EXHIBIT C

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1 2 3 4 5 6 7 8	MARK E. AVSEC* (Ohio State Bar No. 00644 JENNY L. SHEAFFER* (Ohio State Bar No. 00 ANGELA R. GOTT* (Ohio State Bar No. 0082 BENESCH, FRIEDLANDER, COPLAN & AR 200 Public Square, Suite 2300 Cleveland, Ohio 44114-2378 Tel: (216) 363-4500 Fax: (216) 363-4588 E-Mail: mavsec@beneschlaw.com isheaffer@beneschlaw.com agott@beneschlaw.com	069950) (198)
 9 10 11 12 13 14 	DAVID M. GIVEN (State Bar No. 142375) FEATHER D. BARON (State Bar No. 252489) PHILLIPS, ERLEWINE & GIVEN LLP 50 California Street, 35th Floor San Francisco, CA 94111 Tel: (415) 398-0900 Fax: (415) 398-0911 E-Mail: dmg@phillaw.com fdb@phillaw.com	
15 16	Attorneys for Defendants/Counterclaim-Plaintif BLACK FLAG BRANDS, LLC and THE HON	IAX GROUP, INC.
17	IN THE UNITED STATES DISTRICT COURT	
18	FOR THE NORTHERN D	ISTRICT OF CALIFORNIA
19	GREEN PRODUCTS COMPANY,	Case No. 10 CV-02121-JCS
20 21	Plaintiff,	ANSWER, AFFIRMATIVE DEFENSES,
21 22	v.	AND COUNTERCLAIMS OF DEFENDANTS BLACK FLAG BRANDS,
22	BLACK FLAG BRANDS, LLC, THE	LLC AND THE HOMAX GROUP, INC.
24	HOMAX GROUP, INC., and LOWE'S HIW, INC.,	DEMAND FOR JURY TRIAL
25	Defendants.	
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	Answer, Affirmative Defenses, and Counterclaims of Defendants Blac Case No. 10 CV-02121-JCS	ck Flag Brands, LLC and The Homax Group, Inc. –

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1	BLACK FLAG BRANDS, LLC and THE
2	HOMAX GROUP, INC.,
3	Counterplaim Disintiffs
4	Counterclaim-Plaintiffs, v.
5	GREEN PRODUCTS COMPANY,
6	
7	Counterclaim-Defendant.
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10 11	Defendants Black Flag Brands, LLC ("Black Flag") and The Homax Group, Inc.
11	("Homax" and, together with Black Flag, the "Black Flag Defendants"), through their counsel,
	hereby respond to the claims of the First Amended Complaint for Injunctive Relief and Damages
13 14	(the "Complaint") of Green Products Company ("Plaintiff"), as follows:
	1. The Black Flag Defendants admit that Plaintiff asserts violations of the Lanham
15 16	Act, 15 U.S.C. § 1051 <i>et seq.</i> (the "Lanham Act"), including claims for trademark infringement
16 17	and false designation of origin, but deny that any such claims are cognizable claims under the
17	relevant statutes, and assert that such claims are without any bases in fact or in law. The Black
18	Flag Defendants admit that Plaintiff purports to base jurisdiction on 28 U.S.C. §§ 1331 and 1338,
19 20	aver that these allegations constitute legal conclusions that are not properly admitted or denied,
20 21	but for the purposes of answering only, deny these allegations. The Black Flag Defendants deny
21	all of the remaining allegations contained in paragraph 1 of the Complaint.
22 23	2. The Black Flag Defendants admit that Plaintiff asserts various state law claims,
23 24	including a claim under the California Business and Professions Code § 17200 <i>et seq.</i> and claims
24	for unfair competition, but deny that any of these claims asserted against them are cognizable
25 26	claims. The Black Flag Defendants admit that Plaintiff purports to base supplemental
26	jurisdiction over such claims under 28 U.S.C. §§ 1338(b) and 1367 and/or under the California
27	Business and Professions Code § 17200 <i>et seq.</i> , aver that these allegations constitute legal 2
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conclusions that are not properly admitted or denied, but for the purposes of answering only,
 deny these allegations. The Black Flag Defendants deny all of the remaining allegations
 contained in paragraph 2 of the Complaint.

3. The Black Flag Defendants aver that the allegations contained in paragraph 3 of
the Complaint constitute legal conclusions that are not properly admitted or denied. For the
purposes of answering only, the Black Flag Defendants admit that they do business in the
Northern District of California, and deny all of the remaining allegations contained in paragraph
3 of the Complaint.

9 4. The Black Flag Defendants aver that the allegations contained in paragraph 4 of
10 the Complaint constitute legal conclusions that are not properly admitted or denied, but for the
11 purposes of answering only, deny the allegations contained in paragraph 4 of the Complaint.

12 5. The Black Flag Defendants are without knowledge or information sufficient to
13 form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint and, on
14 that basis, deny those allegations.

6. The Black Flag Defendants admit that Black Flag is a limited liability company
with its principal place of business in Bellingham, Washington. The Black Flag Defendants
admit that Black Flag is in the business of producing and selling wood preservatives, among
other products. The Black Flag Defendants deny the remaining allegations of paragraph 6 of the
Complaint.

207. The Black Flag Defendants admit that Homax is a Delaware corporation with a 21 principal place of business in Bellingham, Washington, and admit that Homax is in the business 22 of promoting, distributing, selling and/or assisting in the manufacture, promotion, distribution 23 and sale of wood preservative products, among other things. The Black Flag Defendants admit 24 that the names of both Homax and Black Flag together appear on certain products. The Black 25 Flag Defendants admit that Plaintiff refers to Black Flag and Homax collectively as the "Black 26 Flag Defendants" in the Complaint. The Black Flag Defendants deny the remaining allegations 27 of paragraph 7 of the Complaint.

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8. The Black Flag Defendants are without knowledge or information sufficient to
 form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint and, on
 that basis, deny those allegations.

9. The Black Flag Defendants are without knowledge or information sufficient to
form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint and, on
that basis, deny those allegations.

10. The Black Flag Defendants admit that Plaintiff asserts that it owns U.S.
Registration No. 1,850,495 for the mark COPPER-GREEN for wood preservatives in
International Class 2. The Black Flag Defendants admit that Plaintiff attached a copy of
Registration No. 1,850,495 to the Complaint. The Black Flag Defendants aver that the
remaining allegations contained in paragraph 10 of the Complaint constitute legal conclusions
that are not properly admitted or denied, but for the purposes of answering only, deny the
allegations contained in paragraph 10 of the Complaint.

- 14 11. The Black Flag Defendants deny the allegations contained in paragraph 11 of the15 Complaint.
- 16 12. The Black Flag Defendants deny the allegations contained in paragraph 12 of the
 17 Complaint.

18 13. The Black Flag Defendants deny that they ever offered an infringing product or
19 used COPPER GREEN as a trademark for a wood preservative product, as alleged in paragraph
20 13 of the Complaint. The Black Flag Defendants are without knowledge or information
21 sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 13
22 of the Complaint and, on that basis, deny those allegations.

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14. The Black Flag Defendants deny the allegations contained in paragraph 14 of the Complaint.

25 15. The Black Flag Defendants deny the allegations contained in paragraph 15 of the
26 Complaint.

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116.The Black Flag Defendants deny the allegations contained in paragraph 16 of the2Complaint.

3 17. The Black Flag Defendants admit that they sell products to Lowe's HIW, Inc.
4 ("Lowe's") but deny that they market an infringing product or sell infringing products to Lowe's,
5 as alleged in paragraph 17 of the Complaint. The Black Flag Defendants are without knowledge
6 or information sufficient to form a belief as to the truth of the remaining allegations contained in
7 paragraph 17 of the Complaint and, on that basis, deny those allegations.

8 18. The Black Flag Defendants deny the allegations contained in paragraph 18 of the
9 Complaint.

10 19. The Black Flag Defendants admit that Plaintiff has no control over the nature and
11 quality of the goods offered by the Black Flag Defendants. The Black Flag Defendants deny the
12 remaining allegations contained in paragraph 19 of the Complaint.

- 13 20. The Black Flag Defendants deny the allegations contained in paragraph 20 of the
 14 Complaint.
- 15 21. The Black Flag Defendants deny that there have been any acts of infringement,
 16 unfair competition, or passing off, as alleged in the Complaint. The Black Flag Defendants deny
 17 that there has been any likelihood of consumer confusion, as alleged in the Complaint.
 18 Accordingly, the Black Flag Defendants deny the allegations contained in paragraph 21 of the
 19 Complaint.
- 20 22. The Black Flag Defendants deny that there have been any acts of infringement,
 21 passing off, or unfair competition, as alleged in the Complaint. Accordingly, the Black Flag
 22 Defendants deny the allegations contained in paragraph 22 of the Complaint.
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23. The Black Flag Defendants deny that there have been any acts of infringement, as alleged in the Complaint. Accordingly, the Black Flag Defendants deny the allegations contained in paragraph 23 of the Complaint.

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1	<u>A</u>	nswer to First Claim for Relief: Federal Service Mark Infringement
2	24.	The Black Flag Defendants incorporate herein by reference all allegations,
3	statements, de	enials, and admissions contained in the previous paragraphs.
4	25.	The Black Flag Defendants deny the allegations contained in paragraph 25 of the
5	Complaint.	
6	26.	The Black Flag Defendants deny the allegations contained in paragraph 26 of the
7	Complaint.	
8	Answer to S	Second Claim for Relief: Unfair Competition and False Designation of Origin
9		<u>15 U.S.C. § 1125(a)</u> The Disch Flee Defendents incompare to having her reference all allocations
10	27.	The Black Flag Defendants incorporate herein by reference all allegations,
11		enials, and admissions contained in the previous paragraphs.
12	28.	The Black Flag Defendants deny the allegations contained in paragraph 28 of the
13	Complaint.	
14	29.	The Black Flag Defendants deny the allegations contained in paragraph 29 of the
15	Complaint.	
16		Answer to Third Claim for Relief: Unfair Competition California Bus. And Prof. Code § 17200 et. seq.
17		
18	30.	The Black Flag Defendants incorporate herein by reference all allegations,
19	statements, de	enials, and admissions contained in the previous paragraphs.
20	31.	The Black Flag Defendants deny the allegations contained in paragraph 31 of the
21	Complaint.	
22	32.	The Black Flag Defendants deny the allegations contained in paragraph 32 of the
23	Complaint.	
24	Answ	er to Fourth Claim for Relief: Common Law Trademark Infringement
25	33.	The Black Flag Defendants incorporate herein by reference all allegations,
26	statements, de	enials, and admissions contained in the previous paragraphs.
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	Answer Affirmation	va Defenses and Countercloims of Defendents Black Flag Brands, LLC and The Homey Group, Inc.

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1	34.	The Black Flag Defendants deny the allegations contained in paragraph 34 of the
2	Complaint.	
3	35.	The Black Flag Defendants deny the allegations contained in paragraph 35 of the
4	Complaint.	
5	36.	The Black Flag Defendants deny the allegations contained in paragraph 36 of the
6	Complaint.	
7	<u>A</u>	Answer to Fifth Claim for Relief: Common Law Unfair Competition
8	37.	The Black Flag Defendants incorporate herein by reference all allegations,
9	statements, d	lenials, and admissions contained in the previous paragraphs.
10	38.	The Black Flag Defendants deny the allegations contained in paragraph 38 of the
1	Complaint.	
12	39.	The Black Flag Defendants deny the allegations contained in paragraph 39 of the
3	Complaint.	
4	40.	The Black Flag Defendants deny the allegations contained in paragraph 40 of the
15	Complaint.	
6	<u>Answer to</u>	o Sixth Claim for Relief: Intentional Interference with Prospective Economic
17	41	<u>Relations</u>
8	41.	The Black Flag Defendants incorporate herein by reference all allegations,
9		lenials, and admissions contained in the previous paragraphs.
20	42.	The Black Flag Defendants are without knowledge or information sufficient to
21	form a belief	as to the truth of the allegations contained in paragraph 42 of the Complaint and, on
22	that basis, de	ny those allegations.
23	43.	The Black Flag Defendants deny the allegations contained in paragraph 43 of the
24	Complaint.	
25	44.	The Black Flag Defendants deny the allegations contained in paragraph 44 of the
26	Complaint.	
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	Answer, Affirmat Case No. 10 CV-0	tive Defenses, and Counterclaims of Defendants Black Flag Brands, LLC and The Homax Group, Inc

1	45.	The Black Flag Defendants aver that they are without knowledge or information
2	sufficient to	form a belief as to whether, why, or when Plaintiff's relationship with Lowe's was
3	disrupted, and	d on that basis deny the allegations contained in paragraph 45 of the Complaint.
4	46.	The Black Flag Defendants deny the allegations contained in paragraph 46 of the
5	Complaint.	
6	47.	The Black Flag Defendants deny the allegations contained in paragraph 47 of the
7	Complaint.	
8		General Denial
9	48.	The Black Flag Defendants deny each and every allegation not expressly admitted
10	herein and de	eny that Plaintiff is entitled to any relief.
11		AFFIRMATIVE DEFENSES
12		FIRST DEFENSE
13	49.	The claims asserted in the Complaint fail to state a claim upon which relief can be
14	granted.	
15		SECOND DEFENSE
16	50.	Plaintiff's recovery is barred because the term "copper green" is used by the
17	Black Flag I	Defendants merely to describe the ingredients and copper green patina color of
18	BLACK FLAG®-branded TERMIN-8 copper green wood preservative products, not to identify	
19	the source of	those products.
20		THIRD DEFENSE
21	51.	Plaintiff's recovery is barred by the doctrine of fair use under 15 U.S.C.
22	1115(b)(4).	
23		FOURTH DEFENSE
24	52.	Plaintiff's recovery is barred because Plaintiff's COPPER-GREEN trademark is a
25	generic desig	nation for the goods for which it is registered.
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	Answer, Affirmat Case No. 10 CV-0	ive Defenses, and Counterclaims of Defendants Black Flag Brands, LLC and The Homax Group, Inc 02121-JCS

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1	<u>FIFTH DEFENSE</u>
2	53. Plaintiff's recovery is barred because any damages to Plaintiff were not
3	proximately caused by the Black Flag Defendants.
4	SIXTH DEFENSE
5	54. Plaintiff's recovery is barred because any disruption or damages to Plaintiff's
6	relationship with Lowe's, as complained of herein, was proximately caused by Plaintiff's own
7	acts, including, without limitation, by the nature, quality, and/or costs of Plaintiff's products
8	and/or by suing Lowe's.
9	SEVENTH DEFENSE
10	55. Plaintiff's recovery is barred because Plaintiff has unclean hands.
11	EIGHTH DEFENSE
12	56. Plaintiff is not entitled to receive attorneys' fees or statutory damages.
13	NINTH DEFENSE
14	57. The Black Flag Defendants respectfully reserve the right to amend their Answer
15	to the Complaint to add such additional defenses, cross-claims, counterclaims, and/or third-party
16	complainants as may be disclosed during the discovery of this matter.
17	COUNTERCLAIMS OF THE BLACK FLAG DEFENDANTS
18	58. Capitalized terms not hereafter defined will have the meanings ascribed to them in
19	paragraphs 1-57 above. Defendants/Counterclaim-Plaintiffs Black Flag and Homax (hereinafter
20	collectively referred to as "Counterclaim-Plaintiffs"), by and through the undersigned counsel,
21	assert the following counterclaims against Plaintiff/Counterclaim-Defendant Green Products
22	Company (hereinafter "Green Products"):
23	<u>Parties</u>
24	59. Counterclaim-Plaintiffs incorporate by reference paragraphs 1-58 above as if
25	rewritten herein.
26	60. Black Flag is a limited liability company organized and existing under the laws of
27	the State of New York. Black Flag maintains its principal place of business at 200 Westerly
28	9
	Answer, Affirmative Defenses, and Counterclaims of Defendants Black Flag Brands, LLC and The Homax Group, Inc

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1	Road, Bellingham, Washington. Black Flag is in the business of producing and selling pest
2	control and wood preservative products, among other things.
3	61. Homax is a corporation organized and existing under the laws of the State of
4	Delaware. Homax maintains its principal place of business at 200 Westerly Road, Bellingham,
5	Washington. Homax is a leader in DYI and home improvement products.
6	62. On information and belief, Green Products is a California corporation with its
7	principal place of business in Richmond, California, and is in the business of producing and
8	selling wood preservatives, among other products.
9	Jurisdiction
10	63. This Court has original subject matter jurisdiction over the counterclaims asserted
11	herein pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, pursuant to
12	28 U.S.C. §§ 1331 and 1338, and pursuant to 15 U.S.C. § 1119.
13	64. This Court has personal jurisdiction over Green Products because, on information
14	and belief, Green Products does business in this judicial district, and because the claims asserted
15	herein arose in this judicial district.
16	Venue
17	65. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c).
18	Facts Common to All Claims for Relief
19	66. For more than 20 years, Homax sold wood preservative products under the
20	JASCO brand, including, without limitation, Termin-8 "copper brown" wood preservatives,
21	Termin-8 "copper clear" wood preservatives, and Termin-8 "green" wood preservatives.
22	67. The JASCO Termin-8 "green" wood preservative, with its copper green color,
23	was the standard for the construction industry. Its copper green color was the result of a
24	combination of the active ingredient Copper Naphthenate and a colorant. Among the JASCO
25	wood preservative products, the Termin-8 "green" wood preservative was the leading seller, far
26	outselling JASCO's Termin-8 "copper brown" and "copper clear" counterparts.
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68. Homax sold the paint stripper portion of the JASCO business to a third party in
 July 2008 and, as part of the transaction, agreed to relinquish the JASCO brand.

3 69. Homax retained the wood preservatives business and, in 2009, decided to market
4 wood preservatives under the BLACK FLAG® brand.

70. Because the Termin-8 "green" wood preservative was the biggest seller under the
JASCO brand in the past, Counterclaim-Plaintiffs discontinued the "copper brown" and "copper
clear" colors and produced and sold BLACK FLAG® TERMIN-8 wood preservative exclusively
in "copper green."

9 71. Just as had been done with Homax's "copper brown" and "copper clear" wood
10 preservative products, Counterclaim-Plaintiffs identified the copper green color of the BLACK
11 FLAG® TERMIN-8 wood preservative product on the label.

12 72. Copper green is a particular, recognized shade of green in the construction13 industry.

The National Bureau of Standards' *Dictionary of Color Names* identifies and
defines the color "copper green" as NBS Centroid 136, which is a moderate yellowish green
corresponding to Munsell 0.5g 5.5 4.8 and RGB #657F4B. *See* David A. Mundie, *The NBS/ISCC Color System* (1995), <u>http://www.anthus.com/Colors/NBS.html</u>. A true and correct
copy of the relevant portions of Mr. Mundie's website is attached hereto as Exhibit A.

19 74. The term "copper green" dates to 1843 and is defined in *A Dictionary of Color*.
20 A. Maerz and M. Rea Paul, *A Dictionary of Color* 192 (2d ed. 1950). The color "copper green"
21 is identified as the "name of a pigment or paint used by artists and structural painters". *Id.* at
22 145. A true and correct copy of the relevant portions of *A Dictionary of Color* is attached hereto
23 as Exhibit B.

75. The term "copper green" is defined in the *Dictionary of Architecture and Building Construction*, in pertinent part, as "a shade of green which takes its name from the colour of the
patina which occurs on weathered copper." Nikolas Davies and Erkki Jokiniemi, *Dictionary of Architecture and Building Construction* 96 (Elsevier/Architectural Press 2008).

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The term "copper green" is defined in the *Dictionary of Building Preservation* as
 "[a] light bluish green oil-paint pigment composed of copper salts." *Dictionary of Building Preservation* 117 (Ward Bucher ed., John Wiley & Sons, Inc. 1996). A true and correct copy of
 the relevant portions of the *Dictionary of Building Preservation* is attached hereto as Exhibit C.

77. *Collins Artist's Colour Manual* lists "copper green" as a name used to describe a
hue of green and identifies the history of copper green and malachite, a naturally occurring
copper green. Simon Jennings, *Collins Artist's Colour Manual* 68 (HarperCollins Publishers
2003). A true and correct copy of the relevant portions of *Collins Artist's Colour Manual* is
attached hereto as Exhibit D.

10 78. A true and correct copy of a picture of one SKU of the BLACK FLAG®
11 TERMIN-8 wood preservative product in the copper green color is attached hereto as Exhibit E.

12 79. As evidenced on the picture of the product attached as Exhibit E, BLACK
13 FLAG® is the primary and house trademark, TERMIN-8 is the secondary trademark, "Wood
14 Preservative" is the product itself, and the words "copper green" are used at the bottom to signify
15 the color of the product.

16 80. As evidenced on the picture of the product attached as Exhibit E, Counterclaim17 Plaintiffs are not using the term "copper green" as a designation of the source of the product, but
18 merely only to describe the color of the product.

19 81. Counterclaim-Plaintiffs are using the term "copper green" in its literal, descriptive
20 sense to refer accurately to Counterclaim-Plaintiffs' own product.

COUNT I

DECLARATORY JUDGMENT FOR CANCELLATION

(Cancellation of U.S. Trademark Registration No. 1,850,495 for Genericness 28 U.S.C. § 2201; 15 U.S.C. §§ 1064, 1115(b)(8), 1119, 1127)

82. Counterclaim-Plaintiffs incorporate by reference paragraphs 1-81 above as if
rewritten herein.

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1	83.	On information and belief, Green Products registered COPPER-GREEN with the
2	United States	Patent & Trademark Office ("USPTO"), U.S. Registration No. 1,850,495, on
3	August 23, 19	94 for "preservatives against the deterioration of wood."
4	84.	Copper green is a generic term in the construction industry that corresponds to a
5	particular colo	r.
6	85.	On information and belief, a true and correct copy of a picture of one SKU of
7	Green Produc	ts' COPPER-GREEN wood preservative product in the copper green color is
8	attached hereto	o as Exhibit F.
9	86.	Green Products' COPPER-GREEN wood preservative product is green in color.
10	87.	Green Products' COPPER-GREEN wood preservative product is copper green in
11	color.	
12	88.	On information and belief, the active ingredient in Green Products' COPPER-
13	GREEN wood	preservative product is a copper-based ingredient.
14	89.	In selecting a name for the product, Green Products decided to use the term
15	"copper green"	" as a product designation.
16	90.	Green Products' "copper green" designation does not appear along with any other
17	house mark fo	r its wood preservative product.
18	91.	Green Products' COPPER-GREEN trademark corresponding to Trademark
19	Registration N	Io. 1,850,495 is a generic term for the color of the claimed goods, "preservatives
20	against the det	erioration of wood," and should not be entitled to protection.
21	92.	U.S. Trademark Registration No. 1,850,495 for the mark COPPER-GREEN is
22	subject to ca	ancellation because Green Products' COPPER-GREEN mark is a generic
23	designation. 1	5 U.S.C. §§ 1064(3), 1119.
24	93.	Counterclaim-Plaintiffs are entitled to declaratory relief that the mark COPPER-
25	GREEN is a g	eneric designation and that U.S. Trademark Registration No. 1,850,495 is canceled
26	from the Princ	ipal Register.
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1 2	<u>COUNT II</u> DECLARATORY JUDGMENT OF NON-INFRINGEMENT
3	(28 U.S.C. § 2201)
4	94. Counterclaim-Plaintiffs incorporate by reference paragraphs 1-93 above as if
5	rewritten herein.
6	95. Counterclaim-Plaintiffs are entitled to judgment, pursuant to 28 U.S.C. § 2201
7	and Fed. R. Civ. P. 57, declaring that Counterclaim-Plaintiffs' use of the term "copper green"
8	does not constitute trademark infringement or false designation of origin under the Lanham Act,
9	15 U.S.C. § 1051 et seq. and does not violate California law.
10	PRAYER FOR RELIEF
11	
12	WHEREFORE, Counterclaim-Plaintiffs pray that this Court:
13	(A) Dismiss Green Products' claims with prejudice;
14	(B) Cancel U.S. Registration No. 1,850,495;
15	(C) Enter an Order declaring that Counterclaim-Plaintiffs' use of the term "copper
16	green" does not constitute trademark infringement or false designation of origin;
17	(D) Award Counterclaim-Plaintiffs their costs and attorneys' fees; and
18	(E) Grant such other relief as the Court deems just and appropriate.
19	Dated: July 21, 2010 By:/s/
20	Dated: July 21, 2010 By:/s/ Mark E. Avsec (Pro Hac Vice Pending) BENESCH, FRIEDLANDER, COPLAN
21	& ARONOFF LLP
22	David M. Given
23	PHILLIPS, ERLEWINE & GIVEN LLP
24	Attorneys for Defendants/Counterclaim- Plaintiffs BLACK FLAG BRANDS, LLC
25	and THE HOMAX GROUP, INC.
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28	14
	Answer, Affirmative Defenses, and Counterclaims of Defendants Black Flag Brands, LLC and The Homax Group, Inc Case No. 10 CV-02121-JCS

	DEMAND FOR JURY TRIAL
2 3	Counterclaim-Plaintiffs Black Flag Brands, LLC and The Homax Group, Inc. demand
	jury trial pursuant to Fed. R. Civ. P. 38 as to all issues so triable in this action.
	Dated: July 21, 2010 By:/s/ Mark E. Avsec (<i>Pro Hac Vice Pending</i>)
5	BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP
7	David M. Given
3	PHILLIPS, ERLEWINE & GIVEN LLP
))	Attorneys for Defendants/Counterclaim- Plaintiffs BLACK FLAG BRANDS, LLC and THE HOMAX GROUP, INC.
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1	CERTIFICATE OF SERVICE
2	I, Greg Gheorghiu, declare that I am over the age of eighteen and not a party to this action. My business address is Phillips, Erlewine & Given LLP, 50 California Street, 35 th Floor,
3	San Francisco, California 94111, which is located in the City and County of San Francisco where the service described below took place
4	On the date below, at my place of business at San Francisco, California, a copy of the
5	following document(s):
6	ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS OF DEFENDANTS BLACK FLAG BRANDS, LLC AND THE HOMAX GROUP
7	was sent to
8	Lowe's HIW, Inc. 101 Andover Park E. Ste 200
10	Wukwila, WA 98118 Attn: Legal Department
11	[X] <u>BY U.S. MAIL</u> : I placed the above document(s) in a sealed envelope for deposit in the
12	United States Postal Service, with first class postage fully prepaid, and that envelope was placed for collection and mailing on that date following ordinary business practices as
13	indicated [] <u>BY FACSIMILE TRANSMISSION</u> : I transmitted the above documents to counsel as
14	indicated by facsimile transmission to the FAX telephone number listed for each party and obtained confirmation of complete transmittal thereof.
15	[] <u>BY CAUSING PERSONAL SERVICE</u> : I placed the above documents in a sealed
16	envelope I caused such envelope(s) to be delivered by messenger to the address(es) as indicated.
17 18	[] <u>BY OVERNIGHT EXPRESS</u> : I placed the above documents in a sealed envelope. I caused such envelope(s) to be delivered to the address(es) listed by overnight express.
19	[] <u>BY ELECTRONIC MAIL</u> : I sent the above documents by electronic mail to the following e-mail addresses berkolaw@sbcglobal.net; roburch1236@att.net
20	Tonowing e-man addresses berkolaw@sbegiobal.net, robucen1250@atc.net
21	I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct Executed on July 21, 2010, at San Francisco, California.
22	
23	22
24	Greg Gheorghiu
25	
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I	P. (Chang) De ma / P. (Chang De dag a Mallinger general)

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