reinforced repeatedly. MNC distributes to its Studio Owners a publication called “Merle Norman News.” Articles regarding MNC’s policies of “no internet sales” have appeared frequently in this publication. MNC has presented programs at its annual convention regarding its “no internet sales” policy.

10. MNC’s policy prohibiting Studio Owners from selling MERLE NORMAN products on the internet is incorporated into the Studio Agreements. The form of Studio Agreement used before June 1, 2005 states, in part:

You are granted the right to use [the MERLE NORMAN] names and trademarks designated by MNC, but only in connection with your sale of Merle Norman products at retail and only in compliance with MNC’s policies in effect from time to time.

That agreement authorizes MNC to terminate the Studio Agreement if the Studio Owner fails to cure a default of any “requirements of this Agreement” within 30 days.

11. The form Studio Agreement in effect since June 1, 2005 contains an explicit statement of this policy:

You may only sell [MERLE NORMAN] Products to customers who are physically present at the Studio Location and to customers at MNC approved marketing events. You may not sell [MERLE NORMAN] Products in connection with the use of a toll free telephone number or in any wholesale, mail order or e-commerce distribution, or any channel of distribution other than the retail operation of the Franchised Studio at the Studio Location . . . .

The new version of Studio Agreement permits MNC to terminate, without opportunity to cure, if the Studio Owner sells “MERLE NORMAN Products through any wholesale, mail order (except to existing customers) or e-commerce distribution, or through any channel of distribution other than the retail operation of the Franchised Studio at the Studio Location and MNC approved marketing events.”

12. A Studio Owner's sale of MERLE NORMAN products on the internet is a breach of the Studio Agreement.

**MNC'S DISCOVERY OF LABARBERA'S INTERNET SALES**

13. MNC became aware that an unidentified person had been engaging in the unauthorized sale of large quantities of MNC's products on eBay. eBay is a company that facilitates the buying and selling of items through the internet its auction-style website [www.ebay.com](http://www.ebay.com).

14. On the eBay website, sellers, identified only by an "eBay member name" they select, offer products for sale. The seller typically sets a minimum bid, and buyers bid at that price or above. At the close of the auction period of several days, as determined by the seller, the buyer with the highest bid wins the auction. At that point, the buyer and seller are put in touch with one another to consummate the transaction.

15. In eBay auctions, sellers typically list an additional charge for shipping. It is not unusual for sellers to charge more for shipping than the actual cost of postage to mail the sold item.

16. A seller with an eBay member name "clldesoto" was selling MERLE NORMAN products on eBay. The location of the products was shown on the listings as "Davie, FL." The products offered for sale by "clldesoto" included "lesson materials," which are products made available to Studio Owners for use only in performing demonstrations and are not for resale to the public at all.

17. MNC made a purchase of a MERLE NORMAN product on eBay from "clldesoto." In the course of making this transaction, MNC learned that all "clldesoto's" email address was [Joycel734@msn.com](mailto:Joycel734@msn.com). When the package containing the MERLE NORMAN product purchased by MNC's agent was delivered, it bore the return address "Discount

Cosmetics, 12911 SW 15<sup>th</sup> Manor, Davie, FL”. This address is a residence owned by Ciro and Joyce LaBarbera.

18. The eBay member name “clddesoto” belongs to LaBarbera.

19. On April 2, 2007, an investigator retained by MNC contacted LaBarbera, who admitted that she was selling MERLE NORMAN products on eBay, but claimed that she had purchased the products at a MERLE NORMAN store as a retail customer and insisted on her right to continue selling MERLE NORMAN products on eBay.

20. The products offered for sale by “clddesoto” were not products that would typically be on sale at below suggested retail prices at MERLE NORMAN studios. Typically, the only items on sale at below suggested retail prices at MERLE NORMAN studios are discontinued or seasonal items. The products offered by LaBarbera included items newly shipped to Studio Owners that would not have been marked down. Moreover, the volume of products offered for sale by LaBarbera, over 500 products in a period of a few months, far exceeds the sales that a Studio Owner would normally make to a retail customer.

21. The prices of the sales of “clddesoto” of MERLE NORMAN retail products on eBay were above MNC’s wholesale price and below MNC’s suggested retail price.

22. Despite her claim to be within her rights to sell MERLE NORMAN products on eBay, immediately after being contacted by MNC’s investigator, LaBarbera took steps to attempt to conceal her continuing sale of MERLE NORMAN products on eBay from MNC.

23. In April 2007, LaBarbera changed her eBay member name from “clddesoto” to “discountcosmeticsandthings.” Because this change was a name change on the same account, the name change was disclosed on eBay. Potential buyers were given notice that

“discountcosmeticsandthings” was the same seller as “clldesoto.” “Discountcosmeticsandthings” sold MERLE NORMAN products on eBay whose location was shown as “Davie, FL.”

24. “Discountcosmeticsandthings” is an eBay member name owned by LaBarbera.

25. By letter dated April 24, 2007, MNC, by counsel, directed LaBarbera to cease and desist her sales of MERLE NORMAN products on the internet.

26. At about the same time, LaBarbera adopted an entirely new eBay member name: “cosmeticsgaloreohboy!” Unlike her change to “discountcosmeticsandthings,” this change of name was to an entirely new account, so that the change was not apparent to eBay buyers. EBay listings under the “cosmeticsgaloreohboy!” name stated “we are new to eBay.” The first few listings of MERLE NORMAN products under that name showed the location of the products as “Davie, FL.” Subsequent listings showed the product location as “Canton, GA.”

27. At MNC’s direction, two MERLE NORMAN products were purchased from “cosmeticsgaloreohboy!”. In connection with those purchases, the seller disclosed that one of her email addresses was [joycel734@gmail.com](mailto:joycel734@gmail.com). On information and belief, the label on the package containing the purchased MERLE NORMAN products was in the same handwriting as the handwriting on the label of the package purchased from “clldesoto.” The return address shown on the address label was a P.O. Box in Canton, GA, but the metered postage was purchased in Davie, FL 33328.

28. “Cosmeticsgaloreohboy!” is an eBay member name owned by LaBarbera.

29. MNC then discovered eBay sales of MERLE NORMAN products under the name “alexjp2006,” with products located in Miramar, FL. MNC arranged for a purchase from “alexjp2006.”

30. In connection with the purchase from “alexjp2006,” the seller showed as her return address the same P.O. Box in Canton, GA that was used by “cosmeticsgaloreohboy!.” On information and belief, the handwriting on the address label is the same as that on the address labels sent by “cosmeticsgaloreohboy!” and “clldesoto.” The metered postage was purchased in zip code 33328, the same post office at which the postage for the packages from “cosmeticsgaloreohboy!” and “clldesoto” were purchased.

31. “Alexjp2006” is an eBay member name owed by LaBarbera.

32. In connection with the purchase from “alexjp2006,” eBay provided an alternative name for the seller: “cosmeticsdiva4u.” “Cosmeticsdiva4u” also listed MERLE NORMAN products for sale on eBay. MNC arranged for a purchase of a MERLE NORMAN product from “cosmeticsdiva4u.” In connection with that transaction, MNC learned that “cosmeticsdiva4u” lists the same email address and the same name as were listed for “alexjp2006.” The return address was the same P.O. Box in Canton, GA used by “cosmeticsgaloreohboy!” and “alexjp2006.” The metered postage was purchased in zip code 33328, which is Davie, FL. The product was wrapped in pages from the South Florida Sun Sentinel.

33. “Cosmeticsdiva4u” is an eBay member name owed by Ms. LaBarbera.

34. LaBarbera’s sales of MERLE NORMAN products on eBay were at prices, inclusive of shipping charges in excess of her postage costs, between MNC’s wholesale prices to Studio Owners and MNC’s suggested retail prices.

35. On information and belief, LaBarbera purchased the MERLE NORMAN products she sold on eBay from Jane Doe.

36. On information and belief, each of LaBarbera’s purchases from Jane Doe was at or about the wholesale price at which MNC sold the products to Jane Doe.



37. Each of Jane Doe's sales to LaBarbera was a violation of MNC's policies and a breach of Jane Doe's Studio Agreement. LaBarbera was aware that Doe's sales of MERLE NORMAN products were a breach of Doe's Studio Agreement.

38. The unauthorized sale of MNC products on eBay has caused, and will continue to cause, damage to MNC, its studio owners, and retail customers in a variety of ways, including but not limited to the following:

- (a) The goodwill and reputation of the MERLE NORMAN trademarks and system has been and will continue to be irreparably harmed by the sale of MERLE NORMAN products at discounted prices without the individual "Try Before You Buy" service that has been the cornerstone of the MERLE NORMAN system;
- (b) Dissatisfied customers have attempted (and likely will continue to attempt) to return damaged, spoiled, misbranded or otherwise adulterated MERLE NORMAN products acquired on eBay to MERLE NORMAN studios in reliance on MNC's "Satisfaction Guaranteed" customer return policy and "Try Before You Buy" philosophy;
- (c) Franchised MERLE NORMAN studios have been and will continue to be subjected to unfair competition as a result of the unauthorized availability of MERLE NORMAN products on eBay at a significantly reduced cost from sellers who do not conform to MNC's "Try Before You Buy" concept and provide the personal service that is offered at MERLE NORMAN studios, which MNC requires as a condition to agreeing to selling MERLE NORMAN products at wholesale prices.

- (d) MERLE NORMAN studio customers are at potential health risks from their unknowing use of potentially contaminated MERLE NORMAN products obtained on eBay;
  - (e) MNC faces the potential of bad publicity, loss of goodwill, and undue regulatory scrutiny as the result of the unauthorized sale of misbranded or adulterated MERLE NORMAN products on eBay.
39. LaBarbera is continuing to offer for sale MERLE NORMAN products on eBay.

**FIRST CAUSE OF ACTION**

**(By MNC Against Doe for Breach of Contract)**

40. MNC incorporates herein by reference all other allegations of the Complaint as though fully set forth herein.

41. Pursuant to her Studio Agreement with MNC, Doe was authorized to purchase MERLE NORMAN products only for resale at retail in her MERLE NORMAN studio.

42. Pursuant to her Studio Agreement with MNC, Doe was prohibited from selling MERLE NORMAN products on the internet.

43. Doe's sale of MERLE NORMAN products to LaBarbera at or about wholesale price for resale on the internet is a breach of her Studio Agreement.

44. MNC has suffered and is continuing to suffer irreparable harm as a result of Doe's breaches of contract.

45. MNC has also suffered monetary damages in an amount to be proven at trial.

**SECOND CAUSE OF ACTION**

**(By MNC Against Doe: Termination of Studio Agreement)**

46. MNC incorporates herein by reference all other allegations of the Complaint as though fully set forth herein.

47. Pursuant to the pre-June 1, 2005 form of Studio Agreement, MNC has the right to terminate the Studio Agreement if Doe does not cure a default within thirty days after being given notice thereof. Doe's numerous defaults under the Studio Agreement are incapable of being cured. Accordingly, the Studio Agreement is terminated.

48. Pursuant to the post-June 1, 2005 form of Studio Agreement, MNC has the right to terminate the Studio Agreement without opportunity to cure for sales other than at retail in the studios.

49. MNC is entitled to a declaratory judgment that Doe's Studio Agreement is terminated.

### **THIRD CAUSE OF ACTION**

#### **(By MNC Against LaBarbera For Tortious Interference With Contract)**

50. MNC incorporates herein by reference all other allegations of the Complaint as though fully set forth herein.

51. LaBarbera had knowledge of the Studio Agreement between Doe and MNC.

52. LaBarbera was aware of MNC's prohibition against the sale of MERLE NORMAN products by studio owners at wholesale and on the internet.

53. LaBarbera induced Doe to breach her Studio Agreement with MNC by purchasing products from her at wholesale for resale on the internet.

54. LaBarbera's actions were intentional and without justification or privilege.

55. LaBarbera's actions constitute tortious interference with Doe's performance of her Studio Agreement with MNC.

56. MNC has suffered and is continuing to suffer irreparable harm as a result of LaBarbera's tortious conduct.

57. LaBarbera's tortious conduct has also caused monetary damage to MNC in an amount to be proven at trial.

58. LaBarbera's conduct has been willful and malicious, and in wanton disregard for MNC's rights. MNC is entitled to recover sufficient punitive damages to punish her and to act as deterrent to others.

#### **FOURTH CAUSE OF ACTION**

##### **(By MNC Against Doe and LaBarbera for Civil Conspiracy)**

59. MNC incorporates herein by reference all other allegations of the Complaint as though fully set forth herein.

60. Doe and LaBarbera committed the wrongful and unlawful acts alleged above pursuant to a civil conspiracy of which Doe and LaBarbera were participants and co-conspirators. Accordingly, Doe and LaBarbera are liable to MNC for the full extent of MNC's damages as a result of this conspiracy.

61. As a direct and proximate result of the foregoing acts and conduct of Doe and LaBarbera, MNC has been damaged in its business in a sum according to proof at trial in excess of the jurisdictional limits of this Court.

#### **FIFTH CAUSE OF ACTION**

##### **(By MNC Against Doe and LaBarbera: Deceptive and Unfair Trade Practices)**

62. MNC incorporates herein by reference all the allegations of the Complaint as though fully set forth herein.

63. The acts of Doe and LaBarbera described above, particularly the unauthorized sale of MERLE NORMAN products on the internet in direct contravention of MNC's policies, at discount prices that would not be available to them unless they had access to MERLE NORMAN products at wholesale prices, constitute unfair competition and deceptive trade practices in

violation of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), F.S. § 501.201 et seq.

64. MNC has suffered, and is continuing to suffer irreparable harm as a result of Doe and LaBarbera’s acts of unfair competition.

65. In addition, MNC has suffered monetary damage in an amount to be proven at trial.

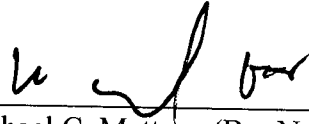
66. MNC is entitled to attorneys’ fees as authorized by FDUTPA.

WHEREFORE, MNC prays for the following:

1. For temporary, preliminary and permanent injunctive relief enjoining the defendants from selling MERLE NORMAN products on eBay, on any internet site, or through any channel of distribution other than through authorized MERLE NORMAN studios;
2. For a judgment against Defendants, jointly and severally, for compensatory damages, as well as for prejudgment interest on such damages;
3. For trebling of damages in accordance with the provisions of the Lanham Act;
4. For punitive and exemplary damages against Defendants according to proof at trial;
5. For a declaration that Doe’s Studio Agreement is terminated;
6. For an award of MNC’s attorneys’ fees in connection with this action; and
7. For costs of suit and such other and further relief as the Court deems just and proper.

Dated: June 11, 2007

Respectfully submitted,



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Michael C. Mattson (Bar No. 308242)  
mmattson@cmlbro.com  
COONEY, MATTSON, LANCE,  
BLACKBURN, RICHARDS &  
O'CONNOR, P.A.  
2312 Wilton Drive  
P.O. Box 14546  
Fort Lauderdale, FL 33302  
954.568.6669 (telephone)  
954.568.0085 (facsimile)

and

James C. Rubinger  
jrubinge@wileyrein.com  
WILEY REIN LLP  
1776 K St. NW.  
Washington, DC 20006  
202.719.7000 (telephone)  
202.719.7207 (facsimile)

Attorneys for Plaintiff,  
MERLE NORMAN COSMETICS, INC.

JS 44 (Rev. 11/05)

**CIVIL COVER SHEET**

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

**I. (a) PLAINTIFFS**  
Merle Norman Cosmetics, Inc

**DEFENDANTS**  
Joyce LaBarbera and Jane Doe

**(b) County of Residence of First Listed Plaintiff** Los Angeles, CA **County of Residence of First Listed Defendant** Broward  
(EXCEPT IN U.S. PLAINTIFF CASES) (IN U.S. PLAINTIFF CASES ONLY)

**(c) Attorney's (Firm Name, Address, and Telephone Number)**  
James C. Rubinger  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

**(d) Check County Where Action Arose:**  MIAMI-DADE  MONROE  BROWARD  PALM BEACH  MARTIN  ST. LUCIE  INDIAN RIVER  OKEECHOBEE HIGHLANDS

Attorneys (If Known) **07-60811**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

*0:07CV 60811-JIC-LSS*

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input checked="" type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding  2 Removed from State Court  3 Re-filed- (see VI below)  4 Reinstated or Reopened  5 Transferred from another district (specify)  6 Multidistrict Litigation  7 Appeal to District Judge from Magistrate Judgment

**VI. RELATED/RE-FILED CASE(S).** (See instructions second page):

a) Re-filed Case  YES  NO b) Related Cases  YES  NO

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

**VII. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

28 USC 1332 Breach of and tortious interference with franchise agreement; civil conspiracy; unfair competition under Florida Deceptive and Unfair Trade Practices Act

LENGTH OF TRIAL via 2 days estimated (for both sides to try entire case)

**VIII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** Injunction **JURY DEMAND:**  Yes  No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD: W. J. ... DATE: 6/12/07

FOR OFFICE USE ONLY

AMOUNT: 350.00 RECEIPT #: \_\_\_\_\_ IFP: 540251