

1 R. Scott Jerger (*pro hac vice*)
2 Field Jerger, LLP
3 610 SW Alder Street, Suite 910
4 Portland, OR 97205
5 Tel: (503) 228-9115
6 Fax: (503) 225-0276
7 Email: scott@fieldjerger.com

8 John C. Gorman (CA State Bar #91515)
9 Gorman & Miller, P.C.
10 210 N 4th Street, Suite 200
11 San Jose, CA 95112
12 Tel: (408) 297-2222
13 Fax: (408) 297-2224
14 Email: jgorman@gormanmiller.com

15 Attorneys for Defendants
16 Matthew Katzer and Kamind Associates, Inc.

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 ROBERT JACOBSEN, an individual,)
21)
22 Plaintiff,)
23)
24 vs.)
25)
26 MATTHEW KATZER, an individual, KAMIND)
ASSOCIATES, INC., an Oregon corporation dba)
KAM Industries, and KEVIN RUSSELL, an)
individual,)
Defendants.)

Case Number C06-1905-JSW

[PROPOSED] ORDER DISMISSING
PLAINTIFF'S CLAIMS 5, 6, 8 AND 10
UNDER FED. R. CIV. P. 12(b) (6), (7);
STRIKING CERTAIN PORTIONS OF
THE AMENDED COMPLAINT; AND
ORDERING PLAINTIFF TO MAKE
CLAIM 9 MORE DEFINITE

27 This matter came before the court on December 15, 2006 on Defendants Matthew Katzer
28 and Kamind Associates, Inc.'s Motion to Dismiss Counts 5, 6, 8 and 10 of the amended
29 complaint for failure to state a claim on which relief can be granted and failure to join a
30 necessary party, motion to strike and motion to make more definite claim 9 of the amended

Case Number C 06 1905 JSW
Order on Defendants' Motion to Dismiss under Fed. R. Civ. P. 12(b)(6), (7), Motion to Strike
and Motion for a Definite Statement

1 complaint. The court reviewed the parties' written submissions and oral argument and finds as
2 follows:

- 3 1.) Counts 5, 8, and 10 fail to state a claim on which relief can be granted;
- 4 2.) Defendants are entitled to recover their reasonable costs and attorney fees for
5 successfully defending the copyright infringement claim;
- 6 3.) Count 6 fails to join a necessary party;
- 7 4.) Certain paragraphs and statements in the amended complaint must be stricken;
- 8 5.) Jacobsen must make claim 9 more definite in order to allow defendants to meaningfully
9 respond.

10
11 Therefore, based upon the above findings and being fully advised in the premises, it is
12 **ORDERED** that KAM and Katzer's motion to dismiss Count 5, Count 8 and Count 10 under
13 Fed. R. Civ. P. 12(b)(6); KAM and Katzer's motion for reasonable costs and attorney fees
14 pursuant to 17 U.S.C. § 505; KAM and Katzer's motion to dismiss Count 6 under Fed. R. Civ. P.
15 12(b)(7); KAM and Katzer's motion to strike Paragraphs 1-6, Paragraph 66, Paragraph 105,
16 Paragraph H and T in Plaintiff's Prayer, all references to Kevin Russell in Paragraph 50, and
17 footnotes 14, 17, 19, and 20; and KAM and Katzer's motion to make Count 9 more definite are
18 **GRANTED** and Counts 5, 6, 8, and 10 of the amended complaint are **DISMISSED** without
19 leave to amend.
20

21
22 _____
Hon. Jeffrey S. White
District Court Judge

23 Presented by:

24 _____
/s/
25 R. Scott Jerger (*pro hac vice*)
Field Jerger, LLP
26 Attorney for KAM and Katzer

Case Number C 06 1905 JSW
Order on Defendants' Motion to Dismiss under Fed. R. Civ. P. 12(b)(6), (7), Motion to Strike
and Motion for a Definite Statement