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5 **IN THE UNITED STATES DISTRICT COURT**
 6 **FOR THE DISTRICT OF ARIZONA**

7 GEORGE KESSEL INTERNATIONAL, INC.,
 and BBK TOBACCO & FOODS, INC.,
 8
 Plaintiffs,
 9
 v.
 10
 CLASSIC WHOLESALERS, INC. and
 11 AMERICAN WEIGH SCALES, INC.,
 12 Defendants.

CV07-323-PHX-SMM

**MEMORANDUM IN SUPPORT OF
 THE MOTION FOR LEAVE TO TAKE
 DISCOVERY ON PERSONAL
 JURISDICTION**

(Assigned to the Hon. Stephen M.
 McNamee)

13 Plaintiffs George Kessel International, Inc. and BBK Tobacco & Foods, Inc.
 14 d/b/a HBI International, through undersigned counsel, file this memorandum in support
 15 of their Motion for Leave to Take Discovery on Personal Jurisdiction. In further
 16 support of that motion, Plaintiffs would show:

17 **FACTUAL BACKGROUND**

18 1. Plaintiffs incorporate herein by reference the Factual Background section
 19 of Plaintiffs' Response to Defendants' Motion to Dismiss filed contemporaneously
 20 herewith.

21 2. This suit includes claims for patent and trademark infringement asserted
 22 against Defendants, X.J. Group, Ltd., X.J. Group (USA), Inc., Classic Wholesales, Inc.,
 23 and American Weigh Scales, Inc. (collectively, "Defendants"). Plaintiffs alleged in their
 24

1 First Amended Complaint, that Defendants have directly and indirectly committed acts
2 of infringement in this forum through the offer for sale and sale of products that
3 infringe the patent-in-suit, U.S. Patent No. D533,798, and through promotions using
4 Plaintiffs' CONVERTIBLE mark.

5 3. Plaintiffs have filed herewith the Declaration of Charles Bachmann with
6 attached exhibits evincing sales and offers for sale of infringing products
7 manufactured and imported by Defendants X.J. Group Ltd. and X.J. Group (USA), Inc.
8 and offered for sale and sold to Arizona residents by Defendants American Weigh, Inc.
9 and Classic Wholesales, Inc.¹ Plaintiffs have not yet taken discovery from any of the
10 Defendants regarding their contacts with Arizona.

11 4. Defendants in their motion to dismiss argue that it would be improper for
12 this Court to exercise jurisdiction over them because they are nonresidents and their
13 "distributing" and other operations are not located in Arizona and that Defendants
14 American Weigh and Classic Wholesales do not direct their infringing activity toward
15 the residents of this State.² That argument is not supported by a declaration or any
16 other evidence.

17 **ARGUMENT**

18 5. Plaintiffs have made prima facie allegations in their First Amended
19 Complaint that Defendants have directly and indirectly committed acts of infringement
20 in this forum. Defendants failed to support the argument in their motion with evidence
21 that controverts Plaintiffs' allegations. In addition, Plaintiffs submitted evidence of
22 offers for sale and actual sales of infringing products made by Defendants directly and

23 ¹ Declaration of Charles Bachmann, filed herewith, ¶¶3-5.

24 ² Docket No. 19, p. 3-4.

1 indirectly in this forum. Under these circumstances, Defendants' motion should be
2 denied. However, if the Court is not inclined to do so at this time, Plaintiffs should be
3 granted leave to take discovery on personal jurisdiction.

4 6. The Federal Circuit has held that a district court should allow
5 jurisdictional discovery if timely requested and supported by a threshold showing that
6 supports the exercise of jurisdiction. *Commissariat a l'Energie Atomique v. Chi Mei*
7 *Optoelectronics Corp.*, 395 F.3d 1315, 1323 (Fed. Cir. 2005); *see also Trintec*
8 *Industries, Inc. and Time to Invent, LLC v. Pedre Promotional Products, Inc.*, 395 F.3d
9 1275, 1283 (Fed. Cir. 2005) (ordering district court to allow jurisdictional discovery
10 upon a finding that record not sufficient to support jurisdiction) In this instance,
11 Plaintiffs have timely requested jurisdictional discovery, and they have already
12 established a distribution chain from the manufacturer X.J. Group, Ltd. to the
13 distributors, Defendants American Weigh and Classic Wholesales, that are offering for
14 sale and selling infringing products in Arizona. This showing is sufficient to establish
15 that jurisdictional discovery will likely provide additional evidence further supporting
16 this Court's exercise of jurisdiction over the Defendants.

17 For the foregoing reasons, Plaintiffs respectfully urge that the Court grant the
18 their leave to take jurisdictional discovery.

19 RESPECTFULLY SUBMITTED this 30th day of May, 2007.
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21 **Gardere Wynne Sewell LLP**

22 s/ Chris P. Perque
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Chris P. Perque
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/EFC registrants:

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By Chris P. Perque /s/