

1 Shape Design® Trademark, the Explorer Body Shape Design® Trademark, the  
2 Kramer Peg-Head® Trademark, and the SG Body Design® Trademark® as  
3  
4 WowWee's and or as affiliated with WowWee, and have participated in or otherwise  
5 knowingly contributed to causing such goods and services to enter into interstate  
6 commerce with full knowledge of the falsity of such designations of origin and such  
7  
8 descriptions and representations, all to the detriment of Gibson. EBay's participation  
9 in or otherwise knowing contribution to the manufacture, advertisement, display,  
10 promotion, marketing, distribution, publication, provision, offering for sale and/or sale  
11 of goods incorporating unauthorized depictions, counterfeits, infringements and/or the  
12 style of the Les Paul Body Shape Design® Trademark, the Les Paul Peg-Head®  
13 Trademark, the Bell Cover Design® Trademark, the Flying V Body Shape Design®  
14 Trademark, the Explorer Body Shape Design® Trademark, the Kramer Peg-Head®  
15 Trademark, and the SG Body Design® Trademark® and other elements associated  
16 with the same, constitute false descriptions and representations tending falsely to  
17 describe or represent goods and services provided and/or sold by EBay's clients and/or  
18 customers and others.  
19  
20  
21  
22

23 86. EBay's contributory conduct in connection with their clients/customers  
24 and others' respective unauthorized and unlawful acts of federal unfair competition,  
25 and each of them, have enabled, assisted, aided and abetted their clients/customers and  
26 others to trade unlawfully upon the established goodwill and reputation of Gibson and  
27  
28

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.

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

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

26 **COUNT XII**

27 **For Contributory Violation of Section 32 of**

**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  
8 Section 32 of the Lanham Trademark Act of 1946, 15 U.S.C. § 1114, as amended.

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  
12 Section 32 of the Lanham Trademark Act of 1946, in amounts within the jurisdiction  
13 of this Court thus far not determined but believed to be in excess of One Hundred  
14 Thousand Dollars (\$100,000.00), which amounts should be trebled pursuant to 15  
15 U.S.C. Section 1117.  
16

17 **COUNT XIII**

18 **Accounting**

19 **Common Law**

20  
21 94. Gibson repeats the allegations set forth in Paragraphs 1 through 93.  
22

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

25 96. As a direct result of the infringing activities, Defendants have been  
26  
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  
10 **PRAYER FOR RELIEF**

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

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  
19 reserves the right to elect statutory damages up to and including \$1,000,000 per  
20 counterfeit mark pursuant to 15 U.S.C. 1117(c).

21  
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  
23  
24  
25  
26  
27  
28

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

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

16  
17 (e) engaging in any course of conduct likely to cause confusion,  
18 deception or mistake or injure Plaintiff's business reputation or dilute the Gibson  
19 Trademarks or appropriate the good will and reputation of said mark or lead to the  
20 passing off of Defendants' products and services as Gibson products and services.  
21  
22

23 6. That the Court issue an Order directing Defendants to file with the Court  
24 and serve on Plaintiff, within thirty (30) days after the service on Defendants of such  
25 injunctions, a report in writing and under oath, setting forth in detail the manner and  
26 form in which Defendants have complied with the injunction.  
27  
28

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

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

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

9           10.    That Defendants be required to deliver to Plaintiff all merchandise,  
10    packaging, labels, boxes, cartons, advertising, brochures, documents, advertising and  
11    promotional materials and other things, possessed, used or distributed by Defendant, or  
12    on its behalf, which use the Gibson Trademarks or any other name, mark or design  
13    confusingly similar to the Gibson Trademarks.  
14

15  
16          11.    That Plaintiff be awarded the costs of this action and its disbursements,  
17    and reasonable attorney's and investigatory fees incurred and as otherwise appropriate  
18    herein pursuant to 15 U.S.C. §1117 or other appropriate statute or law.  
19

20          12.    For interest on all amounts found to be due to Plaintiff from Defendants,  
21    at the prevailing rate, from the date of said amounts or any part thereof became or  
22    becomes due.  
23

24          13.    That the Court require Defendants to notify their commercial associates,  
25    dealers, master distributors, suppliers and customers of this Order.  
26  
27  
28




FRCP 7.1 CORPORATE DISCLOSURE STATEMENT

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

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

Respectfully submitted this 18<sup>th</sup> day of November 2010.

BATES & BATES, LLC



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

## Name &amp; 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)

CV 10 8884-RGK(RZ)

v.

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

DEFENDANT(S).

SUMMONS

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

Dated: 18 NOV 2010

By:

MA SEALAVIS  
 Deputy Clerk

(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)].

ANDREA E. BATES, ESQ. SBN 192491  
 Abates@Bates-Bates.com  
 MICHAEL A. BOSWELL, ESQ. SBN 198994  
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 Fax (404) 963-6231

Attorneys for  
 Plaintiff  
 GIBSON GUITAR CORP.,

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

GIBSON GUITAR CORP., a Delaware ) Case No.  
 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

) 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.*;

Delaware corporation, TOYWIZ, INC., } (11) Contributory Infringement §43  
a New York corporation, HSN, Inc. a } Lanham Act;  
Delaware corporation, and DOES 1 (12) Contributory Infringement § 32  
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:

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

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> ) Gibson Guitar Corp.		<b>DEFENDANTS</b> See Attachment A																			
<b>(b) Attorneys</b> (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)																			
<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)  <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;">PTF <input type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:47%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF <input type="checkbox"/> 2</td> <td>DEF <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td>PTF <input type="checkbox"/> 5</td> <td>DEF <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF <input type="checkbox"/> 3</td> <td>DEF <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td>PTF <input type="checkbox"/> 6</td> <td>DEF <input type="checkbox"/> 6</td> </tr> </table>		Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4																
Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5																
Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6																
<b>IV. ORIGIN</b> (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <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																					
<b>V. REQUESTED IN COMPLAINT:</b> 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 <input type="checkbox"/> MONEY DEMANDED IN COMPLAINT: \$																					
<b>VI. CAUSE OF ACTION</b> (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.)																					
<b>VII. NATURE OF SUIT</b> (Place an X in one box only.)																					
<b>OTHER STATUTES</b> <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	<b>CONTRACT</b> <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 <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b> <b>PERSONAL INJURY</b> <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 <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>TORTS</b> <b>PERSONAL PROPERTY</b> <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 <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER</b> <b>PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<b>LABOR</b> <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 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DJWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609																

FOR OFFICE USE ONLY: Case Number:

CV 10 8884

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

COPY

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): Matt A. Beach 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

=====

**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:

**[X] 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

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

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  
 Delaware corporation, TOYWIZ, INC., a New  
 York corporation, HSN, Inc. a Delaware  
 corporation, and DOES 1 through 100,

Defendants.

) Case No. CV10-8884 RGK (RZx)

) NOTICE OF EX PARTE APPLICATION BY  
 ) PLAINTIFF GIBSON GUITAR CORP. FOR  
 ) A TEMPORARY RESTRAINING ORDER  
 ) AND AN ORDER TO SHOW CAUSE RE:  
 ) PRELIMINARY INJUNCTION;  
 ) MEMORANDUM OF POINTS AND  
 ) AUTHORITIES IN SUPPORT THEREOF

) LOCAL RULES 7-19, 7-19.1

) Dept.: 805  
 ) Judge: R. Gary Klausner

1  
2  
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.

9 Plaintiff GIBSON GUITAR CORP., hereby seeks a temporary restraining order against you  
10 for the usage of Plaintiff's Les Paul Body Shape Design ® Trademark, the Les Paul Peg-Head®  
11 Trademark, the Bell Cover Design® Trademark, the Flying V Body Shape Design® Trademark, the  
12 Explorer Body Shape Design® Trademark, the Kramer Peg-Head® Trademark, and the SG Body  
13 Design® Trademark, the word mark LES PAUL®, the word mark FLYING V®, the word mark  
14 EXPLORER®, the word mark GIBSON® and the word mark S-G® (*i.e.*, U.S. Trademark  
15 Registrations 1782606, 1020485, 1022637, 1539282, 1216644, 2641548, 1045872 and  
16 15453112051790, 2053805, 1567052, and 2215791) and similar variations thereof on the at  
17 www.paperjamz.com, www.wowwee.com (Defendant WowWee), www.walmart.com (Defendant  
18 Wal-Mart), amazon.com (Defendant Amazon), www.biglots.com (Defendant Big Lots),  
19 www.kmart.com (Defendant K Mart), www.target.com (Defendant Target), www.toyrus.com  
20 (Defendant Toys R Us), www.walgreens.com (Defendant Walgreen), www.brookstone.com  
21 (Defendant Brookstone), www.ebay.com (Defendant EBay), www.toywiz.com (Defendant ToyWiz),  
22 and www.hsn.com (Defendant HSN) websites and other websites operated by you.  
23  
24  
25  
26

27 -2-

28 NOTICE OF EX PARTE APPLICATION OF PLAINTIFF GIBSON GUITAR CORP. FOR A TEMPORARY  
RESTRAINING ORDER AND AN ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION;  
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

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

3 1. Plaintiff's Ex Parte Application for a Temporary Restraining Order and an Order to  
4 Show Cause re: Preliminary Injunction: Memorandum of Points and Authorities; and Declarations of  
5 Bruce Mitchell and Andrea E. Bates.  
6

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

9 FURTHER NOTICE RE: OPPOSITION PROCEDURE

10 To the Defendants:

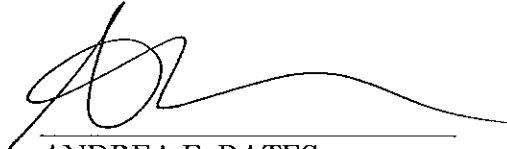
11 If you wish to file an opposition to the Ex Parte Application, you must file your opposition  
12 with the above-mentioned court by 3 p.m. the first business day following the service of the Ex parte  
13 Application.  
14

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

17 Respectfully submitted,

18 BATES & BATES, LLC

19  
20  
21 DATED: November 19, 2010

  
22 ANDREA E. BATES  
23 MICHAEL A. BOSWELL  
24 Attorneys for PLAINTIFF  
25 GIBSON GUITAR COR  
26

# Exhibit 3

ANDREA E. BATES, ESQ, SBN 192491  
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Attorneys for  
 Plaintiff  
 GIBSON GUITAR CORP.,

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

GIBSON GUITAR CORP., a Delaware  
 corporation,

Plaintiff,

vs.

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 INC., an Ohio corporation; K MART  
 CORPORATION, a Michigan corporation;  
 TARGET CORPORATION, a Minnesota  
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 York corporation, HSN, Inc. a Delaware  
 corporation, and DOES 1 through 100,

Defendants.

) Case No. CV10-8884 RGK (RZx)

)  
 ) EX PARTE APPLICATION OF PLAINTIFF  
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 ) TEMPORARY RESTRAINING ORDER  
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 ) MEMORANDUM OF POINTS AND  
 ) AUTHORITIES IN SUPPORT THEREOF

) LOCAL RULES 7-19, 7-19.1

) Dept.: 805

) Judge: Judge R. Gary Klausner

-i-

EX PARTE APPLICATION OF PLAINTIFF GIBSON GUITAR CORP. FOR A TEMPORARY  
 RESTRAINING ORDER AND AN ORDER TO SHOW CAUSE RE: PRELIMINARY  
 INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF