

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

OPTIONMONSTER HOLDINGS, INC.,
Plaintiff

v.

DELICIOUS MONSTER, LLC,
Defendant.

Case No. 1:08-cv-00894

Honorable Ronald A. Guzman

DECLARATION OF WILLIAM J. SHIPLEY

I, William J. Shipley, hereby make the following declaration:

1. I make this declaration in support of defendant Delicious Monster, LLC's ("Delicious Monster") Motion to Dismiss. I am of legal age and am competent to testify to the matters contained herein. If called to do so, I would testify as to their truthfulness. I have personal knowledge of the facts contained in this declaration.
2. I am the founder of Delicious Monster.
3. Delicious Monster is based in Seattle, Washington. It was founded in March 2004 and designs and sells computer software for creating a searchable electronic catalogue of information, which may be downloaded from a global computer network through its website, www.delicious-monster.com.
4. A true and correct copy of a page from www.delicious-monster.com is attached Exhibit A.

5. Every page of Delicious Monster's website features a creature logo (the "DM Logo") that was custom created in 2004 specifically for Delicious Monster by Christopher Masciocchi, a famous graphic artist. Delicious Monster owns all trademark and copyright rights to the DM Logo. Delicious Monster has continuously used this logo to identify its products and services since 2004.


6. On November 30, 2007, I received an e-mail which for the first time brought to my attention OptionMonster's infringing logo. A true and correct copy of the e-mail is attached as Exhibit B.

7. I then investigated the situation, and on December 2, 2007 notified OptionMonster via e-mail that it was infringing Delicious Monster's trademark rights and copyright rights and requested that it cease doing so immediately. A true and correct copy of my e-mail is attached as Exhibit C. Being unfamiliar with OptionMonster, I was unsure of exactly who to write to, and as such utilized all e-mail addresses I was able to glean from OptionMonster's website.

8. A true and correct copy of the only e-mail I received in response to Exhibit C is attached as Exhibit D.

I declare, under penalty of perjury, that the foregoing is true and correct.

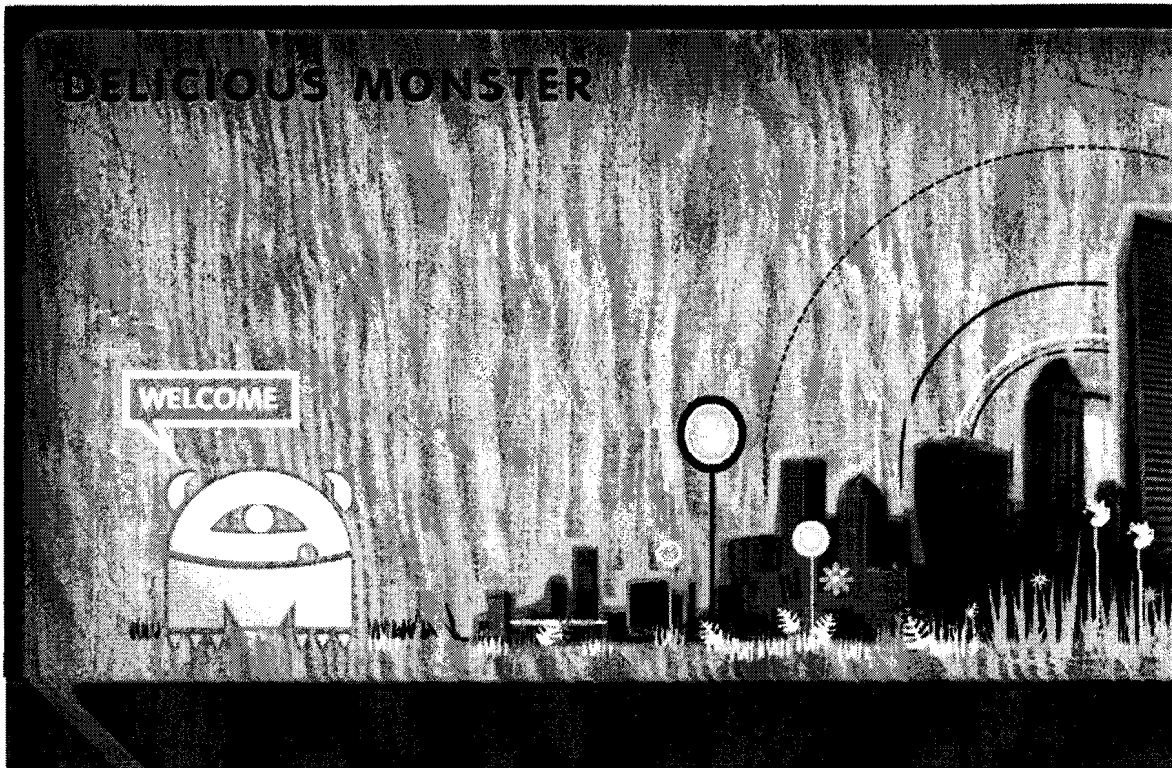
Dated: March 13, 2008


William J. Shipley

INDEX TO EXHIBITS

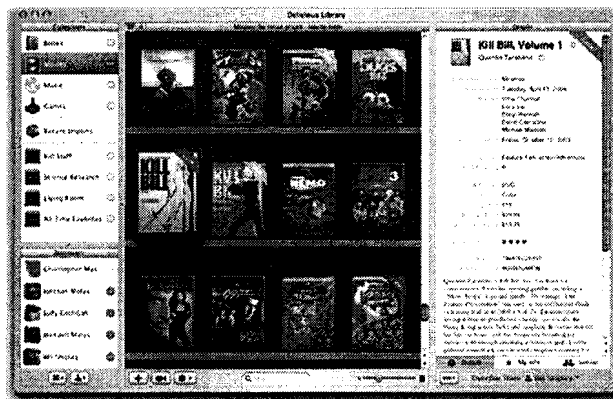
- Exhibit A: Page printed from www.delicious-monster.com
- Exhibit B: November 30, 2007 e-mail regarding OptionMonster's infringing logo
- Exhibit C: December 2, 2007 e-mail from William Shipley to OptionMonster
- Exhibit D: December 2, 2007 e-mail from Rod David to William Shipley

EXHIBIT A



Check out Delicious Library

Catalog, browse, and share all your books, movies, music, and video games with Delicious Library.



**Feature
Info**

Spotlight Searching

Internationalized

iSight Scanning

Get your Mac, a webcam, and Delicious Library and rediscover your

home library. Just point any FireWire digital video camera, like an Apple iSight®, at the barcode on the back of any book, movie, music, or video game. Delicious Library does the rest. The barcode is scanned and within seconds the item's cover appears on your digital shelves filled with tons of in-depth information downloaded from one of six different web sources from around the world.



Once your whole library is cataloged, you can find and use your items like never before. Browse, sort, and search through your digital shelves. Sync your cataloged library onto your iPod or print a color catalog and take it with you. Find and purchase new items using Delicious Library's personalized recommendations. Keep track of the items your friends are borrowing using Delicious Library's loan management system, which integrates with Apple's **Address Book** and **iCal**.



Take advantage of new, cutting-edge Mac OS X Tiger features with Delicious Library. Search through all of your library data using the **Spotlight** menu and enjoy anytime access to your entire collection with the Delicious Library **Dashboard** widget.

Email Friends

iPod Sync

Flexible Import

Voice Search

Personal Ratings

Custom Collections

From Your Shelf to Your Screen

Import all your stuff onto your digital shelves using your Apple iSight®, our wireless barcode scanner, or just your keyboard.

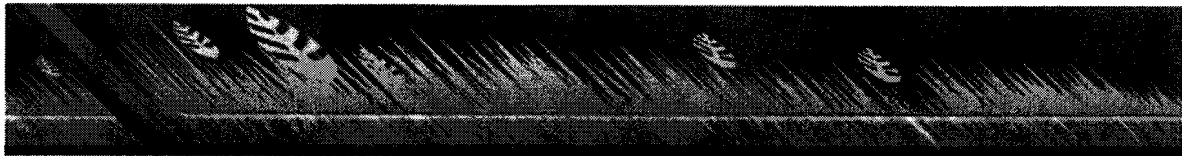
Quickly importing your stuff into Delicious Library doesn't require a dedicated barcode scanner - you can use any **QuickTime®-supported digital video camera**, like your Apple **iSight**. Just hold the barcode on the back of any book, movie, CD, or video game in front of the camera and your item magically shows up on your digital shelf seconds later. Using the same technology found in \$800 industrial-strength CCD barcode scanners, Delicious Library reads every single frame of digital video; seeking out, targeting, and instantly decoding any visible barcodes. This results in a seamless process of scanning that lets you import about 750 items an hour (assuming you can move your arms that fast). At that rate the staff of the new downtown **Seattle Central Library** could work together to import all of their 1.4 million books into Delicious Library in just over 5 hours.

Delicious Monster doesn't sell iSight cameras, but they come built-in to the Apple **iMac** and **MacBook**, or you can buy one from your local **Apple Retail Store** or at the **Apple Online Store**. An iSight can also be used for much more than barcode scanning - you can use it to **video conference with friends**, set up a webcam online, and even play **interactive games**.

If you have tons of items, or don't want to have to take your items to your computer to scan them in, check out our wireless scanner.

Library Screenshots

An Industrial-strength library system, to go.



© 2006 US

Library • Company • Help • Buy
© 2006 Delicious Monster • Delicious Blog

EXHIBIT B

From: "Larry Kubin" <larry.kubin@gmail.com>
Date: November 29, 2007 7:53:36 PM PST
To: support@delicious-monster.com
Subject: Logo?

Hello,

I didn't know the best place to send this, but I was wondering if you have ever seen the site optionmonster.com?

It's run by one of the FastMoney guys on CNBC, and it looks like their logo is almost an identical copy of yours. Are there any copyright issues with this?

Just thought I'd bring it to your attention.

--

Larry Kubin

3/13/2008

EXHIBIT C

From: wjs@delicious-monster.com
Subject: The "optionMonster" logo is a copy of Delicious Monster's copyrighted logo...
Date: December 2, 2007 5:41:55 PM PST
To: support@optionMONSTER.com, ask-drij@optionMONSTER.com, ask-rod@optionMONSTER.com, ask-pete@optionMONSTER.com
Cc: wjs@delicious-monster.com, michael_m@mac.com, christopher@masciocchi.org,
lucas@delicious-monster.com, elcajone@mac.com, leighful@comcast.net

Dear Sirs,

The optionMonster "OM" creature logo is a clear copy of my company's copyrighted "DM" creature logo, which you can view at <http://delicious-monster.com/> if the graphics in this message do not come through.

I won't speculate on how this happened, and I don't claim to be a lawyer, but I believe this is a clear violation of trademark and copyright law. Before I involve any lawyers, thought, I thought I'd write you nicely and ask you to pick a different graphical logo to represent your company.

Compare these:

optionMonster:



3/13/2008



Delicious Monster:

--

Here are just *some* of the elements of our copyrighted logo that have been copied:

- You have the capital letters "O" and "M" stacked vertically to make a little monster, just as we did with "D" and "M".
- You have the "M" making up the body of the creature, with each leg of the M representing a leg of the monster.
- You have horns on your monster.
- Your horns are simple curved horns that taper to a point.
- Your horns point inwards.
- Your horns are separated from the head of the monster with whitespace.
- The top of the "M" is clipped by the other letter, forming a smooth upward curve.
- You have three claws on each foot.
- The claws are perfect triangles.
- The claws are pointing down.
- The claws are separate from the feet.
- The creature has a little mouth, with a single element of interest inside of it (a tooth, for you, a tongue for us).
- The mouth detail is pointing upwards.
- The mouth detail is on the right side.
- The mouth detail is represented by extending negative space.
- The logo is largely one color, and uses contrast with the background to show off most elements. (In fact, the only variant from this is the only new thing your artist added, which is the eyes, which are white-on-grey.)

Basically the only thing that's changed in your version is that the eyes are moved up, there are two eyes, the tongue is a tooth, the eye hole becomes the mouth, and the "D" is now an "O".

The fact that the list of differences is so much shorter than the list of similarities

(which I don't even claim is complete) should speak volumes.

--

We have been using our logo to represent our business continuously since March of 2004. Not only is the mark itself ours, but the artwork itself is copyrighted, and your mark is so close to ours that I believe it would be deemed by any court to be a derivative work even leaving aside trademark law.

Our logo was created and drawn for us in March of 2004 by Christopher Masciocchi, who is a quite famous graphical artist who works for Vogue and Rolling Stone and other magazines. He has an outstanding reputation in his industry.

Delicious Monster is also a very famous company in the software community. We have won three prestigious Apple Design Awards in the last three years for our product.

I am sure that you do not want your financial advice company, which absolutely requires customer trust, to be associated with theft. I'd like to point out that it was one of our customers who found your site and reported your mark to us -- you are losing trust simply by having a copy of our mark on your site, right now.

Therefore I ask that you please *immediately* remove the offending mark from your website and cease using it to represent your company in any way. If you do this, I'll consider this matter closed -- I am not a litigious man by nature, and I'd rather assume this was a screw-up by your artist that you knew nothing about, and settle this as gentlemen.

If I don't hear anything from you by Friday, December 7th, I'll assume you don't want to settle this amicably, and I will escalate this matter accordingly.

Yours,
-Wil Shipley
CEO, Delicious Monster Software
206.619.2561
<http://delicious-monster.com/>
<http://wilshipley.com/>

3/13/2008

EXHIBIT D

From: ask-rod@optionmonster.com

Subject: RE: The "optionMonster" logo is a copy of Delicious Monster's copyrighted logo...

Date: December 2, 2007 10:37:49 PM PST

To: wjs@delicious-monster.com, support@optionmonster.com, ask-drij@optionmonster.com, ask-pete@optionmonster.com

Cc: michael_m@mac.com, christopher@masciocchi.org, lucas@delicious-monster.com, elcajone@mac.com, leighful@comcast.net Mr. Shipley,

Please take note that I am a "contributing editor" to the OptionMonster web site. I am not now nor have I ever been an employee, shareholder or decision-maker of any entity that might be a party to your claim.

As such, please remove me from your distribution list regarding this matter.

Sincerely,

Rod David

3/13/2008