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7 SUPERIOR COURT OF CALIFORNIA
8 COUNTY OF SANTA CLARA

J. Cao-Nguyen
FILED Santa Clara Co
09/10/09 11:29am
David H. Yamasaki
Chief Executive Officer
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Case: 1-09-CV-151913

9 GENERAL CHARLES "CHUCK" YEAGER
10 (RET.),

11 Plaintiff,

12 v.

13 ADVANCED MICRO DEVICES, INC., and
14 DOES 1 through 100,

15 Defendant.

CASE NO.: **109CV151913**

**COMPLAINT FOR VIOLATIONS OF:
PLAINTIFF'S COMMON LAW RIGHTS
TO PRIVACY & PUBLICITY; CAL CIV.
CODE § 3344; CALIFORNIA'S FALSE
ADVERTISING PRACTICES ACT;
UNFAIR BUSINESS PRACTICES
CAL.BUS.&PROF. CODE §§ 17200 ET
SEQ.; DILUTION CAL.BUS.& PROF.
CODE § 14250; AND, UNJUST
ENRICHMENT**

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19 Plaintiff alleges, and states, as follows:

20 **I. GENERAL ALLEGATIONS**

21 1. Plaintiff GENERAL CHARLES E. "CHUCK" YEAGER (RET.) is a retired General
22 Officer of the United States Air Force who currently resides in Penn Valley, California.

23 2. Defendant ADVANCED MICRO DEVICES, INC. ("AMD") is corporation and American
24 multinational semiconductor company based in Sunnyvale, Santa Clara County, California. AMD
25 develops computer processors and related technologies for commercial and consumer markets.
26 AMD is the second-largest global supplier of microprocessors and the third-largest supplier of
27 graphics processing units. In 2007, AMD ranked eleventh among semiconductor manufacturers in
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1 terms of revenue.

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3 3. Defendant DOES 1-10 inclusive, are sued herein under fictitious names, their true names
4 and capacities being unknown to Plaintiff. Plaintiff will amend this Complaint to allege their true
5 names and capacities when ascertained. Plaintiff is informed and believes and alleges that each of
6 the fictitiously named Defendant is responsible in some manner for the occurrences herein alleged
7 and that Plaintiff's damages as herein alleged were proximately caused by those Defendant.

8 4. Plaintiff is informed and believes and alleges that, at all times, Defendant were the agents,
9 servants, and employees of the Co-Defendant and, in doing the things, were acting within the
10 course and scope of their authority as agents, servants, and employees with the permission and
11 consent of their Co-Defendant.

12 **II. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

13 5. GENERAL YEAGER's history and aviation accomplishments have all served to create a
14 valuable, unique identity and commodity. As a brief summary of some of the more pertinent facts,
15 GENERAL YEAGER served in the U.S. Army Air Force during World War II as a fighter pilot,
16 flying P-51 Mustangs. During one mission GENERAL YEAGER was shot down, evaded capture,
17 and aided local resistance forces. He escaped from behind enemy lines and resumed his duties as a
18 fighter pilot. He then went onto become one of the few American fighter pilots to become an "ace
19 in a day", by downing five (5) enemy fighters in one mission. At the end of World War II
20 GENERAL YEAGER had been credited with 11.5 official victories and was credited with holding
21 one of the first victories in his Fighter Group against a jet fighter plane. After World War II,
22 GENERAL YEAGER became a test pilot. In that capacity, he accomplished the feat for which is
23 perhaps best known, that of being the first person to break the speed of sound (known and referred
24 to as "Mach 1"). Shortly thereafter, he again broke records, becoming the first person to exceed 2.4
25 times the speed of sound ("Mach 2.4"). He subsequently set and/or broke additional aviation and
26 speed records. GENERAL YEAGER then went on to command the United States Air Force
27 Aerospace Research Pilot School, the 405th Tactical Fighter Wing, the 4th Tactical Fighter Wing,
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and also served as vice-commander of the Seventeenth Air Force.

6. Following retirement GENERAL YEAGER continued to garner further accomplishments which contribute to the value of his identity. He has set aircraft flight records in light, general, aircraft. He has been featured, recognized, and honored for his accomplishments by Marshall University, the State of West Virginia, the National Aviation Hall of Fame, the Aerospace Walk of Honor and U.S. Presidents Truman, Carter and Reagan.

7. GENERAL YEAGER has taken steps to utilize and protect his name, identity and image. He has served as a spokesman for AC Delco Corp., which saw its sales increase as a result o the use of his name, likeness, identity and endorsement. He has spoken to various groups, organizations, and committees. He has been featured on the cover of numerous magazines as a result of his actions, status, and historical activities. GENERAL YEAGER charges, and receives, a fee for the commercial use of his name, image, and/or identity, and additionally charges for any endorsements of products or companies. GENERAL YEAGER also charges a fee for providing his autograph in commercial or business settings.

8. In or about August 2008 Plaintiff, through his wife, Victoria, wrote AMD complaining about a its use of General Yeager's reputation and iconic accomplishments in an online Internet advertisement beginning apparently in 2000, and continuing thereafter, defendant AMD caused to circulate and widely disseminate an advertising program touting a PC processor which operated at a frequency with an extraordinary speed. As part of the sales program, AMD likened its new technology to the personal achievements of General Yeager, a comparison which was often repeated in the media, both television, magazines, and newspapers, such as the New York Times among others. This sales effort focused primarily upon a subliminal suggestion of endorsement by General Yeager and an implied connection between General Yeager's personal accomplishments and AMD's new product.

9. Over time, the repeated association of General Yeager's historic flight breaking through the sound barrier AMD and AMD technology left the clear impression upon much of the public that

1 there was an implied endorsement by General Yeager of AMD's new product line. This impression,
2 while no doubt commercially effective in AMD's processor advertising enterprise, was false. In
3 fact, AMD never so much as even notified General Yeager of its marketing plan incorporating his
4 heroic and courageous achievement proving that the sound barrier was not some impossible
5 insurmountable speed limit.

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7 **III. FIRST CLAIM FOR RELIEF**

8 **VIOLATION OF COMMON LAW RIGHT OF PUBLICITY**

9 **(Against All Defendants)**

10 10. Plaintiff hereby repeats and realleges paragraphs 1 through 9 of his complaint as though
11 the same were set forth herein in their entirety.

12 11. In or about 2000 and continuing until at least December 2008, Defendant, without Plaintiff's
13 consent, invaded Plaintiff's rights of privacy and publicity by appropriating Plaintiff's name and
14 identity for purposes of marketing the AMD processor.

15 12. The appropriation was unauthorized and without Plaintiff's consent.

16 13. The appropriation was for Defendant' advantage, commercial and otherwise, in that it
17 evoked an association between Plaintiff and Defendant and its product.

18 14. The appropriation usurped Plaintiff's ability to control his public image and diluted his
19 ability to control his public image and dilutes his ability to effectively market such image, all to the
20 detriment of Plaintiff's reputation and good will.

21 15. Plaintiff is informed and believes and, on that basis, alleges that as a proximate result of
22 the advantage accruing to Defendant from said appropriation, Plaintiff has been and/or will be
23 deprived of monetary sums in an amount to be determined at trial.

24 Plaintiff is informed and believes and, on that basis, alleges that Defendant marketed its product
25 by associating Plaintiff's identity to the product, knowing such to belong to Plaintiff. Plaintiff is
26 furthermore informed and believes and, on that basis, alleges that Defendant AMD's knowing
27 appropriation of Plaintiff's identity was accomplished willingly and in conscious disregard of
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1 Plaintiff's rights, insofar as AMD, well aware that Plaintiff was and remains adamantly protective
2 of his right to publicity, nevertheless appropriated Plaintiff's name and identity anyway without any
3 grant of rights or license by him to the Defendant or anyone else. Such willfulness and knowing
4 disregard amounted to malice, for which Plaintiff therefore seeks against AMD an award of
5 punitive damages.

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7 16. Plaintiff is informed and believes and, on that basis, alleges that unless restrained by this
8 court, Defendant will continue to infringe Plaintiff's right of publicity, engendering a multiplicity of
9 judicial proceedings. Unless permanently restrained by this court, irreparable harm is likely to occur
10 to Plaintiff, and pecuniary compensation will not afford Plaintiff adequate relief for the damage to
11 his good will.

12 **IV. SECOND CLAIM FOR RELIEF**

13 **STATUTORY RIGHT OF PUBLICITY -- CAL.CIV.CODE § 3344**

14 **(Against All Defendants)**

15 17. Plaintiff hereby repeats and realleges paragraphs 1 through 16 of his Complaint as
16 though the same were set forth herein in their entirety.

17 18. In or about March 2000 and continuing to at least December 2008, Defendant invaded
18 Plaintiff's rights of privacy and publicity by knowingly appropriating Plaintiff's name and identity
19 by appropriating Plaintiff's name and identity for purposes of marketing the AMD processor.

20 19. The appropriation was purposes of advertising or selling, or soliciting purchases of,
21 Defendant AMD's products, merchandise, or goods or services.

22 20. Defendant embarked on such course of conduct knowing that such appropriation was
23 unauthorized, unlicensed and without the prior consent of Plaintiff.

24 21. Defendant' conduct involved the appropriation of Plaintiff's name and identity in the
25 above-described way by appropriating Plaintiff's name and identity for purposes of marketing the
26 AMD processor. The appropriation of Plaintiff's name, likeness, image and identity by the
27 Defendant was, and continues to be, for the purpose of advertising and soliciting purchases of
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1 Defendant AMD's products, merchandise, and/or goods.

2 22. Defendant' use of Plaintiff's name and identity has resulted in a commercial advantage
3 to the Defendant and violates Plaintiff's rights.

4 23. By reason of the Defendant' wrongful acts of appropriation of Plaintiff's name, image
5 and identity as alleged herein, Plaintiff has been damaged in an amount to be determined at trial.

6 24. Plaintiff is informed and believes and, on that basis, alleges that Defendant AMD
7 appropriated Plaintiff's name, image, and identity by appropriating Plaintiff's name and identity for
8 purposes of marketing the AMD processor knowing such to belong to Plaintiff. Plaintiff is
9 furthermore informed and believes and, on that basis, alleges that Defendant AMD's knowing
10 appropriation of Plaintiff's identity was accomplished willingly and in conscious disregard of
11 Plaintiff's rights, insofar as AMD, well aware that Plaintiff was and remains adamantly protective
12 of his right to publicity, nevertheless appropriated Plaintiff's name, likeness, image and identity
13 anyway without any grant of rights or license by him to the Defendant or anyone else. Such
14 willfulness and knowing disregard amounted to malice, for which Plaintiff therefore seeks against
15 AMD an award of punitive damages.

16 25. Plaintiff is informed and believes and, on that basis, alleges that unless permanently
17 restrained by this court, the Defendant will continue to appropriate Plaintiff's name, likeness, image
18 and identity to the Defendant' advantage, thus causing confusion and deception in the marketplace,
19 and engendering a multiplicity of judicial proceedings. Unless permanently restrained by this court,
20 irreparable harm is likely to occur to Plaintiff, and pecuniary compensation will not afford Plaintiff
21 adequate relief for the damage to his good will.

22 **V. THIRD CLAIM FOR RELIEF**

23 **UNFAIR BUSINESS PRACTICES—CAL.BUS.& PROF. CODE §§ 17200 ET SEQ.**

24 **(Against All Defendants)**

25 26. Plaintiff hereby repeats and realleges paragraphs 1 though 25 of his Complaint as though
26 the same were set forth herein in their entirety.

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1 27. Defendant' use of Plaintiff's name, image and identity by appropriating Plaintiff's name
2 and identity for purposes of marketing the AMD processor creates a likelihood that Plaintiff's
3 customers, potential customers, and the public generally will be confused or misled as to the source
4 of said endorsement by Plaintiff of the Defendant' products, merchandise, goods or services in that
5 they are likely to believe that Plaintiff's business is affiliated with that of the Defendant, all to the
6 irreparable injury of Plaintiff's business and good will, and to the unjust enrichment of the
7 Defendant.

8 28. Defendant AMD's intentional actions, as described hereinabove, were conducted with
9 malice in that they carried on such conduct with a willful and conscious disregard of Plaintiff's
10 rights. Plaintiff therefore seeks an award of punitive damages.

11 29. Defendant' continuing course of conduct in incorporating Plaintiffs' name, image and
12 identity in the above-described way by appropriating Plaintiff's name and identity for purposes of
13 marketing the AMD processor constitutes unfair and improper business practices, which will likely
14 cause irreparable injury to Plaintiff.

15 30. Plaintiff has no adequate remedy of law in that it will be extremely difficult to ascertain
16 the true extent of damages to Plaintiff's business and good will as a result of the Defendant'
17 wrongful actions as alleged herein. Accordingly, Plaintiff is entitled to a preliminary and permanent
18 injunction restraining the Defendant from any further unlawful conduct.

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20 **VI. FOURTH CLAIM FOR RELIEF**
21 **VIOLATION OF CAL. BUS & PROF. CODE §14250**
22 **(Against All Defendants)**

23 31. Plaintiff hereby repeats and realleges paragraphs 1 though 30 of his Complaint as though
24 the same were set forth herein in their entirety.

25 32. By reason of the wrongful conduct alleged above herein, dilution has, or is likely, to
26 occur. As a result thereof, Plaintiff has suffered an erosion of the public's identification with his
27 trademark name and image
28

1 33. Defendant' continuing course of conduct in incorporating Plaintiffs' name, image and
2 identity in the above-described way by appropriating Plaintiff's name and identity for purposes of
3 marketing the AMD processor constitutes unfair and improper business practices, which will likely
4 cause irreparable injury to Plaintiff.

5 34. Plaintiff has no adequate remedy of law in that it will be extremely difficult to ascertain
6 the true extent of damages to Plaintiff's business and good will as a result of the Defendant'
7 wrongful actions as alleged herein. Accordingly, Plaintiff is entitled to a preliminary and permanent
8 injunction restraining the Defendant from any further unlawful conduct.

9 **VII. FIFTH CLAIM FOR RELIEF**

10 **UNJUST ENRICHMENT**

11 **(Against All Defendants)**

12 33. Plaintiff hereby repeats and realleges paragraphs 1 through 34 of his Complaint as
13 though the same were set forth herein in their entirety

14 34. By virtue of the Defendant' unlawful misappropriation of Plaintiff's name, image and
15 identity, the Defendant have been unjustly enriched to the detriment of Plaintiff.

16 35. Plaintiff is informed and believes and, on that basis, alleges that Defendant AMD
17 appropriated Plaintiff's name and image, knowing such to belong to Plaintiff. Plaintiff is
18 furthermore informed and believes and, on that basis, alleges that Defendant AMD's knowing
19 appropriation of Plaintiff's identity was accomplished willingly and in conscious disregard of
20 Plaintiff's rights, insofar as AMD, well aware that Plaintiff was and remains adamantly protective
21 of his right to publicity, nevertheless appropriated Plaintiff's name, likeness, image and identity
22 anyway without any grant of rights or license by him to the Defendant or anyone else. Such
23 willfulness and knowing disregard amounted to malice, for which Plaintiff therefore seeks against
24 AMD an award of punitive damages.

25 **VIII. PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs pray for judgment against Defendant on the First, Second, Third,
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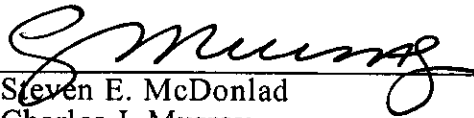
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and Fourth Claims for Relief, and each of them, as follows:

1. For a preliminary and permanent injunction enjoining the Defendant from exploiting Plaintiff's name, image and identity by incorporation of such in print advertisements or otherwise; and,
2. For an accounting of all revenues derived from the Defendant' advertising campaigns that feature Plaintiff's name, image and identity; and,
3. For Plaintiff's damages to be determined at trial; and,
4. For an award of punitive damages against Defendant AMD.
5. And, for the cost of suit herein and for such other and further relief as this court may deem just and proper, and which may otherwise be provided for by statute or law.

Dated: September 9, 2009

DE LA PEÑA & McDONALD, LLP

By 
 Steven E. McDonlad
 Charles J. Murray
 Attorneys for Plaintiffs
 CHARLES YEAGER &
~~VICTORIA YEAGER~~