

Michael R. Murphy  
Jennifer J. Nagle  
K&L GATES LLP  
State Street Financial Center  
One Lincoln Street  
Boston, MA 02111  
(617) 261-3100  
(617) 261-3175  
[michael.r.murphy@klgates.com](mailto:michael.r.murphy@klgates.com)  
[jennifer.nagle@klgates.com](mailto:jennifer.nagle@klgates.com)  
*Attorneys for Plaintiff  
Tile, Inc.*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

TILE, INC.,

Plaintiff,

v.

888 DIGITAL INC.,

Defendant.

**CIVIL ACTION NO.** \_\_\_\_\_

**DOCUMENT ELECTRONICALLY  
FILED**

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

Plaintiff Tile, Inc. (“Tile” or “Plaintiff”), by and through its undersigned counsel K&L Gates LLP, for its Complaint against Defendant 888 Digital Inc. (“888 Digital” or “Defendant”), alleges upon information and belief as follows:

**NATURE OF THIS ACTION**

1. Plaintiff seeks injunctive relief and monetary damages for Defendant’s trademark infringement, unfair competition, false advertising under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, arising from Defendant’s wrongful, unauthorized promotion and sale of Tile’s products.
2. Tile sells its products through a nationwide network of Authorized Resellers.

3. Further, Tile sells its products under the “Tile” brand. Tile is the owner of a federally-registered trademark TILE®, and has been utilizing that trademark since 2014.

4. Defendant offers for sale and sells non-genuine Tile products bearing this registered trademark on its website, 888digital.com. Tile products sold via unauthorized resellers, such as 888 Digital, do not come with a Tile warranty.

5. Despite advertising their Tile products as “new,” Defendant is deceiving customers by selling liquidated, used, or even potentially stolen Tile products.

6. Consumers are likely to be and have been actually confused by Defendant’s sale of Tile products that are being falsely advertised as new product when they are in fact used, liquidated, or potentially stolen products.

7. Defendant’s conduct has produced and, unless enjoined by this Court, will continue to produce a likelihood of consumer confusion and deception, to the irreparable injury of consumers and Tile.

8. As a result of Defendant’s actions, Tile is suffering a loss of the enormous goodwill that Tile has created in its trademarks and is losing profits from lost sales of products. This action seeks permanent injunctive relief and damages for Defendant’s trademark infringement and unfair competition.

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction over the subject matter of this Complaint pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b), as these claims arise under the Trademark Laws of the United States.

10. This Court has personal jurisdiction over Defendant which is a New Jersey corporation with its principal place of business in Linden, New Jersey. Defendant regularly does

business or has done business and sold products to consumers, including Tile products, within New Jersey.

11. Venue is proper in the United States District Court for the District of New Jersey pursuant to 28 U.S.C. § 1391 because the sole Defendant resides in this judicial district, and because a substantial part of the events or omissions giving rise to this claim occurred in this District.

### **PARTIES**

12. Plaintiff Tile, Inc. is a Delaware corporation with its principal place of business in San Mateo, CA. Tile designs, manufactures, and sells a variety of wireless tracking devices used to locate objects (“Tile products”).

13. Upon information and belief, Defendant 888 Digital Inc. is a New Jersey corporation with a principal place of business in Linden, New Jersey.

14. Upon information and belief, Defendant owns and operates the website 888digital.com. Nonetheless, Defendant attempts to mask its identity by registering the 888digital domain with Perfect Privacy LLC.

### **FACTS**

#### **A. Tile’s Authorized Reseller Network**

15. To create and maintain goodwill among its customers, Tile has taken substantial steps to ensure that Tile-branded products are of the highest quality. As a result, Tile has become widely known and is recognized throughout New Jersey, the United States, and the world as a manufacturer of high quality products.

16. One of the most significant steps taken in this regard is Tile’s development of a nationwide network of exclusive and authorized Resellers (“Authorized Resellers” and the “Authorized Reseller Network”).

17. As a prerequisite to becoming part of the carefully selected Authorized Reseller Network, Tile requires that each of its Authorized Resellers agrees to sell Tile products only at the locations and websites designated in their agreement (the “Authorized Reseller Agreement”). The terms of the Authorized Reseller Agreement also prohibit the transshipment, diversion, or transfer of any Tile products to any other party. Tile also ensures that its Authorized Reseller Network is familiar with the subtle differences between its products to ensure that customers receive exactly the Tile product they intend to purchase.

#### **B. Tile’s Trademark Usage**

18. On September 11, 2018, the U.S. Patent and Trademark Office (“USPTO”) issued Reg. No. 5,561,760 for use of the Tile mark on, *inter alia*, a “Wireless tracking device...” (hereinafter, the “Tile Mark”).

19. Tile is the sole and exclusive owner of the federally registered Tile Mark on the USPTO’s Principal Register. The Tile Mark has been in continuous use since at least 2014. Said registration is in full force and effect.

20. Tile owns several other federal trademark and service mark registrations, many of which utilize the Tile Mark. Said registrations are in full force and effect. All of Tile’s trademarks, including the Tile Mark, are collectively referred to as the “Tile Marks.”

21. Tile advertises, distributes, and sells its products to consumers under the Tile Marks.

22. Tile has also acquired common law rights in the use of the Tile Marks throughout the United States.

23. Tile’s federal trademark registrations were duly and legally issued, are valid and subsisting, and constitute *prima facie* evidence of Tile’s exclusive ownership of the Tile Marks.

24. Tile has invested significant time, money, and effort in advertising, promoting, and developing the Tile Marks throughout the United States and the world. Tile has also implemented an Authorized Reseller Network in order to guarantee that Tile products sold to consumers meet high standards of quality control. As a result of such actions, Tile has established substantial goodwill and widespread recognition in its Tile Marks, and those marks have become associated exclusively with Tile and its products by both customers and potential customers, as well as the general public at large.

25. At no time has Tile consented to Defendant's use of the Tile Marks.

### **C. Defendant's Infringing and Improper Conduct**

26. Defendant has sold Tile products on several retail platforms, including but not limited to 888digital.com.

27. Defendant offers for sale and sells Tile products using the Tile Marks.

28. Tile has never authorized or otherwise granted Defendant permission to use the Tile Marks in the sale of Tile products or otherwise.

29. Defendant is falsely advertising the Tile products it lists for sale as "new" despite the fact that they are in fact used, counterfeit, or liquidation products.

30. Indeed, Tile's investigation into other unauthorized resellers of products has confirmed that Defendant has improperly sold them used, counterfeit, or liquidation Tile products.

31. Defendant's literally false advertisement of a used or liquidation product as a "new" Tile product is detrimental to Tile as consumers do not receive the product that they believe that they are obtaining and such false advertising by Defendant results in less sales of actual "new" Tile product.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.