

1           Unless enjoined, the proliferation of the unlicensed use of the Gibson Trademarks will  
2 irreparably harm GIBSON by: (1) undermining Gibson's substantial investment in the Gibson  
3 Trademarks; (2) eliminating Gibson's control over distribution of its federally registered trademarks;  
4 (3) harming Gibson's reputation with third party licensees; and diminishing the sales of future  
5 products displaying the Gibson Trademarks by Gibson and its authorize retailers ( Declaration of  
6 Henry Juszkiewicz at ¶ 28).

7           Gibson has invested millions of dollars developing, promoting and advertising goods that bear  
8 the Gibson Trademarks. In the absence of injunctive relief, Defendants will continue to profit from  
9 the sales of the illegal goods while Gibson will be harmed by the continued distribution of these  
10 counterfeit items to the public. The lack of injunctive relief will therefore result in the loss of  
11 goodwill to the public and licensees encourage infringers to increase operations, and discourage anti-  
12 piracy enforcement – all of which is great and irreparable harm.   In contrast, Defendants will only  
13 suffer the loss of the revenue from the sales of illicit

14 Unauthorized Products utilizing the Gibson Trademarks. But that is the risk Defendants assumed  
15 when they decided to participate actively in an illegal business activity. The law is clear that the  
16 economic harm that befalls a pirate is not cognizable in the balance of hardships (Cadence Design  
17 Systems, Inc. v. Avant! Corp., 125 F.3d 824, 829 (9th Cir. 1997) (profit lost from enjoined sales of  
18 infringing goods not cognizable harm); Triad Sys Corp. v. Southeastern Express Co., 64 F. 3d 1330,  
19 1338 (9th Cir. 1995) (“Where the only hardship that the defendants will suffer is lost profits from an  
20 activity which has been shown likely to be infringing, such an argument in defense merits little  
21 equitable consideration.”) Moreover, the Defendants retail businesses appear to involve the supply of  
22 many types of products, of which the items bearing the Gibson Trademarks are but a few. They will,

1 presumably, continue to supply these other products, despite the granting of any injunctive relief  
 2 preventing the sale and distribution of the Unauthorized Products. Because of the irreparable harm to  
 3 Gibson and because the balance of hardships tips strongly in favor of Gibson, Gibson is entitled to a  
 4 temporary restraining order and preliminary injunction.

5         Additionally, Plaintiff is willing to post a bond to protect Defendants' interest pending the  
 6 outcome of this litigation, although Plaintiff strongly believes that the bond should be minimal based  
 7 on the merits of its case and the strong likelihood it will prevail.

8         Fed. R. Civ. P. 65 (c) provides that a bond be posted "in an amount that the court considers  
 9 proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined  
 10 or restrained." A bond "may not be required, or may be minimal, when the harm to the enjoined party  
 11 is slight or where the movant has demonstrated a likelihood of success" (Ticketmaster L.L.C. v.  
 12 RMG Technologies, Inc. 507 F. Supp. 2d 1096, 1116 (C.D. Cal. 2007); *see also* Connecticut Gen.  
 13 Life Ins. Co. v. New Images of Beverly Hills, 321 F. 3d 878, 882 (9th Cir. 2003) ("bond amount may  
 14 be zero if there is no evidence the party will suffer damages from the injunction."). Here, there is  
 15 little prospect that any of Defendants' legitimate interests would be impinged by an order requiring  
 16 them to cease distribution of the goods bearing the Gibson Trademarks. However, if the Court  
 17 requires that a bond be posted, GIBSON submits that the bond should not exceed \$10,000 since that  
 18 amount is more than sufficient to account for the unlikely possibility that Defendants would be  
 19 "wrongly enjoined or restrained," from selling these plainly illegal devices (Fed. R. Civ. P. 65 (c));  
 20 *see, e.g.*, Iconix, Inc. v. Tokuda, 457 F. Supp. 2d 969, 1002 (N.D. Cal. 2006) (setting bond at \$10,000  
 21 for preliminary injunction in copyright infringement action); Microsoft Corp. v. Very Competitive  
 22 Computer Products Corp., 671 F. Supp. 1250, 1252 (N.D. Cal. 1987) (setting bond at \$10,000 for  
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1 preliminary injunction in copyright infringement action); Nintendo of America, Inc. v. Computer &  
2 Entertainment, Inc., 1996 U.S. Dist. LEXIS 20975, \*15, 1996 WL 511619, \*6 (W.D. Wa. 1996)  
3 (setting bond at \$10,000 for preliminary injunction in copyright and trademark infringement action).

4 Based thereon, Plaintiff respectfully contends that the balance of equities tips in its favor and  
5 favors the issuance of injunctive relief and that a bond, if necessary, be minimal.  
6

7 **E. An Injunction Is In The Public Interest**

8 In the trademark context, courts often define the public interest as the right of the public not to  
9 be deceived or confused (Moroccanoil, Inc. v. Moroccan Gold, LLC, 590 F. Supp.2d 1271, 1282  
10 (C.D. Cal. 2008) (quoting Opticians Ass'n of Am. v. Indep. Opticians of Am., 920 F.2d 187, 198 (3d.  
11 Cir. 1990)). Courts also recognize that the public interest favors injunctive relief in trademark  
12 infringement cases (*See, e.g., Promatek Industries, Ltd. v. Equitrac Corp.*, 300 F. 3d 808, 813 (7th  
13 Cir. 2002)).

14 On the other hand, no public benefit results from Defendants' activities. Public policy  
15 certainly does not support trademark infringement as a means to facilitate trademark counterfeiting.  
16 If the Court finds a likelihood of confusion between marks, it may also find that the public interest  
17 weighs in favor of granting injunctive relief (Maxim Integrated Products, Inc. v. Richard Quintana, et al., 654 F. Supp.2d 1024, 1036 (N.D. Cal. 2009)). In this case, not only is there a likelihood of  
18 confusion; rather, there has been at least one example of "actual" confusion by one of Plaintiff's own  
19 customers. Thus, injunctive relief is warranted.

20  
21 **V. CONCLUSION**

22 Pursuant to the factors set forth by the U.S. Supreme Court in Winter, 129 S.Ct. at 375-376,  
23 Plaintiff has established 1) that it is likely to succeed on the merits; 2) that it is likely to suffer

1      irreparable harm in the absence of preliminary relief; 3) that the balance of equities tip in its favor;  
2      and 4) that an injunction is in the public interest.

3              A Temporary Restraining Order and a Preliminary Injunction will ensure protection of  
4      Plaintiff from further infringement of its Registered Trademarks as well as the public's right to  
5      distinguish between competing sources of goods and services. Accordingly, Plaintiff respectfully  
6      requests that the court enjoin Defendants' infringement in the form of the order proposed and filed  
7      concurrently herewith.

9              Respectfully submitted,

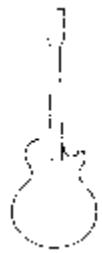
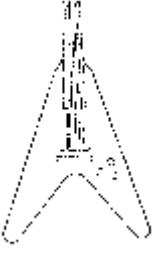
10      DATED:      November 19, 2010

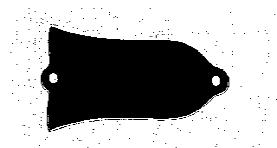
11      BATES & BATES, LLC



12  
13      ANDREA E. BATES  
14      MICHAEL A. BOSWELL  
15      Attorneys for PLAINTIFF  
16      GIBSON GUITAR CORP

# Exhibit 12

Paper Jamz Guitar	Paper Jamz Guitar	Gibson Trademark
		
		
		



## Addendum to Notice of Claimed Infringement: List of allegedly infringing listings, items, or materials

**Note on reason codes:** When identifying item numbers please use the reasons below. When removing items from our website, eBay will inform sellers of the specific reason for the removal of their items. We believe providing sellers with this information benefits all parties.

Select the most appropriate reason. Please associate each item you report with only one reason code.

### Reason codes

(Note that the numbers may not appear to be sequential everywhere. This is not a mistake, but simply reflects that the reason codes are not legally applicable in all countries.)

#### **Trademark – *item* infringement**

1.1. Item(s) is a counterfeit product which infringes the trademark owner's rights.

#### **Trademark – *listing content* infringement**

2.1. Listing(s) contains unlawful comparison to trademark owner's brand name.

2.2. Listing(s) contains unlawful use of trademark (for example, an unauthorized use of stylized logo in written text). Please specify: \_\_\_\_\_

#### **Copyright – *item* infringement**

3.1. Software offered for sale is in violation of an enforceable license agreement, which constitutes a copyright infringement.

3.2. Item(s) infringes copyrights (for example, a bootleg recording of a live performance, a pirated copy of media such as software or movies, or an unlawful copy of copyrighted works such as text, paintings, or sculptures).

#### **Copyright – *listing content* infringement**

4.1. Listing(s) uses unlawful copy of copyrighted text.

4.2. Listing(s) uses unlawful copy of copyrighted image.

4.3. Listing(s) uses unlawful copy of copyrighted image and text.

#### **Other infringement**

5.1. Item(s) has been adjudged to infringe a valid and enforceable patent (requires patent registration number and identification of claims adjudged to be infringed).

5.3. Item(s) violates a celebrity's right of publicity.

5.4. Listing(s) content violates a celebrity's rights of publicity.

5.5. Other – please specify: \_\_\_\_\_

**Reason code:** \_\_\_\_\_

**Work(s) infringed:** \_\_\_\_\_

**Item number(s):** \_\_\_\_\_

**Reason code:** \_\_\_\_\_

**Work(s) infringed:** \_\_\_\_\_

**Item number(s):** \_\_\_\_\_