

TABLE OF AUTHORITIES

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*Winter v. Natural Res. Def. Council, Inc.*,  
129 S. Ct. 365, 374 (2008)..... 1, 9

1 **I. INTRODUCTION**

2 Gibson is entitled to preliminary injunction relief because it has demonstrated: 1) a  
3 likelihood of success on the merits; 2) a likelihood of irreparable injury if the preliminary  
4 injunction is not granted; 3) the balance of equities tips in favor of issuing a preliminary  
5 injunction; and 4) that granting a preliminary injunction is in the public interest. Winter v.  
6 Natural Res. Def. Council, Inc., 129 S. Ct. 365, 374 (2008).  
7

8 **II. INDISPUTABLE LIKELIHOOD OF SUCCESS ON THE MERITS**

9  
10 To succeed on the merits of trademark infringement, including contributory trademark  
11 infringement, Gibson must show two elements: 1) a valid protectable mark; and 2) a  
12 likelihood of confusion, mistake, or deception in Defendants' use of the trademarks. 15  
13 U.S.C. §1114(a). Gibson has met its burden in demonstrating these two elements.  
14

15 **A. Gibson Owns Valid, Protectable Registrations for Each Mark in Question**

16 Gibson has provided the Court with valid, protectable trademark registrations on all of  
17 the marks in question, providing *prima facie* evidence of their validity and Gibson's exclusive  
18 incontestable rights to use these marks. 15 U.S.C. §1057(b). Therefore, the burden of proof  
19 shifts to the Defendants to prove Gibson does not own valid, protectable trademarks.  
20

21 First, Defendants would have the Court believe that the Gibson Design Marks are  
22 invalid because they have not acquired a secondary meaning. A fatal flaw in this contention  
23 is that all of the authority quoted addresses only unregistered trade dress, which is only one  
24 count in the complaint. All of the Gibson Marks in question have been registered on the  
25 principal register for over twelve years, and been used exclusively by Gibson, thus making  
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1 them incontestable.<sup>1</sup> Through Gibson's use of the trademarks for over half a century with  
 2 hundreds of millions of dollars in advertising, Gibson has built enormous goodwill in these  
 3 design marks and the purchasing public has come to expect Gibson quality when they see the  
 4 Gibson Marks used in commerce, thus creating a secondary meaning.<sup>2</sup> *See* Mitchell Supp.  
 5 Decl. ¶¶7 Ex. A and ¶¶11 Ex. E; *See also* Wilson Decl. ¶¶10.

7           Second, Defendants claim that the Gibson Design Marks are generic and functional.  
 8 Federal registration of a trademark endows it with a **strong presumption of validity**. "The  
 9 general presumption of validity resulting from federal registration includes the specific  
 10 presumption that the trademark is not generic." Coca-Cola Co. v. Overland, Inc., 692 F.2d  
 11 1250, 1254 (9<sup>th</sup> Cir. 1982). Defendants have tried to state that Gibson's Design Marks are  
 12 generic and functional; however, Gibson has produced not only valid, incontestable  
 13 registrations but also expert declarations confirming the iconic, non-functional and unique  
 14 nature of the exclusive Gibson Design Marks. *See* Carter Decl. ¶¶ 9-16, *See also* McGuire  
 15 Decl. ¶¶ 9-16 and Wilson Decl. ¶¶ 9-19. Defendant WowWee's expert has erroneously claimed  
 16 that because there are guitars in the marketplace that are allegedly similar to some of the  
 17 Gibson Design Marks, the Gibson Design Marks are generic; however a number of those  
 18 third party marks cited by Defendant WowWee, are actually under license from Gibson. *See*  
 19 Mitchell Supp. Decl. ¶¶ 3-5. Moreover a number of the third party marks cited by Defendant  
 20 WowWee are not comparable in design to the Gibson Design Marks. Further, Defendant  
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 22  
 23  
 24  
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26 <sup>1</sup> *See Sunrise Jewelry Mfg. Corp. v. Fred S.A.*, 175 F.3d 1322, 1324 (Fed. Cir. 1999)(stating an "incontestable mark  
 27 cannot be challenged, for example, on the basis that the mark lacks a secondary meaning.")

28 <sup>2</sup> *See Volkswagen AG v. Verdier Microbus and Camper, Inc.*, 2009 WL 928130 at \*6 (N.D. Cal. 2009)(finding VW trade  
 dress had acquired a secondary meaning through "advertising, promoting, and developing the VW marks throughout the  
 world.")

1 WowWee has argued that Gibson has not properly policed its marks, thereby rendering them  
2 generic; however, Gibson has been policing its rights against these third parties, thereby  
3 preserving its exclusive trademark rights. *See* Mitchell Supp. Decl. ¶ 5. The Defendants have  
4 failed to show that Gibson Design Marks are generic or functional. *See* Carter Decl. ¶¶ 9-16,  
5 *See also* McGuire Decl. ¶¶ 9-16, Wilson Decl. ¶¶ 9-19 . A few isolated incidents of  
6 somewhat similar design marks do not overcome the strong presumption of validity.  
7

8  
9 Defendants also place entirely too much emphasis on Gibson Guitar Corp. v. Paul  
10 Reed Smith Guitars, LP, 423 F.3d 539 (6<sup>th</sup> Cir. 2005). That court conducted no analysis  
11 whatsoever on the claim of genericness or functionality. *Id* at 548. Moreover, this PRS court  
12 did not use the accepted confusion standard of the Ninth Circuit.<sup>3</sup> So this case has no bearing.  
13

14 **B. Defendants’ Use Is Likely to Confuse, Mistake, and Deceive the Public**

15 Analyzing the Sleekcraft factors demonstrates that a finding of consumer confusion is  
16 extremely likely.<sup>4</sup>

17  
18 **i. Gibson’s Marks are Strong**

19 Due to the arbitrary nature, distinctiveness, and commercial success of Gibson’s  
20 Marks, the strength of Gibson’s Marks should be given significant protection.<sup>5</sup>  
21 Distinctiveness refers to “the more likely the mark is to be remembered and associated in the  
22 public mind with the mark’s owner.” Goto.com, Inc. v. Walt Disney Co., 202 F.3d 1199,  
23

24 <sup>3</sup> This is contrary to the Ninth Circuit precedence in Dr. Seuss, where initial-interest was incorporated into a likelihood of  
25 confusion analysis. Dr. Seuss Enterprises, L.P. v. Penguin Books USA, Inc., 109 F.3d 1394, 1405 (9<sup>th</sup> Cir. 1997).

26 <sup>4</sup> The eight Sleekcraft factors used by the Ninth Circuit in determining a likelihood of consumer confusion are 1) the  
27 strength of the mark; 2) the proximity of the goods; 3) the similarity of the marks; 4) evidence of actual confusion; 5) the  
28 defendant’s intent on selecting the mark in question; and 8) likelihood of expansion of the product lines. AMF Inc. v.  
Sleekcraft Boats, 599 F.2d 341, 348-49 (9<sup>th</sup> Cir. 1979).

<sup>5</sup> *See* Brookfield Commc’ns, Inc. v. West Coast Entn’t Corp., 174 F.3d 1036, 1058 (9<sup>th</sup> Cir. 1999) (stating that the  
stronger a mark is, the more protection it will be afforded by the courts).

1 1207 (9<sup>th</sup> Cir. 2000). Even a weak mark “may be strengthened by such factors as extensive  
2 advertising, length of exclusive use, [and] public recognition.” M2 Software, Inc. v. Madacy  
3 Entertainment, 421 F.3d 1073, 1081 (9<sup>th</sup> Cir. 2005). Gibson has spent 100s of millions of  
4 dollars in marketing its unique designs and the commercial success of Gibson’s Marks attests  
5 to the strength of these marks. *See Mitchell Supp. Decl. ¶ 7 Ex. A, ¶ 11 Ex. E, See also Bates*  
6 *Decl. ¶¶9-12*. The Federal Circuit has stated repeatedly that there is no excuse for even  
7 approaching the well-known trademark of a competitor inasmuch as “[a] strong mark ... casts  
8 a long shadow which competitors must avoid.” Kenner Parker Toys, Inc. v. Rose Art  
9 Industries, Inc., 963 F.2d 350, 353 (Fed. Cir. 1992). Because of the strength of Gibson’s  
10 Marks, this Sleekcraft factor heavily weighs in finding a likelihood of confusion.  
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13  
14 **ii. The Proximity of the Goods Favors Gibson**

15 The test for proximity of the goods is “that the public will mistakenly assume there is  
16 an association between the producers of the related goods, though no such association exists.”  
17 Sleekcraft, 599 F.2d at 350. “Related goods are those products that ‘would be reasonably  
18 thought by the buying public to come from the same source if sold under the same mark.’”  
19 Moroccanoil, Inc. v. Moroccan Gold, LLC, 590 F.Supp.2d 1271, 1278 (C.D. Cal.  
20 2008)(quoting Sleekcraft at 348 n. 10). The Defendants would have the Court believe that  
21 the goods are not related because WowWee’s products are allegedly only toys. Paper Jamz  
22 guitars can and do function as an electric guitar. WowWee even includes an insert with every  
23 Paper Jamz guitar showing how to play major and minor chords that states “[use] this Paper  
24 Jamz pocket guide to play real guitar chords and create your own songs.” *See Mitchell Supp.*  
25 *Decl. ¶ 9, Ex. C*. Further, the vast majority of their advertising shows the consumer replacing  
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1 a “real” guitar with a Paper Jamz guitar. Additionally, a search of Defendant Best Buy’s  
2 website of the search terms “electric guitar” results in both Gibson guitars and Paper Jamz  
3 guitars within the same search results, *consecutively*. See Mitchell Supp. Decl. ¶ 10, Ex. D.  
4 Not only are Paper Jamz related to the goods in which Gibson Marks are used, they are direct  
5 competitors. Because of this, the proximity of the goods prong of Sleekcraft weighs heavily  
6 in finding a likelihood of confusion.  
7

8  
9 **iii. The Shape of Paper Jamz Guitar Series are Identical to Gibson’s Design Marks**

10 The designs of the Paper Jamz Guitars are identical to Gibson Design Marks.<sup>6</sup> See  
11 Carter Decl. ¶ 15. While the WowWee and Paper Jamz word marks are displayed on the  
12 guitars, they are not prominent and should not be given significant weight in determining  
13 their appearance in the marketplace. The guitar body shape design is what the consumer will  
14 recognize and remember, as this is the major portion of the Paper Jamz guitar. See Sleekcraft,  
15 599 F.2d at 351 (finding that the more conspicuous mark serves to indicate the source of  
16 origin to the customers.) As noted before, the body shape of Paper Jamz are identical to the  
17 Gibson Design Marks. Because of the third prong of the similarity test, which affords more  
18 weight to the similarities, the identical designs and prominence are impossible for Defendants  
19 to overcome, shifting this Sleekcraft factor towards a likelihood of confusion.<sup>7</sup>  
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26 <sup>6</sup> The Ninth Circuit test for conducting a similarity analysis is (1) “the marks must be considered in their entirety and as  
27 they appear in the marketplace, (2) similarity is adjudged in terms of appearance, sound, and meaning, and (3) the  
28 similarities are weighed more heavily than differences.” Moroccanoil, 590 F.Supp.2d at 1278; See also Entrepreneur  
Media v. Smith 279 F.3d 1135, 1144 (9<sup>th</sup> Cir. 2002).

<sup>7</sup> “[T]he similarity of the marks, has always been considered a critical question in the likelihood-of-confusion analysis.”  
Planet Coffee Roasters, Inc. v. Hung Dam, 2010 WL 625343 at \*2 (C.D. Cal. 2010).

1                                    **iv. Gibson has Provided Evidence of Actual Confusion**

2                    Gibson has provided the Court with evidence of actual confusion in the marketplace.<sup>8</sup>

3                    The evidence of actual consumer confusion has been demonstrated by a video prominently  
4                    displayed on WowWee's website, [paperjamz.com/rockstarz-academy](http://paperjamz.com/rockstarz-academy). See Mitchell Decl. ¶  
5                    17 Ex. LL. WowWee has since removed this video from its website, only strengthening the  
6                    evidence of actual confusion. Even if the video was intended as a joke as Defendant now  
7                    claims, the video itself obviously showed consumer confusion. In addition, WowWee's own  
8                    retailers and customers have been confused between Paper Jamz body designs and Gibson's  
9                    Marks, using the Gibson Word Marks along with the Paper Jamz guitars bearing the Gibson  
10                    Design Marks. See Mitchell Supp. Decl. ¶ 8, Ex. B; See also Bates Supp. Decl. ¶¶ 6-8, See  
11                    also Americana Trading Inc. v. Ross Berrie & Co, 966 F.2d 1284, 1286-87 (9<sup>th</sup> Cir. 1992)  
12                    (finding retailer confusion strong evidence of actual confusion in the marketplace). Evidence  
13                    of this retailer confusion is shown by the website [paperjamzstore.com](http://paperjamzstore.com) as well as on message  
14                    boards, eBay and Amazon websites. See Mitchell Decl. ¶ 14-16, See also Mitchell Decl. Ex.  
15                    GG-KK, Mitchell Supp. Decl. ¶ 8, Ex. B. At least three websites promoting the Paper Jamz  
16                    guitars clearly demonstrate that there is widespread confusion amongst the public at large as  
17                    to whether or not Gibson is affiliated with the products. Bates Supp. Decl. ¶¶ 6-8, Exs. B-D.  
18                    Given the incidents of actual confusion, this Sleekcraft factor supports a finding of a  
19                    likelihood of confusion.  
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28                    <sup>8</sup> Evidence of actual confusion is strong evidence that future confusion is likely. Thane Intern Inc. v. Trek Bicycle Corp.,  
305 F.3d 894, 902 (9<sup>th</sup> Cir. 2002).

1 **v. Same Marketing Channels**

2 The Defendants claim that Gibson guitars and Paper Jamz guitars are sold through  
3 very different marketing channels and do not compete. Again, this is a false assertion. Here  
4 Gibson is arguing that the Gibson Marks are used on goods that are direct competitors of  
5 Paper Jamz and sold through identical marketing channels. In fact, the Gibson Maestro guitar  
6 is sold through Defendants Best Buy and Amazon.com. A search for “electric guitar” on  
7 bestbuy.com, actually lists a Gibson Maestro and a Paper Jamz guitar as consecutive entries.  
8  
9 *See Mitchell Supp. Decl.* ¶ 10 Ex. D. WowWee’s weak argument that Paper Jamz guitars are  
10 not competitors because they are toys is a contention that fails as Gibson has licensed the  
11 Gibson Design Marks for toys including, Guitar Hero, Hasbro’s Power Tour and J Reynolds’s  
12 children’s guitars, which can be purchased from Defendants Amazon.com, Target and eBay.  
13  
14 *See Mitchell Supp. Decl.* ¶ 6. Gibson has proved without a doubt that Gibson Marks are used  
15 and licensed on products that are sold through the identical marketing channels that distribute  
16 Paper Jamz guitars and therefore, this Sleekcraft factor heavily favors a likelihood of  
17  
18 consumer confusion. *See Bates Supp. Decl.* ¶5.

19 **vi. There is Likely a Small Degree of Purchaser Care When Purchasing These**  
20 **Goods**

21  
22 By using the Gibson Design Marks, consumers will be mistakenly deceived into  
23 thinking Gibson sponsors, supports or otherwise authorizes the Paper Jamz. *See Wilson Decl.*  
24 ¶ 10. Because of the inexpensive price of the Paper Jamz guitars, the public is more likely to  
25 depend on the familiar and famous trademark branding and believe that they are purchasing  
26 items that are backed by the reputation associated with Gibson quality products. *See Wilson*  
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1 Decl. ¶ 13, Bates Supp. Decl. ¶ 12, Ex. H. This Sleekcraft factor should also be weighed in  
2 finding a likelihood of consumer confusion.

3  
4 **vii. WowWee Intended to appropriate the Goodwill**

5 Defendant WowWee has created an entire line of electric guitars that are primarily  
6 made up of the Gibson Design Marks, in fact 4 of the 6 guitars available are *identical to*  
7 Gibson's famous guitars. Based on this fact alone, it's clear that the choice in guitar designs  
8 was made with great forethought. Further, on the websites of Defendants Amazon, WowWee  
9 and eBay, THE FLYING V® word mark is seen along with Paper Jamz guitar bearing the  
10 FLYING V Design Mark. See Mitchell Supp. Decl. ¶ 8 Ex. B. This clearly shows intentional  
11 use of the Gibson trademarks. When an alleged infringer knowingly adopts a mark similar to  
12 another's, courts will presume an intent to deceive the public." Moroccanoil 590 F. Supp.2d  
13 at 1280 (quoting Official Airline Guides, Inc. v. Goss, 6 F.3d 1385, 1394 (9<sup>th</sup> Cir. 1993)).  
14 Therefore, this Sleekcraft factor weighs heavily towards a likelihood of confusion.  
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17 **viii. Paper Jamz is a Direct Competitor With Goods Displaying the Gibson Marks**

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19 Gibson has shown that WowWee's Paper Jamz guitars compete directly with goods  
20 bearing the Gibson Marks. The Defendants are selling Paper Jamz guitars while Gibson sells  
21 guitars, therefore the products compete. Moreover, even if the court were to accept that Paper  
22 Jamz guitars were only toys and not guitars, the licensing of the Gibson Design Marks to  
23 Hasbro, J Reynolds and Guitar Hero is *prima facie* evidence that an expansion by Gibson  
24 Marks into "toys" is not only likely but has already occurred. See Mitchell Supp. Decl. ¶ 6.  
25 This Sleekcraft factor also weighs heavily towards a likelihood of consumer confusion.  
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1 **III. LIKELIHOOD OF IRREPARABLE INJURY WILL OCCUR**

2 Gibson will suffer irreparable harm if a preliminary injunction is not ordered. The  
3 goodwill, brand and over-all business of Gibson is at stake. Gibson's most famous trademarks  
4 are being used across the US without license or ability to apply quality control. See Mitchell  
5 Supp. Decl. ¶ 12. Every day consumers are buying these Paper Jamz guitars assuming they  
6 meet Gibson's quality standards and they do not. See Mitchell Supp. Decl. ¶ 12. If these  
7 unauthorized products are not immediately taken off the marketplace, Gibson will suffer  
8 irreparable harm. Defendants call into question whether there is a presumption of irreparable  
9 harm in trademark infringement cases in light of the Winter requirement that a plaintiff show  
10 that irreparable harm is likely, not merely possible. Interestingly, the Defendants quote  
11 Moroccanoil, a case in which the presumption was invoked concurrently with the Winter test.  
12 Gibson contends this presumption of irreparable injury is not inconsistent with the Winter  
13 requirement when a trademark with a significant amount of established goodwill is at issue  
14 and/or where Plaintiff has shown (as it has done here) that there is likelihood of success in the  
15 trademark infringement action.<sup>9</sup> Further, Gibson has shown that it will be irreparably  
16 harmed, without relying on the presumption.

17 **IV. THE BALANCE OF THE EQUITIES IS CLEARLY IN GIBSON'S FAVOR**

18 As stated above, allowing Defendants the continued unlicensed use of Gibson's Marks  
19 through the pendency of a trial will irreparably harm Gibson. Juskiewicz Decl. ¶ 28.

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25 <sup>9</sup> See Marlyn Nutraceuticals, Inc. v. Mucos Pharma, 571 F.3d 873 (9<sup>th</sup> Cir. 2009)(a case in which the district court was  
26 found to have not abused its discretion by presuming irreparable injury in a trademark case); Moroccanoil, 590 F.Supp.2d  
27 at 1281(invoking the presumption of irreparable harm in a trademark infringement case after finding a likelihood of  
28 success on the merits to satisfy the Winter requirement that irreparable harm is *likely*); Fiji Water Co, LLC v. Fiji Mineral  
Water USA, LLC, 2010 WL 3835673 at 10 (C.D. Ca. Sept. 30, 2010)(questioning the presumption of irreparable harm  
but ruling that Fiji's investment to build substantial reputation and goodwill in its trademark was enough to show a  
likelihood of irreparable injury).

1 Enjoining the sale of Paper Jamz products through a preliminary injunction will cease this  
2 irreparable harm to Gibson. Gibson does not want its name and goodwill associated with an  
3 electric guitar over which it has no quality control.  
4

5 **V. THE PUBLIC INTEREST IS CLEARLY IN GIBSON'S FAVOR**

6 As this Court has pointed out when a trademark holder has proven a success on the  
7 merits, as Gibson has, "the public has a right not to be deceived or confused, the public  
8 interest and goals of the Lanham Act favor an injunction." Moroccanoil, 590 F.Supp.2d at  
9 1282. Gibson does not deny that the public also has an interest in free competition. The  
10 Defendants just fail to understand that this only includes legal and legitimate competition.  
11 Paper Jamz guitars are neither legal nor legitimate and as such, public interest would be  
12 furthered by granting a preliminary injunction.  
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15 **VI. CONCLUSION**

16 Given the bad intent WowWee had when adopting Gibson's Marks, the grossly  
17 negligent business conduct of mortgaging its company in an investment into infringing  
18 products, and the strong likelihood that Paper Jamz guitars will confuse consumers as to an  
19 affiliation with Gibson's Marks, a \$10,000 bond is not "patently absurd" but rather very  
20 reasonable.  
21

22 DATED: December 13, 2010

23 Attorneys for Plaintiff

BATES & BATES, LLC



ANDREA E. BATES

MICHAEL A. BOSWELL

# Exhibit 6

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7 Attorneys for  
Plaintiff  
8 GIBSON GUITAR CORP.,

9  
10 UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

11 GIBSON GUITAR CORP., a Delaware  
12 corporation,

13 Plaintiff,

14 vs.

15 WOWWEE USA, INC., et. al.

16 Defendants,  
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) Case No. CV10-8884 RGK (RZx)  
)  
) SUPPLEMENTAL DECLARATION OF  
) ANDREA E. BATES IN SUPPORT OF  
) PLAINTIFF'S APPLICATION FOR A  
) PRELIMINARY INJUNCTION

) Judge: R. Gary Klausner

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**DECLARATION OF ANDREA E. BATES**

I, Andrea E. Bates, declare as follows:

1. Unless otherwise stated as based upon information and belief, the facts set forth in this declaration are personally known to me and I have first knowledge of these facts. If called upon to testify during court of this action, I could, and I would competently testify thereto under oath. I am over 18 and a party to this action.

2. I am an attorney licensed to practice law before the courts in the State of California and the federal Central District of California. I am a partner in the law firm of Bates & Bates, LLC, which is counsel of record for Plaintiff GIBSON GUITAR CORP. (hereinafter "Gibson"), a Delaware corporation. As one of the attorneys in this case, I participate in the filing and retrieval of documents for this case. I also supervise associate attorneys and staff in those activities.

3. As an attorney for Gibson, I have met with personnel of the company as well as reviewing records of the company in regards to trademark issues, among others. I, or personnel of my firm who are under my supervision, have also reviewed and obtained records from the United States Patent and Trademark Office in regards to Gibson's Registered Trademarks.

4. I have reviewed the Defendant WowWee's Memorandum in Opposition to Plaintiff's Motion for Preliminary Injunction along with the accompanying Declarations and Exhibits.

5. Attached hereto as Exhibit A, is a screen print of Defendant Amazon.com's website which includes the Hasbro Power Tour guitar and the J Reynolds 1/2 size LP guitar under the "Toys and Games" category, both displaying the a trademark design in question that has been licensed by Gibson.

1           6.       Attached hereto as **Exhibit B**, are screen shots of paperjamzstore.com which is still  
2 active, despite supposed efforts of WowWee to have it “shut down,” and using Gibson word marks to  
3 describe the Paper Jamz guitars. The “Amazon.com associate” website now links the advertisements  
4 to Defendant Kmart.

5           7.       Attached hereto as **Exhibit C**, are screen shots of paperguitar.co.uk., previously  
6 unmentioned, that contains use of Gibson® word marks to describe the Paper Jamz guitars. The  
7 website contains links to Defendants’ Amazon.com and Toys”R”Us European websites. Upon  
8 information and belief, the Paper Jamz guitars can be purchased on the European websites and  
9 shipped to the United States. I have been unable to locate the owner of this website and, at this time,  
10 am unable to prove an affiliation with Defendant WowWee other than the obvious benefit WowWee  
11 receives from the advertising using the Gibson® word marks.

12           8.       Attached hereto as **Exhibit D**, are screen shots of www.wow-wee-paper-jamz-  
13 guitar.com which is still active, despite supposed efforts of WowWee to have it “shut down,” and  
14 using Gibson® word marks to describe the Paper Jamz guitars. The link to Amazon.com has been  
15 removed. WowWee obviously benefits from this advertising in the form of more Paper Jamz guitar  
16 sales.

17           9.       Attached hereto as **Exhibit E**, are print advertisements from the Gibson Pure®  
18 advertising campaign, specifically designed to create an association with the consumer between the  
19 famous body shape designs and Gibson. These advertisements were run in musician magazines as  
20 well as magazines targeted towards the general public.


21           10.      Attached hereto as **Exhibit F**, are print advertisements specifically designed to create  
22 an association with the consumer between the famous Les Paul Headstock Design® and the Bell-  
23 Shaped Truss Rod Cover®.

1           11. Gibson contends that its famous design trademarks will be recognizable to the general  
2 public, not solely guitar players. Attached hereto as **Exhibit G**, contains a Time® magazine article  
3 from 2003 where the Les Paul Body Shape® is prominently featured. According to  
4 Timewarner.com, Time magazine is the world's largest weekly magazine with a United States  
5 audience of 20 million. Also included is an article by modernguitars.com showing the inventor and  
6 musician Les Paul receiving the National Medal of Arts from George W. Bush in 2007.  
7

8           12. Attached hereto as **Exhibit H**, are other examples of Gibson body shape designs being  
9 prominently displayed to the general public.

10           I declare under penalty of perjury under the laws of the United States of America, the States  
11 of Georgia and California that the foregoing is true and correct.  
12

13           Executed on December 11, 2010 at Atlanta, Georgia.  
14

15  
16 

17 Andrea E. Bates, Esq.  
18 Declarant  
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# EXHIBIT A