

Honorable Ricardo S. Martinez

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**UNITED STATES DISTRICT COURT,  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

MICROSOFT CORPORATION,  
a Washington corporation,

Plaintiff,

v.

AMISH P. SHAH, an individual, JOSE A.  
RIVERA, a/k/a JAY STYLES, an  
individual, DIGISPACE SOLUTIONS  
LLC, a California Limited Liability  
Company, YMULTIMEDIA LLC, a  
California Limited Liability Company, and  
DOES 1-50,

Defendants.

Case No. 10-cv-00653-RSM

**DEFENDANTS' AMENDED  
MOTION TO DISMISS UNDER  
FED. R. CIV. P. 12(b)(6)**

NOTE ON MOTION CALENDAR:  
September 17, 2010

ORAL ARGUMENT REQUESTED

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## I. INTRODUCTION

Defendants Digispace Solutions, LLC, yMultimedia LLC, Amish P. Shah, and Jose Rivera (the “Digispace Parties”) request that the Court dismiss with prejudice Plaintiff Microsoft Corporation’s claims for induced violations of the Anticybersquatting Consumer Protection Act (“ACPA”), 15 U.S.C. § 1125(d), and contributory trademark dilution under the Lanham Act, 15 U.S.C. § 1125(c). In both cases, Microsoft has failed to state a claim for relief and its claims should be dismissed.

There is no legal basis for Microsoft’s claim for induced violations of the ACPA or contributory trademark dilution. Congress narrowly tailored the ACPA to provide limited relief against the actual registrant of a domain name registered with the bad faith intent to profit from the mark of another. It did not provide for liability against a party that induces such a violation. No court has ever recognized a cause of action for inducement under the ACPA. Similarly, no court has ever recognized a cause of action for induced trademark dilution. Both claims should be dismissed here.

Additionally, even if there were a viable claim for inducement under the ACPA, the allegations in Microsoft’s First Amended Complaint for Damages and Equitable Relief (Dkt. No. 17) (“FAC”) are insufficient. The few courts to have discussed secondary liability under the ACPA—where a person with control over the infringer may be liable—have required that the plaintiff plead sufficient facts to show that the defendant had actual knowledge of the infringement. Microsoft’s FAC fails to allege such facts.

Microsoft is asking this Court to take the unprecedented step of imposing liability for induced violations of the ACPA. Despite having not identified any of the Does, any allegedly “Induced Person”, or any actual damages it has suffered, Microsoft has requested many millions of dollars in statutory damages from the Digispace Parties. In truth, the Digispace Parties operate a legitimate business that provides website owners with the ability to place advertisements. They also offer online training, resources and tools for website creation. This request is especially troubling with regard to Rivera—Microsoft’s FAC includes no factual allegations indicating he has liability. The Digispace

1 Parties respectfully request the Court grant their Motion and dismiss Microsoft’s claims  
2 for induced violations of the ACPA, induced trademark dilution, and all of its claims  
3 against Rivera with prejudice.

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**II. FACTS ALLEGED**

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**A. Microsoft’s factual allegations and legal conclusions regarding the Digispace Parties**

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8 Microsoft alleges that Digispace and yMultimedia market advertising technology  
9 to end users. (*See* FAC at 40). Shah and Rivera are each “founders” of both Digispace  
10 and yMultimedia and Shah is the Chief Executive Officer of Digispace. (*Id.* at ¶¶ 8-9.)

10

11 Microsoft broadly claims that each of the Digispace Parties:

11

12 “registered, uses, owns **or** co-owns one or more Infringing Domain Names  
13 **and/or** otherwise infringed **one or more** Microsoft trademarks or service  
14 marks, jointly **and/or** severally, and directly, contributorily, **and/or**  
vicariously.”

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15 (*Id.* at ¶¶ 6-9 (emphasis added).) Microsoft defines “Named Defendants” to include all of  
16 Digispace, yMultimedia, Shah, and Rivera, but Rivera is not otherwise mentioned in  
17 Microsoft’s FAC. (*See id.* at preamble).

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**B. Microsoft’s factual allegations relating to domain name registrations**

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20 Microsoft alleges that “Defendants” in general “registered, control, use, or own the  
21 Infringing Domain Names.” (*Id.* at ¶ 31.) But Microsoft does not identify which of the  
22 Domain Names it alleges the Digispace Parties registered and which it alleges are  
23 registered by the unidentified Does.

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24 Some of the Domain Names must be registered to unidentified Does because the  
25 FAC states that they are not registered by the Digispace Parties. Microsoft claims that the  
26 Digispace Parties

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27 “actively and intentionally induced others (‘Induced Persons’) to profit in  
28 bad faith from and to capitalize on the goodwill associated with the  
Microsoft Marks by following a similar methodology of registering and  
using numerous other domain names that contain or consist of Microsoft’s

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Marks.”

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(*Id.* at ¶ 34.) Microsoft does not identify any of the Induced Persons or the factual basis for its allegation that any of the Induced Persons acted to profit in bad faith. Nor is it clear whether the Induced Persons are among the unidentified Does or whether they are even included among the general term “Defendants” in Microsoft’s FAC.

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Instead of identifying specific parties that the Digispace Parties allegedly induced, Microsoft claims that the Digispace Parties widely “communicated with tens of thousands of persons to whom they provided information” showing how to infringe the Microsoft Marks. (*Id.* at ¶ 35.) But Microsoft does not allege that the Digispace Parties had knowledge of whether any of the individual Induced Persons actually had bad faith, any facts showing that they intended the Induced Persons to act in bad faith, or even that the Digispace Parties knew the identity of any of the Induced Persons.

**C. Microsoft alleges that the Induced Persons used infringing domain names to promote a product not authorized by Microsoft.**

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One of the Microsoft Marks is MSN in connection with software products including “instant messenger programs such as MSN Messenger”. (*Id.* at ¶ 12, 14.) Microsoft alleges that “Defendants” in general—which presumably includes the unidentified Does and/or Induced Persons—registered and used domain names containing MSN in bad faith in order to promote the Smiley Central product. (*See id.* at ¶¶ 35-39). Microsoft alleges that Smiley Central is not affiliated with, sponsored by, or approved by Microsoft in any way. (*Id.* at ¶ 27.)

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Microsoft alleges that unspecified “Defendants” promoted Smiley Central based on the functional enhancement it provides the MSN Messenger program: “Defendants produced a video specifically showing how the Magic Bullet System could be used to set up a marketing campaign using Microsoft marks to sell the Smiley emoticons.” (*Id.* at ¶ 36.) That video described the Smiley promotion as “promoting something related to Messenger.” (*Id.* at ¶ 37.)

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Microsoft’s description of Smiley Central is consistent with the copy of the Smiley Central webpage attached to the FAC. (*Id.* at ¶ 28, Ex. 3.) Smiley Central is a toolbar that

1 “works with most [instant messengers], Email and blog applications – as well as social  
 2 sites like MySpace® and MSN® Spaces!” (Ex. 3, p. 2.) Smiley Central permits users to  
 3 “Choose from 1000’s of FREE Smileys and Emoticons” to use with instant messenger  
 4 clients and the Smiley Central website specifically disclaims any relationship with  
 5 Microsoft:

6 Any instant messaging, social networking or email systems listed above are  
 7 operated by and are the trademarks of their respective owners. No  
 affiliation with or endorsement by Smiley Central is intended or implied.

8 (Exhibit 3 at 2.) Finally, Microsoft’s FAC does not include any factual allegations  
 9 supporting its conclusion that the unidentified Induced Persons had “bad faith” towards  
 10 its MSN mark when registering any of the Domain Names.

### 11 III. DISCUSSION

12 FED. R. CIV. P. 12(b)(6) requires the Court to dismiss when it is clear that “no  
 13 relief could be granted under any set of facts that could be proved consistent with the  
 14 allegations.” Winn v. Ariz. Christian Sch. Tuition Org., 562 F.3d 1002, 1007 (9th Cir.  
 15 2009), *cert. grant.* 176 L. Ed. 2d 1218 (2010). While a court must accept all material  
 16 allegations in the complaint as true and construe them in the light most favorable to the  
 17 nonmoving party, conclusory allegations of law or unwarranted inferences of fact urged  
 18 by the nonmoving party are insufficient to defeat a motion to dismiss. Ove v. Gwinn, 264  
 19 F.3d 817, 821 (9th Cir. 2001).

20 FED. R. CIV. P. 8(a)(2) requires: “A pleading which sets forth a claim for relief . . .  
 21 shall contain . . . (2) a short and plain statement of the claim showing that the pleader is  
 22 entitled to relief . . . .” Inadequate allegations of fact under FED. R. CIV. P. 8(a)(2)  
 23 represent a proper basis for dismissal under FED. R. CIV. P. 12(b)(6); *see also* Bell  
 24 Atlantic Corp. v. Twombly, 550 U.S. 544, 556 n.3, 167 L.Ed.2d 929, 127 S.Ct. 1955,  
 25 1965 (2007) (“Rule 8(a)(2) still requires a ‘showing,’ rather than a blanket assertion, of  
 26 entitlement to relief. Without some factual allegation in the complaint, it is hard to see  
 27 how a claimant could satisfy the requirement of providing not only ‘fair notice’ of the  
 28 nature of the claim, but also ‘grounds’ on which the claim rests.”)

1 The need for plausible factual pleadings has been underscored by Ashcroft v.  
 2 Iqbal, 129 S. Ct. 1937 (2009). In both Twombly and Iqbal, the Supreme Court held that  
 3 Rule 8(a)(2) requires “factual content [that] allows the court to draw the reasonable  
 4 inference that the defendant is liable for the misconduct alleged.” Iqbal, 129 S. Ct at  
 5 1940. “[T]hreadbare recitals of the elements of a cause of action, supported by mere  
 6 conclusory statements” do not suffice. Id. Similarly, with respect to a Rule 12(b)(6)  
 7 motion, a “plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment]’ to relief”  
 8 requires more than labels and conclusions, and a formulaic recitation of the elements of a  
 9 cause of action will not do.” Twombly, 550 U.S. at 555.

10 **A. Microsoft’s FAC fails to state a claim for induced violations of the ACPA**  
 11 **because the ACPA does not provide a cause of action for induced**  
 12 **cybersquatting.**

13 The ACPA provides for a cause of action for an owner of a distinctive mark  
 14 against a person who “(i) has a bad faith intent to profit from that mark . . . and (ii)  
 15 registers, traffics in, or uses a domain name that . . . is identical or confusingly similar to  
 16 that mark”. 15 U.S.C. § 1125(d)(1)(A)(i)-(ii). Microsoft alleges that the so called “Named  
 17 Defendants” induced the unidentified “Induced Persons” to register or use various  
 18 domain names (the “Domain Names”) in bad faith. Microsoft does not allege that the  
 19 Digispace Parties themselves registered, trafficked in, or used the Domain Names and has  
 20 not stated a claim under the ACPA with regard to the Domain Names.

21 In order for Microsoft to assert liability against the Named Defendants for the  
 22 Domain Names, it has asked this Court to create a new cause of action neither intended  
 23 by Congress nor adopted by any court. This Court should decline to do so and dismiss  
 24 Microsoft’s cause of action for induced violation of the ACPA.

25 1. Congress intended relief under the ACPA to be limited to the direct cause  
 26 of action identified in the text of the legislation.

27 The ACPA only provides for a cause of action against a domain name registrant  
 28 who “registers, traffics in, or uses” a domain name confusingly similar to a plaintiff’s  
 mark. Where statutory language is clear, there is no need to review legislative history.



1 *See* BedRoc, Ltd. v. United States, 541 U.S. 176, 183, 124 S. Ct. 1587, 158 L. Ed. 2d 338  
2 (2004) (noting that the task of statutory interpretation “ends there [if] the text is  
3 unambiguous”); *see also* Vulcan Golf, LLC v. Google, Inc., 2010 U.S. Dist. LEXIS  
4 56786 (N.D. Ill. June 9, 2010) (“The court, however, need not delve into the legislative  
5 history of the ACPA, because the statutory language is clear: A person may only be held  
6 liable for ‘using’ a domain name if that person is a registrant or a registrant’s authorized  
7 licensee.”)

8 Even if the statutory language were ambiguous—which it is not—the relevant  
9 legislative history shows that Congress intended the remedies under the ACPA to be  
10 “carefully and narrowly tailored”. S. Rep. No. 106-140, at 12 (1999).<sup>1</sup> The cause of  
11 action is only available where “the plaintiff can demonstrate that the defendant registered,  
12 trafficked in, or used” an infringing domain name. *Id.* Therefore, the only “abusive  
13 conduct that is made actionable is appropriately limited just to bad-faith registrations and  
14 uses of others’ marks by persons who seek to profit unfairly from the goodwill associated  
15 therewith.” *Id.* at 8.

16 Microsoft does not claim that the Digispace Parties registered the Domain  
17 Names—they were allegedly registered by the Induced Persons. (FAC at ¶ 34.) Nor can it  
18 claim that the Digispace Parties “used” the Domain Names. Under the ACPA, “use”  
19 means “the use of a domain name by the domain name registrant”. S. Rep. No. 106-140,  
20 at 8. Congress further provided that “[t]he concept of ‘use’ does not extend to uses of the  
21 domain name made by those other than the domain name registrant . . . .” S. Rep. No.  
22 106-140, at 8. The Digispace Parties are not “registrants” of the Domain Names and  
23 therefore cannot have made “use” of them in the manner for which Congress intended to  
24 provide a cause of action for trademark holders.

25 The ACPA, passed in 1999, differs from other provisions of the Lanham Act  
26

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27 <sup>1</sup> For the Court’s convenience, the Digispace Parties have provided copies of all  
28 legislative materials referenced in this Motion in the Appendix of Legislative Materials attached  
to their previously-filed Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6) (Dkt. No. 14).



1 governing trademark infringement. Congress intended traditional trademark infringement  
2 laws to provide much broader relief than the narrow ACPA. The Lanham Act codified  
3 the common law of trademarks:

4       The theory once prevailed that protection of trade-marks was entirely a  
5       State matter and that the right to a mark was a common-law right. This  
6       theory was the basis of previous national trade-mark statutes.

7 S. Rep. No. 1333 (1946), *reprinted in* 1946 U.S.C.C.A.N. 1276; *See also Inwood*  
8 *Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844, 102 S. Ct. 2182, 72 L. Ed. 2d  
9 606 (1982) (White, J. concurring) (“[T]he purpose of the Lanham Act was to codify and  
10 unify the common law of unfair competition and trademark protection.”). Contributory  
11 trademark infringement has long been recognized under the common law. *See, e.g.,*  
12 *William R. Warner & Co. v. Eli Lilly & Co.*, 265 U.S. 526, 530 (1924) (“The wrong was  
13 in designedly enabling the dealers to palm off the preparation as that of the respondent.”);  
14 *Hostetter Co. v. Brueggeman-Reinert Distilling Co.*, 46 F. 188, 189 (C.C.D. Mo. 1891)  
15 (“[A] person who counsels and advises another to perpetrate a fraud [on the public], and  
16 who also furnishes him the means of consummating the same, is himself a wrong-doer,  
and, as such, is liable for the injury inflicted.”)

17       In passing the Lanham Act, Congress also recognized the need for a unified  
18 federal standard for trademark rights. S. Rep. No. 1333, *reprinted in* 1946 U.S.C.C.A.N.  
19 1277. It noted that legislation was necessary because there is no federal common law  
20 under which federal courts could develop a national standard. S. Rep. No. 1333, *reprinted*  
21 *in* 1946 U.S.C.C.A.N. 1277. If Congress intended to provide for contributory liability  
22 under the ACPA, it would have done so. *See Legal Services Corporation v. Velazquez*, 531  
23 U.S. 533, 560 (2001) (Scalia, J., dissenting) (“One determines what Congress would have  
24 done by examining what it did.”)

25       In stark contrast with the broad scope of the original Lanham Act, Congress  
26 passed the ACPA to create a “narrow” and “limited” cause of action. Congress did not  
27 intend to provide trademark owners with the wide range of common law remedies  
28 available under the Lanham Act—including theories of contributory liability based on

1 inducement. *Cf. Campagnolo S.R.L. v. Full Speed Ahead, Inc.*, 2010 U.S. Dist. LEXIS  
 2 49707 (W.D. Wash. May 20, 2010) (Declining to apply particular theory of trademark  
 3 liability to false advertising claim where no other cases hold that doctrine should apply.)

4  
 5 2. Microsoft has not plead sufficient facts to state a claim for induced liability  
under the ACPA even if such a claim existed.

6 No court has recognized a cause of action for induced violations of the ACPA and  
 7 the case law suggests that doing so here would be inappropriate. The requirement that an  
 8 ACPA plaintiff make a subjective showing of “bad faith” distinguishes the ACPA from  
 9 traditional trademark-related causes of action. *Ford Motor Co. v. Great Domains.com,*  
 10 *Inc.*, 177 F. Supp. 2d 635 ( E.D. Mich. 2001). Traditional theories of contributory liability  
 11 apply to “those contributory infringers who knowingly cooperate in illegal and tortious  
 12 activity.” J. Thomas McCarthy, *McCarthy on Trademark and Unfair Competition* (2002)  
 13 §§ 25:17, 18, *referencing Warner & Co. v. Eli Lilly & Co.*, 265 U.S. 526 (1924)  
 14 (applying common law concept of contributory infringement).

15 The *Ford Motor* case rejected the application of contributory liability to the  
 16 ACPA. 177 F. Supp. 2d. That case did not involve allegations of inducement under the  
 17 ACPA, but rather contributory liability based on alleged control of the direct infringer. *Id.*  
 18 Ford claimed that Great Domains operated a domain name auction offering for sale  
 19 domain names that were confusingly similar to Ford’s trademarks. *Id.* at 640. Ford  
 20 asserted that under the traditional test for contributory trademark infringement, Great  
 21 Domains was liable because it exercised “direct control and monitoring” over the  
 22 allegedly infringing domain names. *Id.* at 646 (*citing Lockheed Martin Co. v. Network*  
 23 *Solutions, Inc.*,<sup>2</sup> 194 F.3d 980, 984-85 (9th Cir. 1999)).

24 The *Ford Motor* court rejected that theory because the “bad faith” requirement  
 25 under the ACPA requires a subjective showing of intent that is not required under  
 26 traditional trademark infringement or unfair competition theories. *Id.* at 647. The court

27  
 28 <sup>2</sup> *Lockheed Martin* also involved domain names but was decided prior to the enactment of  
 the ACPA. 194 F.3d.

1 dismissed Ford’s cause of action for contributory cybersquatting because “Great Domains  
2 generally could not be expected to ascertain the good or bad faith intent of its vendors”.  
3 Id. Ford could not state a cause of action based upon Great Domains knowing that  
4 domain names similar to protected marks were being sold over its website. Id. That court  
5 concluded that—because of the subjective bad faith showing required—contributory  
6 liability for cybersquatting would apply “if at all, in only exceptional circumstances.” Id.

7 While no court has recognized induced liability under the ACPA, one court  
8 recognized contributory liability under the alternative “exercise of control” theory. *See*  
9 Solid Host, NL v. Namecheap, Inc., 652 F. Supp. 2d 1092 (C.D. Cal. 2009). A plaintiff  
10 cannot plead that theory however, unless it can allege the contributory infringer had  
11 actual knowledge of the infringement and the ability to directly control and monitor the  
12 means of infringement. Id. at 1112.

13 In Solid Host, the trademark owner alleged that its domain name <solidhost.com>  
14 was stolen and then registered by a third party at Namecheap, a domain name registrar.  
15 Id. at 1096-97. Namecheap provided a privacy registration service permitting that  
16 registrant to remain anonymous. Id. at 1097. Solid Host contacted Namecheap and  
17 requested that it either transfer the domain or identify the actual registrant. Id. at 1097-98.  
18 Namecheap refused to do so. Id. Solid Host sued Namecheap for contributory violations  
19 of the ACPA. Id. at 1098. Namecheap moved to dismiss on the grounds that Solid Host  
20 failed to state a claim to relief. Id.

21 The Solid Host court denied that motion and held that Solid Host had stated a  
22 claim to relief for contributory violation of the ACPA. It determined that the plaintiff had  
23 plead the “extraordinary circumstances” suggested by the Ford Motors court because it  
24 alleged that the defendant provided the privacy registration service that enabled the  
25 activities of the direct infringer and had the actual ability to terminate the infringement.  
26 Solid Host, 652 F.Supp. 2d at 1115-16.

27 This case is distinguished from Solid Host. Like the plaintiff in Ford Motor,  
28 Microsoft has not alleged any facts indicating that the Digispace Parties had the ability to

1 “ascertain the good or bad faith” of the Induced Persons. Rather, it claims only that the  
2 Digispace Parties “communicated with tens of thousands of persons” via their websites  
3 and distributed a video promoting infringement. (FAC at ¶¶ 35-37.) Microsoft alleges that  
4 some of the unidentified third parties that received that communication then registered  
5 domain names in violation of the ACPA. Microsoft does not allege that the Digispace  
6 Parties know who those third party registrants are and does not allege that the Digispace  
7 Parties had actual knowledge of subjective bad faith intent by those parties as required by  
8 Ford. This is in stark contrast to the Solid Host defendant which had actual knowledge of  
9 infringement and exclusive control over the means of infringement yet continued to  
10 provide the privacy registration service that enabled the infringement and permitted the  
11 infringer to continue its unlawful activities.

12 Also, although the Solid Host decision refers to “contributory” infringement, the  
13 Court found liability in part because Namecheap actually controlled the domain name at  
14 issue. 652 F.Supp. 2d at 1115-16. Such control is similar in nature to the “trafficking”  
15 and “use” prohibited under the ACPA. *See* 15 U.S.C. 1125(d)(1)(A)(ii). No parallel can  
16 be drawn in this case.

17 The ACPA does not provide for a cause of action for induced infringement.  
18 Congress did not intend for the ACPA to enable such a cause of action. No court has ever  
19 recognized such a cause of action. Even if this Court determines that a cause of action  
20 exists for induced violations of the ACPA, Microsoft has failed to plead any facts  
21 showing that the Digispace Parties had actual knowledge of the subjective bad faith intent  
22 of the direct infringers. The Court should dismiss Microsoft’s claim for induced  
23 infringement of the ACPA with prejudice.

24  
25 **B. Microsoft has also failed to state a claim for contributory dilution.**

26 “Although courts have discussed contributory dilution, no appellate court or  
27 statute has yet established the cause of action.” Lockheed Martin, 194 F.3d at 986 (citing  
28 Academy of Motion Picture Arts & Sciences v. Network Solutions, Inc., 989 F.Supp.

1 1276, 1279 (C.D. Cal. 1997); *see also* Tiffany Inc. v. eBay, Inc., 576 F. Supp. 2d 463,  
2 526 (S.D.N.Y. 2008) (“even the one district court in [the Second] circuit that mentioned  
3 the doctrine acknowledged that it is somewhat ‘novel.’”) Microsoft cannot state a claim  
4 for contributory dilution when such a claim does not exist.

5  
6 **C. Microsoft has failed to state a claim against Rivera.**

7 Microsoft’s FAC does not include sufficient factual allegations to support any of  
8 its causes of action against Defendants Rivera and those claims should be dismissed. To  
9 be personally liable for trademark infringement, corporate officers and directors must do  
10 more than merely control corporate affairs, they must personally take part in infringing  
11 activities or specifically direct employees to do so. Transgo, Inc. v. Ajac Transmission  
12 Parts Corp., 768 F.2d 1001 (9th Cir. 1985). But the only factual allegations in Microsoft’s  
13 FAC involving Rivera are that he founded Digispace and yMultimedia. (FAC at 7-9.)  
14 Beyond that, Microsoft merely lumps him into the defined term “Named Defendants” (*id.*  
15 at p. 1) and asserts that he is an agent and principal for all of the other Digispace Parties.  
16 (*Id.* at ¶ 11.) Microsoft does not allege that Rivera personally took part in infringing  
17 activities or specifically directed employees to do so and its claims against him should be  
18 dismissed.

19 **IV. CONCLUSION**


20 Microsoft is seeking millions of dollars in statutory damages against the Digispace  
21 Parties for a cause of action under the ACPA not authorized by Congress or recognized  
22 by any court. It also asks this Court to impose liability for induced trademark dilution—  
23 yet another cause of action rejected by courts. Microsoft has not plead facts necessary to  
24 support its novel cause of action if it did exist. The Digispace Parties respectfully request  
25 that the Court grant their Motion and dismiss Microsoft’s claims for induced violations of  
26 the ACPA and induced trademark dilution and all of its claims against Rivera with  
27 prejudice.  
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1 Dated this 20<sup>th</sup> day of August 2010.

2 Respectfully Submitted,

3  
4 **NEWMAN & NEWMAN,  
ATTORNEYS AT LAW, LLP**

5  
6 By:



Derek Linke, WSBA No. 38314  
Derek A. Newman, WSBA No. 26967

7  
8 Attorneys for Defendants  
Digispace Solutions, LLC, yMultimedia LLC,  
9 Amish P. Shah, and Jose A. Rivera,