

1 resolve this matter without the necessity of bringing this lawsuit, but Defendants have
2 failed to cease all unauthorized use of the Gibson Trademarks as requested by Gibson
3 and continues to deliberately and intentionally use the mark without the consent of
4 Gibson.
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6 58. The misuse of the Gibson Trademarks by Defendants was intended to
7 cause, has caused and is likely to continue to cause consumer confusion, mistake or
8 deception including the misleading of consumers into mistakenly believing that the
9 Defendants' Unauthorized Products are made directly by Gibson pursuant to Gibson's
10 strict quality control standards or Gibson has authorized or licensed the use by
11 Defendants of the Trademark for those products.
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13 59. The aforementioned misuse of the Trademark by Defendants is damaging
14 to the reputation and goodwill of the Gibson and the Gibson Trademarks.
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16 60. Upon information and belief, the aforesaid acts of Defendants have
17 caused and, unless enjoined will continue to cause irreparable damage to Gibson and to
18 the reputation of its valuable Gibson Trademarks.
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20 61. Gibson has no adequate remedy at law.
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22 **COUNT I**

23 **Trademark Infringement Under**

24 **The United States Trademark**

25 **Act (15 U.S.C. 1114 (1))**
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62. Gibson repeats the allegations set forth in Paragraphs 1 through 61.

63. The complained of acts constitute willful, deliberate and intentional infringement of Plaintiff's federally registered trademarks for the Gibson Trademarks in violation of §32(1) of the Lanham Act (15 U.S.C. §1114(1)).

COUNT II

Trademark Counterfeiting Under

The United States Trademark

Act (15 U.S.C. 1114(1))

64. Gibson repeats the allegations set forth in Paragraphs 1 through 63.

65. The complained of acts constitute trademark counterfeiting in violation of Section 32(1) of the Lanham Act (15 U.S.C. §1114(1)).

COUNT III

False Designation Of Origin And

Unfair Competition Under The United States

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

66. Gibson repeats the allegations set forth in paragraphs 1 through 65.

67. The complained of acts constitute willful, deliberate and intentional false designations of origin as to products made available by Defendants and unfair competition in violation of §43(a) of the Lanham Act (15 U.S.C. §1125(a)).

COUNT IV

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

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

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

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

COUNT V

Body Shape Design

Trademark Dilution

Under The United States Trademark Act

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

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

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

COUNT VI

Trade Dress Infringement Under Federal Law

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

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73. Gibson has used in interstate commerce the inherently distinctive product designs in connection with the sale and marketing of its guitars. The Gibson guitars, namely 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, and the SG Body Design® Trademark contain inherently distinctive, nonfunctional features which are protected under the Lanham Act §43(a) (15 U.S.C. 1125(a)).

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

COUNT VII

Trademark Dilution Under

California Business and Professions Code (Section 14330)

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

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

COUNT VIII

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Common Law Trademark

Infringement And Unfair Competition

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

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

COUNT IX

Unfair Competition Under

California Business and Professions Code (Section 17200)

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

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

COUNT X

California Trademark Infringement, Dilution and Deceptive Acts and Practices

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

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

82. The foregoing acts of Defendants constitutes trademark infringement in violation of California Business & Professions Code section 14245, for which Plaintiff is entitled to injunctive relief, profits, and damages.

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83. The foregoing acts of Defendants will create a likelihood of injury to the public image and business reputation of Gibson, in the public and will likely associate Defendants' infringing goods with the Gibson Trademarks and Gibson's goods, and cause the dilution of the distinctive quality of the Gibson Trademarks all in violation of California Business & Professions Code section 14247, for which Plaintiff is entitled to injunctive relief.

COUNT XI

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

Unfair Competition

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

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

1 Shape Design® Trademark, the Explorer Body Shape Design® Trademark, the
2 Kramer Peg-Head® Trademark, and the SG Body Design® Trademark® as
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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
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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.
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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
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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.
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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.
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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.
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26 **COUNT XII**

27 **For Contributory Violation of Section 32 of**
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Lanham Trademark Act

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

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4 90. EBay's contributory conduct in connection with their clients/customers
5 and others' respective unauthorized and unlawful acts of infringement of Gibson's
6 above-mentioned federally registered trademarks, and each of them, have enabled,
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8 assisted, aided and abetted such clients/customers and others, to use in commerce part
9 or all of one or more of Gibson's Trademarks, or of a reproduction, counterfeit, copy
10 or colorable imitation thereof, in connection with the sale, offering for sale,
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12 distribution, or advertising of any goods or in connection with such use was or is likely
13 to cause confusion or mistake, or to deceive, constitute acts of contributory registered
14 trademark infringement in violation of Section 32 of the Lanham Trademark Act of
15 1946, 15 U.S.C. § 1114, as amended.
16

17 91. Moreover, EBay's contributory conduct in connection with their
18 clients/customers and others' respective unauthorized and unlawful acts of
19 reproduction, counterfeit, copy, or colorable imitation of part or all of one or more
20 Gibson Trademarks that are federally registered, and application thereof to any ads,
21 signs, prints, packages, wrappers in connection with the sale, offering for sale,
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23 distribution, or advertising of any goods or in connection with such use was or is likely
24 to cause confusion or mistake, or to deceive, constitute further acts of contributory
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1 registered trademark infringement in violation of Section 32 of the Lanham Trademark
2 Act of 1946, 15 U.S.C. § 1114, as amended.

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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
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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
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15 Thousand Dollars (\$100,000.00), which amounts should be trebled pursuant to 15
16 U.S.C. Section 1117.

17 **COUNT XIII**

18 **Accounting**

19 **Common Law**

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

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

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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
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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.

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

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

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

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26 4. That Defendants' conduct violates the provisions of California Business
27 & Professions Code sections 14240, 14245, 14247 and 17200-17210 and constitutes
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1 trademark infringement, unfair competition under the common law of the State of
2 California.

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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,
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8 be preliminarily and permanently enjoined and restricted from directly or indirectly:

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;

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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;

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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;

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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

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

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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.
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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.
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24 13. That the Court require Defendants to notify their commercial associates,
25 dealers, master distributors, suppliers and customers of this Order.
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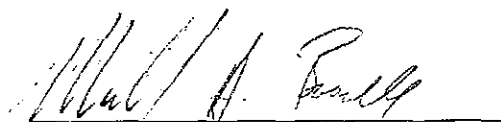
FRCP 7.1 CORPORATE DISCLOSURE STATEMENT

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 18th day of November 2010.

BATES & BATES, LLC



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

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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

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

Dated: 18 NOV 2010

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)].