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CLERK OF DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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9
10 Attorneys for Plaintiff

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13
14 PERFECT 10, INC., a California
15 corporation,

16 Plaintiff,

17 v.

18 RAPIDSHARE AG., a corporation;
19 CHRISTIAN SCHMID; BOBBY
20 CHANG; and DOES 1 through 100,
inclusive,

21 Defendants.

'09 CV 2596 H WMC
CASE NO.

COMPLAINT FOR:
(1) COPYRIGHT INFRINGEMENT; (2) TRADEMARK INFRINGEMENT (FEDERAL); (3) TRADEMARK DILUTION (FEDERAL); (4) VIOLATION OF 15 U.S.C. § 1125 (5) VIOLATION OF CAL. BUS & PROF. CODE §§ 17200, ET. SEQ.; (6) VIOLATION OF RIGHTS OF PUBLICITY; (7) UNJUST ENRICHMENT; AND (8) CONSTRUCTIVE TRUST

DEMAND FOR JURY TRIAL

W

1 Plaintiff Perfect 10, Inc. ("Perfect 10") avers:

2 **JURISDICTION AND VENUE**

3 1. **Jurisdiction.** This action arises under the Copyright Act, 17 U.S.C.
4 § 101 *et seq.*, and the Lanham Act, 15 U.S.C. § 1051 *et seq.* This Court has
5 jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331,
6 1338(a) and (b) and principles of supplemental jurisdiction.

7 2. **Venue.** Venue is proper in this judicial district pursuant to 28
8 U.S.C. § 1391 (b)(2), (c), and § 1400(a).

9 3. **Personal Jurisdiction.** Personal jurisdiction is proper over the
10 Defendants because the wrongful activity at issue concerns Defendants'
11 operation of commercial businesses through which Defendants knowingly
12 transact business and enter into contracts with individuals in California,
13 including within the County of San Diego. Each of the Defendants, therefore,
14 has purposefully availed itself of the privilege of doing business in California,
15 and material elements of Defendants' wrongdoing occurred in this State.

16 **THE PARTIES**

17 4. Plaintiff Perfect 10 is a California corporation. Plaintiff published
18 the popular magazine PERFECT 10 and owns and operates the internet website
19 located at perfect10.com, which domain name Perfect 10 owns.

20 5. Defendants Rapidshare AG, Christian Schmid, and Bobby Chang,
21 Gewerbestr. 6, Cham/Switzerland ("Rapidshare") collectively own, operate,
22 and/or control the internet websites located at rapidshare.com and rapidshare.de,
23 and have various advertising operations, data storage facilities, and other
24 businesses, which among other things, either store unauthorized copyrighted
25 materials, display or distribute unauthorized copyrighted materials, assist others
26 to infringe copyright, or profit from unauthorized copyrighted materials.
27 Schmid and Chang have personally carried out, directed, and facilitated the acts
28 of infringement performed by Rapidshare, as alleged herein. Schmid and

1 Chang know that their actions have infringed Plaintiff's copyrights.

2 6. Does 1 through 100, inclusive, which are businesses owned or
3 controlled by Rapidshare or individuals affiliated with Rapidshare, which either
4 directly or indirectly profit from and/or directly or indirectly infringe or facilitate
5 the infringement of Perfect 10 intellectual property, are sued herein under
6 fictitious names because their true names and capacities are unknown to Perfect
7 10.

8 7. When Perfect 10 ascertains the Doe Defendants' true names and
9 capacities, it will seek leave to amend this complaint to insert such true names
10 and capacities. Perfect 10 is informed and believes, and on that basis avers, that
11 each Doe defendant acted with defendant Rapidshare and is responsible for the
12 harm and damages to Perfect 10 herein averred. Defendants Rapidshare,
13 Christian Schmid and the Doe Defendants are referred to hereinafter collectively
14 as "Rapidshare."

15 8. Perfect 10 is informed and believes, and on that basis avers, that at
16 all times material herein, each of the Defendants was the agent and/or employee
17 of the other Defendants, and, in doing the things herein averred, was acting
18 within the course and scope of such agency and employment.

19 **THE BUSINESS OF PERFECT 10**

20 9. The business of Perfect 10 consists of the design, creation,
21 production, marketing, promotion, and sale of copyrighted adult entertainment
22 products, including photographs, magazines, video productions, cell phone
23 downloads, and other media.

24 10. Perfect 10 was the publisher of the well-known magazine
25 PERFECT 10, but was forced to close that magazine because of rampant
26 infringement.

27 11. Perfect 10 creates or created, and sells or sold, calendars and other
28 merchandise featuring its images, and was involved in the licensing of

1 downloads of images for cell phones, but is not currently earning revenue from
2 that endeavor because of rampant infringement.

3 12. Perfect 10 owns and operates the internet website perfect10.com.
4 Consumers are provided access to content owned by Perfect 10 and made
5 available by payment of a membership fee of \$25.50 per month.

6 13. Perfect 10's revenues are currently derived predominantly from
7 sales of memberships to its perfect10.com website. Sales of memberships to the
8 perfect10.com website are made by providing the customer with an individual
9 user name and password to access the website.

10 14. The Perfect 10 Copyrighted Works: Perfect 10 owns thousands of
11 valuable and unique copyrighted photographs, as well as video productions and
12 other proprietary materials some of which are identified in Exhibit 1. As set
13 forth in Exhibit 1, a substantial number of the copyrighted photographs are
14 registered with the U.S. Copyright Office and others are pending registration.
15 Perfect 10 owns the copyrights in and to these works (the "Perfect 10
16 Copyrighted Works"). Perfect 10 has invested, and continues to invest,
17 substantial sums of money, time, effort, and creative talent, to make and produce
18 the Perfect 10 Copyrighted Works. In addition, in order to produce and sell the
19 Perfect 10 Copyrighted Works, Perfect 10 is required to make numerous
20 payments, including but not limited to model fees, photographer fees, location
21 costs, styling costs, make up costs, printing costs, film and processing costs,
22 travel costs, as well as distribution, public relations, legal, and advertising and
23 promotion costs.

24 15. The Perfect 10 Marks: Perfect 10 also is the owner of the valuable
25 and well-known Perfect 10 family of trademarks, including but not limited to
26 PERFECT 10, PERFECT10.COM, and P10 (the "Perfect 10 Marks"). These
27 marks are used in commerce by Perfect 10 on and in connection with the sale of
28 its products and services, including PERFECT 10 magazine and perfect10.com.

1 Perfect 10 has spent millions of dollars advertising and promoting the Perfect 10
2 Marks and Perfect 10 products and services bearing these marks. Perfect 10 has
3 built and owns the valuable goodwill symbolized by the Perfect 10 Marks.
4 Three of Perfect 10's registered trademarks, registration numbers 2235145,
5 2202643, and 2573998, have become incontestable under Section 15 of the
6 Lanham Act, 15 U.S.C. Section 1065.

7 16. Goods and services bearing the Perfect 10 Marks have been
8 featured and/or talked about on numerous television and radio shows (including
9 *The Tonight Show*, *The Sopranos*, *The Amazing Race*, *Entourage*, *The Howard*
10 *Stern Show*, *Dawson's Creek*, *Battledome*, *Fox News*, *Hard Copy*, *Entertainment*
11 *Tonight*, *Extra*, *The Dating Game*, *Temptation Island*, *Monday Night Football*,
12 *Hannity & Colmes*, *The O'Reilly Factor*, *The View*, and *Jenny Jones*), in motion
13 pictures (including *Orphan*, *Superbad*, *Knocked Up*, *Spiderman*, *American Pie*,
14 *Hollow Man*, and *The Way of the Gun*), and in newspapers and periodicals.

15 17. The Perfect 10 Rights of Publicity: Perfect 10 contracts with
16 models in connection with its magazine and website. Perfect 10 secures
17 assignments from some of those models of their rights of publicity (the "Perfect
18 10 Rights of Publicity"). The Perfect 10 Rights of Publicity are valuable
19 because the identities, including the names and likenesses, of these models are
20 well-known and popular and attract/attraction purchasers of PERFECT 10
21 magazine and visitors and subscribers to perfect10.com.

22 18. The success of Perfect 10's business is almost entirely dependent
23 on its intellectual property rights. Therefore, the ongoing and massive
24 infringements of Perfect 10's rights, as herein described, is devastating to, and
25 threatens the existence of, Perfect 10's business.

26 **THE BUSINESS OF RAPIDSHARE**

27 19. Rapidshare operates the internet website Rapidshare.com, along
28 with multiple foreign versions of that website that are accessible in the United

1 States and throughout the world. Christian Schmid owns the internet website
2 rapidshare.de. Schmid is also identified as the administrative and technical
3 contact person for the rapidshare.com domain name. Both rapidshare.de and
4 rapidshare.com have infringed Perfect 10 copyrights, trademarks, and rights of
5 publicity. Search engines and affiliate sites provide Rapidshare with tens of
6 thousands of links. Rapidshare is the twelfth most popular website on the
7 Internet. Rapidshare enables users from around the world to purchase virtually
8 every pirated image, song, and movie for \$10 a month, and is destroying
9 copyright holders worldwide. It stores hundreds of thousands of unauthorized
10 copyrighted images on its servers, along with billions of dollars in songs and
11 major full length movies, featuring every major artist and every major movie.
12 Rapidshare also offers, without authorization, Perfect 10 DVDs and videos,
13 including Perfect 10's Model of The Year Video, which cost approximately
14 \$1,000,000 to produce.

15 20. In addition to infringing over 26,000 Perfect 10 copyrighted
16 images, along with Perfect 10 DVDs and videos, Rapidshare also has created an
17 affiliate program, whereby it pays other infringing third party websites
18 ("Affiliated Infringing Websites") to refer traffic to it. In many cases, these
19 affiliated Rapidshare infringers offer the public the ability to download a sample
20 of Perfect 10 images for each Perfect 10 model, and then recommend to users
21 that they join Rapidshare.com to download the rest. For example, Rapidshare
22 affiliate nudecelebforum.com offered the following links containing Perfect 10
23 images: *http://rapidshare.com/files/660884/P10_A-J.zip*,
24 *http://rapidshare.com/files/660819/P10_K-R.zip*, and
25 *http://rapidshare.com/files/660804/P10_S-Z.zip*. The file names reference one of
26 Perfect 10's trademarks, "P10."

27 21. All of the Perfect 10 Copyrighted Works which Rapidshare and its
28 affiliates provide to consumers are used without authorization. Rapidshare

1 engages in and facilitates the massive and ongoing violations of Perfect 10's
2 rights even though Rapidshare is aware that Perfect 10 never authorized or
3 consented to the use by Rapidshare of the Perfect 10 Copyrighted Works, the
4 Perfect 10 Marks, or the Perfect 10 Rights of Publicity. Rapidshare is aware of
5 the lack of Perfect 10's authorization and consent for the following reasons,
6 among others:

7 (a) *First*, on May 29, 2009, Perfect 10 notified Rapidshare that it
8 was infringing 800 specifically-identified Perfect 10 copyrighted images
9 offered for sale and downloading by Rapidshare. Rapidshare has not responded
10 to that notice nor has it removed the identified images.

11 (b) *Second*, the Perfect 10 Copyrighted Works on Rapidshare's
12 servers usually contain visible Perfect 10 Marks or visible copyright notices in
13 the name of Perfect 10. An example of such an image is Exhibit 2.

14 (c) *Third*, the file names of, and links to, the Perfect 10 images
15 which Rapidshare offers often utilize Perfect 10's trademark, either P10, or
16 "Perfect 10." Examples of Rapidshare downloading links that offer infringing
17 Perfect 10 copyrighted images include Perfect 10 200006.rar,
18 Marisa_Miller_Perfect-10.rar, and lexi.perfect_10.rar, among many others.

19
20 **FIRST CLAIM FOR RELIEF**

21 **(Copyright Infringement)**

22 **Against All Defendants**

23 22. Perfect 10 re-avers and incorporates herein by reference each and
24 every averment of paragraphs 1 through 21 above as though fully set forth
25 herein.

26 23. Perfect 10 is the owner of all right, title, and interest to each of the
27 Perfect 10 Copyrighted Works. Perfect 10 has registered its works with the
28 United States Copyright Office. Perfect 10 has been issued United States

1 copyright certificates some of which are listed on Exhibit 1, attached hereto.

2 24. Each of the Perfect 10 Copyrighted Works consists of material
3 original with Perfect 10 and each is copyrightable subject matter.

4 25. Rapidshare has copied, reproduced, distributed, adapted, and/or
5 publicly displayed the Perfect 10 Copyrighted Works without the consent or
6 authority of Perfect 10, thereby directly infringing Perfect 10's copyrights.

7 26. Rapidshare's conduct constitutes infringement of Perfect 10's
8 copyrights and exclusive rights under copyright in the Perfect 10 Copyrighted
9 Works in violation of Sections 106 and 501, et. seq. of the United States
10 Copyright Act, 17 U.S.C. §§ 106 and 501.

11 27. Rapidshare has induced, caused, and/or materially contributed to
12 unauthorized copying, reproduction, adaptation, public display, and/or
13 distribution of the Perfect 10 Copyrighted Works.

14 28. Rapidshare's conduct constitutes contributory infringement of
15 Perfect 10's copyrights and exclusive rights under copyright in the Perfect 10
16 Copyrighted Works.

17 29. Rapidshare has directly profited from the infringement of Perfect
18 10's copyrighted works, and has the right and ability to supervise its directly
19 infringing affiliates who provide it with customers by offering their visitors
20 samples of Perfect 10 images, the full set of which is available through
21 Rapidshare.

22 30. Rapidshare's conduct constitutes vicarious infringement of Perfect
23 10's copyrights and exclusive rights under copyright in the Perfect 10
24 Copyrighted Works.

25 31. The infringement of Perfect 10's rights in and to each of the Perfect
26 10 Copyrighted Works constitutes a separate and distinct act of infringement.

27 32. The acts of infringement by Rapidshare have been willful,
28 intentional, and purposeful, in reckless disregard of and with indifference to the

1 rights of Perfect 10.

2 33. As a direct and proximate result of the infringements by Rapidshare
3 of Perfect 10's copyrights and exclusive rights under copyright in the Perfect 10
4 Copyrighted Works, Perfect 10 is entitled to its actual damages and Rapidshare's
5 profits pursuant to 17 U.S.C. § 504(b).

6 34. Alternatively, Perfect 10 is entitled to statutory damages, pursuant
7 to 17 U.S.C. § 504(c).

8 35. Rapidshare's conduct is causing and, unless enjoined and restrained
9 by this Court, will continue to cause, Perfect 10 great and irreparable injury that
10 cannot fully be compensated in money. Perfect 10 has no adequate remedy at
11 law. Pursuant to 17 U.S.C. § 502, Perfect 10 is entitled to injunctive relief
12 prohibiting further infringements of Perfect 10's copyrights.

13 36. Perfect 10 further is entitled to its attorneys' fees and costs pursuant
14 to 17 U.S.C. § 505.

15
16 **SECOND CLAIM FOR RELIEF**

17 **(Trademark Infringement)**

18 **Against All Defendants**

19 37. Perfect 10 re-avers and incorporates herein by reference each and
20 every averment of paragraphs 1 through 13 and 15 through 21 above as though
21 fully set forth herein.

22 38. Perfect 10 is the owner of the Perfect 10 Marks, including the
23 registered trademark/service marks PERFECT 10, PERFECT10.COM, and P10.
24 The United States trademark/service mark registrations for PERFECT 10,
25 PERFECT10.COM, and P10 include Registration Nos. 2,202,643, 2,235,145,
26 2,573,998, 2,709,583, and 3,094,437 for, among other goods and services,
27 entertainment services in the nature of adult entertainment and beauty contests
28 provided via a global computer network; entertainment services in the nature of

1 beauty contests; and magazines featuring adult entertainment, beauty contests,
2 pictures of female models, interviews, fiction, and articles on human relations,
3 sports, entertainment, lifestyles, fitness, and calendars and unmounted
4 photographs.

5 39. The Perfect 10 Marks have been continuously used in commerce by
6 Perfect 10 and its predecessors, and are widely known throughout the United
7 States. Three of Perfect 10's registered trademarks, registration numbers
8 2235145, 2202643, and 2573998 have become incontestable under Section 15 of
9 the Lanham Act, 15 U.S.C. Section 1065.

10 40. Perfect 10 has spent millions of dollars promoting and advertising
11 the Perfect 10 Marks and products and services bearing the Perfect 10 Marks,
12 and has marketed and sold millions of dollars of products and services under the
13 Perfect 10 Marks.

14 41. As a direct result of the aforementioned use, promotion, and
15 advertisement of the Perfect 10 Marks, Perfect 10 has built up and now owns
16 valuable goodwill symbolized by the Perfect 10 Marks.

17 42. As a direct result of the care and skill exercised by Perfect 10 over
18 the nature and quality of goods and services sold under the Perfect 10 Marks and
19 the extensive promotion, advertising, sale, and public acceptance thereof, the
20 Perfect 10 Marks have become known as a symbol of the goodwill that Perfect
21 10 has created throughout the United States and elsewhere by selling products
22 and services of high quality and by fairly and honorably dealing with the trade
23 and public in the sale of these products and services.

24 43. Rapidshare's conduct, as averred herein, including using and
25 reproducing the Perfect 10 Marks in commerce in connection with the sale,
26 offering for sale, and advertising of goods and services on Rapidshare.com and
27 by Affiliated Infringing Websites, for the purpose or with the effect of directing
28 consumers who are searching for authorized Perfect 10 products and services to

1 the Affiliated Infringing Websites and to Rapidshare, constitutes infringement of
2 the Perfect 10 Marks in violation of Sections 32 and 43 of the Lanham Act, 15
3 U.S.C. §§ 1114 and 1125.

4 44. Rapidshare's conduct constitutes contributory infringement of the
5 Perfect 10 Marks.

6 45. Rapidshare's conduct constitutes vicarious infringement of the
7 Perfect 10 Marks.

8 46. The conduct of Rapidshare has been and is willful and deliberate.

9 47. Perfect 10 is entitled to recover all damages sustained as a result of
10 Rapidshare's unlawful conduct, including (a) Rapidshare's profits, (b) Perfect
11 10's damages, (c) treble those amounts, (d) costs of suit, and (e) reasonable
12 attorneys' fees.

13 48. Rapidshare's conduct is causing and, unless enjoined and restrained
14 by this Court, will continue to cause, Perfect 10 great and irreparable injury that
15 cannot fully be compensated in money. Perfect 10 has no adequate remedy at
16 law. Perfect 10 is entitled to injunctive relief prohibiting further infringements
17 of the Perfect 10 Marks.

18
19 **THIRD CLAIM FOR RELIEF**

20 **(Trademark Dilution)**

21 **Against All Defendants**

22 49. Perfect 10 re-avers and incorporates herein by reference each and
23 every averment of paragraphs 1 through 13, 15 through 21, and 37 through 48
24 above as though fully set forth herein.

25 50. The Perfect 10 Marks have become and at all relevant times have
26 been "famous" within the meaning of 15 U.S.C. § 1125(c).

27 51. The Affiliated Infringing Websites typically intermingle Perfect
28 10's high-quality images with images of poor quality or of an offensive or illegal

1 nature. The acts of Rapidshare averred herein have lessened the capacity of the
2 Perfect 10 Marks to identify and distinguish Perfect 10's services and products
3 from those of the Affiliated Infringing Websites, have tarnished the valuable
4 image and reputation associated with the Perfect 10 Marks, and have created an
5 undesirable, unwholesome, or unsavory mental association with Perfect 10 and
6 the Perfect 10 Marks, damaging Perfect 10's goodwill and disparaging Perfect
7 10's rights in the Perfect 10 Marks. Rapidshare's acts and conduct are in
8 violation of 15 U.S.C. § 1125(c). Rapidshare has willfully intended to trade on
9 Perfect 10's reputation and/or to cause dilution of the Perfect 10 Marks.
10 Accordingly, Perfect 10 is entitled to recover all damages sustained as a result of
11 Rapidshare's unlawful conduct, including (a) Rapidshare's profits, (b) Perfect
12 10's damages, (c) treble those amounts, (d) costs of suit, and (e) reasonable
13 attorneys' fees.

14 52. Rapidshare's conduct is causing and, unless enjoined and restrained
15 by this Court, will continue to cause, Perfect 10 great and irreparable injury that
16 cannot fully be compensated in money. Perfect 10 has no adequate remedy at
17 law. Perfect 10 is entitled to injunctive relief prohibiting further dilution and
18 disparagement of the Perfect 10 Marks.

19 **FOURTH CLAIM FOR RELIEF**

20 **(Violation of 15 U.S.C. § 1125 *et seq.*)**

21 **Against All Defendants**

22 53. Perfect 10 re-avers and incorporates herein by reference each and
23 every averment of paragraphs 1 through 13, 15 through 21, and 37 through 52 as
24 though fully set forth herein.

25 54. Without authorization or license, Rapidshare has commercially
26 exploited and used millions of marketable adult-oriented photographs and
27 likenesses, which range from the most tame to the most explicit. Through these
28 photographs, which make Rapidshare a content provider for adult photographs

1 of every type and quality, as well as the use of the names of the persons
2 depicted, Rapidshare is unlawfully exploiting the publicity rights and trademark
3 rights of Perfect 10, as well as the publicity rights, and trademark rights of third-
4 parties. Rapidshare is also selling without authorization, in competition with
5 Perfect 10, billions of dollars in stolen songs, full-length movies, and even
6 computer software. This conduct enables Rapidshare to compete directly and
7 unfairly with Perfect 10 by, among other things, offering for free millions of
8 valuable photographs and likenesses, and thousands of songs, and full length
9 movies, as well as computer software, that are not lawfully available to Perfect
10 10 or other competitors acting lawfully.

11 55. Rapidshare further engages in unfair competition by commercially
12 exploiting, through its affiliate programs, Perfect 10 and third-party rights.

13 56. In connection with its affiliate program, Rapidshare directs and/or
14 permits Rapidshare download links offering tens of thousands of Perfect 10
15 copyrighted images, as well as Perfect 10 videos, to be juxtaposed on
16 Rapidshare affiliated websites, next to photographs and likenesses of Perfect 10
17 models and other models or celebrities.

18 57. Rapidshare is infringing and diluting Perfect 10's and other parties'
19 trademarks, as alleged herein.

20 58. All of the above is causing direct injury to Perfect 10's business.
21 Perfect 10 has suffered injury in fact and has lost money and property as a result
22 of such unfair competition.

23 59. Perfect 10 is entitled to recover all damages sustained as a result of
24 Rapidshare's unlawful conduct, including (a) Rapidshare's profits, (b) Perfect
25 10's damages, (c) treble those amounts, (d) costs of suit, and (e) reasonable
26 attorneys' fees. In undertaking the conduct alleged above, Rapidshare acted
27 with oppression, fraud, and malice, with the intent to cause injury to Perfect 10,
28 with the intent to deprive Perfect 10 of its property and legal rights, and with full

1 knowledge of the wrongfulness of Rapidshare's conduct. Rapidshare's conduct
2 was undertaken with a willful and conscious disregard of the rights of Perfect 10
3 and subjected Perfect 10 to cruel and unjust hardship. Therefore, Perfect 10 is
4 entitled to an award of punitive damages for the sake of example and to punish
5 Rapidshare, in an amount to be determined at trial.

6 60. Rapidshare's conduct is causing and, unless enjoined and restrained
7 by this Court, will continue to cause, Perfect 10 great and irreparable injury that
8 cannot fully be compensated or measured in money. Perfect 10 has no adequate
9 remedy at law. Perfect 10 is entitled to injunctive relief prohibiting further such
10 unfair competition.

11 **FIFTH CLAIM FOR RELIEF**

12 **(Violation of California Unfair Competition Law**

13 **– Cal. Bus. & Prof. Code §§ 17200, et seq.)**

14 **Against All Defendants**

15 61. Perfect 10 re-avers and incorporates herein by reference each and
16 every averment of paragraphs 1 through 13, 15 through 21, and 37 through 60
17 above as though fully set forth herein.

18 62. Without authorization or license, Rapidshare has commercially
19 exploited and used millions of marketable adult-oriented photographs and
20 likenesses, which range from the most tame to the most explicit. Through these
21 photographs, which make Rapidshare a content provider for adult photographs
22 of every type and quality, as well as the use of the names of the persons
23 depicted, Rapidshare is unlawfully exploiting the publicity rights and trademark
24 rights of Perfect 10, as well as the publicity rights, trademark rights of third-
25 parties. Rapidshare is also selling without authorization, in competition with
26 Perfect 10, billions of dollars in stolen songs, full-length movies, and even
27 computer software. This conduct enables Rapidshare to compete directly and
28 unfairly with Perfect 10 by, among other things, offering for free millions of

1 valuable photographs and likenesses, and thousands of songs, and full length
2 movies, as well as computer software, that are not lawfully available to Perfect
3 10 or other competitors acting lawfully.

4 63. Rapidshare further engages in unfair competition by commercially
5 exploiting, through its affiliate programs, Perfect 10 and third-party rights.

6 64. In connection with its affiliate program, Rapidshare directs and/or
7 permits Rapidshare download links offering tens of thousands of Perfect 10
8 copyrighted images, as well as Perfect 10 videos, to be juxtaposed on
9 Rapidshare affiliated websites, next to photographs and likenesses of Perfect 10
10 models and other models or celebrities.

11 65. Rapidshare is infringing and diluting Perfect 10's and other parties'
12 trademarks, as alleged herein.

13 66. Rapidshare's acts and practices alleged herein constitute unfair,
14 unlawful, and fraudulent business acts and practices within the meaning of
15 California Bus. & Prof. Code §§ 17200, et. seq.

16 67. Rapidshare engaged in unfair business acts and practices in that the
17 harm caused by its conduct outweighs any utility of such conduct and such
18 conduct offends public policy, is immoral, unscrupulous, unethical, deceitful and
19 offensive, and cause substantial injury to Perfect 10.

20 68. All of the above is causing direct injury to Perfect 10's business.
21 Perfect 10 has suffered injury in fact and has lost money and property as a result
22 of such unfair competition.

23 69. Perfect 10 seeks an injunction prohibiting Rapidshare from further
24 engaging in such unfair business acts and practices and for an order of restitution
25 and/or disgorgement.

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SIXTH CLAIM FOR RELIEF
(Violation of Rights of Publicity –
Cal. Civ. Code § 3344 and Common-law Right of Publicity)
Against All Defendants

70. Perfect 10 re-avers and incorporates herein by reference each and every averment of paragraphs 1 through 13, 15 through 21, and 37 through 69 above as though fully set forth herein.

71. Perfect 10 is the owner of the Perfect 10 Rights of Publicity, as the assignee of publicity rights, including in the names, photographs, and likenesses, of certain Perfect 10 models (“the Perfect 10 Rights of Publicity”). Largely as a result of the efforts and expenditures of Perfect 10, the names, photographs, and likenesses of these Perfect 10 models have received widespread recognition, particularly among the consumers and potential consumers of adult entertainment products.

72. Rapidshare has infringed the Perfect 10 Rights of Publicity in at least three ways, by selling Perfect 10 images for which Perfect 10 has been assigned rights of publicity, by selling non-Perfect 10 copyrighted images for which Perfect 10 has been assigned rights of publicity, and by partnering with affiliate sites that violate Perfect 10 rights of publicity. Rapidshare has knowingly used the Perfect 10 Rights of Publicity, without the prior consent of Perfect 10 or any authorized party.

73. By reason of Rapidshare’s acts and conduct, Perfect 10 has suffered substantial damage to its business in the form of diversion of trade, loss of profits, injury to goodwill and reputation, and a dilution of the value of its exclusive rights of publicity, all of which are not yet fully ascertainable. Perfect 10 is entitled to recover (a) its actual damages, (b) profits of the infringer, (c) statutory damages, (d) punitive damages, and (e) attorneys’ fees and costs.

74. Rapidshare’s conduct is causing and, unless enjoined and restrained

1 by this Court, will continue to cause Perfect 10 great and irreparable injury that
2 cannot fully be compensated in money. Perfect 10 has no adequate remedy at
3 law. Perfect 10 is entitled to injunctive relief prohibiting further infringements
4 of its rights of publicity.

5 75. Perfect 10 is informed and believes, and on that basis avers, that the
6 aforementioned acts of Rapidshare were willful, oppressive, fraudulent, or
7 malicious, and Perfect 10 therefore is entitled to punitive damages.

8 76. Perfect 10 further is entitled to its attorneys' fees and statutory
9 damages pursuant to California Civil Code § 3344(a) and other laws.

10 **SEVENTH CLAIM FOR RELIEF**

11 **(Unjust Enrichment)**

12 **Against All Defendants**

13 77. Perfect 10 re-avers and incorporates herein by reference each and
14 every averment of paragraphs 1 through 13, 15 through 21, and 37 through 76
15 above as though fully set forth herein.

16 78. By engaging in the acts described above, Rapidshare has and
17 continues to benefit from its wrongdoing, and has been unjustly enriched by
18 reaping the benefits of its unlawful activities to the damage and irreparable harm
19 of Perfect 10.

20 79. The circumstances are such that it would be inequitable for
21 Rapidshare to retain the benefits received from the actions described without
22 repaying the lost value to Perfect 10.

23 **EIGHTH CLAIM FOR RELIEF**

24 **(Constructive Trust)**

25 **Against All Defendants**

26 80. Perfect 10 re-avers and incorporates herein by reference each and
27 every averment of paragraphs 1 through 13, 15 through 21, and 37 through 79
28 above as though fully set forth herein.

1 81. Perfect 10 has a right to millions of dollars paid to Rapidshare which
2 Rapidshare gained through fraud and other wrongful acts.

3 82. Rapidshare holds such funds as an involuntary trustee for the benefit
4 of Perfect 10.

5 83. Perfect 10 requests that the Court impose a constructive trust on said
6 funds for its benefit.

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, plaintiff Perfect 10, Inc. prays for judgment against
10 Rapidshare, Christian Schmid, Bobby Chang, and each of the Doe Defendants,
11 jointly and severally, as follows:

12 1. That Defendants and their officers, agents, servants, employees,
13 representatives, successors, and assigns, and all persons in active concert or
14 participation with them, be temporarily, preliminarily and permanently enjoined
15 from:

16 a. copying, reproducing, distributing, adapting, or publicly
17 displaying the Perfect 10 Copyrighted Works;

18 b. posting Perfect 10 copyrighted photographs on the internet;

19 c. using, authorizing the use of, copying, reproducing or
20 imitating the Perfect 10 Marks, or any confusingly similar or colorable
21 imitation thereof;

22 d. violating the Perfect 10 Rights of Publicity;

23 e. competing unfairly with Perfect 10 by violating the publicity
24 rights of Perfect 10 and others, and by infringing trademark rights; and

25 f. inducing, causing, materially contributing to, and profiting
26 from the foregoing acts committed by others.

27 2. That Defendants be ordered to destroy all photographs, documents,
28 and other items, electronic or otherwise, in its possession, custody, or control,

1 that infringe the copyrights, trademarks, or rights of publicity of Perfect 10.

2 3. That Defendants be ordered to remove all links between its website
3 and all Affiliated Infringing Websites.

4 4. For an order of restitution and/or disgorgement in the amount of the
5 benefit to Defendants by reason of their unlawful conduct, in an amount to be
6 proven at trial, but not less than \$5 million.

7 5. For Perfect 10's actual damages, in an amount to be proven at trial,
8 but not less than \$5 million.

9 6. For a full accounting of all profits, income, receipts, or other
10 benefits derived by Defendants as a result of its unlawful conduct.

11 7. For statutory damages under the Copyright Act, in an amount to be
12 proven at trial, but not less than \$5 million.

13 8. For treble damages under the Lanham Act, in an amount to be
14 proven at trial, but not less than \$5 million.

15 9. For statutory damages under California Civil Code Section 3344, in
16 an amount to be proven at trial, but not less than \$5 million.

17 10. For the imposition of a constructive trust.

18 11. For punitive damages.

19 12. For attorneys' fees and full costs.

20 13. For such other and further relief as this Court deems just and
21 appropriate.

22 Dated: November 18, 2009

KRAUSE KALFAYAN BENINK &
SLAVENS, LLP.

23
24
25 By: 

Eric J. Benink
Attorneys for Plaintiff


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DEMAND FOR JURY TRIAL

Plaintiff Perfect 10, Inc. hereby demands a jury trial pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

Dated: November 18, 2009

KRAUSE KALFAYAN BENINK &
SLAVENS, LLP

By: 
Eric J. Benink
Attorney for Plaintiff

PERFECT 10'S COPYRIGHT REGISTRATIONS

TX 4-556-514
TX 4-556-511
TX 4-556-482
TX 4-556-510
TX 4-556-475
TX 4-556-541
TX 4-812-575
TX 4-813-355
TX 4-812-793
TX 4-813-026
TX 4-812-972
TX 4-813-344
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PERFECT 10'S COPYRIGHT REGISTRATIONS

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PERFECT 10'S COPYRIGHT REGISTRATIONS

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PERFECT 10'S COPYRIGHT REGISTRATIONS

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PERFECT 10'S COPYRIGHT REGISTRATIONS

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PERFECT 10'S COPYRIGHT REGISTRATIONS

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PERFECT 10'S COPYRIGHT REGISTRATIONS

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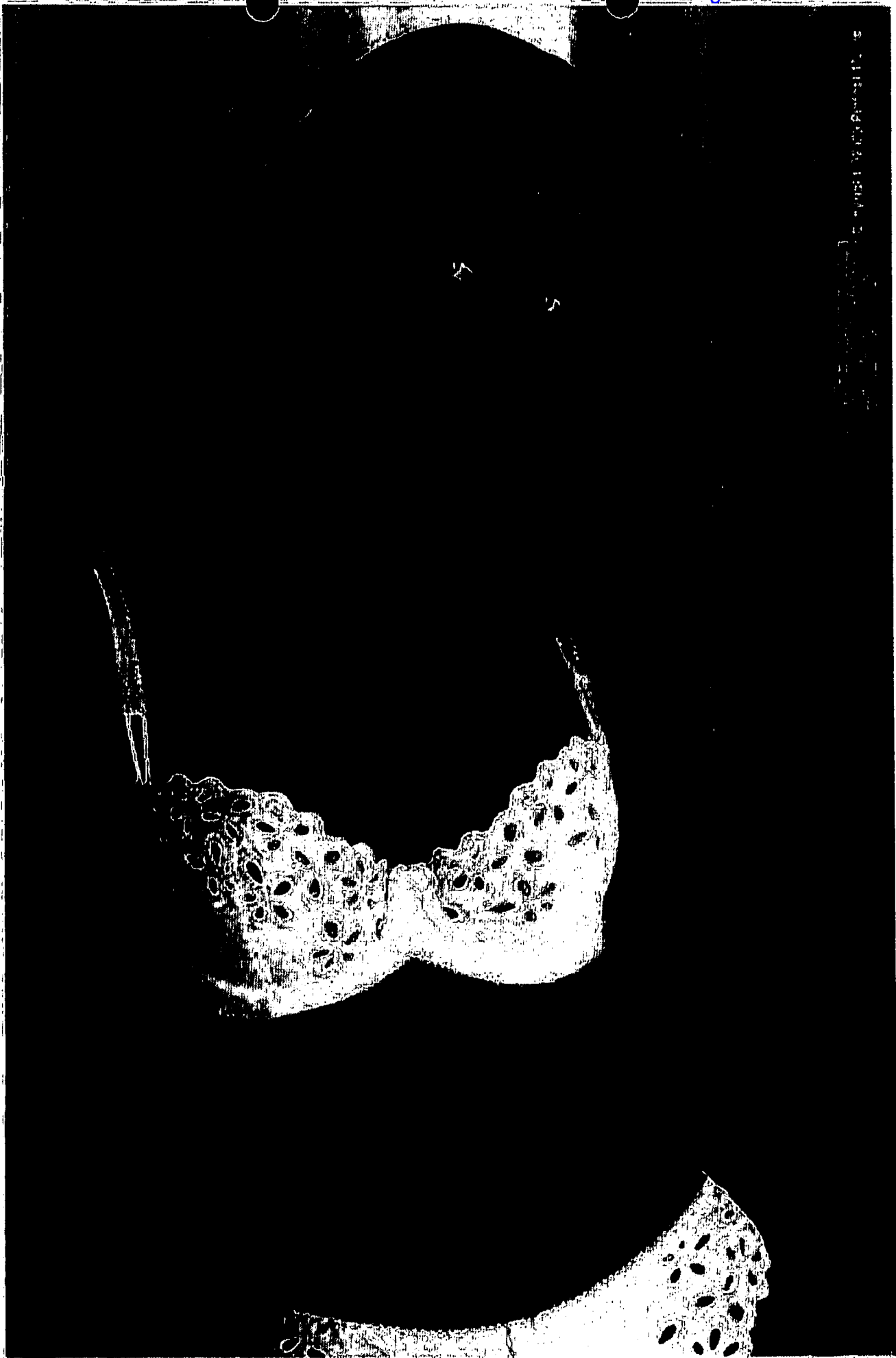
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PERFECT 10'S COPYRIGHT REGISTRATIONS

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VAu 353-448
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VAu 514-176
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VAu 537-932
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VAu 590-327
VAu 590-420
VAu 628-821
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VAu 653-235
VAu 653-253
VAu 686-179
VAu 686-736
VAu 686-737
VAu 687-568
VAu 687-569
VAu 687-570
VAu 702-997
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VAu 756-442



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JS 44 (Rev. 12/07)

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.)

I. (a) PLAINTIFFS
PERFECT 10, INC.

(b) County of Residence of First Listed Plaintiff Los Angeles
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 See Attachment

DEFENDANTS
RAPIDSHARE AG, a corporation; CHRISTIAN SCHMID; BOBBY CHANG

County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)
'09 CV 2596 H WMC

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)

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

Citizen of This State	<input type="checkbox"/> 1	PTF DEF	<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 type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input 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	FOREIGN/INTERNATIONAL	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 type="checkbox"/> 196 Franchise	PERSONAL INJURY <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 PERSONAL INJURY <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 PERSONAL PROPERTY <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"/> 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"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPER ORIGIN <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SPECIAL JURISDICTION <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)) FEDERAL TAX SUITS <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 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
17 U.S.C. § 101, et seq.

Brief description of cause:
Copyright Infringement.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE November 18, 2009 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY

RECEIPT # 7410 AMOUNT \$350- APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CR
MB 11/18/09

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Attachment

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KRAUSE, KALFAYAN,
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Attorney for Plaintiff,
Perfect 10, Inc.

Jeffrey N. Mausner, Esq.
LAW OFFICES OF JEFFREY N. MAUSNER
21800 Oxnard Street, Suite 910
Woodland Hills, CA 91367
Telephone: (310) 617-8100

Attorney for Plaintiff,
Perfect 10, Inc.

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS007410
Cashier ID: mbain
Transaction Date: 11/18/2009
Payer Name: PERFECT 10 V RAPIDSHARE

CIVIL FILING FEE
For: PERFECT 10 V RAPIDSHARE
Case/Party: D-CAS-3-09-CV-002596-001
Amount: \$350.00

CHECK
Check/Money Order Num: 3538
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.

AO 121 (6/90)

<p>TO:</p> <p style="text-align: center;">Register of Copyrights Copyright Office Library of Congress Washington, D.C. 20559</p>	<p>REPORT ON THE FILING OR DETERMINATION OF AN ACTION OR APPEAL REGARDING A COPYRIGHT</p>
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In compliance with the provisions of 17 U.S.C. 508, you are hereby advised that a court action or appeal has been filed on the following copyright(s):

<input checked="" type="checkbox"/> ACTION	<input type="checkbox"/> APPEAL	COURT NAME AND LOCATION
DOCKET NO. 09CV2596-H(WMC)	DATE FILED 11/18/2009	United States District Court, Southern District of California 880 Front Street, Room 4290 San Diego, CA 92101-8900
PLAINTIFF PERFECT 10, INC		DEFENDANT RAPIDSHARE AG ET AL.
COPYRIGHT REGISTRATION NO.	TITLE OF WORK	AUTHOR OF WORK
1 SEE ATTACHED COMPLAINT		
2		
3		
4		
5		

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

DATE INCLUDED	INCLUDED BY		
	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill
	<input type="checkbox"/> Other Pleading		
COPYRIGHT REGISTRATION NO.	TITLE OF WORK	AUTHOR OF WORK	
1			
2			
3			

In the above-entitled case, a final decision was rendered on the date entered below. A copy of the order or judgment together with the written opinion, if any, of the court is attached.

<p>COPY ATTACHED</p> <p><input type="checkbox"/> Order <input type="checkbox"/> Judgment</p>	<p>WRITTEN OPINION ATTACHED</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>DATE RENDERED</p>
CLERK W. SAMMUELHAMRICK	(BY) DEPUTY CLERK L. ROCHA	DATE 11/18/2009

Copy 1 - Upon initiation of action, mail this copy to Register of Copyrights Copy 2 - Upon filing of document adding copyrights, mail this copy to Registrar of Copyrights

Copy 3 - Upon termination of action, mail this copy to Registrar of Copyrights Copy 4 - In the event of appeal, forward this copy to the Appellate Court so they can prepare a new AO 279 for the appeal