

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

CANTOR COLBURN LLP)	
)	
Claimant)	
)	Civil Action No.:
v.)	
)	
ON DEMAND DIRECT RESPONSE, LLC)	
)	
Respondents)	
<hr style="border: 0.5px solid black;"/>		
)	

COMPLAINT

The plaintiff, Cantor Colburn LLP (“Cantor Colburn”), brings this Complaint against defendant, On Demand Direct Response, LLC. (“On Demand”), as follows:

NATURE OF THE CASE

This is a simple case of breach of contract and unjust enrichment. Defendant agreed for Cantor Colburn to represent it in certain legal matters and, in exchange, to pay Cantor Colburn for its legal services. The fees and costs of Cantor Colburn’s legal services were explained to Jeffrey A. Miller (hereafter “Mr. Miller”), the Vice President of Operations for On Demand in his representative capacity as an agent of On Demand both verbally and in a written agreement signed by Mr. Miller on or about September 19, 2013 (hereinafter “the Agreement”). Cantor Colburn performed legal services on behalf of On Demand at the rates set forth in the Agreement. To date, \$131,928.11 remains owed to Cantor Colburn. Thus, On Demand has breached expressed and implied contracts with Cantor Colburn, and has been unjustly enriched at Cantor Colburn’s expense.

PARTIES

1. Cantor Colburn LLP is a law firm having offices at 20 Church Street, Hartford, Connecticut 06103.

2. Upon information and belief, On Demand is a limited liability company organized and existing under the laws of the State of California and having a primary place of business located at 14958 Ventura Boulevard, Ste. 104, Sherman Oaks, CA 91403

JURISDICTION AND VENUE

3. This court has original jurisdiction over this action under Title 28, United States Code section 1332(a)(1) because more than \$75,000.00 is at issue, exclusive of costs and interests, and the parties are citizens of different states.

4. Venue is appropriate in this district under Title 28 United States Code Section 1391(a) because a substantial part of the events or omissions giving rise to the claim occurred here.

GENERAL ALLEGATIONS

5. In or about September of 2013, On Demand hired Cantor Colburn to provide legal services with respect to various intellectual property matters.

6. On or about September 19, 2013 On Demand entered into the Agreement setting forth the terms of their engagement with Cantor Colburn for legal services. *See* Agreement, attached as Exhibit A. The Agreement outlines, *inter alia*, the basis on which Cantor Colburn would provide legal services and bill for them.

7. The Agreement describes that Cantor Colburn's fees would be determined on an hourly basis and that there would be costs associated with Cantor Colburn's representation of On Demand in addition to attorneys' fees.

8. The Agreement also describes how and when Cantor Colburn would bill the On Demand and when On Demand was expected to pay Cantor Colburn.

9. Additionally, On Demand acknowledged in the Agreement that they were given the opportunity to consult with independent counsel regarding the Agreement.

10. After the Agreement was executed by both parties, Cantor Colburn performed legal work on behalf of On Demand.

11. The legal work continued for a period of about four years, from about September 19, 2013 to about February 28, 2017, when On Demand was informed by Cantor Colburn that the engagement would be terminated due to multiple unpaid invoices. As of that date, On Demand owes Cantor Colburn an outstanding amount of \$131,928.11. *See* debtor statement attached as Exhibit B.

COUNT I

BREACH OF WRITTEN CONTRACT

12. The plaintiff incorporates by reference the allegations contained in Paragraphs 1-11 of this complaint.

13. On or about September 19, 2013, the plaintiff and defendant entered into a written Agreement which was signed by Jeffrey Miller, the Vice President of Operations, as agent for On Demand.

14. By terms of the written Agreement, On Demand promised to pay Cantor Colburn's fees and costs in exchange for legal services.

15. The plaintiff fully performed all of its duties including representation and advising On Demand in various intellectual property matters before the United States Patent and Trademark Office.

16. On Demand have breached the Agreement by failing to fully pay Cantor Colburn its fees and costs incurred in performing legal services on behalf of On Demand.

17. On Demand breach has damaged Cantor Colburn in the amount of \$131,928.11.

COUNT II

BREACH OF IMPLIED CONTRACT

18. The plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 17 of this complaint.

19. At On Demand's request, the plaintiff represented On Demand in various intellectual property matters. Both parties expected and understood that On Demand would compensate the plaintiff for its legal services. Their expectations were reasonable given common practices in the legal profession, and the parties' previous course of conduct.

20. The plaintiff performed valuable legal services that directly benefited On Demand. On Demand accepted the plaintiff's legal services to their direct benefit.

21. It would be unjust to permit On Demand to benefit from the plaintiff's legal services without paying the plaintiff the reasonable value for their services.

22. The reasonable value of the plaintiff's representation of On Demand for various intellectual property matters is \$131,928.11 plus interest.

COUNT III

UNJUST ENRICHMENT

23. The plaintiff incorporate by reference the allegations contained in Paragraph 1-22 of this complaint.

24. At On Demand's request, the plaintiff represented On Demand in various intellectual property matters. Both parties expected and understood that On Demand would

compensate the plaintiff for its legal services. Their expectations were reasonable given common practices in the legal professions, and the parties' previous course of conduct.

25. The plaintiff performed valuable legal services that directly benefited On Demand. On Demand accepted the plaintiff's legal services to their direct benefit.

26. It would be unjust to permit On Demand to benefit from the plaintiff's legal services without paying the plaintiff for their reasonable value.

27. The reasonable value of the plaintiff's representation of On Demand for various intellectual property matters is \$131,928.11 plus interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. For compensatory damages in the amount of \$131,928.11 plus interest in an amount to be proved;
2. For interest on the damages;
3. Cost of suit;
4. For other fair and equitable relief to which the plaintiff may be entitled.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

Date: September 7, 2017

Respectfully submitted,

/s/ Andrew C. Ryan

Andrew C. Ryan

CT Juris No. 416992

E-mail: aryan@cantorcolburn.com

Cantor Colburn LLP

20 Church Street, 22nd Floor

Hartford, Connecticut 06103

Telephone: (860) 286-2929

Facsimile: (860) 286-0115

ATTORNEYS FOR THE PLAINTIFF

EXHIBIT A



Cantor Colburn LLP

Intellectual Property Attorneys

George A. Pelletier, Jr.
gpelletier@cantorcolburn.com

ATTORNEY CLIENT PRIVILEGE
ATTORNEY WORK PRODUCT

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www.cantorcolburn.com

September 19, 2013

Sent Via Email and Via First Class Mail

Jeffrey A. Miller, Esq.
Vice President of Operations
On Demand Direct Response, LLC
14958 Ventura Boulevard
Suite 104
Sherman Oaks, CA 91403

Re: Terms of Engagement for Legal Services

Dear Mr. Miller:

We appreciate On Demand Direct Response, LLC requesting our assistance in connection with intellectual property matters, namely Trademark and Copyright matters, and we look forward to serving as counsel in these matters. This letter sets forth the terms of our engagement.

1. **Scope.** Unless we otherwise agree in writing, this letter sets forth our entire agreement for rendering professional services for the current and any future engagements.
2. **Effect.** Our engagement is subject to and effective upon the earlier of (a) receipt of a signed copy of this letter agreement; (b) the date that we first render services; or (c) the date that we first receive a retainer.
3. **Fees.** Services will be rendered at our standard hourly rates for our attorneys and other personnel (such as paralegal assistants) prevailing at the time services are rendered. Our rates presently range from \$150 per hour to \$500 per hour, but we reserve the right to change these rates from time to time. Generally, we revise our rates annually in December. My hourly rate is \$380 per hour. Where possible, we will assign attorneys or



Cantor Colburn LLP

Intellectual Property Attorneys

On Demand Direct Response, LLC

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agents to your cases who are qualified, and yet have a lower billing rate, under my supervision.

While we may attempt to estimate fees to assist you in your planning, such estimates are subject to change and are not binding unless otherwise expressly stated in writing.

4. **Costs.** In addition to fees for professional and staff time, you will also pay for certain costs and expenses such as charges for messengers, facsimiles, computerized research, word processing, printing and photocopying, travel, transcripts, parking, filing fees, telephone toll charges, secretarial overtime (where attributable to your special needs), notary charges, experts and other consultants retained on your behalf, and other similar costs and expenses. You are also responsible for all costs and expenses we advance on your behalf. Where significant or unusual third-party payments are required (e.g., co-counsel fees, expert fees, special studies, extensive transcripts or filing fees), we will normally forward the charge to you for direct payment or obtain advance funds from you to cover the cost. If we advance funds for you, they will be added to the invoice. A list of our current charges for costs is available upon request, although they may be revised from time to time by the Firm without notice.

5. **Retainer.** We generally require a retainer for matters undertaken for new clients. The retainer is based upon the complexity of the case and the resources required. In this case, we are not requesting a retainer at this time. We do, however, reserve the right to request a retainer if we determine that it is warranted.

We will bill you on a monthly basis and all bills are due in full upon receipt. Any retainer is a deposit for payment of a portion of the legal fees and costs to be incurred. Except to the extent any legal fees or costs are incurred, any retainer is a refundable deposit that is your property and which you may have returned. At the end of our engagement, our final charges will be applied against the retainer and the balance of the retainer, if any, will be refunded, or the balance due must be paid by you. By signing this letter, you are authorizing us to withdraw amounts from the trust account containing any retainer to pay your statements as billed on any matter for you and you are granting us a lien for attorneys' fees and costs advanced on all retainers, escrow accounts, trust accounts, real and personal property, intangible property, claims and causes of action that are



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subject to our representation of you and on all proceeds of any recovery obtained (by settlement, arbitration, award, court judgment or otherwise).

6. **Billing statements; carrying charges on unpaid balances.** We will send periodic statements. You herein agree that such statements are due and payable on receipt. If you have any questions about a statement, please call them to our attention promptly, but in any event no later than thirty (30) days after you receive the statement. If we do not receive payment by the end of the month following the month in which we issue our statement, you agree to pay a carrying charge of 1% per month on the unpaid balance of the statement from the invoice's date.

7. **Termination.** You may terminate our services at any time upon written notice, and we also may terminate our services upon written notice. Our representation will end at the earlier of (a) your termination of our representation, (b) our withdrawal, or (c) the substantial completion of our substantive work.

8. **Documents.** When termination occurs, documents and property that you have provided to us will be returned to you at your request, subject to any applicable liens. Copies of documents we have created for you, which you may need but no longer have, will be made available to you at your request, subject to any applicable liens. Our drafts and work product will belong to us. We reserve the right, subject to any applicable laws or rules of professional responsibility, to destroy within a reasonable time any items described in this paragraph that are retained by us.

9. **Confidentiality.** As attorneys, we are required to maintain communications with a client in confidence.

10. **Waiver of certain conflicts.** While we do not believe that there is presently a conflict of interest in our serving as counsel for you, as set forth herein, you agree that we may represent, now and in the future, existing or new clients in any matters that are not substantially related to our work for you. We may represent such clients' interests in those other matters even if they are directly adverse to you or an affiliate. By executing this letter you are agreeing to waive any conflict of interest that arises in such situations. Of course, without your prior written consent, we cannot and will not represent any client adverse to you in a separate legal matter if we have obtained confidential information from you that is material to that matter. However, in instances in which we have no such



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material confidential information, you agree that we can represent other clients in legal matters, even those potentially or actually adverse to you or any affiliate, without your further consent.

11. **No guarantee of success.** It is impossible to provide any promise or guarantee about the outcome of your matters. Nothing in this letter or any statements by our staff or attorneys constitutes a promise or guarantee. Any comments about the outcome of your matter are expressions of opinion only.

12. **ARBITRATION AND WAIVER OF JURY TRIAL.** ANY DISPUTE BASED UPON OR ARISING OUT OF OUR ENGAGEMENT, THIS LETTER AGREEMENT AND/OR THE PERFORMANCE OR FAILURE TO PERFORM SERVICES (INCLUDING, WITHOUT LIMIT, CLAIMS OF PROFESSIONAL NEGLIGENCE) SHALL BE SUBJECT TO BINDING ARBITRATION TO BE HELD IN HARTFORD, CONNECTICUT BEFORE A RETIRED CONNECTICUT SUPERIOR COURT JUDGE. JUDGMENT ON THE ARBITRATOR'S AWARD SHALL BE FINAL AND BINDING, AND MAY BE ENTERED IN ANY COMPETENT COURT. AS A PRACTICAL MATTER, BY AGREEING TO ARBITRATE ALL PARTIES ARE WAIVING JURY TRIAL.

13. **Miscellaneous.** This letter agreement is governed by Connecticut law and sets forth our entire agreement for rendering professional services. It can be amended or modified only in writing. In the event of any dispute, the prevailing party shall be entitled to attorneys' fees (including the value of time of attorneys in the Firm at their normal billing rates), expenses of litigation and/or arbitration (including expert witnesses) and costs, both in connection with obtaining and collecting any judgment and/or arbitration award, in addition to any other relief to which that party may be entitled. We carry errors and omissions insurance, the specifics of which are available upon request. Each party signing below is jointly and severally responsible for all obligations due us and represents that each has full authority to execute this agreement so that it is binding. This agreement may be signed in one or more counterparts and binds each party signing it whether or not any other proposed signatory ever executes it. **We are not advising you with respect to this letter because we would have a conflict of interest in doing so. If you wish advice, you should consult independent counsel of your choice.**



Cantor Colburn LLP

Intellectual Property Attorneys

On Demand Direct Response, LLC
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Please contact me as soon as possible if this letter does not accurately reflect your understanding of our agreement. Any corrections or changes must be in writing signed by both of us.

Please sign and return the enclosed acknowledgment copy of this letter (along with your check for our retainer if one is specified above) at your earliest convenience.

Yours very truly,

George A. Pelletier, Jr.

THE UNDERSIGNED HAS READ AND UNDERSTOOD THIS AGREEMENT. THE FOREGOING ACCURATELY SETS FORTH ALL THE TERMS OF ENGAGEMENT, AND IS APPROVED AND ACCEPTED.

Dated: 9/19, 2013

By:
Name: Jeffrey A. Miller
Title: V.P. Operations

EXHIBIT B



Cantor Colburn LLP

Statement

On Demand Direct Response,
LLC (C-ODD)

Invoice Date	Invoice Number	Invoice Amount	Matter Number	Case Reference	Case Title
08/19/2015	755660	157.19	OD30002TUS		
08/19/2015	755661	110.00	OD10052TCA		
09/30/2015	762358	42,617.81	ODD0033LITUS		
10/28/2015	766070	456.15	OD10050TAU		
10/28/2015	766071	14.51	OD30010TUS		
10/28/2015	766187	22,722.71	ODD0033LITUS		
11/05/2015	767298	51,416.02	ODD0033LITUS		
11/17/2015	769252	560.00	OD10000G		
11/17/2015	769253	400.00	OD30003TUS		
11/17/2015	769254	27.50	ODD0034TUS		ON DEMAND (Stylized) AND DESIGN
12/16/2015	775495	137.50	OD10071OPPCA		
12/16/2015	775496	4,180.50	ODD0033LITUS		
01/27/2016	781410	375.47	OD10052TCA		
01/27/2016	781411	966.50	ODD0033LITUS		
02/29/2016	786924	6,083.90	ODD0001GXX		
02/29/2016	786926	124.00	OD60001TCA		
02/29/2016	786928	124.00	OD10071OPPCA		
03/17/2016	788679	262.24	OD10052TCA		
03/17/2016	788683	150.00	ODD0034TUS		
04/18/2016	793725	25.00	ODD0001GXX		
09/20/2016	819115	431.00	OD60001TCA		
10/13/2016	822756	150.00	OD60001TCA		
11/11/2016	828709	179.39	OD60001TCA		
02/28/2017	845072	256.72	OD60001TCA		
		131,928.11			

ON DEMAND (Stylized) AND DESIGN