

<b>TO: Mail Stop 8</b> <b>Director of the U.S. Patent &amp; Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court \_\_\_\_\_ on the following  Patents or  Trademarks:

DOCKET NO. CV 12-04395 MEJ	DATE FILED 8/21/12	U.S. DISTRICT COURT 450 Golden Gate Avenue, 16 <sup>th</sup> Floor San Francisco, CA 94102
PLAINTIFF SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT		DEFENDANT YAHYA ABDULLA MOHAMED
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 SEE COMPLAINT		
2 972,406		
3 975,032		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wiekling	(BY) DEPUTY CLERK Alfred Amistoso	DATE August 23, 2012
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Copy 1—Upon initiation of action, mail this copy to Commissioner    Copy 3—Upon termination of action, mail this copy to Commissioner  
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner    Copy 4—Case file copy

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BAY AREA RAPID TRANSIT

**FILED**  
AUG 21 2012  
RICHARD W. [unclear]  
CLERK, U.S. DIST. COURT  
NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

**CV 12 4395**  
Case No.

10 San Francisco Bay Area Rapid Transit  
11 District,

12 Plaintiff,

13 vs.

14 Yahya Abdulla Mohamed, a.k.a Taher Yahaya  
15 Abdullah, Ramzey Mohamed, BART Gas &  
Food, and DOES 1 - 10, inclusive,

16 Defendants.

**COMPLAINT FOR FEDERAL  
TRADEMARK INFRINGEMENT AND  
DILUTION; STATE AND FEDERAL  
UNFAIR COMPETITION  
JURY DEMAND**

**MEJ**

17  
18 Plaintiff San Francisco Bay Area Rapid Transit District ("BART") for its complaint against  
19 Defendants Yahya Abdulla Mohamed, a.k.a Taher Yahaya Abdullah, Ramzey Mohamed, BART Gas  
20 & Food Station, and Does 1-10, allege as follows:

21 **NATURE OF THE ACTION**

22 I. This is an action to redress violations of the federal trademark laws, 15 U.S.C. §1114,  
23 et seq., and federal and state laws of unfair competition, 15 U.S.C. §1125(a) et seq., as amended, and  
24 Cal. Bus. & Prof. Code § 17200, as the result of willful and unauthorized use by defendants of  
25 BART's intellectual property, as more fully set forth hereinafter. BART seeks preliminary and  
26 permanent injunctive relief restraining trademark infringement and dilution by defendants of BART's  
27 name, trademark and service mark BART and unfair competition, damages as the direct and proximate  
28 result thereof, and related relief.

COMPLAINT

**THE PARTIES**

1  
2           2.       Plaintiff San Francisco Bay Area Rapid Transit District is a rapid transit district  
3 established pursuant to California Public Utilities Code Section 28500 et seq., with its principal place  
4 of business located at 300 Lakeside Drive, Oakland, California 94612.

5           3.       Plaintiff is informed and believes, and upon that basis alleges, that Defendant Yahya  
6 Abdulla Mohamed, a.k.a Taher Yahaya Abdullah, an individual residing in the Northern District of  
7 California, is an owner, employee and/or agent of defendant BART Gas & Food Station, and is  
8 actively engaged in the operation, management and/or control of defendant BART Gas & Food  
9 Station.

10           4.       Plaintiff is informed and believes, and upon that basis alleges, that Defendant Ramzey  
11 Mohamed, an individual residing in the Northern District of California, is an owner, employee and/or  
12 agent of defendant BART Gas & Food Station, and is actively engaged in the operation, management  
13 and/or control of defendant BART Gas & Food Station.

14           5.       Plaintiff is informed and believes, and upon that basis alleges, that Defendant BART  
15 Gas & Food Station is an unincorporated entity doing business in the Northern District of California,  
16 and is actively engaged in operating a gas station, retail market, and parking rental services located at  
17 1395 7th Street, Oakland, CA 94607, directly adjacent to Plaintiff's West Oakland BART station.

18           6.       Plaintiff does not know the true names of the individuals, corporations, partnerships or  
19 other entities sued and identified herein as Does 1 through 10. Plaintiffs allege that said defendants are  
20 liable to Plaintiffs under the claims for relief set forth below, and will request leave of this Court to  
21 amend this Complaint when the true names of said defendants are discovered.

22           7.       Plaintiff is informed and believes, and upon that basis alleges, that Defendants,  
23 including Does 1 through 10, have themselves committed the acts complained of below, and/or have  
24 caused or directed other defendants to commit said acts. All allegations against Defendants  
25 collectively also refer to each Defendant individually.

**JURISDICTION AND VENUE**

26  
27           8.       This Court has subject matter jurisdiction over Plaintiffs' claims under and pursuant to  
28 28 U.S.C. §§ 1331 and 1338.

1 9. Venue in the Northern District of California is proper pursuant to 28 U.S.C. §§ 1391(b),  
2 1391(c), and 1400(a) because (i) Defendants have sufficient connection with the Northern District of  
3 California to make venue proper and/or (ii) Defendants and or their agents reside or may be found in  
4 the District.

5 **INTRADISTRICT ASSIGNMENT**

6 10. Assignment on a district-wide basis is appropriate under Civil Local Rule 3-2(c)  
7 because this is an Intellectual Property Action.

8 **ALLEGATIONS COMMON TO ALL COUNTS**

9 11. Plaintiff San Francisco Bay Area Rapid Transit District ("BART") is a government  
10 agency, specifically, a special purpose transit district, formed by the California state legislature in  
11 1957 to build and operate a public rapid transit system serving the San Francisco Bay Area. Plaintiff's  
12 official opening day for its rapid transit services was September 11, 1972, and Plaintiff has been  
13 providing such services continuously since then. Today BART operates passenger rapid transit train  
14 services via 669 third rail propulsion trains over 104 miles of surface, elevated and subway rails  
15 between 44 BART stations on five lines connecting San Francisco with cities and suburbs in the  
16 California counties of San Francisco, Alameda, Contra Costa, and San Mateo. BART also has direct  
17 connections to other regional rail services and bus lines. BART is the fifth busiest heavy rail rapid  
18 transit system in the United States. BART's average weekday ridership is approximately 380,000  
19 passengers; weekend day ridership is approximately 310,000 passengers. BART receives federal  
20 funding and is subject to the jurisdiction of the Federal Transit Administration.

21 12. Long before the launch of its services in 1972, Plaintiff has been known to the public  
22 by its acronym, BART. All of BART's trains, stations and promotional materials use the name,  
23 trademark and service mark BART, as well as BART's distinctive logo comprising the name BART in  
24 upper case letters combined with overlapping lower case letters "b" and "a" (the BART Logo)  
25 (collectively, the BART name and the BART Logo are referred to hereinafter as the "BART Marks").

26 13. BART owns U.S. Trademark Registration No. 0972406 for the word mark BART and  
27 No. 0975032 for the design mark comprising the BART Logo. Both registrations are for "prints and  
28 publications issued from time to time-namely, books, brochures, pamphlets, newsletters, maps and

1 posters" in class 16, and "transportation services-namcly, a regional rapid transit system" in class 39.  
2 Both registrations are incontestable. True and correct copies of these registrations are attached hereto  
3 as Exhibit A.

4 14. Plaintiff's BART Marks have become well-known and famous through continuous and  
5 widespread use of the marks in the U.S. and worldwide for over forty years. BART advertises its  
6 services extensively. BART has been featured in at least 12 motion pictures, many television shows,  
7 and even museum exhibits. BART is often the subject of unsolicited media coverage both locally and  
8 nationwide.

9 15. Plaintiff is informed and believes, and on that basis alleges, that in or about 2011  
10 Defendants began operating a business under signage reading "BART Gas & Food Station," "Bart Gas  
11 & Food Station," and "Bart Gas & Food" (collectively, the BART Gas & Food Station Business").  
12 Defendant's BART Gas & Food Station Business is located at 1395 7th Street, Oakland, CA 94607,  
13 directly adjacent to Plaintiff's West Oakland BART station. The BART Gas & Food Station Business  
14 offers gas station services, retail store services, and rental parking to BART patrons. True and correct  
15 copies of signage for the BART Gas & Food Station Business are attached hereto as Exhibit B.

16 16. Defendants did not seek permission from BART to use the BART name and mark for  
17 their BART Gas & Food Station Business.

18 17. BART does not authorize use of its famous BART name and mark in connection with  
19 private businesses.

20 18. On June 4, 2012, BART through its counsel, sent a cease and desist letter to  
21 Defendants by Express Mail. The U.S. Postal Service confirmed that the letter was delivered on June  
22 7, 2012. In the June 4 letter, BART's counsel informed Defendants that their use of the BART name  
23 for their business constituted infringement of BART's trademark rights, and on behalf of BART  
24 offered Defendants a reasonable time frame to change their business name and signage. A true and  
25 correct copy of this letter is attached as Exhibit C hereto. Defendants did not respond to this letter.

26 19. On July 5, 2012, BART's counsel sent a follow up letter to Defendants. The U.S.  
27 Postal Service confirmed that the July 5 letter was delivered on July 7, 2012. To date, Defendants  
28 have not responded.

1 20. Plaintiff is informed and believes, and upon that basis alleges, that Defendants are  
2 continuing and likely to expand their unauthorized use of the BART name and mark to identify and  
3 advertise their business, and, unless restrained by this court, will continue to cause harm to BART's  
4 goodwill by doing so.

5 **FIRST CLAIM FOR RELIEF**

6 **Infringement of Federally Registered**  
7 **Trademarks Under 15 U.S.C. §1114 et seq.**

8 21. BART restates and reavers the allegations of paragraphs 1 through 20, inclusive.

9 22. The incontestable U.S. registered trademarks, namely, the BART word mark and the  
10 BART Logo (the "Registered Trademarks") as described above, have been extensively used,  
11 advertised, and promoted through the United States and the world in connection with BART's services  
12 for over forty years.

13 23. The Registered Trademarks are inherently distinctive. Moreover, they are conclusively  
14 distinctive because the registrations are incontestable. As a result of BART's use, advertisement and  
15 promotion of BART's Registered Trademarks, each of these trademarks have become well and  
16 favorably known throughout the United States and the world as identifying BART and its services.  
17 BART has developed exceedingly valuable goodwill with respect to its Registered Trademarks.

18 24. Upon information and belief, Defendants have adopted the nearly identical and/or  
19 confusingly similar names BART Gas & Food Station, Bart Gas & Food Station, and Bart Gas &  
20 Food (the "Infringing Marks") for their business signage, and have advertised, promoted, displayed,  
21 offered for sale and/or sold services under the Infringing Marks at their business located directly  
22 adjacent to BART's West Oakland BART station. Upon information and belief, Defendants have  
23 engaged in such conduct intentionally and willfully.

24 25. Defendants' use of the Infringing Marks in their business signage, advertising and  
25 promotional materials is likely to cause members of the relevant public and trade to believe that  
26 Defendants' services and products are provided by, in affiliation with, or under the sponsorship or  
27 approval of BART.

28 ///

1 26. Upon information and belief, Defendants willfully selected, adopted and/or used the  
2 Infringing Marks with knowledge of the valuable goodwill and reputation associated therewith, and  
3 with intent to confuse, mislead, and deceive the public into believing Defendants' goods and services  
4 come from BART or are in some manner associated with, approved or endorsed by BART.

5 27. Upon information and belief, unless restrained by this Court, Defendants will continue  
6 to infringe BART's Registered Trademarks by their use of the Infringing Marks.

7 28. By their wrongful acts, Defendants, unless restrained by this Court, will cause serious  
8 and irreparable harm to BART's reputation and goodwill.

9 29. As a direct and proximate result thereof, BART has been and continues to be damaged  
10 in an amount to be ascertained.

11 30. BART has no adequate remedy at law.

12 31. Defendants' conduct constitutes an exceptional case justifying an award of attorneys'  
13 fees pursuant to 15 U.S.C. § 1117(a).

#### 14 SECOND CLAIM FOR RELIEF

#### 15 Federal Unfair Competition, False Designation of Origin and Common Law Trademark 16 Infringement Under 15 U.S.C. § 1125(a)

17 32. BART restates and reavers the allegations of Paragraphs 1 through 20, inclusive.

18 33. The BART Marks as identified above, are inherently distinctive. Moreover, as  
19 described above, the BART Marks have been extensively used, advertised, and promoted throughout  
20 the United States and the world for over forty years in connection with BART's services.

21 34. As a result of BART's use, advertisement and promotion of the BART Marks, each of  
22 these trademarks have become well and favorably known throughout the United States and world as  
23 identifying BART and its services. BART has developed exceedingly valuable goodwill with respect  
24 to all of the BART Marks.

25 35. Upon information and belief, Defendants have adopted the nearly identical and/or  
26 confusingly similar names BART Gas & Food Station, Bart Gas & Food Station, and Bart Gas &  
27 Food (the "Infringing Marks") for their business signage, and have advertised, promoted, displayed,  
28 offered for sale and/or sold services under the Infringing Marks at their business located directly

1 adjacent to BART's West Oakland BART station. Upon information and belief, Defendants have  
2 engaged in such conduct intentionally and willfully.

3 36. Defendants' use of the Infringing Marks in their business signage, advertising and  
4 promotional materials is likely to cause members of the relevant public and trade to believe that  
5 Defendants' services and products are provided by, in affiliation with, or under the sponsorship or  
6 approval of BART, and thus constitutes unfair competition and false advertising.

7 37. Upon information and belief, Defendants willfully selected, adopted and/or used the  
8 Infringing Marks with knowledge of the valuable goodwill and reputation associated therewith, and  
9 with intent to confuse, mislead, and deceive the public into believing Defendants' goods and services  
10 come from BART or are in some manner associated with, approved or endorsed by BART.

11 38. Upon information and belief, unless restrained by this Court, Defendants will continue  
12 to infringe BART's Registered Trademarks by their use of the Infringing Marks.

13 39. By their wrongful acts, Defendants, unless restrained by this Court, will cause serious  
14 and irreparable harm to BART's reputation and goodwill.

15 40. As a direct and proximate result thereof, BART has been and continues to be damaged  
16 in an amount to be ascertained.

17 41. BART has no adequate remedy at law.

### 18 **THIRD CLAIM FOR RELIEF**

#### 19 **Federal Trademark Dilution Under 15 U.S.C. § 1125(c)**

20  
21 32. BART restates and reavers the allegations of Paragraphs 1 through 10, inclusive.

22 33. The BART Marks are widely recognized by the general consuming public in the United  
23 States as designations of the source of BART's services and thus are famous marks within the  
24 meaning of Section 43(c)(2)(A) of the Lanham Act, 15 U.S.C. § 1125(c)(2)(A).

25 34. The BART Marks became famous within the meaning of Section 43(c)(2)(A) of the  
26 Lanham Act, 15 U.S.C. § 1125(c)(2)(A), long before the acts of the Defendants complained of herein.

27 35. Defendants' use of the BART Marks as alleged above is likely to blur and tarnish the  
28 distinctive qualities of Plaintiff's famous BART name and marks within the meaning of Section

1 43(c)(2)(B) of the Lanham Act, 15 U.S.C. § 1125(c)(2)(B).

2 36. Defendants' conduct has been undertaken with a willful intent to trade on the  
3 reputation of BART and to dilute the famous BART Marks, thereby entitling BART to damages and  
4 the other remedies available pursuant to Section 43(c)(5) of the Lanham Act, 15 U.S.C. § 1125(c)(2).

5 36. Defendants' conduct is causing immediate and irreparable injury to BART and will  
6 continue to damage BART until enjoined by this Court.

7 38. BART has no adequate remedy at law.

8 **FOURTH CLAIM FOR RELIEF**

9 **Unfair Competition Under Cal. Bus. & Prof. Code § 17200**

10 39. BART restates and reavers the allegations of paragraphs 1 through 10, inclusive, and  
11 22-31, inclusive.

12 40. Defendants' above-averred actions constitute unlawful, unfair, and fraudulent business  
13 practices and unfair, deceptive, misleading, and false advertising in violation of Cal. Bus. & Prof.  
14 Code § 17200, et seq.

15 41. By their wrongful acts, Defendants, unless restrained by this Court, will cause serious  
16 and irreparable harm to BART.

17 42. As a direct and proximate result thereof, BART has been and continues to be damaged  
18 in an amount to be ascertained.

19 43. BART has no adequate remedy at law.

20 WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

21 1. That Defendants, Defendants' agents, employees and licensees, and all persons or  
22 entities in active concert or participation with any of them who receive notice of the Court's Order, be  
23 preliminarily and permanently enjoined from:

24 A. Promoting, marketing, advertising, distributing, selling, and/or otherwise  
25 displaying or offering any services or using any products, signage, or other items that incorporate,  
26 reflect, or contain any unauthorized use of the BART Marks, and/or infringing said trademarks in any  
27 manner;

28 B. Otherwise infringing any of Plaintiff's trademarks;

1 C. Otherwise competing unfairly with Plaintiff.

2 2. That Defendants, their agents, employees, and licensees, and all those acting under its  
3 direction and pursuant to its control, be directed to deliver up for destruction all infringing signage,  
4 and other items bearing the BART Marks and other matter employed in the manufacture, distribution  
5 and sale of such infringing items.

6 3. That Defendants be required to pay BART:

7 A. Any and all profits made by Defendants as a result of the aforesaid  
8 infringements, together with interest thereupon in an amount presently unknown;

9 B. BART's damages in an amount presently unknown, together with interest;

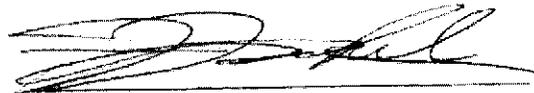
10 C. Three times the profits and damages pursuant to 15 U.S.C. § 1117(b).

11 4. That Defendants be required to pay BART the costs of this action, together with  
12 BART's reasonable attorneys' fees, under 15 U.S.C. §1117(a).

13 5. Plaintiff be awarded any other relief as this Court may deem just and proper.

14 Dated: August 17, 2012

OWEN, WICKERSHAM & ERICKSON

15  
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Linda Joy Kattwinkel  
Eric D. Gelwicks

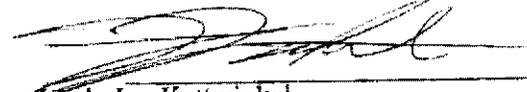
17  
18 *Attorneys for Plaintiff*  
19 San Francisco Bay Area Rapid Transit District

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands a jury trial of all issues in the above-captioned action which are  
22 triable to a jury.  
23

24 Dated: August 17, 2012

OWEN, WICKERSHAM & ERICKSON

25  
26 

Linda Joy Kattwinkel  
Eric D. Gelwicks

27 *Attorneys for Plaintiff*  
28 San Francisco Bay Area Rapid Transit