



## **THE PARTIES AND JURISDICTION**

2. Loretta Moseley is a resident of Jonas Ridge, Burke County, North Carolina, and a citizen of the State of North Carolina.
3. Upon information and belief, Fillmore Co. is a Japanese company with its headquarters in Tokyo, Japan.
4. Upon information and belief, Yusa is a citizen of Japan.
5. Upon information and belief, EREI is corporation organized and existing under the laws of the State of Nevada, with its headquarters and principal place of business in Las Vegas, Nevada.
6. This Court has jurisdiction over Plaintiff's Lanham Act claims pursuant to Section 39 of the Lanham Act, 15 U.S.C. § 1121, and pursuant to 28 U.S.C. § 1338(a) and 28 U.S.C. § 1331, and has jurisdiction over the state statutory and common law claims pursuant to 28 U.S.C. § 1338(b) and this Court's supplemental jurisdiction, 28 U.S.C. § 1367.
7. Upon information and belief, Defendants are conducting business, either directly or through distribution agreements, nationwide, including the State of North Carolina, and the injury to Loretta Moseley from Defendants' acts alleged herein takes place in North Carolina.
8. Upon information and belief, Yusa is the registrant and Fillmore Co. is the owner of the federal trademark registrations falsely or fraudulently obtained in violation of Section 38 of the Lanham Act, 15 U.S.C. § 1120, as alleged herein, and the injury to Loretta Moseley from their acts alleged herein takes place in North Carolina.

9. This Court has personal jurisdiction over Defendants pursuant to N.C. Gen. Stat. § 1-75.4, and venue is proper in this Court pursuant to 28 U.S.C. § 1391.

**FACTUAL BACKGROUND**  
**Facts Concerning Loretta Moseley and Her Trademark Rights**

10. Loretta Moseley is the successor in interest to the rights of her late husband, the legendary guitar builder Semie Moseley.

11. Semie Moseley was a musician and groundbreaking guitar designer whose guitar designs gained prominence beginning in the early 1950s.

12. Initially, Semie Moseley worked out of his garage to make three very detailed guitars a month under the trademark “MOSRITE” and other marks, including the mark “VIBRAMUTE,” which he applied to guitars having a Semie Moseley-designed system for muting the strings. Later, Semie Moseley formed the “Mosrite” company as a vehicle for his guitar production.

13. Some of the marks used by Semie Moseley in association with guitars and related goods included: “MOSRITE,” “M MOSRITE & Design,” “VIBRAMUTE,” “MOSELEY” and “SEMIE MOSELEY” (collectively referred to as the “MOSELEY Marks”).

14. Once professional musicians began to learn of the high quality of Semie Moseley’s guitars, news of the guitars quickly spread by word of mouth. Guitars sold in association with the MOSELEY Marks soon became highly sought after by music fans in general, and Semie Moseley’s guitars exploded in popularity after being played and popularized by the renowned, instrumental rock & roll group The Ventures.

15. Semie Moseley died in August of 1992, and his widow and successor in interest by law and testamentary instrument, Loretta Moseley, took up the cause of preserving Semie Moseley's and the Mosrite company's legacy.

16. Loretta Moseley and, before her, Semie Moseley have made continuous use of the MOSELEY Marks in commerce since at least as early as 1952.

17. Loretta Moseley and Semie Moseley have used the MOSELEY Marks throughout the United States in association with guitars, guitar components, guitar amplifiers and the like (the "MOSELEY Goods") since at least as early as 1952.

18. Loretta Moseley is and has for many years been engaged in extensive publishing, marketing, advertising, and exploitation of the creations of Semie Moseley, and she has used the MOSELEY Marks in connection therewith.

19. Each of the MOSELEY Marks has acquired and maintained substantial goodwill and a strong secondary meaning in the music industry.

20. The public identifies Semie Moseley and his legitimate successors as the source of, or as being associated with, goods that bear or are marketed with one or more of the MOSELEY Marks.

21. The MOSELEY Marks are famous and widely recognized by the general consuming public of the United States as a designation of Semie Moseley and his successors in interest as the sole legitimate source of MOSELEY Goods.

22. The MOSELEY Marks are entitled to protection from misappropriation and misidentification of and by non-authorized goods and products.

23. The distinctive artistic brilliance and goodwill that has come to be associated with Semie Moseley's name and the MOSELEY Marks is of inestimable value to Loretta Moseley.

24. Loretta Moseley used the MOSELEY Marks in interstate commerce throughout the United States and acquired her common law rights in the MOSELEY Marks prior to the acts of the Defendants complained of herein.

**Facts Concerning Defendants and their Unlawful Acts**

25. On February 10, 1998, Yusa filed with the United States Patent and Trademark Office (the "USPTO") an application for registration of the word mark "VIBRAMUTE" for use in connection with "guitars" with an alleged first use in commerce date of October 31, 1996. On February 23, 1998, Yusa also filed an application for the design and word mark "M MOSRITE" for use in connection with "guitars" with an alleged first use in commerce date of October 31, 1996. Hereinafter, both applications are referred to as the "Yusa Applications."

26. On each of the Yusa Applications, Yusa represented to the USPTO that: [He believed himself] to be the owner of the trademark . . . sought to be registered . . .; that to the best of his knowledge and belief, no other person, firm, corporation or association has the right to use said mark in commerce, either in the identical form in such near resemblance thereto as may be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that all statements made herein [in the Yusa Applications] of his/her knowledge are true and that . . . willful false statements may jeopardize the

validity of the application or document or any registration resulting therefrom.

27. The representations in the Yusa Applications described above (the “Application Misrepresentations”) were false when made to the USPTO and are false today.

28. Based on his prior dealings with Semie Moseley, Loretta Moseley and the Mosrite company, Yusa knew the Application Misrepresentations to be false at the time that he made them.

29. The Application Misrepresentations regarded a material fact in Yusa’s applications for federal trademark registration.

30. Yusa made the Application Misrepresentations with the intent to induce the USPTO to issue trademark registrations in reliance on the misrepresentations.

31. The USPTO did issue registrations on each of the Yusa Applications (the “Yusa Registrations”).

32. Upon information and believe, Yusa subsequently transferred his interest in the Yusa Registrations to Fillmore Co.

33. Upon information and belief, Fillmore Co. manufactures, markets, sells and distributes guitars and related products bearing the MOSELEY Marks or other marks that are identical or substantially similar to the MOSELEY Marks (the “Infringing Goods”).

34. Upon information and belief, the Infringing Goods are manufactured, marketed, sold and distributed in the United States by Fillmore Co. either directly or through a distributor.

35. Upon information and belief, EREI is Fillmore Co.'s only authorized distributor for the Infringing Goods in North America and South America.

36. Upon information and belief, EREI manufactures and/or assembles some or all of the Infringing Goods.

37. Upon information and belief, EREI markets, sells and distributes the Infringing Goods throughout the United States in direct commercial competition with the MOSELEY Goods.

38. EREI's internet web site <[www.edroman.com](http://www.edroman.com)> advertises that it sells "Original Mosrite USA Guitars," that Mosrite Guitars USA is a division of EREI, and that EREI is the source for "The Only Authentic, Legal Mosrite Guitars You Can Buy in the United States . . . ." The EREI web site also uses Semie Moseley's image and name to create the false impression that the Infringing Goods are somehow affiliated, approved or sponsored by the legendary Semie Moseley or his successor in interest.

39. Upon information and belief, Fillmore Co. and EREI commenced their infringing use of the MOSELEY Marks or other marks that are identical or substantially similar to the MOSELEY Marks with full knowledge that the MOSELEY Marks are widely recognized by the public to identify the MOSELEY Goods and to distinguish the MOSELEY Goods from those of competitors.

40. Fillmore Co. and EREI are using the MOSELEY Marks or other marks that are identical or substantially similar to the MOSELEY Marks on products in interstate commerce leading to actual confusion or the likelihood of confusion to confuse or deceive the public as to the source, origin, approval or sponsorship of the Infringing Goods.

41. As a result of Defendants' false or fraudulent statements and their infringing acts, confusion, mistake and deception is likely to occur in this District and throughout the United States.

42. The activities of Defendants complained of herein constitute infringement of Loretta Moseley's rights in the MOSELEY Marks.

43. Fillmore Co. and EREI have used the MOSELEY Marks or other marks that are identical or substantially similar to the MOSELEY Marks in ways that are likely to cause dilution by blurring or tarnishment of the famous MOSELEY Marks and to impair the distinctiveness of the MOSELEY Marks. Fillmore Co. and EREI are aware of the harm to Plaintiff that their actions have caused and are causing, and their activities are purposefully directed toward harnessing and exploiting the good will, fame and popularity of the MOSELEY Marks.

44. Fillmore Co. and EREI have executed marketing activities with blatant disregard for the fact that the MOSELEY Marks are immutably associated by the public with Semie Moseley, who bequeathed all of his intellectual property and associated rights to Loretta Moseley. The use in interstate commerce by Fillmore Co. and EREI of the MOSELEY Marks or other marks that are identical or substantially similar to the MOSELEY Marks in connection with the advertising, distribution, offering for sale, and sale of guitars is likely to cause confusion and dilution by blurring and dilution by tarnishment.

45. Upon information and belief, Defendants have engaged in the activities complained of herein knowingly and with the intent to deceive and mislead the public.

46. The activities of Fillmore Co. and EREI complained of herein constitute unfair competition and unfair and deceptive trade practices.

47. The activities of Defendants complained of herein have caused, and continue to cause, irreparable harm to the reputation and goodwill of the MOSELEY Marks and has caused, is causing and will continue to cause irreparable harm to Loretta Moseley.

48. Loretta Moseley has no adequate remedy at law.

**COUNT I**  
**FALSE ADVERTISING AND FALSE DESIGNATION OF ORIGIN**

49. Plaintiff realleges and incorporates by reference the foregoing allegations as if fully stated herein.

50. Fillmore Co.'s and EREI's activities as set forth herein constitute unfair competition, false advertising and the use of false and misleading descriptions, representations and designations of origin, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

**COUNT II**  
**DILUTION**

51. Plaintiff realleges and incorporates by reference the foregoing allegations as if fully stated herein.

52. Fillmore Co.'s and EREI's activities as set forth herein have caused a likelihood of injury to the reputation and goodwill associated with the MOSELEY Goods and the dilution of the highly distinctive and famous MOSELEY Marks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

**COUNT III**  
**FALSE OR FRAUDULENT TRADEMARK REGISTRATION**

53. Plaintiff realleges and incorporates by reference the foregoing allegations as if fully stated herein.

54. Yusa's activities as set forth herein, including the submission to the USPTO of the Application Misrepresentations, constitute false or fraudulent registration of the Yusa Registrations in violation of Section 38 of the Lanham Act, 15 U.S.C. § 1120.

**COUNT IV**  
**COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION**

55. Plaintiff realleges and incorporates by reference the foregoing allegations as if fully stated herein.

56. Defendants' activities as set forth herein constitute common law trademark infringement, passing off and unfair competition.

**COUNT V**  
**UNFAIR OR DECEPTIVE TRADE PRACTICES**

57. Plaintiff realleges and incorporates by reference the foregoing allegations as if fully stated herein.

58. Defendants' activities as set forth herein constitute unfair or deceptive acts or practices in violation of Section 75-1.1, *et seq.* of the North Carolina General Statutes.

59. Loretta Moseley is entitled to recover from Defendants treble damages pursuant to N.C. Gen. Stat. § 75-16.

60. In addition, Loretta Moseley is entitled to recover from Defendants her costs and expenses, including her reasonable attorneys' fees, pursuant to N.C. Gen. Stat. § 75-16.1.

**COUNT VI**  
**PRELIMINARY AND PERMANENT INJUNCTION**

61. Plaintiff realleges and incorporates by reference the foregoing allegations as if fully stated herein.

62. The damages and injuries caused to Loretta Moseley by reason of Defendants' violations of 15 U.S.C. § 1120, 15 U.S.C. § 1125(a)(1)(A), 15 U.S.C. § 1125(a)(1)(B), 15 U.S.C. § 1125(c), N.C. Gen. Stat. § 75 *et seq.* and the common law constitute damages and injuries that are ongoing and for which there is not an adequate remedy at law.

63. Defendants' violations of 15 U.S.C. § 1120, 15 U.S.C. § 1125(a)(1)(A), 15 U.S.C. § 1125(a)(1)(B), 15 U.S.C. § 1125(c), N.C. Gen. Stat. § 75 *et seq.* and the common law are likely to continue to cause confusion and mistake among other members of the relevant public if Defendants are not preliminarily and permanently enjoined from infringing the MOSELEY Marks and from falsely advertising, promoting and marketing the Infringing Goods.

**COUNT VII**  
**CANCELLATION OF THE YUSA REGISTRATIONS**

64. Plaintiff realleges and incorporates by reference the foregoing allegations as if fully stated herein.

65. Yusa's false or fraudulent registration of the Yusa Registrations and the underlying lack of rights by Yusa or Fillmore Co. to the subject marks of the Yusa Registrations warrant the cancellation of the Yusa Registrations pursuant to Section 37 of the Lanham Act, 15 U.S.C. § 1119.

**WHEREFORE**, for the foregoing reasons, Loretta Moseley respectfully prays:

1. That Defendants and their respective owners, parent companies, subsidiary companies, related companies, successors, assigns, officers, directors, agents, employees and attorneys – and all persons or entities in active concert or participation with any of them – be preliminarily and permanently enjoined and restrained from using, on or in connection with the manufacture, sale, importation, exportation, purchase, order, offer for sale, distribution, transmission, advertisement, display and promotion of any products or services, the MOSELEY Marks or other marks that are confusingly similar to the MOSELEY Marks, including but not limited to the marks that are the subject of the Yusa Registrations;

2. That Defendants be ordered immediately to recall any and all Infringing Goods and any other packaging, containers, advertising or promotional material or other matter that displays the MOSELEY Marks or other marks that are identical or substantially similar to the MOSELEY Marks, including but not limited to the marks that are the subject of the Yusa Registrations;

3. That Defendants be ordered to deliver to Loretta Moseley for destruction any and all Infringing Goods and any other packaging, containers, advertising or promotional material or other matter that displays the MOSELEY Marks or other marks that are identical or substantially similar to the MOSELEY Marks, including but not limited to the marks that are the subject of the Yusa Registrations;

4. That Defendants be ordered to remove from their respective web sites the MOSELEY Marks or other marks that are identical or substantially similar to the

MOSELEY Marks, including but not limited to the marks that are the subject of the Yusa Registrations;

5. That this Court order cancellation of each of the Yusa Registrations;

6. That Defendants be ordered to pay to Loretta Moseley all damages suffered by Loretta Moseley as a result of the acts complained of herein;

7. That Defendants be ordered to pay to Loretta Moseley all profits made by them through the import, export, sale or distribution of the Infringing Goods;

8. That Defendants be ordered to pay to Loretta Moseley treble damages as a result of Defendants' violation of N.C. Gen. Stat. § 75-1.1;

9. That Defendants be ordered to pay to Loretta Moseley costs and disbursements incurred in the prosecution of this action, including reasonable attorneys' fees, as provided under federal and North Carolina law including, but not limited to, N.C. Gen. Stat. § 75-16.1; and

7. The Court grants such other and further relief as may be just and proper.

**JURY DEMAND**

Loretta Moseley hereby demands trial by jury of all issues so triable.

Respectfully submitted this the 15th day of June, 2009.

/s/ Alice Carmichael Richey

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