

1 THOMAS E. SHARDLOW, State Bar #072616
2 PATRICIA G. VICK, State Bar #113951
3 THE LAW OFFICES OF SHARDLOW & VICK
4 790 East Colorado Boulevard, 9th Floor
5 Pasadena, California 91101
6 (626) 584-1600; FAX (626) 584-3952

7 Attorneys for Plaintiff

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 The Network Network,
12 Plaintiff,
13 vs.
14 CBS, Inc. and Does 1 to 10,
15 Defendants.

CASE NO. _____
COMPLAINT FOR DECLARATORY
RELIEF RE TRADEMARK DISPUTE
(LANHAM ACT)
DEMAND FOR JURY TRIAL

16
17
18 I. JURISDICTION AND VENUE

19
20 1. This action for declaratory and equitable relief is brought pursuant to the
21 Lanham Act, 15 U.S.C. § 1051 et seq. and the Declaratory Judgment Act, 28 U.S.C. § 2201. The
22 district courts of the United States have original jurisdiction of all actions arising under the
23 Lanham Act. 15 U.S.C. 1121(a), 28 U.S.C. §§ 1331 and 1338. Venue is proper in the United
24 States District Court, Central District of California, in that plaintiff has its principal place of
25 business within the Central District of California, most of the activities which constitute the
26 claimed infringement occurred or originated in the Central District of California, defendant CBS,
27 Inc. is transacting business within and may be found within California and the Central District of
28 California and has sufficient contacts to the Central District of California to permit personal juris-

1 | diction over CBS, Inc. if the Central District of California were a separate State, and the defen-
2 | dants have done the acts complained of herein within this district. Plaintiff is informed and be-
3 | lieves, and thereupon alleges, that Does 1 to 10 are transacting business within and may be found
4 | within the State of California and the Central District of California.

5 |
6 | **II. PARTIES**
7 |

8 | 2. Plaintiff The Network Network, Inc. is a California Corporation. Plaintiff is
9 | engaged in interstate commerce.

10 | 3. Defendant CBS, Inc. is a corporation. Plaintiff is unaware of the place of its
11 | incorporation. Defendant CBS, Inc. is engaged in interstate commerce.

12 | 4. Defendants Does 1 to 10 are affiliates of CBS, Inc. which CBS, Inc. represents
13 | may own or control the service mark "TNN" which CBS, Inc. represents is registered "For: Tele-
14 | vision Program Production Services and Distribution of Television Programming to Cable Tele-
15 | vision Systems in Class 41 (U.S. CLS. 104 and 107)." TNN, as used by CBS, Inc. and/or its affili-
16 | ates and predecessors, stands for "The Nashville Network," a country music cable station. Plaintiff
17 | is ignorant of true names and capacities, whether individual, corporate, associate or otherwise, of
18 | defendants Does 1 to 10, inclusive.

19 | 5. Plaintiff is informed and believes, and thereupon alleges that each fictitious
20 | defendant was in some way responsible for, participated in, or contributed to the matters and
21 | things of which plaintiff complains herein, and in some fashion has legal responsibility therefor.
22 | When the exact nature and identity of such factitious defendant's contributions to the matters and
23 | things herein alleged is ascertained, plaintiff will seek leave to amend this complaint to set forth
24 | the same.

25 | 6. Plaintiff is informed and believes, and thereupon alleges that each defendant
26 | has acted and is acting as the agent of, and with the authorization of, the other defendants with
27 | respect to the matters and things of which plaintiff complains herein.
28 |

III. CLAIM FOR DECLARATORY RELIEF AND PERMANENT INJUNCTION

7. Plaintiff The Network Network was incorporated in the State of California in 1988. From its inception, The Network Network has utilized the letters TNN as a common-law service mark. A copy of plaintiff's service mark is attached hereto as Exhibit "A" as shown on its Internet Web site.

8. Plaintiff is in the business of providing computer networking consulting services with respect to large, sophisticated computer networks.

9. On or about June 19, 1995 plaintiff registered the domain name "www.tnn.com" with Internic Registration Service, operated by a private firm called Network Solutions. Such registration is the "address" by which plaintiff's clients and others interested in its services contact plaintiff's "Web site" on the Internet. CBS, Inc. and/or its predecessor in interest have known about plaintiff's use of the www.tnn.com domain name since at least December 1996, and until December 1997 made no objection to plaintiff's use of the same. By virtue of the explosion in the use of the Internet in 1997 and the efforts of plaintiff to develop and promote its Web site throughout 1997, the www.tnn.com Web site address has become an integral and valuable part and asset of plaintiff's business.

10. CBS, Inc. claims that it and/or its affiliates own and/or control Registered Trade Mark Nos. 1,426,014 and 1,560,188. Plaintiff has insufficient information at this time to determine whether CBS, Inc. and/or its affiliates own and/or control Registered Trade Mark Nos. 1,426,014 and 1,560,188, or whether such registrations are valid. CBS's trademark, as used on its Web site, is attached hereto as part of Exhibit "A."

11. Commencing in 1996, defendant CBS, Inc., for itself and on behalf of Does 1 to 10, contacted plaintiff with the following contentions and demands:

a. Defendants contended that CBS, Inc. and or its affiliates owned and/or controlled the right to the sole and exclusive use of the letters "TNN" for any and all purposes and that CBS, Inc. had the exclusive right to copy, record, perform, exhibit, exploit or otherwise use the letters "TNN" by virtue of its registrations.

1 b. Defendants contended that plaintiff's registration and/or use of "www.
2 tnn.com" as a Web site address constituted a violation of CBS, Inc.'s sole and exclusive right to
3 the letters "TNN" and an infringement of defendants' service mark (originally alleged to have been
4 a trademark).

5 c. Defendants contended that plaintiff's use of the letters "TNN" in any
6 manner and for any purpose constituted a violation of CBS, Inc.'s sole and exclusive rights to the
7 letters "TNN" and infringements of defendants' service mark (originally alleged to have been a
8 trademark).

9 d. Defendants demanded that plaintiff immediately cease and desist from
10 all use of the letters "TNN."

11 e. Defendants demanded that plaintiff withdraw its registration of the
12 domain name "www.tnn.com" with the Internic Registration Service.

13 f. Defendants demanded that plaintiff provide it with written assurances
14 that it had withdrawn its registration of the domain name "www.tnn.com" with the Internic Regis-
15 tration Service and that it would not utilize the letters "TNN" in the future for any purpose.

16 12. A copy of the contentions and demands of the defendants, including copies of
17 the service mark registrations, are attached hereto as Exhibit B, along with copies of plaintiff's
18 responses thereto.

19 13. Defendant's attempt to intimidate plaintiff to give up its Web site address is
20 commonly referred to as "poaching" or "reverse domain name hijacking," and has been soundly
21 criticized as an abuse of trademark law when such attempt is inflicted upon an entity which has
22 the right to utilize the service mark in a different service field or geographical area.

23 14. Plaintiff is informed and believes that none of the defendants perform com-
24 puter networking consulting services, or engage in any similar or related business.

25 15. Plaintiff does not engage in television program production services or distri-
26 bution of television programming to cable television systems services or in any similar or related
27 business. Plaintiff does not operate a country music cable station, provide country music pro-
28 gramming, or engage in any business which relates to country music.

1 16. At no time has any person obtained any services from plaintiff believing that
2 it was obtaining such services from any of the defendants or their predecessors in interest.

3 17. At no time could any person obtain any services from plaintiff believing that
4 it was obtaining such services from any of the defendants or their predecessors in interest.

5 18. At no time could any person obtain television program production services or
6 distribution of television programming to cable television systems services or any related services
7 from the plaintiff, since plaintiff has never provided such services.

8 19. At no time could any person obtain computer networking consulting services
9 from defendants or their predecessors, since neither the defendants nor their predecessors have
10 ever provided such services.

11 20. At no time could any person obtain computer networking consulting from plain-
12 tiff believing that it was actually obtaining country music programming or any other type of
13 programming, since plaintiff has never provided such services.

14 21. At no time could any person visit plaintiff's www.tnn.com Web site and obtain
15 television program production services or distribution of television programming to cable television
16 systems services or believe that any such services were available from plaintiff. *See, e.g.*, the copy
17 of plaintiff's introductory Web site page, attached as part of Exhibit "A."

18 22. There is no likelihood, even possibility, of confusion between plaintiff's use of
19 its common-law service mark and defendants' use of their service mark, since plaintiff and
20 defendant are engaged in entirely separate lines of businesses. *See Interstellar Starship Services*
21 *Limited v. Epix, Inc.*, ___ F.Supp. ___ (D. Oregon November 20, 1997), 1997 WL 736486) with
22 respect to a virtually identical dispute over use of a Web site domain name. The likelihood of
23 confusion is even further reduced (to the extent that it is possible to reduce the likelihood of
24 confusion below zero) by the fact that the customers of both plaintiff and defendants are extremely
25 sophisticated individuals who could not possibly mistakenly believe that services received from
26 plaintiff were in fact services provided by the defendant, or vice versa.

27 23. Defendants have waived any right to object to plaintiff's use of its TNN service
28 mark, and www.tnn.com Internet domain name.

1 24. Defendants are estopped from objecting to plaintiff's use of its TNN service
2 mark, and www.tnn.com Internet domain name.

3 25. Defendants have misused their trademark by claiming that their alleged trade-
4 mark registration gives them sole and exclusive right to utilize the letters "TNN," knowing that
5 their alleged registration gives them no such right, all in the context of an attempt to "poach" or
6 "hijack" plaintiff's Web site address.

7 26. A controversy presently exists between plaintiff and defendants concerning
8 whether plaintiff's use of its service mark "TNN" and its domain name "www.tnn.com" constitutes
9 a trademark or other infringement under federal law.

10 27. It is necessary and appropriate that this Court resolve the existing controversy
11 and determine the rights and duties of the parties in respect to the matters in controversy.

12
13 **IV. JURY TRIAL DEMAND**

14
15 Plaintiff demands that this case, or such portions thereof as are permitted by law, be
16 tried by a jury.

17
18
19 **WHEREFORE**, the plaintiff requests the following relief:

20
21 1. For a declaration of the rights of the parties with respect to the controversies
22 set forth herein.

23 2. For a declaration that each and every claim made by defendants against plain-
24 tiff is without merit.

25 3. For a declaration that plaintiff has not infringed defendant's trademark rights.

26 4. For a permanent injunction enjoining defendants from interfering in any way
27 with plaintiff's use or right to use the "www.tnn.com" domain name.

28 5. For attorney fees, costs and expenses, according to law.

