

1 Shape Design® Trademark, the Explorer Body Shape Design® Trademark, the
2 Kramer Peg-Head® Trademark, and the SG Body Design® Trademark® as
3 WowWee's and or as affiliated with WowWee, and have participated in or otherwise
4 knowingly contributed to causing such goods and services to enter into interstate
5 commerce with full knowledge of the falsity of such designations of origin and such
6 descriptions and representations, all to the detriment of Gibson. EBay's participation
7 in or otherwise knowing contribution to the manufacture, advertisement, display,
8 promotion, marketing, distribution, publication, provision, offering for sale and/or sale
9 of goods incorporating unauthorized depictions, counterfeits, infringements and/or the
10 style of the Les Paul Body Shape Design® Trademark, the Les Paul Peg-Head®
11 Trademark, the Bell Cover Design® Trademark, the Flying V Body Shape Design®
12 Trademark, the Explorer Body Shape Design® Trademark, the Kramer Peg-Head®
13 Trademark, and the SG Body Design® Trademark® and other elements associated
14 with the same, constitute false descriptions and representations tending falsely to
15 describe or represent goods and services provided and/or sold by EBay's clients and/or
16 customers and others.

17 86. EBay's contributory conduct in connection with their clients/customers
18 and others' respective unauthorized and unlawful acts of federal unfair competition,
19 and each of them, have enabled, assisted, aided and abetted their clients/customers and
20 others to trade unlawfully upon the established goodwill and reputation of Gibson and
21
22

1 its licensees. EBay is thereby unjustly enriching itself at the expense and to the
 2 damage and injury to Gibson, and unless enjoined by this Court, will further impair the
 3 value of the Gibson Trademarks. By reason of the aforesaid, the continued use by
 4 EBay and its customers/clients of the Les Paul Body Shape Design® Trademark, the
 5 Les Paul Peg-Head® Trademark, the Bell Cover Design® Trademark, the Flying V
 6 Body Shape Design® Trademark, the Explorer Body Shape Design® Trademark, the
 7 Kramer Peg-Head® Trademark, and the SG Body Design® Trademark®, or the
 8 likenesses thereof, has caused, and unless restrained will continue to cause serious,
 9 irreparable injury to Gibson.

10 87. Gibson has no adequate remedy at law and has suffered, and is continuing
 11 to suffer, harm and damage as a result of EBay's acts of contributory federal unfair
 12 competition in amounts within the jurisdiction of this Court thus far not determined but
 13 believed to be in excess of One Hundred Thousand Dollars (\$100,000.00), which
 14 amounts should be trebled pursuant to 15 U.S.C. Section 1117.

15 88. EBay has been notified of their infringing and illegal activity. Despite
 16 clear requests to EBay, Gibson is informed and believes, and upon that basis alleges,
 17 that EBay has willfully and knowingly continued their wrongful conduct in violation
 18 of Gibson's rights through the date of the filing of this Complaint.

19
 20 **COUNT XII**
 21
 22

23 **For Contributory Violation of Section 32 of**
 24
 25

Lanham Trademark Act

89. Gibson repeats the allegations set forth in Paragraphs 1 through 88.

90. EBay's contributory conduct in connection with their clients/customers and others' respective unauthorized and unlawful acts of infringement of Gibson's above-mentioned federally registered trademarks, and each of them, have enabled, assisted, aided and abetted such clients/customers and others, to use in commerce part or all of one or more of Gibson's Trademarks, or of a reproduction, counterfeit, copy or colorable imitation thereof, in connection with the sale, offering for sale, distribution, or advertising of any goods or in connection with such use was or is likely to cause confusion or mistake, or to deceive, constitute acts of contributory registered trademark infringement in violation of Section 32 of the Lanham Trademark Act of 1946, 15 U.S.C. § 1114, as amended.

91. Moreover, EBay's contributory conduct in connection with their clients/customers and others' respective unauthorized and unlawful acts of reproduction, counterfeit, copy, or colorable imitation of part or all of one or more Gibson Trademarks that are federally registered, and application thereof to any ads, signs, prints, packages, wrappers in connection with the sale, offering for sale, distribution, or advertising of any goods or in connection with such use was or is likely to cause confusion or mistake, or to deceive, constitute further acts of contributory

1 registered trademark infringement in violation of Section 32 of the Lanham Trademark
2 Act of 1946, 15 U.S.C. § 1114, as amended.
3

4 92. EBay's contributory conduct as alleged hereinabove, are business
5 practices likely to deceive, confuse or cause a mistake by the purchasing public, and
6 constitute acts of contributory registered trademark infringement, all in violation of
7 Section 32 of the Lanham Trademark Act of 1946, 15 U.S.C. § 1114, as amended.
8

9 93. Gibson has no adequate remedy at law and has suffered, and is continuing
10 to suffer, harm and damage as a result of EBay's acts in contributory violation of
11 Section 32 of the Lanham Trademark Act of 1946, in amounts within the jurisdiction
12 of this Court thus far not determined but believed to be in excess of One Hundred
13 Thousand Dollars (\$100,000.00), which amounts should be trebled pursuant to 15
14 U.S.C. Section 1117.
15

16 **COUNT XIII**
17

18 **Accounting**
19

20 **Common Law**
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22 94. Gibson repeats the allegations set forth in Paragraphs 1 through 93.
23

24 95. Defendants' activities, as alleged above, have violated Plaintiff's right in
the Gibson Trademarks under common law.
25

26 96. As a direct result of the infringing activities, Defendants have been
27 unjustly enriched through fraudulent conversion of Plaintiff's goodwill and rights in its
28

1 trademark into their own profits through the sale of infringing products and has caused
2 Plaintiff to lose sales of its genuine goods and services.
3

4 97. As a direct result of Defendants' misconduct, Defendants have received
5 substantial profits, to which Plaintiff is entitled under common law.
6

7 98. The amount of said profits is unknown to Plaintiff and cannot be
8 ascertained without an accounting.
9

PRAYER FOR RELIEF

10 **WHEREFORE**, Plaintiff Gibson Guitar Corp. prays for judgment as follows:
11

12 1. That judgment be entered in favor of Plaintiff on all causes of action set
13 forth herein.
14

15 2. That in accordance with Section 35 of the Lanham Act (15 U.S.C. §1117),
16 Plaintiff be awarded monetary damages sufficient to recover: 1) Defendants' profits; 2)
17 all damage suffered by Plaintiff; and 3) the costs of this action and that said amount be
18 trebled or otherwise multiplied to the extent permitted by statute. In addition, Plaintiff
20 reserves the right to elect statutory damages up to and including \$1,000,000 per
21 counterfeit mark pursuant to 15 U.S.C. 1117(c).
22

23 3. That Plaintiff be awarded such other monetary damages, recovery and
24 awards as appropriate under the law.
25

26 4. That Defendants' conduct violates the provisions of California Business
27 & Professions Code sections 14240, 14245, 14247 and 17200-17210 and constitutes
28

1 trademark infringement, unfair competition under the common law of the State of
2 California.
3

4 5. That Defendants, their officers, directors, principals, agents, servants,
5 affiliates, employees, attorneys, representatives, successors and assigns, and all those
6 in privy or acting in concert or participation with Defendants, and each and all of them,
7 be preliminarily and permanently enjoined and restricted from directly or indirectly:
8

9 (a) claiming or representing that any products and/or services sold by
10 Defendants are made directly by Gibson pursuant to Gibson's strict quality control
11 standards or Gibson has authorized or licensed the use by Defendants of the Gibson
12 Trademarks for those products;
13

14 (b) using, in any manner, or holding itself out as having rights to use,
15 the FLYING V Trademark, Les Paul Body Shape Design® Trademark, the Les Paul
16 Peg-Head® Trademark, the Bell Cover Design® Trademark, the Flying V Body Shape
17 Design® Trademark, the Explorer Body Shape Design® Trademark, the Kramer Peg-
18 Head® Trademark, the SG Body Design® Trademark, the LES PAUL® Trademark,
19 the FLYING V® Trademark, the EXPLORER® Trademark, and the S-G® Trademark
20 or any other name, mark or design confusingly similar to the Gibson Trademarks to
21 designate, describe or refer to themselves or in conjunction with any product or
22 service, including any use in conjunction with any Internet activities conducted by it or
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1 on its behalf such as any use as a domain name or in the text, graphics and hypertext
2 metatags of any Internet website;

3 (c) requesting or inducing Internet search engines to display links to
4 the Defendants' website or other websites displaying or promoting Defendants'
5 products or services when potential customers using those search engines search for
6 terms containing variations of the FLYING V® Trademark, LES PAUL® Trademark,
7 the Les Paul Peg-Head® Trademark, the Bell Cover Design®, the EXPLORER®, the
8 Kramer Peg-Head® Trademark and the S-G® Trademark;

9 (d) selling, offering for sale, promoting, advertising, distributing or
10 providing or offering to provide any goods or services in conjunction with the Gibson
11 Trademarks or any other name, mark or design confusingly similar to the Gibson
12 Trademarks in conjunction with any product or service; and

13 (e) engaging in any course of conduct likely to cause confusion,
14 deception or mistake or injure Plaintiff's business reputation or dilute the Gibson
15 Trademarks or appropriate the good will and reputation of said mark or lead to the
16 passing off of Defendants' products and services as Gibson products and services.

17 6. That the Court issue an Order directing Defendants to file with the Court
18 and serve on Plaintiff, within thirty (30) days after the service on Defendants of such
19 injunctions, a report in writing and under oath, setting forth in detail the manner and
20 form in which Defendants have complied with the injunction.

1 7. That the Court award judgment in favor of the Plaintiff in the amount of
2 treble damages.

3 8. That the Court award to Plaintiff punitive damages sufficient to deter
4 Defendants from committing such willful acts of infringement in the future.

5 9. That the Court require a full and complete accounting of all monies
6 received by Defendants as a result of the infringement.

7 10. That Defendants be required to deliver to Plaintiff all merchandise,
8 packaging, labels, boxes, cartons, advertising, brochures, documents, advertising and
9 promotional materials and other things, possessed, used or distributed by Defendant, or
10 on its behalf, which use the Gibson Trademarks or any other name, mark or design
11 confusingly similar to the Gibson Trademarks.

12 11. That Plaintiff be awarded the costs of this action and its disbursements,
13 and reasonable attorney's and investigatory fees incurred and as otherwise appropriate
14 herein pursuant to 15 U.S.C. §1117 or other appropriate statute or law.

15 12. For interest on all amounts found to be due to Plaintiff from Defendants,
16 at the prevailing rate, from the date of said amounts or any part thereof became or
17 becomes due.

18 13. That the Court require Defendants to notify their commercial associates,
19 dealers, master distributors, suppliers and customers of this Order.

14. That Plaintiff be granted such other monetary, equitable and further relief, as this Court may deem appropriate under federal, state and common law.

15. That the Court retain jurisdiction of this action for the purpose of enabling Plaintiff to apply to the Court, at any time, for such further orders and directions as may be necessary or appropriate for the interpretation or execution of any order entered in this action, for the modification of any such order, for the enforcement or compliance therewith and for the punishment of any violation thereof.

DEMAND FOR JURY TRIAL

Gibson hereby demands a jury trial on all issues.

DATED: November 18, 2010 BATES & BATES, LLC

ANDREA E. BATES
MICHAEL A. BOSWELL
Attorneys for PLAINTIFF
GIBSON GUITARS

1 FRCP 7.1 CORPORATE DISCLOSURE STATEMENT
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4

5 This Corporate Disclosure Statement is filed on behalf of Gibson Guitar Corp in
6 compliance with Federal Rule of Civil Procedure 7.1.
7
8

9 Gibson Guitar Corp., is a Delaware corporation; it has no parent corporation and
10 has not, nor will it issue publically held stock. No publically held corporation owns
11 10% or more of the Gibson Guitar Corp. stock.
12
13

14 Respectfully submitted this 18th day of November 2010.
15
16

17 BATES & BATES, LLC
18
19

20 
21 ANDREA E. BATES
22 MICHAEL A. BOSWELL
23 Attorneys for PLAINTIFF
24 GIBSON GUITAR CORP.
25
26
27
28

Name & Address:

Andrea E. Bates, SBN 192491
 Michael A. Boswell, SBN 198994
 Bates & Bates, LLC
 9645 DeKalb Avenue, Suite 101
 Atlanta, Georgia 30307 Phone (866)701-0404

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Gibson Guitar Corp.

CASE NUMBER

PLAINTIFF(S)

v.

CV 10 8884-RGK(RZx)

Wowwee USA, Inc., a California corporation;
 Wal-Mart Stores, Inc., a Delaware corporation;
 et al.; SEE ATTACHED

SUMMONS

DEFENDANT(S.)

TO: DEFENDANT(S): _____

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Andrea E. Bates, Esq., whose address is 964 DeKalb Avenue, Suite 101, Atlanta, Georgia 30307. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

By: _____



(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3).]

1 ANDREA E. BATES, ESQ. SBN 192491
2 Abates@Bates-Bates.com
3 MICHAEL A. BOSWELL, ESQ. SBN 198994
4 MBoswell@Bates-Bates.com
5 BATES & BATES, LLC
6 964 DeKalb Avenue, Suite 101
7 Atlanta, Georgia 30307
8 Phone(866) 701-0404 and (562) 360-2097
9 Fax (404) 963-6231

10
11 Attorneys for
12 Plaintiff
13 GIBSON GUITAR CORP.,

14
15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 13 GIBSON GUITAR CORP., a Delaware) Case No.
18 corporation,)
19 Plaintiff,)
20 vs.)
21) COMPLAINT FOR:
22) (1) Trademark Infringement;
23) (2) Trademark Counterfeiting;
24) (3) False Designation of Origin and
25) Unfair Competition Under the United
26) States Trademark Act;
27) (4) False Description of Fact and
28) 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.*;

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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
through 100, } Lanham Act; and
4 } (13) Accounting

5 Defendants,

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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:

- 2 -
COMPLAINT

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Gibson Guitar Corp.	DEFENDANTS See Attachment A																												
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Andrea E. Bates, SBN 192491, Michael A. Boswell, SBN 198994 Bates & Bates, 964 DeKalb Ave., Suite 101 Atlanta, Georgia 30307	Attorneys (If Known)																												
II. BASIS OF JURISDICTION (Place an X in one box only.)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table border="0" style="width: 100%;"> <tr> <td style="width: 33.33%;"><input type="checkbox"/> 1 U.S. Government Plaintiff</td> <td style="width: 33.33%;"><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</td> <td style="width: 33.33%;"><input type="checkbox"/> 1 Citizen of This State</td> <td style="width: 33.33%;"><input type="checkbox"/> PTF</td> <td style="width: 33.33%;"><input type="checkbox"/> DEF</td> <td style="width: 33.33%;"><input type="checkbox"/> 4 Multi-District Litigation</td> <td style="width: 33.33%;"><input type="checkbox"/> 4 Incorporated or Principal Place of Business in this State</td> </tr> <tr> <td><input type="checkbox"/> 2 U.S. Government Defendant</td> <td><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</td> <td><input type="checkbox"/> 2 Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 5 Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td></td> <td></td> <td><input type="checkbox"/> 3 Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td><input type="checkbox"/> 6</td> </tr> </table>	<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	<input type="checkbox"/> 1 Citizen of This State	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF	<input type="checkbox"/> 4 Multi-District Litigation	<input type="checkbox"/> 4 Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<input type="checkbox"/> 2 Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5 Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5			<input type="checkbox"/> 3 Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6							<input type="checkbox"/> 6
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	<input type="checkbox"/> 1 Citizen of This State	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF	<input type="checkbox"/> 4 Multi-District Litigation	<input type="checkbox"/> 4 Incorporated or Principal Place of Business in this State																							
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<input type="checkbox"/> 2 Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5 Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5																							
		<input type="checkbox"/> 3 Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6																							
						<input type="checkbox"/> 6																							
IV. ORIGIN (Place an X in one box only.)	<input checked="" type="checkbox"/> 1 Original <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): _____ <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge																												
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)																													
CLASS ACTION under F.R.C.P. 23: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	MONEY DEMANDED IN COMPLAINT: \$ _____																												
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)																													
VII. NATURE OF SUIT (Place an X in one box only.)																													
<input type="checkbox"/> OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> TORTS <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> TORTS <input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act																								

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
DAVIDSON	Tennessee

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	See Attachment A

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER): Mark A. Baile **Date:** November 17, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

ATTACHMENT "A"

Defendants

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;

K MART CORPORATION, a Michigan corporation;

MACYS.COM, INC., a New York 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 Delaware corporation,

TOYWIZ, INC., a New York corporation,

HSN, Inc. a Delaware corporation,

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge R. Gary Klausner and the assigned discovery Magistrate Judge is Ralph Zarefsky.

The case number on all documents filed with the Court should read as follows:

CV10- 8884 RGK (RZx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

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NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Exhibit 2

1 ANDREA E. BATES, ESQ, SBN 192491
2 Abates@Bates-Bates.com
3 MICHAEL A. BOSWELL, ESQ. SBN 198994
4 MBoswell@Bates-Bates.com
5 BATES & BATES, LLC
6 964 DeKalb Avenue, Suite 101
7 Atlanta, Georgia 30307
8 Phone (866)701-0404 and (562) 360-2097
9 Fax (404)963-6231

10 Attorneys for
11 Plaintiff
12 GIBSON GUITAR CORP.,

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 GIBSON GUITAR CORP., a Delaware corporation,) Case No. CV10-8884 RGK (RZx)
16 vs.)
17 Plaintiff,) NOTICE OF EX PARTE APPLICATION BY
18) PLAINTIFF GIBSON GUITAR CORP. FOR
19) A TEMPORARY RESTRAINING ORDER
20) AND AN ORDER TO SHOW CAUSE RE:
21) PRELIMINARY INJUNCTION;
22) MEMORANDUM OF POINTS AND
23) AUTHORITIES IN SUPPORT THEREOF
24) LOCAL RULES 7-19, 7-19.1
25 Defendants.)
26) Dept.: 805
27) Judge: R. Gary Klausner

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3 TO THE DEFENDANTS:

4 WOWWEE USA, INC., WAL-MART STORES, INC., AMAZON.COM, INC., BIG LOTS
5 STORES, INC., K MART CORPORATION, TARGET CORPORATION, TOYS "R" US-
6 DELAWARE, INC., WALGREEN CO., BROOKSTONE COMPANY, INC., BEST BUY CO.,
7 INC., EBAY INC., TOYWIZ, INC., and HSN, INC.

8 Plaintiff GIBSON GUITAR CORP., hereby seeks a temporary restraining order against you
9 for the usage of Plaintiff's Les Paul Body Shape Design ® Trademark, the Les Paul Peg-Head®
10 Trademark, the Bell Cover Design® Trademark, the Flying V Body Shape Design® Trademark, the
11 Explorer Body Shape Design® Trademark, the Kramer Peg-Head® Trademark, and the SG Body
12 Design® Trademark, the word mark LES PAUL®, the word mark FLYING V®, the word mark
13 EXPLORER®, the word mark GIBSON® and the word mark S-G® (*i.e.*, U.S. Trademark
14 Registrations 1782606, 1020485, 1022637, 1539282, 1216644, 2641548, 1045872 and
15 15453112051790, 2053805, 1567052, and 2215791) and similar variations thereof on the at
16 www.paperjamz.com, www.wowwee.com (Defendant WowWee), www.walmart.com (Defendant
17 Wal-Mart), amazon.com (Defendant Amazon), www.biglots.com (Defendant Big Lots),
18 www.kmart.com (Defendant K Mart), www.target.com (Defendant Target), www.toyrus.com
19 (Defendant Toys R Us), www.walgreens.com (Defendant Walgreen), www.brookstone.com
20 (Defendant Brookstone), www.ebay.com (Defendant EBAY), www.toywiz.com (Defendant ToyWiz),
21 and www.hsn.com (Defendant HSN) websites and other websites operated by you.

The basis for the relief sought by Plaintiff is set forth in the documents attached and listed below:

1. Plaintiff's Ex Parte Application for a Temporary Restraining Order and an Order to Show Cause re: Preliminary Injunction: Memorandum of Points and Authorities; and Declarations of Bruce Mitchell and Andrea E. Bates.

2. Proposed Temporary Restraining Order and Order to Show Cause Why a Preliminary
Injunction Should Not Issue.

FURTHER NOTICE RE: OPPOSITION PROCEDURE

To the Defendants:

If you wish to file an opposition to the Ex Parte Application, you must file your opposition with the above-mentioned court by 3 p.m. the first business day following the service of the Ex parte Application.

If you do not intend to file an opposition, you must inform the courtroom deputy clerk by telephone as soon as possible. The Courtroom Deputy Clerk can be reached at (213) 894-2649.

Respectfully submitted,

BATES & BATES, LLC

DATED: November 19, 2010

ANDREA E. BATES
MICHAEL A. BOSWELL
Attorneys for PLAINTIFF
GIBSON GUITAR COR

Exhibit 3

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10 Attorneys for
11 Plaintiff
12 GIBSON GUITAR CORP.,

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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 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; K MART 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 Delaware corporation, TOYWIZ, INC., a New York corporation, HSN, Inc. a Delaware corporation, and DOES 1 through 100, Defendants.

18) Case No. CV10-8884 RGK (RZx)
19)
20) EX PARTE APPLICATION OF PLAINTIFF
21) GIBSON GUITAR CORP. FOR A
22) TEMPORARY RESTRAINING ORDER
23) AND AN ORDER TO SHOW CAUSE RE:
24) PRELIMINARY INJUNCTION;
25) MEMORANDUM OF POINTS AND
26) AUTHORITIES IN SUPPORT THEREOF
27) LOCAL RULES 7-19, 7-19.1
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29) Dept.: 805
30) Judge: Judge R. Gary Klausner
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1 EX PARTE APPLICATION OF PLAINTIFF GIBSON GUITAR CORP. FOR A TEMPORARY
2 RESTRAINING ORDER AND AN ORDER TO SHOW CAUSE RE: PRELIMINARY
3 INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF