

Exhibit 1

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ANDREA E. BATES, ESQ. SBN 192491
Abates@Bates-Bates.com
MICHAEL A. BOSWELL, ESQ. SBN 198994
MBoswell@Bates-Bates.com
BATES & BATES, LLC
964 DeKalb Avenue, Suite 101
Atlanta, Georgia 30307
Phone (866) 701-0404 and (562) 360-2097
Fax (404) 963-6231

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: _____

Attorneys for
Plaintiff
GIBSON GUITAR CORP.,

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GIBSON GUITAR CORP., a Delaware)
corporation,)

Plaintiff,

vs.

WOWWEE USA, INC., a California)
corporation; WAL-MART STORES,)
INC., a Delaware corporation;)
AMAZON.COM, INC., a Delaware)
corporation; BIG LOTS STORES,)
INC., an Ohio corporation; KMART)
CORPORATION, a Michigan)
corporation; TARGET)
CORPORATION, a Minnesota)
corporation; TOYS "R" US-)
DELAWARE, INC., a Delaware)
corporation; WALGREEN CO., an)
Illinois corporation; BROOKSTONE)
COMPANY, INC., a New Hampshire)
corporation; BEST BUY CO. INC., a)
Minnesota corporation; EBAY INC., a)

Case No.

CV 10 8884 -RGK
(RZ)

COMPLAINT FOR:

- (1) Trademark Infringement;
- (2) Trademark Counterfeiting;
- (3) False Designation of Origin and Unfair Competition Under the United States Trademark Act;
- (4) False Description of Fact and Representations and False Advertising Under the United States Trademark Act;
- (5) Trademark Dilution Under the United States Trademark Act;
- (6) Trade Dress Infringement Under Federal Law;
- (7) Trademark Dilution Under California State Law;
- (8) Common Law Trademark Infringement;
- (9) Unfair Competition;
- (10) California Business & Professions Code §§ 14245, *et seq.*;

1	Delaware corporation, TOYWIZ, INC.,	}	(11) Contributory Infringement §43
2	a New York corporation, HSN, Inc. a		Lanham Act;
3	Delaware corporation, and DOES 1		(12) Contributory Infringement § 32
4	through 100,		Lanham Act; and
			(13) Accounting

Defendants,

JURY TRIAL DEMANDED

COMPLAINT

1. Plaintiff, Gibson Guitar Corp. ("Gibson"), for its Complaint against Defendants WowWee USA, Inc. ("WowWee"), Wal-Mart Stores, Inc. ("Wal-Mart"), Amazon.com, Inc. ("Amazon"), Big Lots Stores, Inc. ("Big Lots"), KMart Corporation ("KMart"), Target Corporation ("Target"), Toys "R" Us-Delaware, Inc. ("Toys R Us"), Walgreen Co. ("Walgreens"), Brookstone Company, Inc. ("Brookstone"), Best Buy Co. Inc. ("Best Buy"), ToyWiz, Inc. ("ToyWiz"), HSN, Inc. ("HSN"), and EBay Inc. ("Ebay") (collectively "Defendants") alleges as follows:

Nature of Action

2. This is an action for trademark infringement, trade dress infringement, trademark counterfeiting, unfair competition, trademark dilution and other related causes of action under federal, state and common law arising from the unauthorized use by Defendants of Gibson's Les Paul Body Shape Design® Trademark, the Les Paul Peg-Head® Trademark, the Flying V Body Shape Design® Trademark, the Explorer Body Shape Design® Trademark, the Kramer Peg-Head® Trademark, the SG Body Design® Trademark, the word mark LES PAUL®, the word mark FLYING V®, the word mark EXPLORER®, the word mark GIBSON® and the word mark S-G®.

The Parties

3. Gibson is a Delaware Corporation with a principal place of business at 309 Plus Park Boulevard, Nashville, Tennessee 37217.

4. Upon information and belief, Defendant WowWee is a California Corporation with a principal place of business at 5963 La Place Court, Suite 207, Carlsbad, California 92008.

5. Upon information and belief, Defendant WowWee is engaged in the promotion and sale of various products in the United States, including in this District, through their business, their distributors and through its websites at www.paperjamz.com, www.paperjamzstore.com and www.wowwee.com.

1 6. Upon information and belief, Defendant Wal-Mart is a Delaware
2 Corporation with a principal place of business at 702 SW 8th Street, MS #0555,
3 Bentonville, Arkansas.
4

5 7. Upon information and belief, Defendant Wal-Mart is engaged in the
6 promotion and sale of various products in the United States, including in this District,
7 through their business, their distributors and through its website at www.Walmart.com.
8

9 8. Upon information and belief, Defendant Amazon is a Delaware
10 Corporation with a principal place of business at 1200 12th Avenue South, Suite 1200,
11 Seattle, Washington 98144.
12

13 9. Upon information and belief, Defendant Amazon is engaged in the
14 promotion and sale of various products in the United States, including in this District,
15 through their business, their distributors and through its website at www.Amazon.com.
16

17 10. Upon information and belief, Defendant Big Lots is an Ohio Corporation
18 with a principal place of business at 300 Phillip Road, Columbus, Ohio 43228.
19

20 11. Upon information and belief, Defendant Big Lots is engaged in the
21 promotion and sale of various products in the United States, including in this District,
22 through their business, their distributors and through its website at www.biglots.com.
23

24 12. Upon information and belief, Defendant KMart is a Michigan Corporation
25 with a principal place of business at 3333 Beverly Road, Hoffman Estates, Illinois
26 60179.
27
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1 13. Upon information and belief, Defendant KMart is engaged in the
2 promotion and sale of various products in the United States, including in this District,
3 through their business, their distributors and through its website at www.kmart.com.
4

5 14. Upon information and belief, Defendant Target is a Minnesota
6 Corporation with a principal place of business at 1000 Nicollet Mat, TPS-2672,
7 Minneapolis, Minnesota 55403.
8

9 15. Upon information and belief, Defendant Target is engaged in the
10 promotion and sale of various products in the United States, including in this District,
11 through their business, their distributors and through its website at www.Target.com.
12

13 16. Upon information and belief, Defendant Toys R Us is a Delaware
14 Corporation with a principal place of business at One Geoffrey Way, Wayne, New
15 Jersey 07470.
16

17 17. Upon information and belief, Defendant Toys R Us engaged in the
18 promotion and sale of various products in the United States, including in this District,
19 through their business, their distributors and through its website at
20 www.ToysRUs.com.
21
22

23 18. Upon information and belief, Defendant Walgreens is an Illinois
24 Corporation with a principal place of business at 300 Wilmot Road, MS#3301,
25 Deerfield, Illinois 60015.
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1 19. Upon information and belief, Defendant Walgreens is engaged in the
2 promotion and sale of various products in the United States, including in this District,
3 through their business, their distributors and through its website at
4 www.Walgreens.com.
5

6 20. Upon information and belief, Defendant Brookstone is a New Hampshire
7 Corporation with a principal place of business at One Innovation Way, Merrimack,
8 New Hampshire 03054.
9

10 21. Upon information and belief, Defendant Brookstone is engaged in the
11 promotion and sale of various products in the United States, including in this District,
12 through their business, their distributors and through its website at
13 www.brookstone.com.
14
15

16 22. Upon information and belief, Defendant Best Buy is a Minnesota
17 Corporation with a principal place of business at 7601 Penn Avenue South, Richfield,
18 Minnesota 55423.
19

20 23. Upon information and belief, Defendant Best Buy is engaged in the
21 promotion and sale of various products in the United States, including in this District,
22 through their business, their distributors and through its website at www.bestbuy.com.
23

24 24. Upon information and belief, Defendant EBay is a Delaware Corporation
25 with a principal place of business at 2145 Hamilton Avenue, San Jose, California
26 95125.
27
28

1 25. Upon information and belief, Defendant EBay is engaged in the
2 promotion and sale of various products in the United States, including in this District,
3 through their business, their distributors and through its website at www.EBay.com.
4

5 26. Upon information and belief, Defendant Toywiz is a New York
6 Corporation with a principal place of business at 664 Chestnut Ridge Road, Spring
7 Valley, New York 10977.
8

9 27. Upon information and belief, Defendant Toywiz is engaged in the
10 promotion and sale of various products in the United States, including in this District,
11 through its website at www.Toywiz.com.
12

13 28. Upon information and belief, Defendant HSN is a Delaware corporation
14 with a principal place of business at 1 HSN Drive, St. Petersburg, Florida 33729.
15

16 29. Upon information and belief, Defendant HSN is engaged in the promotion
17 and sale of various products in the United States, including in this District, through a
18 television home shopping network broadcast on the HSN television network, and
19 through its website at www.HSN.com.
20

21 30. The true names and capacities of Defendants DOES 1 through 100 are
22 unknown to Plaintiff, who therefore sues said Defendants by such fictitious names.
23 Plaintiff is informed and believes and thereon alleges that each of the Defendants
24 designated herein as a fictitiously named Defendant is, in some manner, responsible
25 for the events and happenings herein referred to, either contractually or tortuously, and
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27
28

1 caused damage to the Plaintiff as herein alleged. When Plaintiff ascertains the true
2 names and capacities of DOES 1 through 100, it will ask leave of this Court to amend
3 its Complaint by setting forth the same.
4

5 31. Plaintiff is informed and believes and thereon alleges that at all times
6 herein mentioned, each of the Defendants was and is an agent, servant, employee
7 and/or partner of each of the other Defendants, and all of the things alleged to have
8 been done by said Defendants were done in the capacity, and as the agent, servant,
9 employee, and/or partner of the other Defendants.
10
11

12 Jurisdiction and Venue

13 32. Jurisdiction of this Court is based on 28 U.S.C. §1332(a)(1) (Diversity
14 Jurisdiction) for Defendants WowWee, Big Lots, KMart, Target, Walgreens,
15 Brookstone, Best Buy and Toywiz and for Defendants Wal-Mart, Amazon, Toys R Us,
16 EBay and HSN as well as Defendants WowWee, Big Lots, KMart, Target, Walgreens,
17 Brookstone, Best Buy and ToyWiz jurisdiction is based on U.S.C. §1338(a) and (b)
18 (Acts of Congress relating to trademarks and related actions), Sections 39 and 43(a)
19 and (c) of the United States Trademark Act of 1946 ("Lanham Act"), as amended (15
20 U.S.C. §1121 and 1125(a)(c)), and 28 U.S.C. §1367 (Supplemental Jurisdiction), as
21 well as the principles of pendent jurisdiction. The amount in question exceeds \$75,000.
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26 33. This action arises out of wrongful acts, including advertising, offering for
27 sale, selling and distributing products by Defendants within this judicial district. Venue
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is proper in this district under 28 U.S.C. §1391(b) and (c) because the claims arise in this judicial district.

Gibson's Use and Ownership of The Les Paul Body Shape Design®, The Les Paul Peg-Head Design®, The Bell Shaped Truss Rod Cover Design®, The Flying V Body Shape Design®, The Explorer Body Shape Design®, The Kramer Peg-Head Design®, The SG Body Design®, the word mark LES PAUL®, the word mark FLYING V®, the word mark EXPLORER®, the word mark GIBSON® and the word mark S-G®

34. Plaintiff Gibson is engaged in the business of developing, manufacturing and selling musical instruments, including electric guitars, basses and mandolins under the famous Gibson® trademark for over a century.

35. Gibson guitars are sold worldwide. Gibson's instruments have gained worldwide recognition and reputation, winning awards for their design.

36. Gibson is the sole owner of the distinctive Les Paul Body Shape Design®, U.S. Trademark Reg. No. 1782606 (hereinafter "Les Paul Body Shape Design® Trademark"). This Trademark was issued by the U.S. Patent and Trademark Office on July 20, 1993, and has been continuously and exclusively used in commerce by Gibson since 1952. A copy of the Trademark's registration is attached hereto as Exhibit A.

37. Gibson is the sole owner of the distinctive The Les Paul Peg-Head Design®, U.S. Trademark Reg. No. 1020485 (hereinafter "Les Paul Peg-Head®

1 Trademark"). This Trademark was issued by the U.S. Patent and Trademark Office on
2 September 16, 1975, and has been continuously and exclusively used in commerce by
3 Gibson since 1922. A copy of the Trademark's registration is attached hereto as
4 Exhibit B.

6 38. Gibson is the sole owner of the distinctive The Bell Shaped Truss Rod
7 Cover Design®, U.S. Trademark Reg. No. 1022637 (hereinafter "the Bell Cover
8 Design® Trademark"). This Trademark was issued by the U.S. Patent and Trademark
9 Office on October 14, 1975, and has been continuously and exclusively used in
10 commerce by Gibson since 1922. A copy of the Trademark's registration is attached
11 hereto as Exhibit C.

14 39. Gibson is the sole owner of the distinctive The Flying V Body Shape
15 Design Body Shape Design®, U.S. Trademark Reg. No. 2051790 (hereinafter "Flying
16 V Body Shape Design® Trademark"). This Trademark was issued by the U.S. Patent
17 and Trademark Office on April 15, 1997, and has been continuously and exclusively
18 used in commerce by Gibson since 1958. A copy of the Trademark's registration is
19 attached hereto as Exhibit D.

22 40. Gibson is the sole owner of the distinctive The Explorer Body Shape
23 Design®, U.S. Trademark Reg. No. 2053805 (hereinafter "Explorer Design®
24 Trademark"). This Trademark was issued by the U.S. Patent and Trademark Office on
25 April 22, 1997, and has been continuously and exclusively used in commerce by
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1 Gibson since 1958. A copy of the Trademark's registration is attached hereto as
2 Exhibit E.

3
4 41. Gibson is the sole owner of the distinctive The Kramer Peg-Head
5 Design®, U.S. Trademark Reg. No. 1567052 (hereinafter "Kramer Peg-Head®
6 Trademark"). This Trademark was issued by the U.S. Patent and Trademark Office on
7 November 21, 1999, and has been continuously and exclusively used in commerce by
8 Gibson since 1958. A copy of the Trademark's registration is attached hereto as
9 Exhibit F.

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12 42. Gibson is the sole owner of the distinctive The SG Body Design®, U.S.
13 Trademark Reg. No. 2215791 (hereinafter "SG Body Design® Trademark"). This
14 Trademark was issued by the U.S. Patent and Trademark Office on January 5, 1999,
15 and has been continuously and exclusively used in commerce by Gibson since 1961.
16 A copy of the Trademark's registration is attached hereto as Exhibit G.

17
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19 43. Gibson is the sole owner of the distinctive word mark FLYING V®, U.S.
20 Trademark Reg. No. 1216644 (hereinafter "FLYING V® Trademark"). This
21 Trademark was issued by the U.S. Patent and Trademark Office on November 16,
22 1982, and has been continuously and exclusively used in commerce by Gibson since
23 1958. A copy of the Trademark's registration is attached hereto as Exhibit H.

24
25
26 44. Gibson is the sole owner of the distinctive word mark LES PAUL®, U.S.
27 Trademark Reg. No. 1539282 (hereinafter "LES PAUL® Trademark"). This
28

1 Trademark was issued by the U.S. Patent and Trademark Office on May 16, 1989, and
2 has been continuously and exclusively used in commerce by Gibson since 1952. A
3 copy of the Trademark's registration is attached hereto as Exhibit I.
4

5 45. Gibson is the sole owner of the distinctive word mark S-G®, U.S.
6 Trademark Reg. No. 1045872 (hereinafter "S-G® Trademark"). This Trademark was
7 issued by the U.S. Patent and Trademark Office on August 10, 1976, and has been
8 continuously and exclusively used in commerce by Gibson since 1975. A copy of the
9 Trademark's registration is attached hereto as Exhibit J.
10
11

12 46. Gibson is the sole owner of the distinctive word mark EXPLORER®,
13 U.S. Trademark Reg. No. 2641548 (hereinafter "EXPLORER® Trademark"). This
14 Trademark was issued by the U.S. Patent and Trademark Office on October 29, 2002,
15 and has been continuously and exclusively used in commerce by Gibson since 1958.
16 A copy of the Trademark's registration is attached hereto as Exhibit K.
17
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19 47. Gibson is the sole owner of the distinctive word mark GIBSON®, U.S.
20 Trademark Reg. No. 1545311 (hereinafter "GIBSON® Trademark"). This Trademark
21 was issued by the U.S. Patent and Trademark Office on June 27, 1989, and has been
22 continuously and exclusively used in commerce by Gibson since 1890. A copy of the
23 Trademark's registration is attached hereto as Exhibit L.
24
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26 48. Gibson has spent millions of dollars in the advertising and promotion of
27 the Les Paul Body Shape Design® Trademark, the Les Paul Peg-Head® Trademark,
28

1 the Bell Cover Design® Trademark, the Flying V Body Shape Design® Trademark,
2 the Explorer Body Shape Design® Trademark, the Kramer Peg-Head® Trademark, the
3 SG Body Design® Trademark, the LES PAUL® Trademark, the FLYING V®
4 Trademark, the EXPLORER® Trademark, the GIBSON® Trademark and the S-G®
5 Trademark (hereinafter collectively referred to as the "Gibson Trademarks") which
6 have been used in conjunction with various Gibson stringed instruments.
7
8

9 49. As a result of the quality of Gibson's products and the extensive sales,
10 licensing and marketing, advertising and promotion of these products under the Gibson
11 Trademarks, Les Paul Body Shape Design® Trademark, the Les Paul Peg-Head®
12 Trademark, the Bell Cover Design® Trademark, the Flying V Body Shape Design®
13 Trademark, the Explorer Body Shape Design® Trademark, the Kramer Peg-Head®
14 Trademark, the SG Body Design® Trademark, Trademark, the LES PAUL®
15 Trademark, the FLYING V® Trademark, the EXPLORER® Trademark, the
16 GIBSON® Trademark and the S-G® Trademark have become famous trademarks that
17 are widely and favorably known by consumers in the United States and elsewhere as
18 designating high quality and dependable products originating exclusively from Gibson
19 and its related companies.
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24 50. The Gibson Trademarks have been famous in the United States and
25 elsewhere since long prior to the acts complained of herein.
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1 51. The above-identified registrations remain in full force and effect and are
 2 *prima facie* proof of Gibson's exclusive right to own and use the Les Paul Body Shape
 3 Design® Trademark, the Les Paul Peg-Head® Trademark, the Bell Cover Design®
 4 Trademark, the Flying V Body Shape Design® Trademark, the Explorer Body Shape
 5 Design® Trademark, the Kramer Peg-Head® Trademark, the SG Body Design®
 6 Trademark, the LES PAUL® Trademark, the FLYING V® Trademark, the
 7 EXPLORER® Trademark, the GIBSON® Trademark and the S-G® Trademark. In
 8 addition, the above registrations are incontestable pursuant to Section 15 of the
 9 Lanham Act (15 U.S.C. § 1065).

13 **Misuse By Defendants of the Gibson Trademarks**

14 52. Upon information and belief, Defendants offer for sale and sell products
 15 using the Les Paul Body Shape Design® Trademark, the Les Paul Peg-Head®
 16 Trademark, the Bell Cover Design® Trademark, the Flying V Body Shape Design®
 17 Trademark, the Explorer Body Shape Design® Trademark, the Kramer Peg-Head®
 18 Trademark, the SG Body Design® Trademark, the LES PAUL® Trademark, the
 19 FLYING V® Trademark, the EXPLORER® Trademark, the GIBSON® Trademark
 20 and the S-G® Trademark ("Defendants' Unauthorized Products") (See Exhibits "M,"
 21 "N," "O" and "P").

22 53. Upon information and belief, notwithstanding the lack of authorization
 23 from Gibson and the fact that said Defendants' Unauthorized Products otherwise are
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1 not authorized to be sold utilizing the Gibson Trademarks, Defendants have made
2 repeated unauthorized use of the Trademark in connection with said products, as
3 described below, with the intent to mislead and confuse consumers into believing that
4 said Defendants' Unauthorized Products are made directly by Gibson pursuant to
5 Gibson's strict quality control standards or that said Defendants' Unauthorized
6 Products are otherwise authorized or licensed by Gibson and with the intent of
7 misappropriating, for their own benefit, the tremendous goodwill built up by Gibson in
8 the Gibson Trademarks (See Exhibits "Q," "R," "S," "T," "U," "V" and "W").
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12 54. In particular, Defendants have improperly used the Trademark in their
13 advertising and promotional materials for said Defendants' Unauthorized Products as
14 well as on their Internet websites at www.paperjamz.com, www.paperjamzstore.com,
15 www.wowwee.com (Defendant WowWee), www.walmart.com (Defendant Wal-Mart),
16 www.amazon.com (Defendant Amazon), www.biglots.com (Defendant Big Lots),
17 www.kmart.com (Defendant KMart), www.target.com (Defendant Target),
18 www.toyrus.com (Defendant Toys R Us), www.walgreens.com (Defendant
19 Walgreens), www.brookstone.com (Defendant Brookstone), www.ebay.com
20 (Defendant EBay), www.toywiz.com (Defendant ToyWiz), and www.hsn.com
21 (Defendant HSN), and otherwise have falsely stated or implied that said Defendants'
22 Unauthorized Products are made directly by Gibson pursuant to Gibson's strict quality
23
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1 control standards or that their use of the Trademark is authorized or licensed by
2 Gibson.

3
4 55. Plaintiff is informed and believes, and thereon alleges that Defendant
5 WowWee is advertising the FLYING V® Trademark along with the Unauthorized
6 Product bearing the Flying V Body Shape Design® Trademark, the LES PAUL®
7 Trademark along with the Unauthorized Product bearing the Les Paul Body Shape
8 Design® Trademark, the Les Paul Peg-Head® Trademark the S-G® Trademark along
9 with the Unauthorized Product bearing the SG Body Design® Trademark, and the
10 EXPLORER Trademark along with the Unauthorized Explorer Body Shape Design®
11 and the GIBSON® Trademark with the Unauthorized Products on the
12 www.paperjamz.com and www.paperjamzstore.com websites.
13
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15
16 56. Upon information and belief, the aforementioned misuse of the Gibson
17 Trademarks by Defendants was done by Defendants with the intent of deceiving or
18 misleading customers into mistakenly believing that said Defendants' Unauthorized
19 Products were authorized Gibson products originating from Gibson or its related
20 companies and otherwise misappropriating the goodwill built up by Gibson in the
21 Gibson Trademarks and otherwise attracting and misdirecting consumers looking for
22 genuine or authorized Gibson goods to Defendants' websites.
23
24

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26 57. Prior to commencing this lawsuit, Gibson and its representatives
27 communicated directly with Defendants and their representatives in an attempt to
28

1 resolve this matter without the necessity of bringing this lawsuit, but Defendants have
2 failed to cease all unauthorized use of the Gibson Trademarks as requested by Gibson
3 and continues to deliberately and intentionally use the mark without the consent of
4 Gibson.
5

6 58. The misuse of the Gibson Trademarks by Defendants was intended to
7 cause, has caused and is likely to continue to cause consumer confusion, mistake or
8 deception including the misleading of consumers into mistakenly believing that the
9 Defendants' Unauthorized Products are made directly by Gibson pursuant to Gibson's
10 strict quality control standards or Gibson has authorized or licensed the use by
11 Defendants of the Trademark for those products.
12

13 59. The aforementioned misuse of the Trademark by Defendants is damaging
14 to the reputation and goodwill of the Gibson and the Gibson Trademarks.
15

16 60. Upon information and belief, the aforesaid acts of Defendants have
17 caused and, unless enjoined will continue to cause irreparable damage to Gibson and to
18 the reputation of its valuable Gibson Trademarks.
19

20 61. Gibson has no adequate remedy at law.
21

22 **COUNT I**

23 **Trademark Infringement Under**

24 **The United States Trademark**

25 **Act (15 U.S.C. 1114 (1))**
26
27
28

**False Descriptions Of Fact And Representations
And False Advertising Under The United States**

Trademark Act (15 U.S.C. 1125(a))

68. Gibson repeats the allegations set forth in paragraphs 1 through 67.

69. The complained of acts constitute willful, deliberate and intentional false and misleading descriptions of fact, false and misleading representations of fact and false advertising in violation of §43(a) of the Lanham Act (15 U.S.C. §1125(a)).

COUNT V

Body Shape Design

Trademark Dilution

Under The United States Trademark Act

(15 U.S.C. 1125(c))

70. Gibson repeats the allegations set forth in paragraphs 1 through 69.

71. The complained of acts have diluted and damaged the distinctive quality of Gibson's famous the Gibson Trademarks and constitute trademark dilution of the famous marks in violation of §43(c) of the Lanham Act (15 U.S.C. §1125(c)).

COUNT VI

Trade Dress Infringement Under Federal Law

72. Gibson repeats the allegations set forth in paragraphs 1 through 71.

1 73. Gibson has used in interstate commerce the inherently distinctive product
2 designs in connection with the sale and marketing of its guitars. The Gibson guitars,
3 namely Les Paul Body Shape Design® Trademark, the Les Paul Peg-Head®
4 Trademark, the Flying V Body Shape Design® Trademark, the Explorer Body Shape
5 Design® Trademark, the Kramer Peg-Head® Trademark, and the SG Body Design®
6 Trademark contain inherently distinctive, nonfunctional features which are protected
7 under the Lanham Act §43(a) (15 U.S.C. 1125(a)).
8
9

10 74. Defendants' use of the infringing trade dress has confused and is likely to
11 continue to cause confusion or to cause mistake or to deceive the consuming public
12 into believing that the Unauthorized Products are authorized, sponsored or approved
13 by Plaintiff.
14
15

16 **COUNT VII**

17 **Trademark Dilution Under**

18 **California Business and Professions Code (Section 14330)**

19 75. Gibson repeats the allegations set forth in Paragraphs 1 through 74.
20
21

22 76. The complained of acts are likely to cause injury to the business
23 reputation of or otherwise dilute the distinctive quality of the Gibson Trademarks in
24 violation of §14330 of the California Business and Professions Code.
25

26 **COUNT VIII**

1 **Common Law Trademark**

2 **Infringement And Unfair Competition**

3
4 77. Gibson repeats the allegations set forth in Paragraphs 1 through 76.

5 78. The complained of acts constitute trademark infringement, palming off,
6 and unfair competition in violation of the common law of the State of California.
7

8 **COUNT IX**

9 **Unfair Competition Under**

10 **California Business and Professions Code (Section 17200)**

11
12 79. Gibson repeats the allegations set forth in Paragraphs 1 through 78.

13 80. The complained of acts constitute unlawful acts of unfair competition and
14 unlawful, unfair and fraudulent business practices in violation of §17200, *et seq.* of the
15 California Business and Professions code.
16

17 **COUNT X**

18 **California Trademark Infringement, Dilution and Deceptive Acts and Practices**

19 **California Business & Professions Code §§ 14245, *et seq.***

20
21 81. Gibson repeats the allegations set forth in Paragraphs 1 through 80.

22 82. The foregoing acts of Defendants constitutes trademark infringement in
23 violation of California Business & Professions Code section 14245, for which Plaintiff
24 is entitled to injunctive relief, profits, and damages.
25
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1 83. The foregoing acts of Defendants will create a likelihood of injury to the
2 public image and business reputation of Gibson, in the public and will likely associate
3 Defendants' infringing goods with the Gibson Trademarks and Gibson's goods, and
4 cause the dilution of the distinctive quality of the Gibson Trademarks all in violation of
5 California Business & Professions Code section 14247, for which Plaintiff is entitled
6 to injunctive relief.
7

8
9 **COUNT XI**

10 **Contributory Violation of Section 43(a) of Lanham Trademark Act**

11 **Unfair Competition**

12
13 84. Gibson repeats the allegations set forth in Paragraphs 1 through 83.

14
15 85. Gibson is informed and believes, and upon that basis alleges, that, as
16 alleged above, EBay, has, and without permission, authority or license from Gibson or
17 its licensees, participated in or otherwise knowingly contributed to the affixation,
18 application and/or use by their clients/customers and others in connection with the
19 advertisement, display, promotion, marketing, distribution, publication, provision,
20 offering for sale and/or sale of goods, of false descriptions and representations,
21 including words, shapes or other symbols, which tend falsely to describe or represent
22 such goods as Gibson's and/or as affiliated with Gibson, or alternatively which tend
23 falsely to describe or represent the Les Paul Body Shape Design® Trademark, the Les
24 Paul Peg-Head® Trademark, the Bell Cover Design® Trademark, the Flying V Body
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