

Exhibit 1

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

BY:

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

14
15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17
18 GIBSON GUITAR CORP., a Delaware corporation, Case No. **CV 10 8884 -RGK** (RZ)
19 Plaintiff,) COMPLAINT FOR:
20 vs.) (1) Trademark Infringement;
21) (2) Trademark Counterfeiting;
22) (3) False Designation of Origin and
23) Unfair Competition Under the United
24) States Trademark Act;
25) (4) False Description of Fact and
26) Representations and False Advertising
27) Under the United States Trademark Act;
28) (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
through 100, Lanham Act; and
4 (13) Accounting

5 Defendants,
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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.
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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.
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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

13. Upon information and belief, Defendant KMart 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 website at www.kmart.com.

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

15. Upon information and belief, Defendant Target 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 website at www.Target.com.

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

17. Upon information and belief, Defendant Toys R Us 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 website at www.ToysRUs.com.

18. Upon information and belief, Defendant Walgreens is an Illinois Corporation with a principal place of business at 300 Wilmot Road, MS#3301, Deerfield, Illinois 60015.

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

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

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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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.
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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.
22
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24 33. This action arises out of wrongful acts, including advertising, offering for
25 sale, selling and distributing products by Defendants within this judicial district. Venue
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1 is proper in this district under 28 U.S.C. §1331(b) and (c) because the claims arise in
2 this judicial district.
3

4 **Gibson's Use and Ownership of The Les Paul Body Shape Design®, The Les Paul**
5 **Peg-Head Design®, The Bell Shaped Truss Rod Cover Design®, The Flying V**
6 **Body Shape Design®, The Explorer Body Shape Design®, The Kramer Peg-Head**
7 **Design®, The SG Body Design®, the word mark LES PAUL®, the word mark**
8 **FLYING V®, the word mark EXPLORER®, the word mark GIBSON® and the**
9 **word mark S-G®**
10

11 34. Plaintiff Gibson is engaged in the business of developing, manufacturing
12 and selling musical instruments, including electric guitars, basses and mandolins under
13 the famous Gibson® trademark for over a century.
14

15 35. Gibson guitars are sold worldwide. Gibson's instruments have gained
16 worldwide recognition and reputation, winning awards for their design.
17

18 36. Gibson is the sole owner of the distinctive Les Paul Body Shape Design®,
19 U.S. Trademark Reg. No. 1782606 (hereinafter "Les Paul Body Shape Design®
20 Trademark"). This Trademark was issued by the U.S. Patent and Trademark Office on
21 July 20, 1993, and has been continuously and exclusively used in commerce by Gibson
22 since 1952. A copy of the Trademark's registration is attached hereto as Exhibit A.
23

24 37. Gibson is the sole owner of the distinctive The Les Paul Peg-Head
25 Design®, U.S. Trademark Reg. No. 1020485 (hereinafter "Les Paul Peg-Head®
26

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.

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

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

17 40. Gibson is the sole owner of the distinctive The Explorer Body Shape
18 Design®, U.S. Trademark Reg. No. 2053805 (hereinafter "Explorer Design®
19 Trademark"). This Trademark was issued by the U.S. Patent and Trademark Office on
20 April 22, 1997, and has been continuously and exclusively used in commerce by
21
22

1 Gibson since 1958. A copy of the Trademark's registration is attached hereto as

2 Exhibit E.

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

8 Exhibit F.

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

14 43. Gibson is the sole owner of the distinctive word mark FLYING V®, U.S.
15 Trademark Reg. No. 1216644 (hereinafter "FLYING V® Trademark"). This
16 Trademark was issued by the U.S. Patent and Trademark Office on November 16,
17 1982, and has been continuously and exclusively used in commerce by Gibson since
18 1958. A copy of the Trademark's registration is attached hereto as Exhibit H.

19 44. Gibson is the sole owner of the distinctive word mark LES PAUL®, U.S.
20 Trademark Reg. No. 1539282 (hereinafter "LES PAUL® Trademark"). This
21

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.
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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

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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21

24 50. The Gibson Trademarks have been famous in the United States and
25 elsewhere since long prior to the acts complained of herein.
26

51. The above-identified registrations remain in full force and effect and are *prima facie* proof of Gibson's exclusive right to own and use the Les Paul Body Shape Design® Trademark, the Les Paul Peg-Head® Trademark, the Bell Cover Design® 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 LES PAUL® Trademark, the FLYING V® Trademark, the EXPLORER® Trademark, the GIBSON® Trademark and the S-G® Trademark. In addition, the above registrations are incontestable pursuant to Section 15 of the Lanham Act (15 U.S.C. § 1065).

Misuse By Defendants of the Gibson Trademarks

52. Upon information and belief, Defendants offer for sale and sell products using the Les Paul Body Shape Design® Trademark, the Les Paul Peg-Head® Trademark, the Bell Cover Design® 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 LES PAUL® Trademark, the FLYING V® Trademark, the EXPLORER® Trademark, the GIBSON® Trademark and the S-G® Trademark (“Defendants’ Unauthorized Products”) (See Exhibits “M,” “N,” “O” and “P”)

53. Upon information and belief, notwithstanding the lack of authorization from Gibson and the fact that said Defendants' Unauthorized Products otherwise are

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").

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

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

14 56. Upon information and belief, the aforementioned misuse of the Gibson
15 Trademarks by Defendants was done by Defendants with the intent of deceiving or
16 misleading customers into mistakenly believing that said Defendants' Unauthorized
17 Products were authorized Gibson products originating from Gibson or its related
18 companies and otherwise misappropriating the goodwill built up by Gibson in the
19 Gibson Trademarks and otherwise attracting and misdirecting consumers looking for
20 genuine or authorized Gibson goods to Defendants' websites.
21

22 57. Prior to commencing this lawsuit, Gibson and its representatives
23 communicated directly with Defendants and their representatives in an attempt to
24