

ELLIS & VENABLE
A Partnership of Professional Organizations
ATTORNEYS AND COUNSELORS AT LAW

www.ellisvenable.com

May 16, 2006

7005 3110 0000 6651 5839

[REDACTED]
[REDACTED]
[REDACTED]

Re: Unauthorized Use of Intellectual Property

Dear Sir or Madam:

This letter is to provide notice of unauthorized use of intellectual property and good will associated therewith owned or licensed by Onkyo USA Corporation and its affiliates (“ONKYO”) (such intellectual property is referred to as “ONKYO Works” or “Onkyo IP”) by [REDACTED] (“herein referred to as “Infringer”). The specific ONKYO Works at issue are as follows:

The specific works, graphics or other material ONKYO believes to be infringed or to be the subject of infringing activity (the “Infringing Material”) are copyrighted images from ONKYO’s website. Specific violations of copyrighted images by www.gizmosforgeeks.com are listed below this paragraph.

<http://www.gizmosforgeeks.com/index.php/articles/2102>

ONKYO has discovered that Infringer has violated upon the rights of ONKYO by performing or allowing to be performed some or all of the following actions: (1) improperly obtained a copy of the ONKYO Works; (2) created derivative works from ONKYO Works; (3) illegally reproduced the ONKYO Works; (4) illegally distributed the ONKYO Works; and (5) illegally publicly displayed the ONKYO Works. The ONKYO Works is used by ONKYO in connection with its business, which includes the provision of Infringer’s goods and/or services.

Infringer’s actions violate the federal copyright laws, 17 U.S.C. § 101 *et seq.*, as well as common law and statutory claims for deceptive trade practices and unfair competition. Even if willful conduct cannot be conclusively established, Section 504 permits the copyright owner to elect an award of non-willful statutory damages of as much as \$30,000 for each work infringed without the necessity of demonstrating actual damages. Additionally, 17 U.S.C. § 505 permits the court to award to the prevailing party its costs and reasonable attorneys’ fees.

Infringer’s use of the Mark unfairly capitalizes upon the goodwill and reputation embodied in the Mark and already has caused confusion among customers of ONKYO.

ONKYO believes Infringer's use of the Mark is highly likely to cause consumers to mistakenly believe that the products and services provided by ONKYO under the Mark are somehow associated, affiliated or otherwise connected with Infringer's business. As a result, ONKYO believes Infringer's use of the Mark constitutes trademark infringement, trademark dilution and unfair competition in violation of the Federal Lanham Trademark Act, 15 U.S.C. § 1051 et seq., as well as state trademark and anti-dilution law. Additionally, such misleading association with ONKYO may cause damage to ONKYO's reputation. ONKYO insists that this situation be remedied.

ONKYO's rights in the ONKYO IP are of enormous value to its business. ONKYO takes reports of copyright and trademark infringement very seriously and will not hesitate to pursue all available legal remedies. Infringer's potential exposure in this matter, should it be litigated, is significant. Despite the potential for a large money judgment, we believe that it is in the best interest of all parties to resolve this matter amicably. However, if Infringer does not immediately cease and desist from its conduct, as demanded by this letter, ONKYO will institute the appropriate proceedings against Infringer without delay.

Therefore, this letter is to formally demand that:

- (1) Infringer immediately ceases and desists from using, copying and displaying the ONKYO IP and all variations thereof;
- (2) Infringer immediately ceases and desists from creating derivative works from the ONKYO IP;
- (3) Infringer immediately ceases and desists from distributing any and all copies of the ONKYO IP that it has already copied and destroys all copies thereof;
- (4) Infringer immediately cease and desist from violating the federal copyright laws, 17 U.S.C. § 101 et seq., as well as other common law and statutory laws in any manner not specifically set forth in this letter;
- (5) Infringer immediately cease and desist from violating the federal and state trademark and unfair competition laws, including the Lanham Act, as well as other common law and statutory laws in any manner not specifically set forth in this letter; and

If Infringer fails to comply with each of the conditions set forth in this letter, ONKYO will take all appropriate action, including but not limited to filing a lawsuit seeking a temporary restraining order, an immediate injunction against Infringer and ultimately the award of damages and attorneys fees against Infringer.

This office is sending this correspondence on behalf of ONKYO, herein referred to as Client. Client believes that the information contained herein is accurate and certifies under penalty of perjury that it is the owner of said intellectual property rights or authorized to act on behalf of said copyright owner. Client has a good faith belief that the listings or materials listed herein are not authorized by Client, its agent, or the law and therefore infringe on Client's rights according to state, federal, or United States law. Please act expeditiously to remove or disable access to the material or items claimed to be infringing.

If you have questions, please contact Net Enforcers Compliance Management Department via facsimile to 501-646-6242, or via email to Compliance.Management@NetEnforcers.com. All communication must be in writing, but if you need to contact Net Enforcers directly, you can contact them at 501-646-6242. Net Enforcers is authorized to handle and resolve this matter with you and has already been involved with this case. Calls directly to ONKYO will not be accepted. If Infringer does not respond to this demand as requested by 5:00 p.m. on **May 25, 2006**, we will assume that you admit to the violations described above and that this demand to immediately cease further violation has been rejected. We will advise our Client accordingly to take appropriate action.

Sincerely,

ELLIS & VENABLE



Lance C. Venable
Attorney at Law

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