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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11
12 GRACENOTE, INC., a Delaware
corporation,

13 Plaintiff,

14 v.

15 MUSICMATCH, INC., a Washington
16 corporation,

17 Defendant.

CASE NO. C 02-3162 CW

FIRST AMENDED COMPLAINT FOR

1. BREACH OF CONTRACT
2. UNFAIR COMPETITION
3. TRADEMARK INFRINGEMENT
4. INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
5. NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
6. PATENT INFRINGEMENT

DEMAND FOR JURY TRIAL

1 Plaintiff, Gracenote, Inc. (formerly known as CDDDB, Inc.) (hereinafter "Gracenote")
2 through its undersigned counsel and by way of Complaint against Defendant MusicMatch, Inc.
3 (hereinafter "MusicMatch") hereby alleges and avers as follows:

4 **JURISDICTION AND VENUE**

5 1. This is an action for patent infringement and trademark infringement committed by
6 MusicMatch that arises under the United States patent laws (35 U.S.C. §§ 1 et seq.) and
7 trademark laws (15 U.S.C. § 1111 et seq.). Therefore, this Court has jurisdiction under 28 U.S.C.
8 §§ 1331 and 1338 and 15 U.S.C. § 1121. This is also an action for breach of contract, unfair
9 competition and intentional and/or negligent interference with prospective economic advantage.
10 Accordingly, this Court has jurisdiction under 28 U.S.C. § 1367.

11 2. On information and belief, MusicMatch maintains a principal place of business
12 within the State of California, maintains an Internet website availing itself of the privilege of
13 conducting business in the State of California, is doing business and is actively soliciting business
14 in the State of California and has undertaken acts with knowledge that such acts would harm a
15 corporation in California. Therefore, this Court has personal jurisdiction over MusicMatch.

16 3. Because a substantial part of the events giving rise to Gracenote's claims occurred
17 in this judicial district and because the intellectual property at issue is situated in this judicial
18 district, venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c).

19 4. MusicMatch and Gracenote have agreed and given consent that jurisdiction and
20 venue for all matters relating to the "Agreement or the parties" will be exclusively in the federal
21 and state courts within San Francisco or Alameda Counties in the State of California.

22 **INTRADISTRICT ASSIGNMENT**

23 5. Because Plaintiff Gracenote has a place of business in Alameda County, because a
24 substantial part of the events which give rise to Gracenote's claims occurred in Alameda County
25 and because the intellectual property at issue is situated in Alameda County, this action should be
26 and has been assigned to the Oakland division of this Court pursuant to Civil Local Rules 3-2(c)
27 and 3-2(d).

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THE PARTIES

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2 6. Plaintiff, Gracenote, Inc., is a Delaware corporation with its place of business at
3 2141 Fourth Street, Berkeley, California 94710. Gracenote is in the business of developing
4 technology and offering products and services relating to music recognition, content delivery and
5 database management. Among other things, Gracenote is engaged in the business of creating,
6 modifying, and providing access to Gracenote's copyrighted database ("CDDB[®] Database");
7 creating and modifying computer programs, including computer programs that are used to access
8 and modify the CDDB Database; and distributing, selling and/or licensing the distribution and
9 sale of its compilation and computer programs, or arranging to do so, in the United States and
10 around the world.

11 7. Gracenote's CDDB Database is widely known throughout the music industry as
12 the first large compilation of digital music file and music compact disc ("CD") information
13 accessible to users of digital music file and CD player software, and Gracenote is known as the
14 pioneer and industry leader in the creation of digital music file and music CD databases. Digital
15 music file and music CD player software can be used to play a digital music file or a music CD
16 that is placed in the CD drive of a personal computer or other devices that can access the CDDB
17 Database (e.g., via the Internet). Digital music file and CD information includes, for example,
18 information about a particular music file or music CD, such as artist, album title, and track and
19 title information, that is not stored initially in the music file or on the CD itself. Gracenote also
20 operates commercial websites, including the website located at <http://www.gracenote.com>.

21 8. Gracenote employs many engineers and computer scientists devoted to the
22 development and design of its products. In order to protect its intellectual property rights,
23 including its innovations relating to music recognition and delivery of content related to music,
24 Gracenote has obtained numerous United States Patents. Gracenote's patent portfolio includes
25 U.S. Patent No. 6,230,192 (the "'192 Patent") entitled "Method And System For Accessing
26 Remote Data Based On Playback Of Recordings," and U.S. Patent No. 6,330,593 (the "'593
27 Patent") entitled "System For Collecting Use Data Related To Playback Of Recordings."

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1 Gracenote further protects its intellectual property and proprietary information through its license
2 agreements, which restrict the use of Gracenote's technology and information.

3 9. On information and belief, Defendant MusicMatch is a Washington corporation
4 having a place of business in San Diego, California, that is in the business of developing software
5 and services relating to music recognition, delivery of music and delivery of other online content.
6 MusicMatch sells and distributes certain computer software (including but not limited to the
7 "MusicMatch Jukebox" product) for playing digital music files and CDs, making digital music
8 files and CDs, managing collections of digital music files and CDs and delivering content
9 associated with music recordings fixed in digital music files or CDs. MusicMatch also operates
10 commercial websites, including the website located at <http://www.musicmatch.com>.

11 FACTS

12 MusicMatch's And Gracenote's Technology

13 10. MusicMatch's software applications (including the "MusicMatch Jukebox"
14 product) enable users to play digital music files and CDs, make digital music files and CDs and
15 manage collections of digital music files and CDs. MusicMatch's software applications also
16 enable the delivery of content associated with digital music files or CDs being played by end
17 users using such MusicMatch applications. MusicMatch's applications perform these functions,
18 in part, by (i) accessing remote data based on playback of a recording by end users and (ii) by
19 collecting a substantial amount of "use data" related to playback of recordings by end users along
20 with other information, in order to develop and maintain extensive music listening behavior
21 profiles of uniquely identifiable end users, in order to deliver personalized content to them. As
22 enumerated at <http://www.musicmatch.com/info/terms/privacy.htm>, MusicMatch collects from
23 its end users: "personal information," (e.g. name and email address), "demographic information,"
24 "compact disc identification information," "listening history," and "genre preference."

25 11. Under a license agreement between the parties, MusicMatch's software
26 applications (including the "MusicMatch Jukebox" product) have enabled access to Gracenote's
27 CDDDB Database through client software ("CDDDB Client") incorporated into the MusicMatch
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1 application by means of Gracenote's proprietary software development kit ("CDDB² SDK").

2 12. Gracenote's CDDB Database is an electronic database stored on a computer
3 server, which has been developed over time at substantial effort and expense, and which presently
4 contains data records relating to nearly 1.5 million albums and more than 17.8 million tracks. For
5 example, a data record can contain information about a particular digital music file or music CD,
6 including artist name, album title and track titles. A data record for a particular music CD can
7 contain relatively unique table of contents ("TOC") information. A "TOC" is a series of numbers
8 representing the track offsets on a CD, including silence between the tracks, and is measured
9 cumulatively in "frames" of 1/75th of a second. A data record for a particular music CD can also
10 contain other disc identification ("disc ID") information. A data record for a particular digital
11 music file can also contain unique identifier ("unique ID") information.

12 13. Gracenote's licensees, such as MusicMatch, use Gracenote's CDDB Client to
13 access the CDDB Database. The CDDB Client is an application plug-in, in object code form, that
14 provides the user interface and lookup functions for accessing the CDDB Database and CDDB
15 data through the Internet. From 1998 through 1999 CDDB access was obtained using the CDDB¹
16 protocol. Since 1999, a CDDB Client has conformed to the CDDB² server protocol.

17 14. By implementing Gracenote's CDDB Client and thus enabling access to the
18 CDDB Database, MusicMatch's application has been able to quickly provide to end users the
19 following information about CDs or other digital music files: artist, title and other related
20 information about digital music files and music CDs. For example, the MusicMatch software can
21 control playing a digital music file or music CD and can determine, based on digital music file
22 information (e.g. unique ID) or CD information (e.g. TOC or other disc ID information) whether
23 there is a data record matching the digital music file or CD in the CDDB Database, and if so, it
24 can send information from the matching data record to the MusicMatch software for display to
25 the end-user.

26 15. This information has allowed MusicMatch's software to perform music
27 recognition functions, in order to enhance the playback of music by MusicMatch's software, to
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1 enhance the ability of end users to manage music collections and also to deliver content related to
2 digital music files and music CDs being played by end users.

3 16. MusicMatch's "MusicMatch Jukebox" product has been favorably reviewed by
4 software critics for including access to Gracenote's CDDDB Database and thus allowing end users
5 to skip the tedious process of entering artist and title information when making a copy of a digital
6 music file or music CD. MusicMatch's success with its product has been made possible in part
7 by implementation of Gracenote's music recognition technology.

8 **The Agreement Between MusicMatch And Gracenote**

9 17. In 1998, MusicMatch first licensed Gracenote's service pursuant to an agreement
10 between the parties, which was negotiated at arms length. Under the terms of that license,
11 Gracenote's service relied upon and conformed to the CDDDB¹ protocol. Under the initial
12 agreement, MusicMatch was not required to pay Gracenote any license fee for Gracenote's
13 service. During the parties' negotiations regarding this agreement it was made clear that
14 eventually Gracenote would require that MusicMatch pay license fees for Gracenote's service.

15 18. In 1999, Gracenote's service was expanded to rely upon the CDDDB² protocol. The
16 CDDDB² protocol offered additional flexibility, scalability and functionality such as the ability to
17 support extended data, security measures (e.g. encryption), more efficient interaction with
18 Gracenote's database and support of double-byte characters (to support multiple languages).
19 Accordingly, the parties terminated the original agreement, properly and pursuant to its terms,
20 and began negotiating terms of a new agreement with MusicMatch to license the CDDDB² service.

21 19. On December 31, 1999, as a result of arms-length negotiations, Gracenote and
22 MusicMatch entered into the "CDDDB² SDK and DATABASE ACCESS AGREEMENT" (the
23 "Agreement"), which governs the utilization and implementation of Gracenote's technology and
24 resources in MusicMatch applications.

25 20. Under the Agreement, Gracenote licensed to MusicMatch the ability to enable
26 end-user access to Gracenote's CDDDB Database using Gracenote's proprietary CDDDB² protocol
27 and Gracenote's "CDDDB² SDK" so that MusicMatch could implement the CDDDB Client into
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1 MusicMatch products. Under the Agreement, MusicMatch would be charged license fees, as a
2 result of the expanded functionality of CDDB², as the parties had contemplated all along.

3 **MusicMatch's Breach Of The Agreement**
4 **MusicMatch's Continued Duplication And Distribution Of Gracenote Enabled Products**

5 21. The Agreement's initial term extended until December 31, 2001. On August 30,
6 2001, Gracenote approached MusicMatch regarding negotiation of a new agreement to take effect
7 after expiration of the initial term. However, MusicMatch refused to negotiate terms of a new
8 agreement and accordingly, pursuant to Paragraph 15(b) of the Agreement, Gracenote gave
9 written notice to MusicMatch that the Agreement would expire at the end of the initial term (i.e.
10 December 31, 2001).

11 22. On October 12, 2001, MusicMatch gave Gracenote written notice of its desire to
12 extend the Agreement for an additional six months past the December 31, 2001 expiration date, as
13 contemplated by Paragraph 16 of the Agreement. Under this extension provision, by March 31,
14 2002, MusicMatch was required to discontinue duplication of CDDB²-Enabled licensed
15 applications and was required to use commercially reasonable efforts to have its OEM customers
16 discontinue any duplication of CDDB²-Enabled licensed applications. Under this provision,
17 MusicMatch was allowed to distribute remaining inventory in the channels until that date (March
18 31, 2002) and MusicMatch's OEMs were allowed to continue to distribute remaining physical
19 inventory of licensed applications. Further, according to Paragraph 16 of the Agreement, after
20 June 30, 2002, Gracenote need not support any new users of MusicMatch's software.

21 23. On March 28, 2002, MusicMatch informed Gracenote that MusicMatch would "be
22 terminating the distribution of Gracenote enabled applications by 31 March 2002 per the previous
23 contract."

24 24. Gracenote is informed and believes that, although MusicMatch purported to no
25 longer distribute Gracenote-enabled applications, MusicMatch has continued to duplicate and/or
26 has allowed its OEM customers to duplicate CDDB²-Enabled licensed applications, in violation
27 of Paragraph 16 of the Agreement. Gracenote is informed and believes that, after March 31,
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1 2002, MusicMatch allowed one or more of its OEM customers to continue to duplicate CDDB²-
2 Enabled licensed applications from a non-volatile golden master application image resident on the
3 OEMs' servers and to distribute those duplicated applications. Gracenote is informed and
4 believes that MusicMatch has, therefore, not used commercially reasonable efforts to have its
5 OEM customers discontinue duplication of CDDB²-Enabled licensed applications.

6 **MusicMatch's Breach Of The Agreement**
7 **MusicMatch's Music Recognition System Based On Gracenote's Proprietary Data**

8 25. From the outset, Gracenote was concerned that because MusicMatch's application
9 would have access to Gracenote's valuable data, MusicMatch might attempt to steal the data and
10 use it to build its own alternative music recognition system. Accordingly, the Agreement
11 specifically contemplated intentional and bad faith conduct by MusicMatch regarding
12 Gracenote's technology and proprietary information.

13 26. Indeed, the Agreement sets forth a permissive structure by which all allowable
14 uses of Gracenote's proprietary data are set forth and all other uses which are not expressly
15 allowed in the Agreement are forbidden. Section 9 of the Agreement is titled "Negative
16 Covenants and Restrictions" and states that MusicMatch "further agrees as follows:". Specifically, in Paragraph 9(j) of the Agreement, MusicMatch agreed that it "WILL NOT USE
17 OR EXPLOIT THE CDDB DATABASE, CDDB DATA, END USER DATA OR THE CDDB
18 SERVER, EXCEPT AS EXPRESSLY PERMITTED HEREIN, ALL OTHER USE IS
19 PROHIBITED." Similarly, MusicMatch agreed in Paragraph 9(c) that "[e]xcept as expressly set
20 forth in this Agreement, you will not exploit the CDDB Database or SDK in any way or for any
21 commercial gain." MusicMatch agreed to this structure after extensive negotiation with
22 Gracenote.

23 27. Further, numerous specific provisions of the Agreement clearly provide express
24 limitations on MusicMatch's conduct in anticipation of a potential situation in which MusicMatch
25 would steal Gracenote's data (to which its end user's had access during the term of Agreement)
26 and use it to build its own alternative music recognition system. Importantly, the Agreement sets
27 forth limitations on MusicMatch's right to collect and store Gracenote's data (which MusicMatch
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1 had access to via its Licensed Application) and to use and/or associate any Gracenote data in
2 ways that would allow MusicMatch to improperly build a music recognition system based on
3 Gracenote's innovation and labor. Further, anticipating potential violation of these provisions
4 and the harm which would be done by such breach, the Agreement sets forth remedies for such
5 breach, including injunctive relief.

6 28. Gracenote is informed and believes that MusicMatch has engaged in precisely the
7 conduct that the structure and limitations of the Agreement were designed to prevent. Gracenote
8 is informed and believes, and on that basis alleges, that MusicMatch has built an alternative music
9 recognition system that relies upon, contains and/or uses Gracenote's proprietary information in
10 breach of the Agreement.

11 29. Specifically, Gracenote is informed and believes, and on that basis alleges that,
12 MusicMatch has developed and is now using its own client software which enables access to an
13 alternative music database, which is an unauthorized derivative work based upon the CDDB
14 Database and which was created through violations of the Agreement. Further, Gracenote is
15 informed and believes, and on that basis alleges that, in violation of the Agreement, this client
16 software and alternative music database rely upon, contain and/or use Gracenote's trademarks and
17 CDDB proprietary information (including but not limited to TOC data and unique ID data) which
18 were previously licensed under the Agreement.

19 30. Gracenote is informed and believes that MusicMatch's alternative recognition
20 system breaches provisions of the Agreement, as set forth below.

21 31. As stated, the Agreement contains provisions that MusicMatch "WILL NOT USE
22 OR EXPLOIT THE CDDB DATABASE, CDDB DATA, END USER DATA OR THE CDDB
23 SERVER, EXCEPT AS EXPRESSLY PERMITTED HEREIN, ALL OTHER USE IS
24 PROHIBITED" (Paragraph 9(j)) and that "[e]xcept as expressly set forth in this Agreement"
25 MusicMatch "will not exploit the CDDB Database or SDK in any way or for any commercial
26 gain." (Paragraph 9(c)). Further, in the Agreement, MusicMatch explicitly recognizes (in
27 paragraph 10) that "[t]he CDDB² SDK, the CDDB Database and CDDB Server" are Gracenote's
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1 “sole property.”

2 32. Gracenote is informed and believes that MusicMatch has used or exploited the
3 CDDB Database, CDDB Data, End User Data and/or the CDDB Server in ways not expressly
4 permitted in the Agreement. Gracenote is further informed and believes that MusicMatch has and
5 is currently exploiting the CDDB Database and/or SDK for commercial gain, in ways other than
6 those expressly set forth in the Agreement.

7 33. Moreover, Gracenote is informed and believes that MusicMatch is in breach of
8 numerous express limitations of the Agreement relating to MusicMatch’s use of Gracenote’s
9 proprietary data, as described more fully below. Indeed, Gracenote is informed and believes that
10 MusicMatch has collected and stored Gracenote’s data and has used and associated Gracenote’s
11 data, in violation of provisions described below, in order to develop its own music recognition
12 functionality. This is precisely the conduct that the limiting provisions and specific negative
13 covenants of the Agreement were designed to prevent.

14 34. The Agreement contains a provision, in Schedule G, that MusicMatch agrees not
15 to associate or accompany “TOC or other disk identification data” with “the text-only portion of
16 CDDB Data or End-User Data.” Schedule G of the Agreement “survives termination of the
17 Agreement.”

18 35. Gracenote is informed and believes, and on that basis alleges that, MusicMatch has
19 associated or accompanied TOC and/or other compact disc identification data with the text-only
20 portion of CDDB Data or End-User Data. Gracenote is informed and believes that making these
21 data associations, MusicMatch has been able to create its own alternative music database.

22 36. The Agreement contains a provision (Paragraph 9(a)(ii)) that MusicMatch agrees
23 that its “Licensed Application shall not have or enable any functionality that uploads or permits
24 the transmission of CDDB Data to anyone other than CDDB,” except as expressly set forth in
25 Schedules G and H of the Agreement.

26 37. Gracenote is informed and believes, and on that basis alleges that, MusicMatch has
27 associated TOC and/or other compact disc identification data with the text-only portion of CDDB
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1 Data and/or End-User Data and therefore that, MusicMatch's application has and/or enables
2 functionality that uploads or permits transmission of CDDB Data to parties other than CDDB.
3 Gracenote is informed and believes that MusicMatch uploaded or transmitted CDDB Data to
4 MusicMatch's own servers or servers controlled by MusicMatch in order to create an alternative
5 music recognition system.

6 38. The Agreement contains a provision (Paragraph 9(a)(iii)) that MusicMatch agrees
7 "not to upload, aggregate, transfer, transmit, or collect CDDB Data or End-User Data" except as
8 expressly set forth in Schedules G and H of the Agreement.

9 39. Gracenote is informed and believes, and on that basis alleges that, MusicMatch has
10 associated TOC and/or other compact disc identification data with the text-only portion of CDDB
11 Data and/or End-User Data and has therefore uploaded, aggregated, transferred, transmitted
12 and/or collected CDDB Data and/or End-User Data. Gracenote is informed and believes that
13 MusicMatch has uploaded, aggregated, transferred, transmitted and/or collected CDDB Data
14 and/or End-User Data in order to create an alternative music recognition system.

15 40. The Agreement contains a provision (Paragraph 9(b)(i)) that MusicMatch agrees
16 not to "use CDDB Data to enable or direct the routing or linking of End-Users or any other
17 person to electronic commerce sites or for the purpose of promoting or marketing goods or
18 services to End-Users," except as expressly set forth in Schedules G and H of the Agreement.

19 41. Gracenote is informed and believes, and on that basis alleges that, MusicMatch has
20 associated TOC and/or other compact disc identification data with the text-only portion of CDDB
21 Data and/or End-User Data for the purpose of using CDDB Data to enable or direct the routing or
22 linking of End-Users and/or other persons to electronic commerce sites and for the purpose of
23 promoting or marketing goods or services to End-Users.

24 42. The Agreement contains a provision (Paragraph 9(b)(ii)) that MusicMatch agrees
25 not to "use CDDB Data to enable or direct the routing or linking of End-Users or any other
26 person to content or services accessed on the Internet that are related to particular CD titles,
27 tracks, artists or music categories," except as expressly set forth in Schedules G and H of the

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1 Agreement.

2 43. Gracenote is informed and believes, and on that basis alleges that, MusicMatch has
3 associated TOC and/or other compact disc identification data with the text-only portion of CDDB
4 Data and/or End-User Data for the purpose of using CDDB Data to enable or direct the routing or
5 linking of End-Users or any other person to content or services accessed on the Internet that are
6 related to particular CD titles, tracks, artists or music categories.

7 44. The Agreement contains a provision (Paragraph 9(e)), that MusicMatch's
8 "Licensed Application may not be intentionally designed or enabled to be used together with any
9 other program to accomplish functions or uses forbidden by this Agreement."

10 45. Gracenote is informed and believes, and on that basis alleges that, MusicMatch's
11 Licensed Application is being intentionally designed and/or enabled to be used together with
12 other programs to accomplish functions or uses forbidden by the Agreement.

13 46. The Agreement contains a provision, in Schedule A, that MusicMatch's "Licensed
14 Application will not intentionally be enabled to transmit Files and associated Tags to a portable
15 Electronic Music Player Device unless such portable Electronic Music Player Device either (i)
16 has no capacity to display such information (e.g. Diamond Rio PMP300) or (ii) has the capacity
17 to display such information and is manufactured by a company that has entered into a written
18 branding agreement with CDDB (e.g. RCA Lyra)."

19 47. Gracenote is informed and believes, and on that basis alleges that, MusicMatch's
20 Licensed Application is intentionally being enabled to transmit Files and associated Tags to
21 portable Electronic Music Player Devices which have the capacity to display such information
22 and are manufactured by companies that have not entered into a written branding agreement with
23 CDDB.

24 48. The Agreement contains a provision, in Schedule H, that MusicMatch agrees that
25 in each MP3 file created by MusicMatch's Licensed Application, that the Licensed Application
26 "shall embed a CDDB Unique ID" as defined in the Agreement.

27 49. Gracenote is informed and believes, and on that basis alleges that, in MP3 files
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1 created by MusicMatch's Licensed Application, the Licensed Application fails to embed a CDDB
2 Unique ID as expressly provided for in Schedule H of the Agreement.

3 50. The Agreement contains a provision (paragraph 9(d)) that MusicMatch agrees not
4 to "use or permit the use of the trademarks, trade names or other designations of CDDB" except
5 as specified in the Agreement or as may be stated in trademark use guidelines that Gracenote may
6 issue from time to time.

7 51. Gracenote is informed and believes, and on that basis alleges that MusicMatch is
8 using or permitting the use of trademarks, trade names or other designations of CDDB in a
9 manner other than that specified in the Agreement or in any trademark use guidelines issued by
10 Gracenote.

11 52. The Agreement contains a provision (paragraph 5(c)) that requires that "the
12 Licensed Application, when accessing the CDDB Server to obtain data or when sending data to
13 the CDDB Server, must do so directly, without first accessing any other site or IP address (other
14 than an End-User's internal network's proxy server)" and requires that MusicMatch "may not
15 redirect queries to [its] own site or any other server or otherwise interfere with the operation of
16 the CDDB Client."

17 53. Gracenote is informed and believes, and on that basis alleges that MusicMatch has
18 caused its Licensed Application to access the CDDB Server to obtain data and/or send data to the
19 CDDB Server in a manner other than direct access, has caused such Licensed Application to first
20 access other sites and/or IP addresses (other than an End-User's internal network's proxy server)
21 during access to the CDDB Server, has redirected queries of the CDDB Server to MusicMatch's
22 own site and/or other servers and has otherwise interfered with operation of the CDDB client.

23 54. Gracenote is informed and believes, and on that basis alleges that MusicMatch has
24 caused Gracenote irreparable harm by building an alternative music recognition system which
25 relies upon, contains and/or uses Gracenote's proprietary information in breach of the Agreement,
26 as described above. Specifically, Gracenote is informed and believes, and on that basis alleges
27 that by building an alternative music recognition system in breach of numerous provisions of the
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1 Agreement, MusicMatch has been able to secure business relationships and contracts that would
2 otherwise have been secured by Gracenote.

3 55. For example, on July 20, 2000 Gracenote announced that its CDDB music
4 recognition service would be used to enable music recognition functionality in Apple Macintosh
5 media player applications. On July 12, 2002, after MusicMatch had improperly implemented its
6 own music recognition functionality in breach of the Agreement, MusicMatch announced that its
7 “Jukebox” application (including music recognition service) would be shipped with every Apple
8 iPod device. Similarly, it was recently announced that the iPod device for Windows would use
9 MusicMatch software to enable music recognition. Gracenote is informed and believes, and on
10 that basis alleges that but for existence of music recognition functionality in MusicMatch’s
11 product, in breach of the Agreement, that Gracenote rather than MusicMatch would have secured
12 this business relationship and contract.

13 56. The Agreement provides that all provisions of the Agreement relating to the
14 CDDB² SDK, CDDB Database, CDDB Servers, CDDB Data, End-User Data or restrictions on
15 use thereof or relating to Gracenote’s intellectual property are such that breach would cause
16 Gracenote immediate and irreparable harm. The Agreement further provides that in case of
17 breach, Gracenote is entitled to seek temporary, preliminary and final injunctive relief, in addition
18 to such other relief as may be available.

19 57. Gracenote is informed and believes, and on that basis alleges that MusicMatch has
20 built its alternative music recognition system by breaching provisions of the Agreement relating
21 to the CDDB² SDK, CDDB Database, CDDB Servers, CDDB Data, End-User Data or
22 restrictions on use thereof or relating to Gracenote’s intellectual property. Accordingly,
23 Gracenote is informed and believes, and on that basis alleges that MusicMatch has caused
24 Gracenote irreparable harm.

25 58. The Agreement provides that Gracenote may recover lost profits, lost savings or
26 other incidental, consequential, punitive, special, or exemplary damages in amounts in excess of
27 amounts paid or due to Gracenote under the Agreement, in the event that MusicMatch
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1 intentionally and in bad faith violates express restrictions on use of CDDB Data and End User
2 Data in the Agreement.

3 59. Gracenote is informed and believes, and on that basis alleges that MusicMatch has
4 intentionally and in bad faith violated express restrictions on use of CDDB Data and End User
5 Data in the Agreement.

6 60. As set forth below, MusicMatch is in material breach of the Agreement and has
7 engaged in unfair competition against Gracenote. Thus, Gracenote is filing the present action to
8 enforce its rights against MusicMatch.

9 **MusicMatch's Interference With Gracenote's Economic Relationships**

10 61. Gracenote is informed and believes, and on that basis alleges, that when end-users
11 install versions 7.1 and higher of MusicMatch's Jukebox product, such installation interferes with
12 end-user registrations of other Gracenote-enabled products on the end-user's computer.

13 62. Gracenote is informed and believes, and on that basis alleges, that the interfering
14 behavior of MusicMatch's product includes, but is not limited to, overwriting or deleting
15 registrations of other Gracenote-enabled products on an end-user computer and causing other
16 Gracenote-enabled applications on an end-user computer to re-register with a new user ID.

17 63. Gracenote gave notice to MusicMatch of this interfering behavior of the
18 MusicMatch Jukebox application on July 9, 2002. However, upon information and belief,
19 MusicMatch has neither acknowledged such behavior nor caused its products (including
20 MusicMatch Jukebox versions 7.1 and 7.2) to cease this interfering behavior.

21 64. The interfering behavior of MusicMatch's product causes harm to Gracenote by
22 confusing consumers of Gracenote-enabled products, which will attribute errors and the need to
23 re-register Gracenote-enabled products to Gracenote. The behavior of MusicMatch's product
24 also harms Gracenote by causing developers that pay Gracenote per end-user registration to be
25 billed twice for the same end-user, which would not occur but for the interference of
26 MusicMatch's product.

27 65. As set forth below, by means of this behavior of MusicMatch's product,
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1 MusicMatch has engaged in unfair competition against Gracenote and has interfered with
2 Gracenote's economic relationships.

3 **MusicMatch's Infringement Of Gracenote's Trademark**

4 66. Gracenote (f/k/a CDDDB, Inc.) is the owner of U.S. Trademark Registration No.
5 2,361,355, filed on August 7, 1998 and issued on April 4, 2000 for the CDDDB word mark for use
6 in connection with computer services, namely, providing an on-line computer database in the
7 field of music. This registration, duly and legally issued by the United States Patent and
8 Trademark Office, is valid and subsisting. Gracenote uses the notice of registration, "®", with its
9 CDDDB word mark pursuant to 15 U.S.C. § 1111.

10 67. MusicMatch has recognized that the CDDDB word mark is Gracenote's intellectual
11 property and that Gracenote owns the CDDDB word mark, in paragraph 2(m), paragraph 10 and
12 Schedule B of the Agreement between the parties.

13 68. Gracenote has priority of use for the CDDDB word mark based on its registrations
14 and has continuously used the CDDDB word mark in United States interstate and foreign
15 commerce in connection with, including but not limited to, computer services providing on-line
16 computer databases in the field of music.

17 69. Gracenote markets, sells and licenses products and services related to on-line
18 computer databases in the field of music bearing the CDDDB word mark. Products enabled by
19 Gracenote's services relating to on-line computer databases in the field of music also bear the
20 CDDDB word mark.

21 70. Gracenote is informed and believes, and on that basis alleges that, MusicMatch has
22 made unauthorized use and is currently making unauthorized use of the CDDDB word mark in
23 connection with MusicMatch's own client software which enables access to an alternative music
24 database.

25 71. MusicMatch intends to use and uses the CDDDB word mark to create a strong
26 likelihood of confusion due to the similarity of goods on which the mark is used or intended to be
27 used and the similarity of channels of trade.

28

1 72. MusicMatch's use of the CDDB word mark in connection with MusicMatch's
2 client software which enables access to an alternative music database is likely to cause confusion
3 or mistake or deception of purchasers, consumers and the general public as to the source or origin
4 of MusicMatch's on-line computer database services accessed by MusicMatch's client software.
5 Purchasers and the general public are likely to purchase, view, use or receive MusicMatch's
6 software or services, believing that they are enabled by Gracenote's computer database services,
7 or associated or affiliated with Gracenote.

8 73. Because of the confusion as to source engendered by MusicMatch's use of the
9 CDDB word mark, Gracenote's valuable goodwill with respect to its CDDB word mark is at the
10 mercy of MusicMatch, and the quality (or lack thereof) of MusicMatch's related goods.

11 74. Gracenote is informed and believes, and on that basis alleges, that despite
12 MusicMatch's knowledge of Gracenote's prior rights in the CDDB word mark for related
13 services, MusicMatch has continued to promote related services using the CDDB word mark.

14 75. The various practices described herein threaten irreparable injury to Gracenote's
15 business, goodwill, and reputation with respect to its CDDB word mark.

16 76. MusicMatch's conduct is continuing and will continue unless restrained by the
17 Court. Unless MusicMatch is enjoined from engaging in the wrongful conduct described above,
18 Gracenote will suffer irreparable injury and further harm. Gracenote has no adequate remedy at
19 law, and in the alternative, Gracenote has been damaged in an amount to be determined at trial.

20 **MusicMatch's Infringement Of Gracenote's Patents**

21 77. Gracenote continues to strive for further improvement in the development of music
22 recognition, content delivery and database management applications and, to this end, employs
23 many engineers devoted to research and design. In order to protect its intellectual property rights,
24 Gracenote has obtained numerous patents in the United States and abroad.

25 78. Gracenote's patent portfolio includes numerous U.S. patents that cover many
26 music recognition, content delivery and database management applications, including
27 applications which access remote data based on playback of a recording and applications which
28

1 collect use data related to playback of recordings.

2 79. The present action involves MusicMatch's infringement of two patents owned by
3 Gracenote that cover various fundamental aspects of music recognition, content delivery and
4 database management. Specifically, Gracenote asserts that MusicMatch infringes the following
5 two U.S. patents:

<u>U.S. Patent No.</u>	<u>Inventor</u>	<u>Title</u>
6,230,192 ("the '192 patent")	Roberts, et al.	Method And System For Accessing Remote Data Based On Playback Of Recordings
6,330,593 ("the '593 patent")	Roberts, et al.	System For Collecting Use Data Related To Playback Of Recordings

10 80. Gracenote is the owner of all rights granted by the '192 patent and '593 patent.

11 81. Upon information and belief, MusicMatch has developed and offered for sale
12 software and services relating to music recognition and delivery of music and other online content
13 which performs, without authorization from Gracenote, methods and processes covered by
14 Gracenote's '192 patent and '593 patent. As set forth below, the system MusicMatch has
15 developed and offered for sale infringes Gracenote's patents. Thus, Gracenote is filing the
16 present patent infringement action to enforce its intellectual property rights against MusicMatch.

17
18 **FIRST CLAIM FOR RELIEF**
19 **BREACH OF CONTRACT**

20 82. Gracenote incorporates by reference paragraphs 1 – 81 above as if set forth in full
21 herein.

22 83. The Agreement requires that MusicMatch refrain from: (a) associating or
23 accompanying "TOC or other disk identification data" with "the text-only portion of CDDB Data
24 or End-User Data;" (b) creating an application that has and/or enables "any functionality that
25 uploads or permits the transmission of CDDB Data to anyone other than CDDB;" (c) uploading,
26 aggregating, transferring, transmitting, and/or collecting CDDB Data and/or End User Data
27 (except as expressly permitted in the Agreement); (d) using CDDB Data "to enable or direct the
28 routing or linking of End-Users or any other person to electronic commerce sites or for the

1 purpose of promoting or marketing goods or services to End-Users” (except as expressly
2 permitted by the Agreement); (e) except as expressly permitted, using CDDB Data “to enable or
3 direct the routing or linking of End-Users or any other person to content or services accessed on
4 the Internet that are related to particular CD titles, tracks, artists or music categories;” (f)
5 exploiting “the CDDB Database and/or SDK for commercial gain” beyond what the Agreement
6 expressly permits; (g) intentionally designing and/or enabling its application “to be used together
7 with any other program to accomplish functions or uses forbidden by this Agreement;” (h)
8 intentionally enabling its application to transmit Files and associated Tags to portable Electronic
9 Music Player Devices which have the capacity to display such information and which are
10 manufactured by a company that has not entered into a written branding agreement with CDDB;
11 (i) creating MP3 files by means of its application which do not contain an embedded CDDB
12 Unique ID; (j) using or permitting the use of the trademarks, trade names or other designations of
13 CDDB except as specified in the Agreement or as may be stated in trademark use guidelines that
14 Gracenote may issue from time to time; and (k) causing the Licensed Application to access the
15 CDDB Server to obtain data or when sending data to the CDDB Server in a manner other than
16 direct access, such as by first accessing any other site or IP address (other than an End-User’s
17 internal network’s proxy server), redirecting queries to its own site or any other server or
18 otherwise interfering with operation of the CDDB client.

19 84. The Agreement requires that MusicMatch discontinue any duplication of CDDB²-
20 Enabled licensed applications by March 31, 2002 and that MusicMatch use commercially
21 reasonable efforts to have its OEM customers discontinue duplication of CDDB²-Enabled
22 licensed applications by March 31, 2002.

23 85. The Agreement provides that all provisions of the Agreement relating to the
24 CDDB² SDK, CDDB Database, CDDB Servers, CDDB Data, End-User Data or restrictions on
25 use thereof or relating to Gracenote’s intellectual property are such that breach would cause
26 Gracenote immediate and irreparable harm. The Agreement further provides that in case of
27 breach, Gracenote is entitled to seek temporary, preliminary and final injunctive relief, in addition
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1 to such other relief as may be available.

2 86. The Agreement provides that Gracenote may recover lost profits, lost savings or
3 other incidental, consequential, punitive, special, or exemplary damages in amounts in excess of
4 amounts paid or due to Gracenote under the Agreement, in the event that MusicMatch
5 intentionally and in bad faith violates express restrictions on use of CDDB Data and End User
6 Data in the Agreement.

7 87. Gracenote has performed all of its obligations under the Agreement.

8 88. Upon information and belief, in and among other breaches, MusicMatch has
9 unjustifiably and inexcusably breached its obligations under the Agreement: (a) by associating
10 TOC and/or other compact disc identification data with the text-only portion of CDDB Data
11 and/or End-User Data; (b) by creating an application that has and/or enables functionality that
12 uploads or permits transmission of CDDB Data to parties other than CDDB; (c) by uploading,
13 aggregating, transferring, transmitting, and/or collecting CDDB Data and/or End User Data in
14 ways not permitted by the Agreement; (d) by using CDDB Data to enable or direct the routing or
15 linking of End-Users and/or other persons to electronic commerce sites and for the purpose of
16 promoting or marketing goods or services to End-Users in ways not permitted by the Agreement;
17 (e) by using CDDB Data impermissibly to enable or direct the routing or linking of End-Users or
18 any other person to content or services accessed on the Internet that are related to particular CD
19 titles, tracks, artists or music categories; (f) by exploiting the CDDB Database and/or SDK for
20 commercial gain; (g) by intentionally designing and/or enabling its application to be used together
21 with another program or other programs to accomplish functions forbidden by the Agreement; (h)
22 by intentionally enabling its application to transmit Files and associated Tags to portable
23 Electronic Music Player Devices which have the capacity to display such information and which
24 are manufactured by a company that has not entered into a written branding agreement with
25 CDDB; (i) by creating MP3 files by means of its application which do not contain an embedded
26 CDDB Unique ID; (j) by using or permitting the use of trademarks, trade names or other
27 designations of CDDB in a manner other than that specified in the Agreement or in any trademark

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1 use guidelines issued by Gracenote; and (k) by causing its Licensed Application to access the
2 CDDDB Server to obtain data and/or send data to the CDDDB Server in a manner other than direct
3 access, by causing such Licensed Application to first access other sites and/or IP addresses (other
4 than an End-User's internal network's proxy server) during access to the CDDDB Server, by
5 redirecting queries of the CDDDB Server to MusicMatch's own site and/or other servers and by
6 otherwise interfering with operation of the CDDDB client.

7 89. Upon information and belief, in and among other breaches, MusicMatch has
8 unjustifiably and inexcusably breached its obligations under the Agreement by failing to
9 discontinue duplication of CDDDB²-Enabled licensed applications by March 31, 2002 and/or
10 failing to use commercially reasonable efforts to have its OEM customers discontinue duplication
11 of CDDDB²-Enabled licensed applications by March 31, 2002.

12 90. MusicMatch's breaches of the Agreement cause Gracenote immediate and
13 irreparable harm and entitle Gracenote to injunctive relief.

14 91. Upon information and belief, MusicMatch has intentionally and in bad faith
15 violated express restrictions on use of CDDDB Data and End User Data in the Agreement, entitling
16 Gracenote to seek recovery of lost profits, lost savings or other incidental, consequential,
17 punitive, special, or exemplary damages in amounts in excess of amounts paid or due to
18 Gracenote under the Agreement.

19 92. As a direct and proximate result of MusicMatch's breach, Gracenote has been
20 damaged in an amount to be proven at trial.

21 **WHEREFORE**, Gracenote seeks relief as hereinafter set forth.

22 **SECOND CLAIM FOR RELIEF**
23 **UNFAIR COMPETITION (Cal. Bus. & Prof. Code §17200)**

24 93. Gracenote incorporates by reference paragraphs 1 – 81 above as if set forth in full
25 herein.

26 94. The acts described above constitute unfair competition in violation of California
27 Business and Professions Code § 17200 *et seq.*, which prohibits acts of unfair competition,
28 including any and all "unlawful, unfair or fraudulent business act or practice," and 2) in violation

1 of the common law of the State of California in that MusicMatch has obtained an unfair
2 competitive advantage over Gracenote in the market because it has wrongfully relied upon and
3 enabled applications containing and/or using Gracenote's proprietary information.

4 95. As a direct and proximate cause of MusicMatch's intentional misappropriation and
5 misuse of Gracenote's proprietary information, MusicMatch's trademark infringement and
6 MusicMatch's interference with Gracenote's economic relations, MusicMatch has been unjustly
7 enriched and Gracenote has sustained damages in an amount to be proven at trial. Gracenote has
8 also suffered irreparable harm as a result of MusicMatch's conduct and will continue to suffer
9 irreparable injury that cannot be adequately remedied at law unless MusicMatch, and its officers,
10 agents and employees, and all other persons acting in concert with them, are enjoined from
11 engaging in any further such acts of unfair competition.

12 96. Upon information and belief, MusicMatch's acts and conduct which resulted in the
13 unfair competition were carried out willfully, fraudulently, maliciously and with wanton disregard
14 of Gracenote's rights, thereby entitling Gracenote to punitive damages to be proven at trial.

15 **WHEREFORE**, Gracenote seeks relief as hereinafter set forth.

16 **THIRD CLAIM FOR RELIEF**
17 **UNFAIR COMPETITION (California Common Law)**

18 97. Gracenote incorporates by reference paragraphs 1 – 81 above as if set forth in full
19 herein.

20 98. The acts described above constitute unfair competition in violation of the common
21 law of the State of California in that MusicMatch has obtained an unfair competitive advantage
22 over Gracenote in the market because it has wrongfully relied upon and enabled applications
23 containing and/or using Gracenote's proprietary information.

24 99. Gracenote invested substantial time, skill and money in developing its technology
25 and its proprietary information. Gracenote is informed and believes that MusicMatch has
26 appropriated and used Gracenote's proprietary information at little or no cost to MusicMatch and
27 without the authorization or consent of Gracenote.

28 100. As a direct and proximate cause of MusicMatch's intentional misappropriation and

1 misuse of Gracenote's proprietary information, MusicMatch's trademark infringement and
2 MusicMatch's interference with Gracenote's economic relations, MusicMatch has been unjustly
3 enriched and Gracenote has sustained damages in an amount to be proven at trial. Gracenote has
4 also suffered irreparable harm as a result of MusicMatch's conduct and will continue to suffer
5 irreparable injury that cannot be adequately remedied at law unless MusicMatch, and its officers,
6 agents and employees, and all other persons acting in concert with them, are enjoined from
7 engaging in any further such acts of unfair competition.

8 101. Upon information and belief, MusicMatch's acts and conduct which resulted in the
9 unfair competition were carried out willfully, fraudulently, maliciously and with wanton disregard
10 of Gracenote's rights, thereby entitling Gracenote to punitive damages to be proven at trial.

11 **WHEREFORE**, Gracenote seeks relief as hereinafter set forth.

12 **FOURTH CLAIM FOR RELIEF**
13 **TRADEMARK INFRINGEMENT**

14 102. Gracenote incorporates by reference paragraphs 1 – 81 above as if set forth in full
15 herein.

16 103. MusicMatch's acts described above constitute trademark infringement of the
17 CDDDB word mark, in violation of section 32(l) of the Lanham Act, 15 U.S.C. § 1114(1).

18 104. MusicMatch's wrongful acts have permitted or will permit it to make substantial
19 sales and profits on the strength of Gracenote's nationwide advertising, sales, consumer
20 recognition and goodwill in connection with the CDDDB word mark.

21 105. MusicMatch either had actual notice and knowledge, or had constructive notice, of
22 Gracenote's ownership and registration in the United States of the CDDDB word mark pursuant to
23 15 U.S.C. § 1072 prior to the commencement of MusicMatch's sale of products and services
24 under the CDDDB word mark. Gracenote has requested that MusicMatch cease and desist from its
25 acts of infringement and has given MusicMatch notice of Gracenote's registration of the CDDDB
26 word mark, but MusicMatch has not indicated to Gracenote that it has ceased such acts.

27 106. Upon information and belief, MusicMatch deliberately and willfully used the
28 CDDDB word mark in connection with its sale of products and services, in an attempt to trade on

1 the goodwill, reputation and selling power established by Gracenote under the CDDB word mark.

2 107. MusicMatch's unauthorized use of the CDDB word mark falsely indicates to
3 consumers that MusicMatch's products or services are in some manner connected with, sponsored
4 by, affiliated with, or related to Gracenote's goods and services.

5 108. MusicMatch's unauthorized use of the CDDB word mark also causes consumers to
6 be confused as to the source, nature and quality of the goods and services that MusicMatch is
7 promoting, distributing and selling.

8 109. MusicMatch's unauthorized use of the CDDB work mark in connection with its
9 products and services deprives Gracenote of the ability to control the consumer perception of the
10 quality of goods and services marketed under the CDDB word mark.

11 110. The aforementioned activities of MusicMatch are likely to cause confusion, or to
12 cause mistake, or to deceive consumers or potential consumers willing to purchase CDDB's
13 services.

14 111. As a direct and proximate result of MusicMatch's wrongful, willful conduct,
15 Gracenote, among other things, has been and will be deprived of the value of its federally
16 registered CDDB word mark as a commercial asset.

17 112. Gracenote has no adequate remedy at law for MusicMatch's continuing violation
18 of Gracenote's rights and has been, is now, and will be irreparably injured and damaged by
19 MusicMatch's trademark infringement. MusicMatch's wrongful acts will continue to damage
20 Gracenote unless the Court enjoins MusicMatch's acts.

21 **WHEREFORE**, Gracenote seeks relief as hereinafter set forth.

22 **FIFTH CLAIM FOR RELIEF**
23 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

24 113. Gracenote incorporates by reference paragraphs 1 – 81 above as if set forth in full
25 herein.

26 114. MusicMatch knew of the economic relationships between Gracenote and other
27 developers that offer Gracenote-enabled applications, which contain a probable future economic
28 benefit to Gracenote.

1 115. MusicMatch knew of the economic relationships between Gracenote and end-users
2 of other Gracenote-enabled applications, which contain a probable future economic benefit to
3 Gracenote.

4 116. MusicMatch has intentionally offered and offers applications designed to interfere
5 with and which actually interfere with end-user registrations of other Gracenote-enabled
6 applications installed on an end-user computer. MusicMatch's applications cause such
7 interference by, among other things, overwriting or deleting registrations of other Gracenote-
8 enabled products on the end-user computer and causing other Gracenote-enabled applications on
9 the end-user computer to re-register with a new user ID.

10 117. By means of this behavior of MusicMatch's products, MusicMatch has
11 intentionally and wrongfully interfered with or disrupted Gracenote's economic relationships with
12 developers by causing such developers to be billed more than once per end-user of the
13 developer's Gracenote-enabled application.

14 118. By means of this behavior of MusicMatch's products, MusicMatch has
15 intentionally and wrongfully interfered with or disrupted Gracenote's economic relationships with
16 end-users of Gracenote-enabled applications by causing such end-users to re-register for use of
17 such other application and/or register for use of Gracenote's services and to be confused as to the
18 cause of such required re-registration.

19 119. As a result of MusicMatch's interference, Gracenote has been damaged in an
20 amount to be proven at trial. This harm would not occur but for the interference of MusicMatch's
21 product.

22 120. MusicMatch carried out the acts and conduct which caused the breach willfully,
23 fraudulently, maliciously, and with wanton disregard of Gracenote's rights, thereby entitling
24 Gracenote to punitive damages to be proven at trial.

25 **WHEREFORE**, Gracenote seeks relief as hereinafter set forth.

26 **SIXTH CLAIM FOR RELIEF**
27 **NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

28 121. Gracenote incorporates by reference paragraphs 1 – 81 above as if set forth in full

1 herein.

2 122. MusicMatch knew of the economic relationships between Gracenote and other
3 developers which offer Gracenote-enabled applications, which contain a probable future
4 economic benefit to Gracenote.

5 123. MusicMatch knew of the economic relationships between Gracenote and end-users
6 of other Gracenote-enabled applications, which contain a probable future economic benefit to
7 Gracenote.

8 124. MusicMatch has offered and offers applications that actually interfere with end-
9 user registrations of other Gracenote-enabled applications installed on an end-user computer.
10 MusicMatch's applications cause such interference by, among other things, overwriting or
11 deleting registrations of other Gracenote-enabled products on the end-user computer and causing
12 other Gracenote-enabled applications on the end-user computer to re-register with a new user ID.

13 125. By means of this behavior of MusicMatch's products, MusicMatch has negligently
14 interfered with or disrupted Gracenote's economic relationships with developers by causing such
15 developers to be billed more than once per end-user of the developer's Gracenote-enabled
16 application.

17 126. By means of this behavior of MusicMatch's products, MusicMatch has negligently
18 interfered with or disrupted Gracenote's economic relationships with end-users of Gracenote-
19 enabled applications by causing such end-users to re-register for use of such other application
20 and/or register for use of Gracenote's services and to be confused as to the cause of such required
21 re-registration.

22 127. MusicMatch was aware or should have been aware that if it did not act with due
23 care its actions would interfere with Gracenote's relationships with its developers and end-users
24 and cause Gracenote to lose in whole or in part the probable future economic benefit or advantage
25 of the relationship.

26 128. MusicMatch was negligent and failed to exercise due care in offering its
27 interfering products.

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1 129. As a result of MusicMatch's negligent interference, Gracenote's relationships with
2 developers and end users have actually been interfered with or disrupted and Gracenote has lost in
3 whole or in part the economic benefits or advantage from the relationship.

4 130. Thus, Gracenote has been damaged in an amount to be proven at trial. This harm
5 would not occur but for the interference of MusicMatch's product.

6 **WHEREFORE**, Gracenote seeks relief as hereinafter set forth.

7 **SEVENTH CLAIM FOR RELIEF**
8 **INFRINGEMENT OF THE '192 PATENT**

9 131. Gracenote incorporates by reference paragraphs 1 – 81 above as if set forth in full
10 herein.

11 132. Upon information and belief, MusicMatch has used apparatus and performed
12 methods through its music and content delivery system that directly infringe one or more claims
13 of the '192 patent under 35 U.S.C. § 271(a).

14 133. Upon information and belief, and by virtue of MusicMatch's acts as set forth
15 above, MusicMatch has made, used, offered to sell and sold its music and content delivery system
16 in the United States, thus infringing one or more claims of the '192 patent.

17 134. MusicMatch has therefore induced, and is actively inducing, various third parties
18 to infringe claims of the '192 patent by encouraging use of its music and content delivery system
19 in the United States. Thus, MusicMatch is liable to Gracenote under 35 U.S.C. § 271(b).

20 135. Upon information and belief and, by virtue of MusicMatch's acts as set forth
21 above, MusicMatch has made, used, offered to sell and sold its music and content delivery system
22 in the United States, which has contributed to the infringement of one or more claims of the '192
23 patent.

24 136. MusicMatch's music and content delivery system constitutes a material part of the
25 invention covered under the '192 patent. MusicMatch knows that its music and content delivery
26 system are especially made and adapted for use in infringement of such patent, and that it is not a
27 staple article or commodity of commerce suitable for substantial noninfringing uses. Thus,
28 MusicMatch is liable to Gracenote for contributory infringement under 35 U.S.C. § 271(c).

1 137. MusicMatch’s acts of direct, contributory and inducement of infringement have
2 been with full and complete knowledge of Gracenote’s intellectual property rights. Accordingly,
3 MusicMatch’s conduct and activities have been, and will continue to be willful, deliberate and in
4 total disregard of Gracenote’s rights in the ‘192 patent. Thus, this case should be considered
5 “exceptional” pursuant to 35 U.S.C. § 285.

6 138. MusicMatch’s foregoing conduct has left Gracenote with no adequate remedy at
7 law and has caused, is causing, and if not enjoined will continue to cause irreparable damage to
8 Gracenote.

9 **WHEREFORE**, Gracenote seeks relief as hereinafter set forth.

10 **EIGHTH CLAIM FOR RELIEF**
11 **INFRINGEMENT OF THE ‘593 PATENT**

12 139. Gracenote incorporates by reference paragraphs 1 – 81 above as if set forth in full
13 herein.

14 140. Upon information and belief, MusicMatch has used apparatus and performed
15 methods through its music and content delivery system that directly infringe one or more claims
16 of the ‘593 patent under 35 U.S.C. § 271(a).

17 141. Upon information and belief, and by virtue of MusicMatch’s acts as set forth
18 above, MusicMatch has made, used, offered to sell and sold its music and content delivery system
19 in the United States, thus infringing one or more claims of the ‘593 patent.

20 142. MusicMatch has therefore induced, and is actively inducing, various third parties
21 to infringe claims of the ‘593 patent by encouraging use of its music and content delivery system
22 in the United States. Thus, MusicMatch is liable to Gracenote under 35 U.S.C. § 271(b).

23 143. Upon information and belief and, by virtue of MusicMatch’s acts as set forth
24 above, MusicMatch has made, used, offered to sell and sold its music and content delivery system
25 in the United States, which has contributed to the infringement of one or more claims of the ‘593
26 patent.

27 144. MusicMatch’s music and content delivery system constitutes a material part of the
28 invention covered under the ‘593 patent. MusicMatch knows that its music and content delivery

1 system are especially made and adapted for use in infringement of such patent, and that it is not a
2 staple article or commodity of commerce suitable for substantial noninfringing uses. Thus,
3 MusicMatch is liable to Gracenote for contributory infringement under 35 U.S.C. § 271(c).

4 145. MusicMatch's acts of direct, contributory and inducement of infringement have
5 been with full and complete knowledge of Gracenote's intellectual property rights. Accordingly,
6 MusicMatch's conduct and activities have been, and will continue to be willful, deliberate and in
7 total disregard of Gracenote's rights in the '593 patent. Thus, this case should be considered
8 "exceptional" pursuant to 35 U.S.C. § 285.

9 146. MusicMatch's foregoing conduct has left Gracenote with no adequate remedy at
10 law and has caused, is causing, and if not enjoined will continue to cause irreparable damage to
11 Gracenote.

12 **WHEREFORE**, Gracenote seeks relief as hereinafter set forth.

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Gracenote prays for the following relief:

- 15 A. An Order adjudging Defendant MusicMatch to be liable for breach of contract;
- 16 B. An Order adjudging Defendant MusicMatch to be liable for intentional and bad
17 faith violation of the express restrictions on use of CDDB Data and End User Data in the
18 Agreement between Gracenote and MusicMatch;
- 19 C. An Order adjudging Defendant MusicMatch to be liable for unfair competition;
- 20 D. An Order adjudging Defendant MusicMatch to be liable for negligent or
21 intentional interference with prospective economic advantage;
- 22 E. Entry of a preliminary and permanent injunction enjoining Defendant
23 MusicMatch, together with its officers, agents, employees and attorneys, and upon those persons
24 in active concert or participation with it who receive actual notice of the Order from using any
25 proprietary information of Gracenote;
- 26 F. Entry of a preliminary and permanent injunction enjoining Defendant
27 MusicMatch, together with its officers, agents, employees and attorneys, and upon those persons
28 in active concert or participation with it who receive actual notice of the Order from breaching

1 terms of the Agreement between Gracenote and MusicMatch;

2 G. An order compelling Defendant MusicMatch to specifically perform its obligations
3 under the Agreement between Gracenote and MusicMatch;

4 H. Entry of a preliminary and permanent injunction enjoining Defendant
5 MusicMatch, together with its officers, agents, employees and attorneys, and upon those persons
6 in active concert or participation with it who receive actual notice of the Order from engaging in
7 the conduct constituting negligent or intentional interference with prospective economic
8 advantage;

9 I. An Order adjudging Defendant MusicMatch to be liable for direct infringement,
10 inducing infringement and contributory infringement of the '192 and '593 patents;

11 J. Entry of a preliminary and permanent injunction enjoining Defendant
12 MusicMatch, together with its officers, agents, employees and attorneys, and upon those persons
13 in active concert or participation with it who receive actual notice of the Order from directly,
14 inducing or contributorily infringing the claims of the two patents at issue herein;

15 K. An Order adjudging Defendant MusicMatch to be liable for trademark
16 infringement;

17 L. Entry of a preliminary and permanent injunction enjoining Defendant
18 MusicMatch, together with its officers, agents, employees and attorneys, and upon those persons
19 in active concert or participation with it who receive actual notice of the Order from infringing
20 Gracenote's trademarks at issue herein;

21 M. An award of compensatory damages in an amount to be proven at trial resulting
22 from the conduct complained of herein, including an award of compensatory damages suffered by
23 Gracenote as a direct and proximate cause of MusicMatch's breach of the Agreement, an award
24 of compensatory and trebled damages as permitted under 35 U.S.C. § 284 for MusicMatch's
25 willful acts of patent infringement, an award of profits made by MusicMatch and the actual
26 damages suffered by Gracenote as a result of MusicMatch's trademark infringement, an award of
27 treble damages and enhanced profits pursuant to 15 U.S.C. § 1117(a) for MusicMatch's

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1 trademark infringement; together with interest and costs;

2 N. Punitive damages in an amount to be proven at trial;

3 O. Reasonable attorneys' fees, expenses and costs as the prevailing party in this
4 action, including a declaration that this case is "exceptional" under 35 U.S.C. § 285; and

5 P. Such other relief as this Court deems necessary and just.

6

7 Dated: August 21, 2002.

8

Respectfully submitted,

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ORRICK, HERRINGTON & SUTCLIFFE LLP

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William Sloan Coats
Vickie L. Feeman
Gabriel M. Ramsey
Attorneys for Plaintiff
Gracenote, Inc.

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2 **DISCLOSURE OF INTERESTED PARTIES OR ENTITIES**
3 **PURSUANT TO GENERAL ORDER NO. 48**

4 Pursuant to General Order No. 48, the undersigned certifies that as of this date there is no
5 such interest to report.

6 Dated: August 21, 2002.

7 Respectfully submitted,

8 ORRICK, HERRINGTON & SUTCLIFFE LLP

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10 _____
11 William Sloan Coats
12 Vickie L. Feeman
13 Gabriel M. Ramsey
14 Attorneys for Plaintiff
15 Gracernote, Inc.

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DEMAND FOR JURY TRIAL

Plaintiff Gracenote, Inc., hereby demands a jury trial in this action.

Dated: August 21, 2002.

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP



William Sloan Coats
Vickie L. Feeman
Gabriel M. Ramsey
Attorneys for Plaintiff
Gracenote, Inc.