

EX PARTE APPLICATION

Pursuant to Fed. R. Civ.P. 65, Local Rules 7-19 and 65-1 and Judge R. Gary Klauser, plaintiff Gibson Guitar Corp. (“Gibson”), by its undersigned attorneys, hereby applies to the Court, ex parte, for a Temporary Restraining Order and an Order to Show Cause re: Preliminary injunction to enjoin the Defendants from further acts of trademark infringement in violation of 15 USC 1114 and 1125.

This application (“Application”) is made on the grounds that:

1. Gibson is the sole owner of the distinctive Les Paul Body Shape Design®, U.S. Trademark Reg. No. 1782606 (hereinafter “Les Paul Body Shape Design® Trademark”). This Trademark was issued by the U.S. Patent and Trademark Office on July 20, 1993, and has been continuously and exclusively used in commerce by Gibson since 1952.

2. Gibson is the sole owner of the distinctive The Les Paul Peg-Head Design®, U.S. Trademark Reg. No. 1020485 (hereinafter “Les Paul Peg-Head® Trademark”). This Trademark was issued by the U.S. Patent and Trademark Office on September 16, 1975, and has been continuously and exclusively used in commerce by Gibson since 1922.

3. Gibson is the sole owner of the distinctive The Bell Shaped Truss Rod Cover Design®, U.S. Trademark Reg. No. 1022637 (hereinafter "the Bell Cover Design® Trademark"). This Trademark was issued by the U.S. Patent and Trademark Office on October 14, 1975, and has been continuously and exclusively used in commerce by Gibson since 1922.

4. Gibson is the sole owner of the distinctive The Flying V Body Shape Design Body Shape Design®, U.S. Trademark Reg. No. 2051790 (hereinafter “Flying V Body Shape Design® Trademark”). This Trademark was issued by the U.S. Patent and Trademark Office on April 15, 1997, and has been continuously and exclusively used in commerce by Gibson since 1958.

1 5. Gibson is the sole owner of the distinctive The Explorer Body Shape Design®, U.S.
2 Trademark Reg. No. 2053805 (hereinafter “Explorer Design® Trademark”). This Trademark was
3 issued by the U.S. Patent and Trademark Office on April 22, 1997, and has been continuously and
4 exclusively used in commerce by Gibson since 1958.

5 6. Gibson is the sole owner of the distinctive The Kramer Peg-Head Design®, U.S.
6 Trademark Reg. No. 1567052 (hereinafter “Kramer Peg-Head® Trademark”). This Trademark was
7 issued by the U.S. Patent and Trademark Office on November 21, 1999, and has been continuously and
8 exclusively used in commerce by Gibson since 1958.

9 7. Gibson is the sole owner of the distinctive The SG Body Design®, U.S. Trademark
10 Reg. No. 2215791 (hereinafter “SG Body Design® Trademark”). This Trademark was issued by the
11 U.S. Patent and Trademark Office on January 5, 1999, and has been continuously and exclusively
12 used in commerce by Gibson since 1961.

13 8. Gibson is the sole owner of the distinctive word mark FLYING V®, U.S. Trademark
14 Reg. No. 1216644 (hereinafter “FLYING V® Trademark”). This Trademark was issued by the U.S.
15 Patent and Trademark Office on November 16, 1982, and has been continuously and exclusively used
16 in commerce by Gibson since 1958.

17 9. Gibson is the sole owner of the distinctive word mark LES PAUL®, U.S. Trademark
18 Reg. No. 1539282 (hereinafter “LES PAUL® Trademark”). This Trademark was issued by the U.S.
19 Patent and Trademark Office on May 16, 1989, and has been continuously and exclusively used in
20 commerce by Gibson since 1952.

21 10. Gibson is the sole owner of the distinctive word mark S-G®, U.S. Trademark Reg.
22 No. 1045872 (hereinafter “S-G® Trademark”). This Trademark was issued by the U.S. Patent and
23

1 Trademark Office on August 10, 1976, and has been continuously and exclusively used in commerce
2 by Gibson since 1975.

3 11. Gibson is the sole owner of the distinctive word mark EXPLORER®, U.S. Trademark
4 Reg. No. 2641548 (hereinafter “EXPLORER® Trademark”). This Trademark was issued by the U.S.
5 Patent and Trademark Office on October 29, 2002, and has been continuously and exclusively used in
6 commerce by Gibson since 1958.

7 12. Gibson is the sole owner of the distinctive word mark GIBSON®, U.S. Trademark
8 Reg. No. 1545311 (hereinafter “GIBSON® Trademark”). This Trademark was issued by the U.S.
9 Patent and Trademark Office on June 27, 1989, and has been continuously and exclusively used in
10 commerce by Gibson since 1890.

11 13. Defendants offer for sale and sell products using the Les Paul Body Shape Design®
12 Trademark, the Les Paul Peg-Head® Trademark, the Bell Cover Design® Trademark, the Flying V
13 Body Shape Design® Trademark, the Explorer Body Shape Design® Trademark, the Kramer Peg-
14 Body Shape Design® Trademark, the SG Body Design® Trademark, the LES PAUL® Trademark, the FLYING
15 Head® Trademark, the SG® Trademark, the EXPLORER® Trademark, the GIBSON® Trademark and the S-G® Trademark
16 (“Defendants’ Unauthorized Products”)

17 14. Notwithstanding the lack of authorization from Gibson and the fact that said
18 Defendants’ Unauthorized Products otherwise are not authorized to be sold utilizing the Gibson
19 Trademarks, Defendants have made repeated unauthorized use of the Trademark in connection with
20 said Unauthorized Products, with the intent to mislead and confuse consumers into believing that said
21 Defendants’ Unauthorized Products are made directly by Gibson pursuant to Gibson’s strict quality
22 control standards or that said Defendants’ Unauthorized Products are otherwise authorized or

1 licensed by Gibson and with the intent of misappropriating, for their own benefit, the tremendous
2 goodwill built up by Gibson in the Gibson Trademarks.

3 15. Defendant WowWee is advertising the FLYING V® Trademark along with the
4 Unauthorized Product bearing the Flying V Body Shape Design® Trademark, the LES PAUL®
5 Trademark along with the Unauthorized Product bearing the Les Paul Body Shape Design®
6 Trademark, the Les Paul Peg-Head® Trademark the S-G® Trademark along with the Unauthorized
7 Product bearing the SG Body Design® Trademark, and the EXPLORER Trademark along with the
8 Unauthorized Explorer Body Shape Design® and the GIBSON® Trademark with the Unauthorized
9 Products on the www.paperjamz.com and www.paperjamzstore.com websites.

10 16. The aforementioned misuse of the Gibson Trademarks by Defendants was done by
11 Defendants with the intent of deceiving or misleading customers into mistakenly believing that said
12 Defendants' Unauthorized Products were authorized Gibson products originating from Gibson or its
13 related companies and otherwise misappropriating the goodwill built up by Gibson in the Gibson
14 Trademarks and otherwise attracting and misdirecting consumers looking for genuine or authorized
15 Gibson goods to Defendants' websites.

16 17. The misuse of the Gibson Trademarks by Defendants was intended to cause, has
17 caused and is likely to continue to cause consumer confusion, mistake or deception including the
18 misleading of consumers into mistakenly believing that the Defendants' Unauthorized Products are
19 made directly by Gibson pursuant to Gibson's strict quality control standards or Gibson has
20 authorized or licensed the use by Defendants of the Trademark for those products.

21
22
23
24
25
26
27 EX PARTE APPLICATION OF PLAINTIFF GIBSON GUITAR CORP. FOR A TEMPORARY
28 RESTRAINING ORDER AND AN ORDER TO SHOW CAUSE RE: PRELIMINARY
INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

18. The aforementioned misuse of the Trademark by Defendants is damaging to the reputation and goodwill of the Gibson and the Gibson Trademarks and any continued use will cause irreparable harm to Gibson.

Plaintiff request that the Temporary Restraining Order and Preliminary Injunction issue with minimal bond or no bond based on Plaintiff's showing of a strong likelihood of success on the merits, and on the anticipated low amount of the enjoined Defendants' possible losses should it later turn out that the injunction should not have been granted (Fed. R. Civ.P. 65).

This Application is based on the Complaint filed in this action, the accompanying Notice of Ex Parte Application for a Temporary Restraining Order and an Order to Show Cause Re Preliminary Injunction and Notice of Opposition Procedure, the Memorandum of Points and Authorities, the Declarations of Henry Juszkiewicz, Andrea Bates and Bruce Mitchell, all the records and files in this action and such further oral and documentary matters as may be properly placed before the court.

STATEMENT OF OPPOSING COUNSEL'S POSITION

WOWWEE USA, INC., a California corporation

Prior to filing the complaint against WOWWEE, Plaintiff Gibson engaged in informal settlement discussions with Kim J. Landsman of Patterson Belknap Webb & Tyler LLP, 1133 Avenue of the Americas, NY, NY 10036, Direct Tel: 212.336.2980 Direct Fax: 212.336.2985 E-mail: kjlandsman@pbwt.com.

It is unknown if he has been retained as counsel for this litigation.

WAL-MART STORES, INC., a Delaware corporation

1 Prior to filing the complaint against Wal-Mart, Plaintiff Gibson was contacted by Rosalyn Mitchell,
2 in house counsel for Wal-Mart, indicating that she was looking in to the matter. Her Fax is 479-277-
3 5991.

4 It is unknown if he has been retained as counsel for this litigation.

5 **AMAZON.COM, INC., a Delaware corporation**

6 No known opposing counsel at this time.

7 **BIG LOTS STORES, INC., an Ohio corporation**

8 No known opposing counsel at this time.

9 **KMART CORPORATION, a Michigan corporation**

10 No known opposing counsel at this time.

11 **TARGET CORPORATION, a Minnesota corporation**

12 Prior to filing the complaint against Target, Plaintiff Gibson was contacted by Michael J Kroll, in
13 house counsel for Target, indicating that he was looking in to the matter. His fax is 612-696-3399.

14 It is unknown if he has been retained as counsel for this litigation.

15 **TOYS "R" US-DELAWARE, INC., a Delaware corporation**

16 No known opposing counsel at this time.

17 **WALGREEN CO., an Illinois corporation**

18 No known opposing counsel at this time.

19 **BROOKSTONE COMPANY, INC., a New Hampshire corporation**

20 No known opposing counsel at this time.

21 **BEST BUY CO. INC., a Minnesota corporation**

22 No known opposing counsel at this time.

1 **EBAY INC., a Delaware corporation**

2 No known opposing counsel at this time.

3 **TOYWIZ, INC., a New York corporation**

4 No known opposing counsel at this time.

5 **HSN, Inc. a Delaware corporation, and DOES 1 through 100**

6 No known opposing counsel at this time.

7 **STANDING ORDER**

8 Pursuant to the Standing Order For Assigned Cases ¶ 9 (EX Parte Applications), Plaintiff has
9 served the Defendants via facsimile this Application and Notice of the Ex Parte Application For a
10 Temporary Restraining Order and An Order to Show Cause Re: Preliminary Injunction to the
11 Defendants, including notifying Defendants that an opposition needs to be filed no later 3:00 p.m. on
12 the first business day following such facsimile service.

13 **MEMO OF KNOWN COUNSEL/DEFENDANT'S CONTACT INFORMATION**

14 **WOWWEE USA, INC.**

15 Counsel: Kim J Landsman
16 Patterson Belknap Webb & Tyler LLP,
17 1133 Avenue of the Americas, NY, NY 10036,
18 Direct Tel: 212.336.2980
19 Direct Fax: 212.336.2985
20 E-mail: kjlandsman@pbwt.com.

21
22
23 Address: 5963 La Place Court, Suite 207
24 Carlsbad, CA 92008

25 Registered Agent: National Registered Agents, Inc.
26 2875 Michelle Drive, Suite 100

27 -xiii-

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

Irvine, CA 92606
Phone: 800-562-6439
Fax: 800-562-6504

WAL-MART STORES, INC.

Counsel: Rosalyn Mitchell (in house)
Fax: 479-277-5991
Phone: 479-204-6574

Address: 702 SW 8th Street
Bentonville, AR 72716

Registered Agent: The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801
Phone: 302-658-7581
Fax: 302-655-5049

AMAZON.COM, INC.

Counsel: Not known at this moment

Address: 410 Terry Avenue North
Seattle, WA 98109-5210

Registered Agent: Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, DE 19808
Phone: 800-927-9800
Fax: 302-636-5454

BIG LOTS STORES, INC.

Counsel: Not known at this moment

Address: 300 Phillipi Road
PO Box 28512
Columbus, OH 43228-5311

Registered Agent: CSC-Lawyers Incorporating Service
50 W. Broad Street, Suite 1800

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

1 Columbus, OH 43215
2 Phone: 800-927-9800
3 Fax: 302-636-5454

4 **KMART CORPORATION**

5 Counsel: Not known at this moment
6
7 Address: 3333 Beverly Road
8 Hoffman Estates, IL 60179
9 Phone: 847-286-2500
10 Fax: 847-286-5500
11
12 Registered Agent: The Corporation Company
13 30600 Telegraph Road, Suite 2345
14 Bingham Farms, MI 48025

15 **TARGET CORPORATION**

16 Counsel: Michael J Kroll (in house)
17 Fax: 612-696-3399
18 Phone: 612-696-2249
19
20 Address: 1000 Nicollet Mall
21 Minneapolis, MN 55403
22 Phone: 612-304-6073
23 Fax: 612-696-5400
24
25 Registered Agent: No Agent on File With Secretary of State

26 **TOYS"R"US DELAWARE, INC**

27 Counsel: Not known at this moment
28
29 Address: One Geoffrey Way
30 Wayne, NJ 07470-2030
31
32 Registered Agent: The Prentice-Hall Corporation System, Inc.
33 2711 Centerville Road, Suite 400
34 Wilmington, DE 19808
35 Phone: 302-636-5440
36 Fax: 302-636-5454

1 **WALGREEN CO.**

2 Counsel: Not known at this moment
3 Address: 200 Wilmot Road
4 Deerfield, IL 60015
5 Registered Agent: Illinois Corporation Service Company
6 801 Adlai Stevenson Drive
7 Springfield, IL 62703
8 Phone: 888-690-2882
9 Fax: 302-636-5454

10 **BROOKSTONE COMPANY, INC.**

11 Counsel: Not known at this moment
12 Address: One Innovation Way
13 Merrimack, NH 03054
14 Registered Agent: Thomas P. Manson, Esq.
15 1000 Elm Street, 20FI
16 Manchester, NH 03101
17 Phone: 603-621-7100
18 Fax: 603-621-7111

19 **BEST BUY CO., INC.**

20 Counsel: Not known at this moment
21 Address: 7601 Penn Avenue South
22 Richfield, MN 55423
23 Registered Agent: C T Corporation System Inc.
24 100 South 5th Street, Suite 1075
25 Minneapolis, MN 55402
26 Phone: 612-333-4315
27 Fax: 612-333-2524

28 **EBAY INC.**

29 Counsel: Not known at this moment
30 Address: 2145 Hamilton Avenue

1 San Jose, CA 95125

2 Registered Agent: National Registered Agents, Inc.
3 160 Greentree Drive, Suite 101
4 Dover, DE 19904
Phone: 302-674-4089
Fax: 302-674-5266

5 **TOYWIZ, INC.**

6 Counsel: Not known at this moment

7 Address: 363 Spook Rock Rd. Building K
8 Suffern, NY 10901

9 Registered Agent: Barr, Post & Associates
10 664 Chestnut Ridge Road
11 Spring Valley, NY 10977
Phone: 845-352-4080
12 Fax: 845-352-6777

13 **HSN, INC.**

14 Counsel: Not known at this moment

15 Address: 1 HSN Drive
16 St. Petersburg, FL 33729

17 Registered Agent: National Registered Agents, Inc.
18 160 Greentree Drive, Suite 101
19 Dover, DE 19904
Phone: 302-674-4089
20 Fax: 302-674-5266

1 Respectfully submitted,

2 DATED: November ___, 2010 BATES & BATES, LLC

3
4
5 ANDREA E. BATES
6 MICHAEL A. BOSWELL
7 Attorneys for PLAINTIFF
8 GIBSON GUITAR CORP.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

-xviii-

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

TABLE OF CONTENTS

	<u>PAGE</u>
3 TABLE OF CONTENTS	xix
4 TABLE OF AUTHORITIES.....	xx
5 I. INTRODUCTION.....	1
6 II. STATEMENT OF FACTS	5
7 A. Plaintiff Exclusively Owns the Gibson Trademarks.....	5
8 B. The Gibson Trademarks Enjoy Worldwide Fame.....	5
9 C. Defendant's Illegal Activities.....	6
10 D. Defendant EBay's Contributory Infringement 11 of the Gibson Trademarks.....	8
12 III. A TEMPORARY RESTRAINING ORDER IS NECESSARY 13 TO PREVENT TRADEMARK INFRINGEMENT	9
14 A. GIBSON has Satisfied The Standards For Granting A 15 Temporary Restraining Order And A Preliminary Injunction	9
16 B. GIBSON has Demonstrated An Indisputable Likelihood of 17 Success On the Merits Of Its Federal Trademark 18 Infringement Claims	10
19 i. Strength of the Marks.....	11
20 ii. Similarity of the Marks	12
21 iii. The Alleged Infringer's Intent In 22 Selecting the Mark	13
23 iv. Likelihood of Expansion in Product Lines	14
24 C. Plaintiff Will Suffer Irreparable Harm In The Absence of 25 Preliminary Injunctive Relief.....	15
26	-xix-
27	EX PARTE APPLICATION OF PLAINTIFF GIBSON GUITAR CORP. FOR A TEMPORARY 28 RESTRAINING ORDER AND AN ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

1	D. The Balance of Equities Tips In Favor of Plaintiff.....	16
2	E. An Injunction Is In the Public Interest.....	19
3	IV. CONCLUSION.....	19
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27	EX PARTE APPLICATION OF PLAINTIFF GIBSON GUITAR CORP. FOR A TEMPORARY RESTRANING ORDER AND AN ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF	
28		

TABLE OF AUTHORITIES

	<u>PAGE</u>
<u>STATUTES AND RULES</u>	
15 U.S.C. §1057(b)	10
15 U.S.C. §1114.....	10
Fed. R. Civ. P. 65(c).....	18
TMEP §1207.01(a)(v).....	15
<u>CASES</u>	
<u>AMF, Inc. v. Sleekcraft Boats</u> 599 F. 2d 341, 348-49 (9th Cir. 1979).....	11, 13
<u>Brunner v. Bawcom</u> U.S. Dist. LEXIS 96341, 2010 WL 3724436, *4 (D.Mont., Sept. 15, 2010)	4
<u>Cadence Design Systems, Inc. v. Avant! Corp.</u> 125 F.3d 824, 829 (9th Cir. 1997).....	17
<u>Connecticut Gen. Life Ins. Co. v. New Images of Beverly Hills,</u> 321 F. 3d 878, 882 (9th Cir. 2003).....	18
<u>CPG Products Corp. v. Perceptual Play, Inc.</u> 221 USPQ 88 (TTAB 1983)	15
<u>Cytosport, Inc. v. Vital Pharm., Inc.</u> 617 F.Supp.2d 1051, 1081-1082 (E.D.Cal.2009)	16
<u>Eclipse Associates Ltd. v. Data General Corp.</u> 894 F. 2d 1114, 1118 (9th Cir. 1990).....	11
<u>Freecycle Network, Inc. v. Oey</u> 505 F.3d 898, 901 (9th Cir. 2007).....	10
<u>Goto.com, Inc. v. Walt Disney Co.</u>	-xxi-

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

1	202 F.3d 1199, 1205 (9th Cir. 2000).....	11, 12
2	<u>Iconix, Inc. v. Tokuda</u> 457 F. Supp. 2d 969, 1002 (N.D. Cal. 2006)	18
3		
4	<u>In re 1st USA Realty Professionals, Inc.</u> 84 USPQ2d 1581 (TTAB 2007)	15
5		
6	<u>Inwood Laboratories Inc. v. Ives Laboratories, Inc.</u> 456 U.S. 844, 853-854 (1982).....	8
7		
8	<u>Lockheed Martin Corp. v. Network Solutions, Inc.</u> 194 F.3d 980, 983 (9th Cir. 1999).....	9
9		
10	<u>Marlyn Nutraceuticals, Inc. v. Murcos Pharma GmbH & Co.</u> 571 F. 3d 873, 877 (9th Cir. 2009).....	16
11		
12	<u>Maxim Integrated Products, Inc. v. Quintana</u> 654 F. Supp. 2d 1024, 1035 (N.D. Cal. 2009)	16, 19
13		
14	<u>McGee v. International Life Ins. Co.</u> 355 U.S. 220, 223, 78 S.Ct. 199, 2 L.Ed.2d 223 (1957)	4
15		
16	<u>Metro Pub., Ltd. v. San Jose Mercury News</u> 987 F. 2d 637, 640 (9th Cir. 1993).....	11
17		
18	<u>Microsoft Corp. v. Very Competitive Computer Products Corp.</u> 671 F. Supp. 1250, 1252 (N.D. Cal. 1987)	18
19		
20	<u>Moroccanoil, Inc. v. Moroccan Gold, LLC</u> 590 F. Supp.2d 1271, 1282 (C.D. Cal. 2008)	19
21		
22	<u>Nintendo of America, Inc. v. Computer & Entertainment, Inc.</u> 1996 U.S. Dist. LEXIS 20975, *15, 1996 WL 511619, *6 (W.D. Wa. 1996)	19
23		
24	<u>Opticians Ass'n of Am. v. Indep. Opticians of Am.</u> 920 F.2d 187, 198 (3d. Cir. 1990).....	19
25		
26	<u>Park Inns International v. Pacific Plaza Hotels, Inc.</u> 5 F.Supp.2d 762, 764 (D.Ariz. 1998).....	4
27		
28	<u>Perfect 10, Inc. v. Visa Int'l Service Ass'n</u> 494 F.3d 788, 807 (9th Cir. 2007).....	9

1	<u>Promatek Industries, Ltd. v. Equitrac Corp.</u>	
2	300 F. 3d 808, 813 (7th Cir. 2002).....	19
3	<u>Rent-A-Center, Inc. v. Canyon Television & Appliance Rental, Inc.</u>	
4	944 F. 2d 597, 603 (9 th Cir. 2001).....	16
5	<u>Sierra On-Line, Inc. v. Phoenix Software, Inc.</u>	
6	739 F.2d 1415, 1422 (9th Cir. 1984).....	10
7	<u>State of Alaska v. Native Village of Venetic</u>	
8	856 F.2d 1384, 1389 (9th Cir. 1988).....	9
9	<u>Stormans, Inc. v. Selecky</u>	
10	Nos. 07-36039, 07-36040, 2009 WL 194550, at 13 (9 th Cir., July 8, 2009).....	10
11	<u>Sun Microsystems, Inc. v. Microsoft Corp.</u>	
12	21 F. Supp. 2d 1109, 1118 (N.D. Cal 1998).....	10
13	<u>Tech Heads, Inc. v. Desktop Service Center, Inc.</u>	
14	105 F.Supp.2d 1142, 1150-51 (D.Or. 2000)	4
15	<u>Textile Unlimited, Inc. v. A. BMH & Co.</u>	
16	240 F.3d 781, 786 (9th Cir. 2001).....	10
17	<u>Ticketmaster L.L.C. v. RMG Technologies, Inc.</u>	
18	507 F. Supp. 2d 1096, 1116 (C.D. Cal. 2007)	18
19	<u>Tiffany v. eBay</u>	
20	(2010) 600 F.3d 93	9
21	<u>TMX Funding, Inc. v. Impero Technologies, Inc.</u>	
22	2010 U.S. Dist. LEXIS 68843, *19-20, 2010 WL 2745484, *7 (N.D. Cal.2010).....	16
23	<u>Triad Sys Corp. v. Southeastern Express Co.</u>	
24	64 F. 3d 1330, 1338 (9th Cir. 1995).....	17
25	<u>Vision Sports, Inc. v. Melville Corp.</u>	
26	888 F.2d 609, 612 n.3 (9th Cir. 1989).....	16
27	<u>Walter v. Mattel, Inc.</u>	
28	210 F.3d 1108, 1111 (9th Cir. 2000).....	11