

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DOCKET NO.

ASTROLABE, INC.,

Plaintiff,

v.

ARTHUR DAVID OLSON,
and PAUL EGGERT,

Defendants.

*
*
*
*
*
*
*
*
*
*
*

COMPLAINT, REQUEST FOR INJUNCTIVE RELIEF, RESTRAINING ORDER,
DAMAGES AND TRIAL BY JURY

Parties

1. Plaintiff, Astrolabe, Inc. [hereinafter "Astrolabe"], is a for-profit Massachusetts corporation with a principal place of business at 350 Underpass Road, P.O. Box 1750, Brewster, Barnstable County, Commonwealth of Massachusetts 02631, and is engaged in the business of publication, marketing and sale, including computer software publications and/or programs pertaining to the field of astrology.
2. Defendant, Arthur David Olson [hereinafter "Olson"], is an individual with a last and usual residence at 7406 Hancock Avenue, #2, Takoma Park, Maryland 20912, and with a usual an ordinary place of business as a computer specialist at the Laboratory of Experimental Carcinogenesis, Building 37, Room 4146A, National Cancer Institute, National Institute of Health, 37 Convent Drive, MSC 4262, Bethesda, Maryland 20892.
3. Defendant, Paul R. Eggert [hereinafter "Eggert"], is an individual with a last and usual residence in the State of California, who is engaged in the business of computer services and programming, and employed as a lecturer with the University of California, Los Angeles, Computer Science Department, with a principal business address of: UCLA Computer Science, Box 951596, 4532JBH, Los Angeles, California 90095-1596.

Jurisdiction

4. Pursuant to a written agreement, Astrolabe is the copyright assignee of the copyright owner, of certain copyright-protected computer software programs and information contained therein, pursuant to the Copyright Protection Act, 17 U.S.C. Section 101, et seq., known as the “*ACS Atlas*,” consisting of both the “*ACS International Atlas*,” and the “*ACS American Atlas*,” in the form of computer software program(s) and/or data bases, and in the form of electronic output and future electronic media from said programs [hereinafter “the Works”].
5. These atlases set forth interpretations of historical time zone information pertaining to innumerable locations throughout the world, based upon the compilation of historical research and documentation regarding applicable time zones officially and/or in actuality in effect, given the actual latitude and longitudes of specific locations throughout the world.
6. Upon information and belief, defendants Olson and Eggert have unlawfully reproduced the Works, in violation of the Copyright Protection Act, without proper permission and/or authorization from the copyright holder, and without paying royalties due and payable to the copyright holder and/or its assignee, Astrolabe, in computer software format.
7. Plaintiff, Astrolabe publishes, markets and sells its *ACS Atlas* programs (the Works) for commercial profit purposes to, *inter alia*, those interested and/or engaged in the business and field of astrology seeking to determine the historical time at any given time in any particular location, world-wide.
8. In connection with its rights to reproduce the Works, plaintiff Astrolabe is contractually obligated to pay royalties to the owner/assignor of the copyright and the authors of the same.

Facts

9. Defendant Olson’s unauthorized reproduction of the Works have been published at <ftp://elsie.nci.nih.gov/tzarchive.qz>, where the references to historic international time zone data is replete with references to the fact that the source for this information is, indeed, the *ACS Atlas*.
10. In connection with his unlawful publication of some and/or any portion of the Works, defendant Olson has wrongly and unlawfully asserted that this information and/or data is “in the public domain,” in violation of the protections afforded by the federal copyright laws.
11. Defendant Eggert’s unauthorized reproduction of the Works have been published at <http://cs.ucla.edu/~eggert/tz/tz-link.htm> <http://cs.ucla.edu/~eggert/tz/tz-art.htm>, where the references to historic

international time zone data is replete with references to the fact that the source for this information is, indeed, the *ACS Atlas*.

12. In connection with his unlawful publication of some and/or any portion of the Works, defendant Eggert has wrongly and unlawfully asserted that this information and/or data is “in the public domain,” in violation of the protections afforded by the federal copyright laws.
13. On or about May 12, 2011, Astrolabe sent a “takedown notice” to both the National Institute of Health [hereinafter “NIH”], and the University of California Los Angeles hereinafter “UCLA”], which have failed and/or refused to remove the unauthorized publication and copying of the Works. See Exhibit 1, May 12, 2011, Letter to NIH, and Exhibit 2, May 12, 2011, Letter to UCLA.
14. Despite having received copies of the letters attached hereto as Exhibits 1 and 2, defendants Olson and Eggert continue to unlawfully publish the Works, without permission and/or authorization to do so.

Count I

Copyright Violation -- Olson

15. Plaintiff repeats and reasserts the matters set forth above, as if fully set forth herein, incorporating the same herein by reference, and further states:
16. In publishing any and/or all of the Works as set forth above, defendant Olson has and does so in violation of the federal copyright protection laws of the United States, to the detriment of plaintiff, Astrolabe.
17. Defendant Olson is well aware that the information and/or data wrongfully and unlawfully published by him violates the plaintiff’s copyright in the Works.
18. As a direct and proximate cause of defendant Olson’s unlawful and wrongful publication of some and/or any portion of the Works, he has unlawfully deprived plaintiff of income it would have otherwise derived from sales of the same, and has wrongfully and unlawfully asserted that the information and/or data taken from the Works is in the “public domain.”

WHEREFORE, plaintiff requests that this Honorable Court enter judgment in its favor, and against the defendant Olson, and enter the following orders and/or judgments of the Court:

- A. Issue a temporary restraining order prohibiting defendant Olson from unlawfully publishing any and/or some part of the Works;

- B. Issue a permanent injunction prohibiting defendant Olson from unlawfully publishing any and/or some part of the Works;
- C. Award plaintiff damages and such other amounts, including interest, attorney's fees and costs, for the unlawful and wrongful use of the Works.
- D. Such other orders and/or relief the Court deems just, reasonable and appropriate.

Count II

Copyright Violation -- Eggert

- 19. Plaintiff repeats and reasserts the matters set forth above, as if fully set forth herein, incorporating the same herein by reference, and further states:
- 20. In publishing any and/or all of the Works as set forth above, defendant Eggert has and does so in violation of the federal copyright protection laws of the United States, to the detriment of plaintiff, Astrolabe.
- 21. Defendant Eggert is well aware that the information and/or data wrongfully and unlawfully published by him violates the plaintiff's copyright in the Works.
- 22. As a direct and proximate cause of defendant Eggert's unlawful and wrongful publication of some and/or any portion of the Works, he has unlawfully deprived plaintiff of income it would have otherwise derived from sales of the same, and has wrongfully and unlawfully asserted that the information and/or data taken from the Works is in the "public domain."

WHEREFORE, plaintiff requests that this Honorable Court enter judgment in its favor, and against the defendant Eggert, and enter the following orders and/or judgments of the Court:

- A. Issue a temporary restraining order prohibiting defendant Eggert from unlawfully publishing any and/or some part of the Works;
- B. Issue a permanent injunction prohibiting defendant Eggert from unlawfully publishing any and/or some part of the Works;
- C. Award plaintiff damages and such other amounts, including interest, attorney's fees and costs, for the unlawful and wrongful use of the Works.

D. Such other orders and/or relief the Court deems just, reasonable and appropriate.

Plaintiff,

ASTROLABE, INC.

by its attorney,

/s/ Julie C. Molloy

Julie C. Molloy BBO#555176

379 Route 6A

East Sandwich MA 02537

Tel: (508) 833-3707

jcourtmolloy@gmail.com

Dated: September 30, 2011

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ASTROLABE, INC.

(b) County of Residence of First Listed Plaintiff Barnstable (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Julie C. Molloy, Esq., 379 Route 6A, East Sandwich MA 02537; (508) 833-3707

DEFENDANTS

ARTHUR DAVID OLSON and PAUL R. EGGERT

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 17 U.S.C. Section 101 et seq.

Brief description of cause: Copyright infringement violation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$, CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE, DOCKET NUMBER

DATE, SIGNATURE OF ATTORNEY OF RECORD

09/30/2011, /s/ Julie C. Molloy, Esq.

FOR OFFICE USE ONLY

RECEIPT #, AMOUNT, APPLYING IFP, JUDGE, MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) ASTROLABE, INC.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 410, 441, 470, 535, 830*, 891, 893, 894, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442-446, 710, 720, 730, 740, 790, 820*, 840*, 850, 870, 871.
- III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 368, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 610, 620, 625, 630, 640, 650, 660, 690, 791, 810, 861-865, 875, 890, 892, 900, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Julie C. Molloy, Esq.

ADDRESS 379 Route 6A, East Sandwich MA 02537

TELEPHONE NO. 508-833-3707