Michael Fuller, OSB No. 09357

Lead Attorney for Plaintiff Olsen Daines PC US Bancorp Tower 111 SW 5th Ave., Suite 3150 Portland, Oregon 97204 michael@underdoglawyer.com Direct 503-201-4570

Mark Geragos, Pro Hac Pending

Of Attorneys for Plaintiff Geragos & Geragos Historic Engine Co. No. 28 644 South Figueroa Street Los Angeles, California 90017 geragos@geragos.com Phone 213-625-3900

(additional counsel on signature page)

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

ZACK BARTEL, an Oregon consumer, individually and on behalf of all others,

Case No. 3:17-cv-1331

CLASS ACTION ALLEGATION COMPLAINT

Unlawful Trade Practices

Plaintiff,

v.

SHOWTIME NETWORKS, INC.,

28 U.S.C. § 1332

Unjust Enrichment

Demand for Jury Trial

Defendant.

COMPLAINT – Page 1 of 18

THE PARTIES

Defendant Showtime Networks, Inc. is a Delaware corporation. In the regular course of its business, defendant advertised that consumers could pay \$99.99 to "witness history" by streaming the Mayweather vs. McGregor fight live on its app, Showtime PPV. Specifically, defendant advertised that its system could stream the fight live in HD on its app starting at 6:00 pm PST on August 26, 2017.

2.

Plaintiff Zack Bartel is an individual consumer residing in Portland, Oregon. Like thousands of other fight fans across the country, plaintiff paid defendant \$99.99 to stream the Mayweather fight live on its app in HD, as defendant's advertisement promised.

3.

JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds \$5 million. Venue is proper under 28 U.S.C. § 1391 because the bulk of defendant's Mayweather fight advertising and sales in Oregon took place in the Portland metro area. This complaint's allegations are based on personal knowledge as to plaintiff's conduct and made on information and belief as to the acts of others.

COMPLAINT – Page 2 of 18

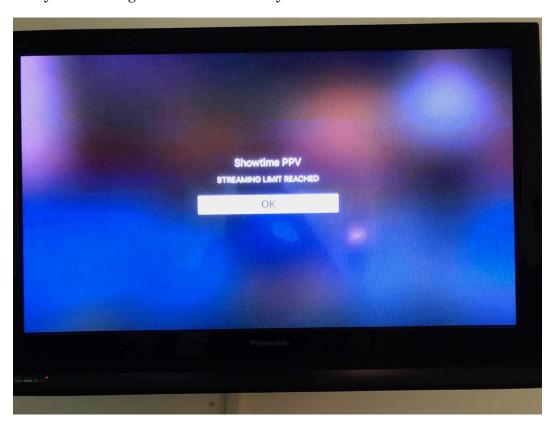
FACTUAL ALLEGATIONS

On August 25, 2017, in response to defendant's advertisement and representation that its system would stream the Mayweather fight at 1080p resolution and at 60 frames per second, plaintiff paid defendant \$99.99. Plaintiff's receipt is shown below:

From: Apple <<u>no reply@email.apple.com</u>> Subject: Your receipt from Apple. Date: August 25, 2017 at 11:51:48 PM PDT To: <u>zack@bartel.com</u>

Ś.			Receipt
APPLE ID zack@bartel.com DATE Aug 25, 2017 ORDER ID MSSF008M34 1541737450	BILLED TO MasterCard 2648 Zack Bartel 7810 SW 50th Ave Portland, OR 97219-1420 USA		TOTAL \$114.98
App Store	TYPE	PURCHASED FROM	PRICE
HBO NOW: Stream on movies & more, HBO (Automatic Renewal) Monthly Sep 20, 2011 Write a Review Report of	al series, hit M ^{sw} Subscription		\$14.99
SHOWTIME PPV- May McGregor- Stream Li PPV Write a Review Report a f	In-App Purchase	Apple TV	\$99.99
			Subtotal \$114.98 Tax \$0.00
		TOTAL	\$114.98

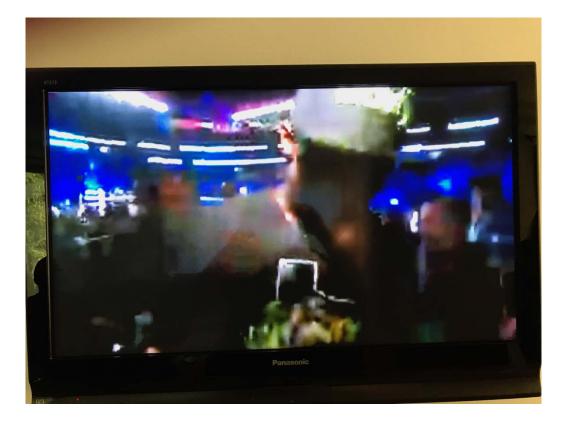
On August 26, 2017 at 6pm PST, like thousands of other fight fans across the county, plaintiff turned on defendant's app in anticipation to watch the Mayweather fight. To his extreme disappointment and frustration, plaintiff (and thousands of other consumers) quickly learned that defendant's system was defective and unable to stream the Mayweather fight in HD as defendant had advertised. Instead of being a "witness to history" as defendant had promised, the only thing plaintiff witnessed was grainy video, error screens, buffer events, and stalls. The screenshots below show the quality of video plaintiff saw while he should have been watching the Mayweather fight on defendant's system in HD:



COMPLAINT – Page 4 of 18





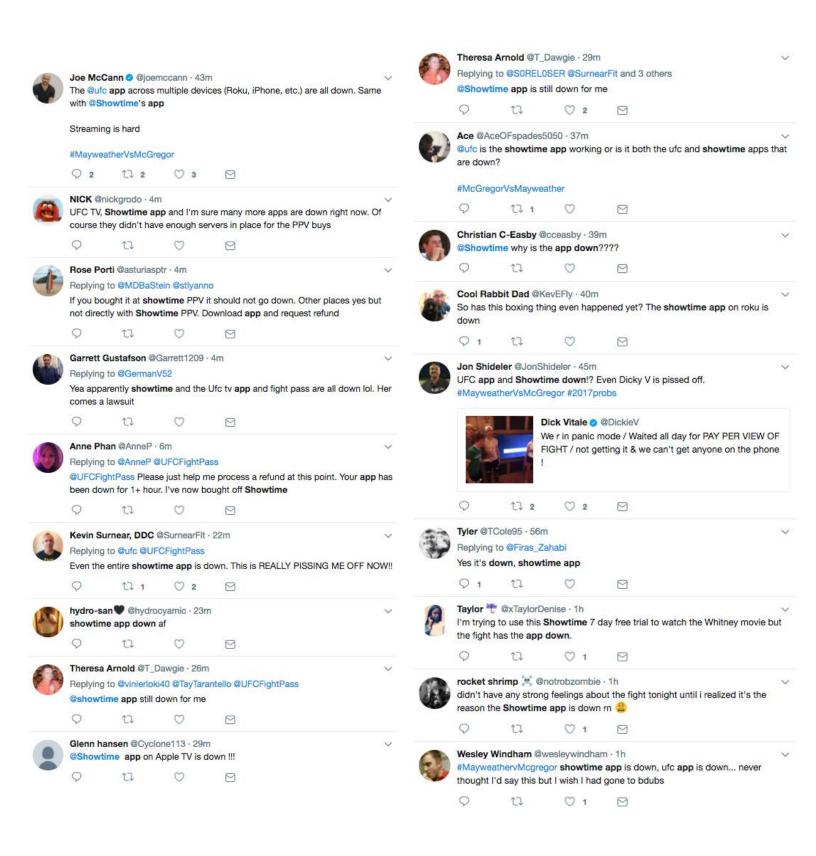


Plaintiff was using up-to-date, top-of-the-line software and hardware, just as defendant required, including a 4th generation Apple TV. At the same time defendant's system was unable to stream the Mayweather fight in HD, plaintiff was able to watch other streaming services on YouTube and Netflix in crystal clear HD, as usual. Plaintiff took a speed test of his Internet just to make sure the issues weren't being caused by a bad connection. Plaintiff's speed test results below showed the issues were entirely due to defendant's defective system:



7.

When plaintiff turned to Twitter, he saw hundreds of complaints being tweeted by defendant's other app customers in real time during the Mayweather fight experiencing the same issue with defendant's defective service:



Defendant's advertisement in iTunes below, which every consumer who purchased defendant's streaming app service saw, represented that consumers could witness history through live streaming access to the most anticipated sporting event of the year.

iTunes Preview

SHOWTIME PPV- Mayweather vs. McGregor- Stream Live By Showtime Networks Inc.

Open iTunes to buy and download apps.



Description

FEATURES

territories

vs. McGregor

Witness history with the official SHOWTIME PPV app! Stream Mayweather vs. McGregor LIVE on your iPhone, iPad, or Apple TV (4th generation) for \$99.99. With your purchase, you'll get live streaming access to the most anticipated sporting event of the year as Floyd Mayweather and Conor McGregor take center stage for a once in a lifetime spectacle. Don't miss this epic match for the ages, streaming live on Saturday, August 26 at 9:00pm ET/6:00pm PT.

Overview

Music

Video

View More by This Developer

Charts

The SHOWTIME PPV app is also your source for everything Mayweather vs. McGregor. Stream pre-fight coverage, explore fighter profiles, and re-live your favorite Floyd Mayweather and Conor McGregor moments with a selection of their classic fights. Plus, get an unprecedented behind-the-scenes look with the first episode of the Emmy® award-winning SHOWTIME series All Access: Mayweather vs. McGregor.

- The Main Event - stream Mayweather vs. McGregor LIVE in HD for \$99.99, available for purchase in the US and its

· Watch on Your Favorite Devices - purchase the fight and stream it live on your iPhone, iPad or Apple TV (4th

News - get the latest videos of pre-fight coverage such as interviews, clips from the world press tour, and live

· Classic Fights - browse and stream a selected library of classic Floyd Mayweather and Conor McGregor fights

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marks are trademarks of Showtime Networks Inc., a CBS Company. If purchased from Showtime Digital Inc., or an

authorized third party distributor in the United States, the pay-per-view event is accessible for viewing solely in the

· Behind the Scenes - get an insider look with all episodes of the acclaimed SHOWTIME series All Access: Mayweather

generation). One simultaneous stream per purchase, requires iOS 9.0+ or tvOS 10.0+

+ This app is designed for both iPhone and iPad

View in iTunes

Free

Category: Sports Updated: Aug 24, 2017 Version: 1.0.1 Size: 68.2 MB Language: English Seller: Showtime Digital Inc. ©2017 Showtime Digital Inc., a subsidiary of Showtime Networks Inc. All rights reserved. SHOWTIME and related marks are trademarks of Showtime Networks Inc., a CBS Company.

Rated 12+ for the following:

Infrequent/Mild Realistic Violence Infrequent/Mild Profanity or Crude Humor Infrequent/Mild Mature/Suggestive Themes United States and its territories and possessions. Minimum high-speed broadband connection is required for viewing. This website may contain adult content.

· Fighter Profiles - get details on the main event and co-feature fighters

Terms of Use: https://www.showtimeppv.com/legal/terms

streams of Fight Week events including the official weigh-in

· Spanish Audio - available for the live pay-per-view event

Showtime Networks Inc. Web Site > SHOWTIME PPV- Mayweather vs. McGregor- Stream Live Support >

What's New in Version 1.0.1

- Minor bug fixes

Compatibility: Requires iOS 9.0 or later. Compatible with iPhone, iPad, and iPod touch.

Unlike past big events like Mayweather vs. Pacquiao in 2015, the Mayweather vs. McGregor event on August 26, 2017 was the first major fight available on pay-per-view without a cable subscription.

11.

In hopes of maximizing profits, defendant rushed its pay-perview streaming service to market, without securing enough networking bandwidth to support the number of subscribers who paid to watch the fight. Defendant's app used HLS (HTTP Live Streaming), which is a VBR (variable bitrate) video delivery protocol. With VBR video, it's possible to perform a bitrate "upshift" or "downshift" based on how much network bandwidth is available to the video player. Video players that support HLS and other VBR formats (DASH, MSS Microsoft Smooth Streaming, etc.) detect when video segments are not downloading fast enough and perform a downshift by downloading a lower bitrate version of the video file. Conversely, if the video player knows it's downloading the video file fast enough, it can perform an upshift, and start downloading the higher resolution version of the video files. Defendant knew and should have known its system wasn't able to conform to the qualify defendant promised its customers, based on defendant's available bandwidth and subscriber numbers. Instead of being upfront with consumers about its new, untested, underpowered service, defendant caused likelihood of confusion and misunderstanding as to the source and quality of the HD video consumers would see on fight night. Defendant intentionally misrepresented the quality and grade of video consumers would see using its app, and knowingly failed to disclose that its system was defective with respect to the amount of bandwidth available, and that defendant's service would materially fail to conform to the quality of HD video defendant promised.

12.

CLASS ALLEGATIONS

Plaintiff files this complaint as a national class action lawsuit. The Oregon class consists of Oregon consumers who:

- a) Viewed defendant's app advertisement on iTunes, then paid
 \$99.99 to stream the Mayweather vs. McGregor fight live on defendant's app, Showtime PPV, and
- b) Who were unable to view the Mayweather vs. McGregor fight live on defendant's app in HD at 1080p resolution and at 60 frames per second, and who experienced ongoing grainy video, error screens, buffer events, and stalls instead.

Excluded from the class are all attorneys for the class, officers and members of defendant, including officers and members of any entity with an ownership interest in defendant, any judge who sits on the case, and all jurors and alternate jurors who sit on the case.

14.

The exact number of aggrieved consumers in Oregon can be determined based on defendant's sales records and data.

15.

Every aggrieved Oregon consumer misled by defendant's advertisement as alleged in this complaint suffered an actual ascertainable loss of the \$99.99 they paid to stream the Mayweather fight live in HD as advertised. But for defendant's false representations as alleged in this complaint and its failure to disclose known defects and nonconformities in its system and service, plaintiff and the members of the putative class would not have paid defendant any money and would have instead have viewed the Mayweather fight through a different service.

16.

Defendant's behavior as alleged in this complaint willfully violated the Oregon Unlawful Trade Practices Act ("UTPA"), including ORS 646.608(1)(b), (e), (g), (i), and (t). This UTPA violation is common to the Oregon class.

17.

The class is so numerous that joinder is impracticable. Upon information and belief, the Oregon class alone includes thousands of members, based on the historic nature of the fight and the recordbreaking demand to watch it.

18.

Common questions of fact and law predominate over any questions affecting only individual class members. Common questions include whether plaintiff and the Oregon class members are entitled to equitable relief, whether defendant acted willfully, recklessly, knowingly, or intentionally, whether plaintiff and the Oregon class members are entitled to recover actual damages or statutory damages or punitive damages from defendant, and whether plaintiff and the Oregon class are entitled to recover fees and costs for defendant's UTPA violation.

19.

Plaintiff's claims are typical of the claims of the Oregon class because each was misled by defendant's false representations and failures to disclose, the injuries suffered by plaintiff and the Oregon class members are identical (\$99.99), and plaintiff's claim for relief is

COMPLAINT – Page 12 of 18

based upon the same legal theories as are the claims of the other class members. Plaintiff will fairly and adequately protect and represent the interests of the class because his claim is typical of the claims of the Oregon class, he is represented by nationally known and locally respected attorneys who have experience handling class action litigation and consumer protection cases who are qualified and competent, and who will vigorously prosecute this litigation, and their interests are not antagonistic or in conflict with the interests of the Oregon class.

20.

A class action is superior to other methods for fair and efficient adjudication of this case because common questions of law and fact predominate over other factors affecting only individual members, as far as plaintiff knows, no class action that purports to include Oregon customers suffering the same injury has been commenced in Oregon, individual class members have little interest in controlling the litigation, due to the high cost of actions, the relatively small amounts of damages, and because plaintiff and his attorneys will vigorously pursue the claims. The forum is desirable because the bulk of defendant's sales in Oregon took place in the Portland metro area. A class action will be an efficient method of adjudicating the claims of the class members who have suffered relatively small damages, as a result of the same conduct by defendant. In the aggregate, class members have claims for relief that are significant in scope relative to the expense of litigation. The availability of defendant's sales records and data will facilitate proof of class claims, processing class claims, and distributions of any recoveries.

OREGON CLASS CLAIMS FOR RELIEF

– Claim 1 –

VIOLATION OF ORS 646.608

Defendant willfully, recklessly, knowingly and intentionally violated ORS 646.608 as alleged above, causing plaintiff and the Oregon class ascertainable losses.

22.

Plaintiff and the Oregon class are entitled to equitable relief in the form of an accounting, restitution, and unless agreed upon by defendant, an order to preserve all documents and information (and electronically stored information) pertaining to this case. Plaintiff and the Oregon class are entitled to recover actual damages or \$200 statutory damages, whichever is greater, interest and fees and costs under ORS 646.638. Defendant's violation of the UTPA as alleged above was reckless, in pursuit of profit, and constituted a wanton, outrageous and oppressive violation of the right of Oregon consumers to be free from unlawful trade practices. Plaintiff and the Oregon class are entitled to recover punitive damages under ORS 646.638.

COMPLAINT – Page 15 of 18

– Claim 2 –

UNJUST ENRICHMENT

As a matter of justice and equity, defendant should not be able to retain the pay-per-view fees it charged plaintiff and the Oregon class for live HD streaming services that were never provided or received. Plaintiff and the Oregon class are entitled to restitution based on defendant's unjust enrichment as alleged in this complaint.

24.

Demand for jury trial.

PRAYER FOR RELIEF

Plaintiff seeks relief for himself and the proposed Oregon class as follows:

- **A.** Unless agreed upon by defendant, an order to preserve all documents and information (and electronically stored information) pertaining to this case,
- B. An order certifying this matter as a class action,
- C. Judgment against defendant for actual, statutory, and punitive damages, interest, and reimbursement of fees and costs,
- **D.** And other relief the Court deems necessary.

August 26, 2017

RESPECTFULLY FILED,

<u>s/ Michael Fuller</u> **Michael Fuller, OSB No. 09357** Lead Attorney for Plaintiff Olsen Daines PC US Bancorp Tower 111 SW 5th Ave., Suite 3150 Portland, Oregon 97204 michael@underdoglawyer.com Direct 503-201-4570

(additional counsel information on next page)

COMPLAINT – Page 17 of 18

Rex Daines, OSB No. 952442

Of Attorneys for Plaintiff Olsen Daines PC US Bancorp Tower 111 SW 5th Ave., Suite 3150 Portland, Oregon 97204 rdaines@olsendaines.com Phone 503-362-9393

Ben Meiselas, Pro Hac Pending

Of Attorneys for Plaintiff Geragos & Geragos Historic Engine Co. No. 28 644 South Figueroa Street Los Angeles, California 90017 meiselas@geragos.com Phone 213-625-3900

Robert Le, OSB No. 094167 Of Attorneys for Plaintiff rl@robertlelaw.com

Kelly Jones, OSB No. 074217 Of Attorneys for Plaintiff kellydonovanjones@gmail.com

PROOF OF MAILING

Under ORS 646.638(2), I declare and certify that on the date below I caused a copy of this complaint to be mailed to the Oregon Attorney General at the following address:

Ellen Rosenblum Oregon Attorney General Oregon Department of Justice 1162 Court Street NE Salem, Oregon 97301-4096

August 26, 2017

s/ Michael Fuller **Michael Fuller, OSB No. 09357** Lead Attorney for Plaintiff Olsen Daines PC US Bancorp Tower 111 SW 5th Ave., Suite 3150 Portland, Oregon 97204 michael@underdoglawyer.com Direct 503-201-4570

Case 3:17-cv-01331-YY Document 1-1 Filed 08/26/17 Page 1 of 1 CIVIL COVER SHEET

JS 44 (Rev. 09/11)

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 NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS ZACK BARTEL			DEFENDANTS SHOWTIME NETWORKS, INC.		
(b) County of Residence of First Listed Plaintiff <u>Multnomah</u> (EXCEPT IN U.S. PLAINTIFF CASES)			County of Residence	County of Residence of First Listed Defendant <i>(IN U.S. PLAINTIFF CASES ONLY)</i> NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.	
(c) Attorneys (Firm Name, Address, and Telephone Number) Michael Fuller, US Bancorp Tower, 111 SW 5th Ave., Suite 3150 Portland, Oregon 97204, 503-201-4570			Attorneys (If Known)		
II. BASIS OF JURISD	ICTION (Place an "X" i	n One Box Only)		PRINCIPAL PARTIES	(Place an "X" in One Box for Plaintiff)
□ 1 U.S. Government Plaintiff	□ 3 Federal Question (U.S. Government N	Not a Party)		TF DEF ↓ □ 1 Incorporated or Pr of Business In Thi	
□ 2 U.S. Government Defendant	X 4 Diversity (Indicate Citizenshi)	p of Parties in Item III)	Citizen of Another State	2 2 Incorporated and I of Business In A	
			Citizen or Subject of a Foreign Country	3 3 Foreign Nation	
IV. NATURE OF SUIT					
		RTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
 □ 110 Insurance □ 120 Marine □ 310 Airplane □ 310 Miller Act □ 130 Miller Act □ 140 Negotiable Instrument □ 150 Recovery of Overpayment & Enforcement of Judgment □ 151 Medicare Act □ 152 Recovery of Defaulted 	 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 	 PERSONAL INJURY 365 Personal Injury - Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal 	 G 625 Drug Related Seizure of Property 21 USC 881 G90 Other 	 422 Appeal 28 USC 158 423 Withdrawal 28 USC 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 840 Trademark 	 375 False Claims Act 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations
Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury - Med. Malpractice 	Injury Product Liability PERSONAL PROPERT 3 370 Other Fraud 3 371 Truth in Lending 3 380 Other Personal Property Damage 385 Property Damage Product Liability	LABOR Y 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Empl. Ret. Inc.	SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g))	 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/ Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration
REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/ Accommodations 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 448 Education	PRISONER PETITIONS □ 510 Motions to Vacate Sentence Habeas Corpus: □ 530 General □ 535 Death Penalty □ 540 Mandamus & Other □ 550 Civil Rights □ 555 Prison Condition □ 560 Civil Detainee - Conditions of Confinement	IMMIGRATION	FEDERAL TAX SUITS State of Constraints of Defendant) State of Constraints of Co	 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes
V. ORIGIN (Place an "X" in One Box Only) Image: Description of the proceeding 2 Removed from State Court 3 Remanded from Appellate Court □ 4 Reinstated or Reopened □ 5 Reopened Transferred from another district (specify) □ 6 Multidistrict Litigation					
VI. CAUSE OF ACTIO	28 U.S.C. & 1332	2	filing (Do not cite jurisdictional se	tatutes unless diversity):	
	Unlawful Trade F				
VII. REQUESTED IN COMPLAINT:	CHECK IF THIS UNDER F.R.C.P.	IS A CLASS ACTION 23	DEMAND \$	CHECK YES only JURY DEMAND:	if demanded in complaint: : IX Yes □ No
VIII. RELATED CASI IF ANY	E(S) (See instructions):	JUDGE		DOCKET NUMBER	
DATE		SIGNATURE OF ATTO			
08/26/2017		s/ Michael Fuller	r		
FOR OFFICE USE ONLY					
RECEIPT # AM	10UNT	APPLYING IFP	JUDGE	MAG. JU	DGE

Case 3:17-cv-01331-YY Document 1-2 Filed 08/26/17 Page 1 of 1

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon

ZACK BARTEL

Plaintiff

v. SHOWTIME NETWORKS, INC. Civil Action No. 3:17-cv-1331

Defendant

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Showtime Networks, Inc. c/o registered agent US Corporation Company 251 Little Falls Drive Wilmington, DE 19808

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Zack Bartel

c/o attorney Michael Fuller US Bancorp Tower 111 SW 5th Ave., Suite 3150 Portland, Oregon 97204

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk