

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

TVB HOLDINGS (USA), INC. and DISH
NETWORK L.L.C.,

Plaintiffs,

v.

GRAND STREET PHARMACEUTICAL
LLC d/b/a BUY-RITE PHARMACY IV,

Defendant.

CIVIL ACTION NO. 15-CV-9521

COMPLAINT

Plaintiffs TVB Holdings (USA), Inc. (“TVB (USA)”) and DISH Network L.L.C. (“DISH,” and together with TVB (USA), “Plaintiffs”), by and through their undersigned attorneys, for their Complaint, allege as follows:

NATURE OF THE ACTION

1. Despite being warned by several letters from Plaintiffs demanding that it cease and desist from its infringing activities, defendant Grand Street Pharmaceutical LLC d/b/a Buy-Rite Pharmacy IV (“Buy-Rite” or “Defendant”) continues to publicly perform Plaintiffs’ copyrighted programming without authorization at its business location at 215 Grand Street in Manhattan. Buy-Rite’s infringing public performance of Plaintiffs’ copyrighted programming is ongoing and continuous, and Plaintiffs have documented infringement of multiple specific copyrighted works.

2. Defendant’s infringing public performances of Plaintiffs’ programming is accomplished using a device known as the TVpad. The manufacturer and certain distributors of the TVpad have been the subject of federal copyright and trademark infringement litigation. The courts in those litigations have issued injunctions against the TVpad manufacturer and TVpad

distributors, and a number of other TVpad distributors have settled by, among other things, agreeing to injunctions on consent.

3. Defendant's infringing conduct is clearly knowing and willful, in light of its receipt of Plaintiffs' cease and desist letters.

4. As a result of Buy-Rite's unlawful and willful conduct, Plaintiffs are entitled to damages for copyright infringement as well as preliminary and permanent injunctive relief barring Buy-Rite from (i) publicly performing, publicly displaying and/or reproducing Plaintiffs' copyrighted works in the United States and (ii) inducing, encouraging, causing, facilitating, and/or materially contributing to the unauthorized public performance and/or reproduction of Plaintiffs' copyrighted works in the United States by others.

THE PARTIES

5. Plaintiff TVB (USA) is a corporation organized under the laws of the State of California with its principal place of business in Norwalk, California. TVB (USA) is a wholly owned indirect subsidiary of TVB, a Hong Kong company that is the largest and most popular producer of Cantonese-language television programming in the world. TVB (USA) distributes and licenses TVB television programming in the United States.

6. Plaintiff DISH Network L.L.C. ("DISH") is a limited liability company organized under the laws of the State of Colorado with its principal place of business in Englewood, Colorado. DISH is the nation's third-largest pay television service, delivering video services to approximately 14 million customers nationwide through both satellite and Internet platforms.

7. Defendant Grand Street Pharmaceutical LLC dba Buy-Rite Pharmacy IV is a limited liability corporation organized and existing under the laws of New York, having its principal place of business at 215 Grand Street, New York, New York 10013.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over Plaintiffs' federal claims pursuant to 28 U.S.C. §§ 1331 and 1338 because they arise under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*

9. The Court has personal jurisdiction over Defendant because it resides in the State of New York.

10. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1)-(2) because Defendant resides in this district and a substantial part of the events giving rise to these claims arose and/or occurred in this district.

FACTUAL BACKGROUND

A. TVB (USA)'s Business and Intellectual Property Rights

11. TVB (USA)'s ultimate parent company, TVB, operates five over-the-air television channels—Jade, J2, Jade HD, iNews (Cantonese), and Pearl (English)—and 13 pay TV channels in Hong Kong. TVB also has operations in Taiwan, including the popular TVBS, TVBS-News, and TVBS-G channels.

12. TVB produces and distributes a wide variety of television programming and copyrighted works including, but not limited to, episodic dramas, comedies, news programs, sports, and other programs that are initially broadcast in Hong Kong and subsequently or simultaneously distributed internationally.

13. By agreement, TVB's wholly owned subsidiary TVBO Production Limited ("TVBO") holds the copyrights subsisting in TVB programs throughout the world except Hong Kong. TVBO, through an affiliate, has granted TVB (USA) the exclusive right to reproduce, publicly perform, transmit, and distribute all TVB programs in all media in the United States.

14. Certain TVB television programs that originally air in Hong Kong and Taiwan are distributed by TVB (USA) in the United States on the following channels: TVB1, TVB2, TVBe, TVB Pearl, TVBHD, TVB8, TVB Drama, TVBS, Jade SF, Jade NY, and Jade LA (hereafter, the “TVB U.S. channels”). TVB (USA)’s most popular television package is called the “Jadeworld” Package, which includes TVB1, TVB2, TVBe, and TVBS.

15. In the United States, TVB (USA) and its affiliates distribute the TVB U.S. channels and the TVB programs comprising those channels through license agreements with certain cable television systems, satellite television services, and other multi-channel distributors, including Plaintiff DISH. TVB (USA)’s authorized U.S. providers pay TVB (USA) or its affiliates licensing fees for the right to broadcast TVB’s U.S. channels and programs to their customers in the United States.

16. TVB (USA) has licensed to DISH the exclusive right to transmit via satellite in the United States the TVB U.S. Channels, as well as the exclusive right to transmit the TVB U.S. Channels in the United States via Over-the-Top¹ (“OTT”), but excluding video-on-demand format. TVB (USA) retains the exclusive right to reproduce, publicly perform, and transmit TVB programming in the United States on platforms including Internet Protocol Television (IPTV) and OTT, in video-on-demand format.

17. TVB (USA) spends substantial amounts of money each year on the facilities, equipment, and labor necessary to distribute the TVB U.S. channels in the United States.

18. TVBO holds United States copyright registrations for the following television programs and episodes (the “Registered TVB Programs”):

¹ For purposes of this Complaint, “Over The Top” or “OTT” refers to the delivery of video programming using an Internet connection that is not owned, managed, or operated by the party delivering the programming (e.g., Netflix).

Program	Registration number
Lord of Shanghai – 梟雄 (Episode 2)	PA 1-960-690
With Or Without You (Episode 3)	PA 1-962-246
Taipei On A Tray (Episode 11)	PA 1-962-245
Come Home Love (Episode 888)	PA 1-962-247

Attached hereto as **Exhibit A** are true and correct copies of the certificates of registration for the Registered TVB Programs

19. The Registered TVB Programs are only a small subset of the total programming that TVB produces and that TVB (USA) distributes in the United States.

20. The Registered TVB Programs are enumerated for purposes of establishing Plaintiffs' entitlement to statutory damages and attorneys' fees. Because all of TVB's programs are non-United States works, registration with the United States Copyright Office is not a prerequisite to filing a copyright infringement action with respect to these works. 17 U.S.C. §§ 101, 411(a). Buy-Rite is liable for copyright infringement of, and Plaintiffs are entitled to damages and injunctive relief with respect to, all of TVB's copyrighted television programming that has been and continues to be publicly performed without authorization by Buy-Rite.

B. DISH's Business and Intellectual Property Rights

21. DISH provides its subscribers satellite television services and OTT television services. DISH's OTT television services are available on numerous viewing devices including Apple iPhones and iPads, Android phones and tablets, Samsung Smart TVs and Blu-Ray devices, Amazon Fire, personal computers, and the Roku Streaming Player.

22. Under a license agreement, as noted above, DISH owns the exclusive rights to retransmit certain TVB U.S. channels and the TVB programs comprising those channels (a) via satellite in the United States and (b) via OTT television services in the United States, except for video-on-demand content. In return for monthly subscription fees, DISH offers its United States

subscribers access to TVB programming through the Jadeworld Package.

C. Defendant Buy-Rite’s Unlawful Conduct

23. Buy-Rite operates a retail pharmacy and shop in New York City located at 215 Grand St, New York, New York 10013. Buy-Rite shows Chinese-language programming on a television located in its establishment, including TVB programming, immediately above the pharmacy counter and plainly visible to Buy-Rite’s customers:



24. Buy-Rite shows this Chinese-language programming, including TVB programming, using a set-top box device known as a TVpad that is the subject of a lawsuit brought in the Central District of California by TVB, DISH and others, *China Central Television v. Create New Technology (HK) Limited*, Civil Action No. CV 15-1869 (the “TVpad Litigation”). The court in the TVpad Litigation has found, among other things, that applications on the TVpad device stream TVB programming without authorization. ¶¶ 10-12, 16. The court in the TVpad Litigation thus has preliminarily enjoined the defendants in that action and those in active concert and participation with them from, among other things, publicly performing TVB’s copyrighted programming through TVpad device applications and otherwise.

25. The TVpad Litigation has been the subject of widespread news coverage—for

example in the newspapers Sing Tao Daily and World Journal—and of press releases issued by Plaintiffs among others.

26. On August 3, 2015, Plaintiffs' counsel sent a letter to Buy-Rite stating that Plaintiffs' investigation revealed that Buy-Rite was committing copyright infringement by showing copyrighted TVB programming on its premises using a TVpad; notifying Buy-Rite of the preliminary injunction in the TVpad Litigation; and demanding that Buy-Rite cease using the TVpad device to show TVB programming. This letter warned Buy-Rite that, should Buy-Rite not comply, TVB and DISH would vigorously enforce their rights and seek damages for copyright infringement.

27. On October 13, 2015, Plaintiffs' counsel arranged for a letter to be hand-delivered to Buy-Rite stating that Plaintiffs' investigation had revealed that Buy-Rite was continuing to show TVB programming without authorization, even after the August 3 letter; and demanding that Buy-Rite cease and desist from showing such programming in its premises. This letter warned Buy-Rite that, should Buy-Rite not comply, TVB and DISH would vigorously enforce their rights and seek damages for copyright infringement.

28. Buy-Rite publicly performs TVB's copyrighted programming without authorization in its establishment using one or more TVpad devices. On October 27, 2015, Plaintiffs' investigator visited the Buy-Rite pharmacy location at 215 Grand Street and documented Buy-Rite's performance of the following Registered TVB Program:

Program	Registration number	Date infringement documented
Lord of Shanghai – 梟雄 (Episode 2)	PA 1-960-690	October 27, 2015

29. On October 28, 2015, Plaintiffs' investigator visited the Buy-Rite pharmacy location at 215 Grand Street and documented Buy-Rite's performance of the following

Registered TVB Program:

Program	Registration number	Date infringement documented
With Or Without You (Episode 3)	PA 1-962-246	October 28, 2015

30. October 30, 2015 Plaintiffs' investigator visited the Buy-Rite pharmacy location at 215 Grand Street and documented Buy-Rite's performance of the following Registered TVB Program:

Program	Registration number	Date infringement documented
Taipei On A Tray (Episode 11)	PA 1-962-245	October 30, 2015

31. November 2, 2015 Plaintiffs' investigator visited the Buy-Rite pharmacy location at 215 Grand Street and documented Buy-Rite's performance of the following Registered TVB Program:

Program	Registration number	Date infringement documented
Come Home Love (Episode 888)	PA 1-962-247	November 2, 2015

COUNT ONE
COPYRIGHT INFRINGEMENT

32. Plaintiffs hereby incorporate by reference and reallege each and every allegation of Paragraphs 1 through 31 above.

33. Plaintiffs are the legal and/or beneficial owners of exclusive rights in the United States to TVB's television programs and broadcasts, including but not limited to the Registered TVB Programs (collectively, the "Copyrighted Works").

34. The Copyrighted Works are original audiovisual works that have been fixed in a tangible medium of expression and constitute copyrightable subject matter within the meaning of 17 U.S.C. § 102.

35. Each of the Copyrighted Works is entitled to protection under 17 U.S.C. §104(a) and (b) because it is either (1) an unpublished work, or (2) a work first published in Hong Kong, which is a treaty party to the Berne Convention.

36. Under 17 U.S.C. § 106, Plaintiffs own the exclusive rights to reproduce the Copyrighted Works, to distribute copies of the Copyright Works to the public, to publicly perform the Copyrighted Works, to publicly display the Copyrighted Works, and to make derivative works based upon the Copyrighted Works. Under 17 U.S.C. § 106, Plaintiffs also own the exclusive rights to authorize others to exercise those rights.

37. By the actions alleged above, Buy-Rite has infringed and will continue to directly infringe Plaintiffs' copyrights in the Copyrighted Works by unlawfully publicly performing and/or authorizing others to publicly perform the Copyrighted Works in the United States, in violation of Plaintiffs' exclusive rights under 17 U.S.C. § 106.

38. By the actions alleged above, Buy-Rite has directly infringed and will continue to directly infringe Plaintiffs' copyrights in the Copyrighted Works by unlawfully publicly displaying and/or authorizing others to publicly display the Copyrighted Works in the United States, in violation of Plaintiffs' exclusive rights under 17 U.S.C. § 106.

39. The foregoing acts were and are conducted by Buy-Rite without Plaintiffs' authorization or consent and are not otherwise permissible under the Copyright Act.

40. Buy-Rite committed the foregoing acts willfully and with full knowledge of and conscious disregard for Plaintiffs' copyrights and exclusive rights in and to the Copyrighted Works.

41. Plaintiffs are entitled to recover from Buy-Rite the profits made by it attributable to the infringements of the Copyrighted Works and Plaintiffs' damages therefrom, or, at Plaintiffs' election, statutory damages of up to \$150,000 per work pursuant to 17 U.S.C. § 504 (at present, Plaintiffs have registrations for four works that they has identified as being infringed, entitling Plaintiffs to seek up to \$600,000 in statutory damages).

42. Plaintiffs are also entitled to recover from Buy-Rite costs and attorneys' fees pursuant to 17 U.S.C. § 505.

43. The foregoing acts of infringement by Buy-Rite are causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated for or measured in money damages. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to preliminary and permanent injunctions prohibiting further infringements of the Copyrighted Works and their exclusive rights under the Copyright Act by Buy-Rite.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court grant judgment in favor of Plaintiffs and against Buy-Rite as follows:

a. Preliminarily and permanently enjoining Buy-Rite and its officers, agents, servants, and employees and all those in active concert or participation with them, from (i) publicly performing, publicly displaying, transmitting, distributing, and/or reproducing Plaintiffs' Copyrighted Works and (ii) inducing, encouraging, causing, facilitating, and/or

materially contributing to the unauthorized public performance, public display, transmission, distribution, and/or reproduction of Plaintiffs' Copyrighted Works by others.

b. Awarding Plaintiffs either Plaintiffs' actual damages plus any profits made by Buy-Rite attributable to their violations not taken into account when computing actual damages; or at Plaintiffs' election statutory damages, in an amount to be determined at trial;

c. Awarding Plaintiffs their costs of prosecuting this action, including reasonable attorneys' fees;

d. Awarding Plaintiffs prejudgment interest at the highest legal rate allowed under law;

e. Directing Buy-Rite to file with this Court within 30 days after the entry of final judgment a written statement, under oath, setting forth in detail the manner in which they have complied with the Judgment of the Court; and

f. Awarding Plaintiffs such other and further relief as this Court deems just, proper and equitable.

Dated: December 4, 2015

Respectfully submitted,

By: /s/ Lacy H. Koonce, III

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