

1 Michael J. Niborski (State Bar No. 192111)
2 E-Mail: mniborski@pryorcashman.com
3 PRYOR CASHMAN LLP
4 1801 Century Park East, 24th Floor
5 Los Angeles, California 90067
6 Tel: (310) 556-9608
7 Fax: (310) 556-9670

8 Brad D. Rose (*Pro Hac Vice Admission Pending*)
9 E-Mail: brose@pryorcashman.com
10 Jacob B. Radcliff (*Pro Hac Vice Admission Pending*)
11 E-Mail: jradcliff@pryorcashman.com
12 PRYOR CASHMAN LLP
13 7 Times Square
14 New York, New York 10036
15 Tel: (212) 421-4100
16 Fax: (212) 326-0806

17 *Attorneys for Plaintiff*
18 *Faheem Rashad Najm*

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

16 FAHEEM RASHAD NAJM,

17 Plaintiff,

19 vs.

20 AUBURN AUDIO TECHNOLOGIES,
21 INC. d/b/a ANTARES AUDIO
22 TECHNOLOGIES,

23 Defendant.

Case No. **CV 11 363 9**

COMPLAINT FOR:

1. **Misappropriation of Right of
Publicity**
Cal. Civ. Code §3344
2. **Unfair Competition and False
Designation of Origin**
15 U.S.C. §1125(a)
3. **Common Law Unfair Competition**

DEMAND FOR JURY TRIAL

1 Plaintiff Faheem Rashad Najm p/k/a T-Pain ("T-Pain"), by his attorneys, Pryor
2 Cashman LLP, as and for his Complaint against Defendant Auburn Audio
3 Technologies, Inc. d/b/a Antares Audio Technologies ("Antares"), alleges as follows:

4 **NATURE OF THE ACTION**

5 1. T-Pain is a world-renowned singer, songwriter and actor whose successes
6 include numerous number one hits, two Grammy and dozens of other awards. T-Pain
7 is the owner and founder of Nappy Boy Enterprises LLC ("Nappy Boy"), which has
8 filed registration applications for the marks T-PAIN, I AM T-PAIN and T-PAIN
9 EFFECT (the "Marks"), the latter being a descriptive term for T-Pain's use of pitch
10 correction technology as an instrument to change the sound of his singing voice in a
11 distinctive manner. Plaintiff seeks monetary damages, statutory damages, punitive
12 damages and attorneys' fees arising from Antares's willful and unauthorized use of the
13 Marks and T-Pain's name, identity and persona in advertisements, packaging,
14 marketing and promotional materials for Antares's products.

15 **THE PARTIES**

16 2. T-Pain is a resident of the State of Georgia.

17 3. Defendant Antares is, upon information and belief, incorporated under the
18 laws of the state of California and maintains a business address of 231 Technology
19 Circle, Scotts Valley, California 95066.

20 **JURISDICTION AND VENUE**

21 4. This action arises under the Lanham Trademark Act, 15 U.S.C. §1501 et
22 seq. (the "Lanham Act"), Section 3344 of the California Civil Code and the common
23 law of the State of California. This Court has jurisdiction pursuant to 28 U.S.C §§
24 1331 and 1332 and 15 U.S.C. §1121. The amount in controversy exceeds the sum of
25 \$75,000, exclusive of interest and costs.

26 5. Venue is proper in this District under 28 U.S.C. §1391(a).

1 6. **Intra-district Assignment** – Pursuant to Local Rule 3-2(c), the San
2 Francisco Division is appropriate in this action as the complaint involves a claim
3 arising from intellectual property rights.

4 **FACTUAL ALLEGATIONS**

5 7. T-Pain's first album, *Rappa Ternt Singa*, was released in 2005 and
6 included two singles which reached number 5 and number 8 on the Billboard Top 100.
7 The album was a commercial success, and was followed by the 2007 release of
8 *Epiphany*, which debuted as the number one selling album in the United States. T-Pain
9 has also collaborated with numerous other top selling artists on highly successful
10 songs, and at one point in 2007, four of the top ten songs in the United States featured
11 T-Pain. T-Pain's success continued thereafter with the 2008 release of *Thr33 Rings*,
12 both of which included chart topping singles. T-Pain is also the producer of the
13 musical comedy animated series *Freaknik* and the voice actor for the lead character,
14 and his videos posted to YouTube have been accessed over 750 million times.

15 8. Due to his commercial success, the name, image, identity and persona of
16 T-Pain are highly valuable. In addition to the commercial success described above, in
17 2009 Nappy Boy released, in a joint venture with a third party, the "I am T-Pain"
18 application for the iPhone (the "iPhone App"), which allows users to employ pitch
19 correction technology to attempt to sound like T-Pain. The iPhone App was a huge
20 commercial success and remains the best-selling artist-driven iPhone application of all
21 time.

22 9. Nappy Boy filed registration applications that are pending for the
23 trademarks T-PAIN®, Reg. No. 85254503, a service mark in class 41, T-PAIN
24 EFFECT®, Reg. No. 85261124, for goods in class 9 (computer software and
25 downloadable computer software), and I AM T-PAIN, Reg. No. 85223603, also a class
26 9 mark.

27 10. Through Nappy Boy's ventures with third parties, T-Pain markets the "I
28 am T-Pain" application, the soon to be released I am T-Pain Mic, and other products by

1 making prominent use of the Marks on the packaging of the products and in
2 promotional materials.

3 11. As a result of T-Pain's long-standing use of the Marks as well as his
4 success in selling, advertising, licensing and promoting products including computer
5 software bearing the Marks, the T-PAIN brand has become strong and recognizable.

6 12. In addition to using the Marks to promote his own software, Plaintiff has
7 licensed the Marks and engaged in endorsements for products and services
8 manufactured and distributed by third parties.

9 13. Antares is the owner of the "Auto-Tune®" pitch correction technology
10 ("Auto-Tune"), which, upon information and belief, Antares designed and developed.

11 14. In or about November 2008, Antares began selling software called "Auto-
12 Tune EFX" through online and traditional stores.

13 15. In or about January, 2011, Antares began selling software called the
14 "Auto-Tune EFX Vocal Toolkit" through online and traditional stores.

15 16. Despite the fact that neither Plaintiff nor Nappy Boy has never authorized
16 Antares to use the Marks, Antares has knowingly and willfully sold and distributed
17 software bearing infringing reproductions of the Marks in interstate and intrastate
18 commerce, including, upon further information and belief, in this District.

19 17. Specifically, the packaging and promotional materials for both the Auto-
20 Tune EFX and Auto-Tune EFX Vocal Toolkit (collectively, the "Software") state
21 prominently, and repeatedly, that the software allows users to "Correct pitch in real-
22 time or create the Auto-Tune Vocal Effect (the T-Pain/Cher Style effect)."

23 18. Antares issued press releases launching the Software, and in those press
24 releases Antares explained that the Software enabled users to create the "T-Pain/Cher-
25 style effect."

26 19. The phrase "T-Pain/Cher-style effect" is on the front of the box of both
27 pieces of Software.

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1 20. The phrase "T-Pain/Cher-style effect" is on the back of the box of both
2 pieces of Software.

3 21. The owner's manuals for both pieces of Software state that the "use [of
4 Auto-Tune] by T-Pain (and many others in the pop, R&B and hip-hop communities
5 has rekindled interest in the effect and introduced the magic of Auto-Tune to an even
6 larger community of musicians and producers."

7 22. Antares's frequent use of the phrase "T-Pain/Cher-style effect" to describe
8 the software has created an environment where online searches for "T-Pain" software
9 invariably lead consumers to websites where they may purchase the defendant's
10 Software.

11 23. For example, at www.amazon.com, as of June 9, 2011, when a user
12 searches the "Software" category for "T-Pain," the Auto-Tune EFX Vocal Toolkit is
13 the tenth most "relevant" product Amazon.com reveals. Upon information and belief,
14 this is because the product description for the Auto-Tune EFX Vocal Toolkit contains
15 multiple unauthorized references to T-Pain.

16 24. Counsel for Plaintiff has notified counsel for Antares that the use of the
17 Marks and T-Pain's name was unauthorized, yet, upon information and belief, Antares
18 continues to distribute and/or sell the Software that makes the aforementioned
19 unauthorized uses of the Marks and the name T-Pain.

20 25. Antares has been unjustly enriched at Plaintiff's expense by virtue of their
21 unauthorized uses of the Marks and the name T-Pain.

22 **FIRST CLAIM FOR RELIEF**
23 **(Misappropriation of Right of Publicity – California Civil Code §3344)**

24 26. Plaintiff repeats and re-alleges the allegations in Paragraphs 1 through 24
25 of the Complaint as if fully set forth herein.

26 27. The conduct of Antares as alleged above constitutes a violation of section
27 3344 of the California Civil Code due to the knowing and unauthorized use of T-Pain's
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1 name, identity and persona for commercial purposes, all of which have substantial
2 commercial value.

3 28. As a direct and proximate result of the aforesaid wrongful acts by Antares,
4 Plaintiff has been damaged in an amount that is not yet fully ascertainable, but which
5 exceeds the jurisdictional minimum of this Court. When Plaintiff has ascertained the
6 full amount of its damages, he will seek leave of Court to amend this Complaint
7 accordingly.

8 29. As a direct and proximate result of the aforesaid wrongful acts by Antares,
9 Plaintiff has incurred, and will continue to incur, substantial attorneys' fees and costs.
10 Plaintiff is entitled to an award of such attorneys' fees and costs pursuant to Section
11 3344(a) of the California Civil Code.

12 30. By reason of the aforesaid wrongful acts by Antares, in addition to the
13 relief sought above, Plaintiff is entitled to an accounting of all of Antares's revenues
14 and profits associated with the unauthorized use of T-Pain's name, identity and
15 persona, and to an award of all such sums. By reason of the aforesaid wrongful acts by
16 Antares, Antares holds all such sums in constructive trust for the benefit of Plaintiff
17 and has the duty to transfer such sums to Plaintiff forthwith.

18 31. In engaging in the aforesaid wrongful acts, Antares has acted willfully,
19 maliciously and oppressively, with the full knowledge of the adverse effect of its
20 actions on Plaintiff and with willful and deliberate disregard for the consequences to
21 Plaintiff. Accordingly, Plaintiff is entitled to recover punitive and exemplary damages
22 from Antares in an amount to be determined at the time of trial.

23 32. Plaintiff has no adequate remedy at law, and is entitled to a permanent
24 injunction prohibiting Antares from any further commercial use of Plaintiff's publicity
25 rights, including T-Pain's name, photograph, likeness, image, voice, sound-alike voice,
26 signature, identity and/or persona.

1 **SECOND CLAIM FOR RELIEF**
2 **(False Designation of Origin Under 15 U.S.C. §1125(a))**

3 33. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1
4 through 31 of the Complaint as if fully set forth herein.

5 34. Antares's conduct as alleged herein, including its use of the name T-Pain
6 and the Marks on the Software, is likely to cause confusion or to deceive consumers as
7 to the origin, sponsorship, affiliation, connection and/or association of Plaintiff and/or
8 his Marks, with Antares and the Software.

9 35. The packaging of the Software is calculated and intended to deceive and is
10 likely to deceive consumers into believing that they are authorized by Plaintiff. The
11 Software utilizes the Marks without any approval or authorization of Plaintiff.

12 36. Antares is capitalizing on and profiting from the likely consumer
13 confusion between its Software and Plaintiff's software.

14 37. The foregoing acts of Antares constitute unfair competition in violation of
15 §43(a) of the Lanham Act, 15 U.S.C. §1125(a).

16 38. Plaintiff has no adequate remedy at law, and if Antares's wrongful
17 activities are not permanently enjoined, Plaintiff will continue to suffer irreparable
18 harm.

19 39. Plaintiff has sustained and are entitled to monetary damages in an amount
20 to be proved at trial, which, upon information and belief, is in excess of \$1,000,000.

21 **THIRD CLAIM FOR RELIEF**
22 **(Common Law Unfair Competition)**

23 40. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1
24 through 39 of the Complaint as if fully set forth herein.

25 41. Plaintiff has expended substantial time, resources and effort to develop
26 and obtain an excellent reputation and goodwill for themselves, their merchandise and
27 the Marks.
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1 amount to be determined at trial; (iv) an award of Plaintiff's attorneys' fees; and (v) a
2 permanent injunction preventing Antares from making any further use of T-Pain's
3 name, identity, persona and/or publicity rights.

4 2. As to the Second Cause of Action: (i) general and special damages to be
5 determined at trial, together with interest; (ii) an award of Plaintiff's attorneys' fees;
6 and (iii) a permanent injunction preventing Antares from making any further use of the
7 Marks or any portion thereof.

8 3. As to the Third Cause of Action: (i) general and special damages to be
9 determined at trial, together with interest; and (ii) a permanent injunction preventing
10 Antares from making any further use of the Marks or any portion thereof.

11 4. As to all causes of action, for all costs of suit incurred herein, and for all
12 such other and further relief the Court deems just and proper.

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15 Dated: July 25, 2011

PRYOR CASHMAN LLP

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17 Bv: 

18 Michael J. Niborski
19 1801 Century Park East, 24th Floor
20 Los Angeles, CA 90067-2302
21 Tel: (310) 556-9608 Fax: (310) 556-9670
mniborski@pryorcashman.com

22 Brad D. Rose
23 Jacob B. Radcliff
24 7 Times Square
25 New York, New York 10036
26 Tel: (212) 421-4100 Fax: (212) 326-0806
brose@pryorcashman.com
jradcliff@pryorcashman.com

27 *Attorneys for Plaintiff Faheem Rashad Najm*
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff Faheem Rashad Najm p/k/a T-Pain hereby demands a jury trial as
3 provided by Rule 38(a) of the Federal Rules of Civil Procedure.

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5 Dated: July 25, 2011

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Michael J. Niborski
1801 Century Park East, 24th Floor
Los Angeles, CA 90067-2302
Tel: (310) 556-9608 Fax: (310) 556-9670
mniborski@pryorcashman.com

12 Brad D. Rose
13 Jacob B. Radcliff
14 7 Times Square
15 New York, New York 10036
16 Tel: (212) 421-4100 Fax: (212) 326-0806
brose@pryorcashman.com
jradcliff@pryorcashman.com

17 *Attorneys for Plaintiff Faheem Rashad Najm*
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21
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23
24
25
26
27
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