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5 Attorneys for Plaintiffs  
 6 STANLEY BLACK & DECKER, INC. and  
 THE BLACK & DECKER CORPORATION

**FILED**

APR 24 2013

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

~~SEALED~~  
~~BY COURT ORDER~~

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION

12 STANLEY BLACK & DECKER, INC., and THE  
 13 BLACK & DECKER CORPORATION,

14 Plaintiffs,

15 v.

16 D&L ELITE INVESTMENTS, LLC, a California  
 17 limited liability company d/b/a G BAY  
 18 INTERNATIONAL; BILLY DENG, an individual;  
 WEISHEN LUO, an individual; and JOHN DOES  
 1-10, inclusive,,

19 Defendants.

Case No.: C 12-04516 SC

~~DOCUMENT FILED UNDER SEAL~~

~~[PROPOSED]~~ SEIZURE ORDER,  
 TEMPORARY RESTRAINING ORDER  
 FREEZING DEFENDANTS' FINANCIAL  
 ACCOUNTS AND ASSETS AND ORDER  
 TO SHOW CAUSE RE: CONTEMPT  
 SANCTIONS FOR VIOLATION OF  
 TEMPORARY RESTRAINING ORDER  
 AND PRELIMINARY INJUNCTION

1           Having considered Plaintiffs Stanley Black & Decker, Inc. and The Black and Decker  
2 Corporation (collectively "Plaintiffs") *ex parte* application for issuance of a seizure order, temporary  
3 restraining order freezing Defendants' financial accounts and assets, and order to show cause  
4 regarding contempt sanctions by reason of Defendants' continued sale of counterfeit batteries  
5 infringing and diluting Plaintiff's DeWalt Trademarks and yellow and black DeWalt Trade Dress in  
6 violation of this Court's Temporary Restraining Order and Preliminary Injunction, and the Court  
7 having reviewed Memorandum of Points and Authorities in support of this Order, supporting  
8 Declaration and exhibits submitted herewith, finds:

9           1.       Plaintiffs have shown they are likely to succeed on the merits of their trademark,  
10 trade dress, unfair competition and trademark dilution claims based on Defendants' wrongful use of  
11 Plaintiffs' federally registered DeWalt trademarks and yellow and black trade dress (Registration  
12 Nos. 1,734,403; 1,734,404 (the DeWalt Trademarks"); 3,064,666; and 3,066,999 (the "DeWalt  
13 Trade Dress") (collectively the "DeWalt Trademarks and Trade Dress") in connection with  
14 counterfeit battery packs;

15           2.       Plaintiffs are being irreparably harmed by Defendants' continued advertising,  
16 marketing, distributing, offering to sale, and/or sale of counterfeit batteries. Defendants' acts will  
17 confuse and deceive the public and trade as to the origin of Defendants' counterfeit goods and will  
18 dilute Plaintiffs' famous DeWalt Trademarks and DeWalt Trade Dress, causing immediate and  
19 irreparable injury, loss and damage to Plaintiffs, their trademarks, trade dress and the valuable  
20 goodwill and reputation associated therewith, and such injury, loss and damage is more likely to be  
21 sustained by Plaintiffs if the Defendants are given notice of this application prior to the issuance of  
22 the Seizure Order and Temporary Asset Restraining Order hereinafter specified and thereby given  
23 time to dispose of or move the counterfeit goods and other possible relevant evidence;

24           3.       The balance of hardships tips in Plaintiffs' favor and the public interest weighs in  
25 favor of granting a temporary restraining order and issuing an order to show cause re: preliminary  
26 injunction; and

27           4.       Plaintiffs have made a showing that *ex parte* relief is warranted given that Defendants  
28



1 drives and/or disks; and (iv) containers or vehicles in which the same are held or transported, which  
2 Defendants sell, attempt to sell or hold for sale, at all locations within this District and other Districts  
3 where Defendants' Infringing Products are sold, offered for sale, distributed, transported,  
4 manufactured and/or stored, to wit:

- 5 a. G Bay International Warehouse, 30502 Huntwood Avenue, Hayward, CA 94544;
- 6 b. 2353 Old Post Way, San Jose, CA 95132; and

7 And it is further ORDERED, that the United States Marshal or other law enforcement  
8 officer(s) effecting such seizure shall employ whatever reasonable force is necessary to enter the  
9 premises owned, leased or controlled by Defendants or the location to be searched where  
10 Defendants' Infringing Products or labels and business records relating thereto may be found, and to  
11 inspect the contents of any computers, rooms, vehicles, closets, cabinets, containers, cases, desks or  
12 documents located in the identified locations or other premises controlled by Defendants; and it is  
13 further

14 ORDERED, that Plaintiffs' agents shall promptly inspect all items seized and, if any items  
15 are found to be authorized products, which items are to be returned to Defendants within twenty (20)  
16 business days after the date this Order is executed; and it is further

17 ORDERED, that the search and seizure ordered herein may be photographed or videotaped  
18 for the purpose of authenticating and assisting in obtaining evidence and preventing any controversy  
19 regarding the activities and events occurring during said search and seizure; and it is further

20 ORDERED, that any merchandise and/or packaging or means of making such merchandise  
21 and/or packaging or records and other items seized shall be appropriately tagged to permit  
22 identification; Defendants shall be given a receipt therefor; such merchandise, records or other items  
23 seized shall be impounded in the custody or control of Plaintiffs or Plaintiffs' agents as substitute  
24 custodian pending further order of this Court and shall be made available for inventory inspection by  
25 the party from which it was seized or its counsel during normal business hours; and that any such  
26 records seized shall likewise be impounded and shall be subject to a protective order whereby access  
27 thereto shall be initially restricted to Plaintiffs and Plaintiffs' counsel and Defendants and

1 Defendants' attorneys of record, who shall be permitted to inspect and copy such records, and such  
2 records shall be copied and the copies returned to Defendants within twenty (20) business days of  
3 the date this Order is executed. This protective order, restricting access to such documents, shall  
4 expire on twenty (20) business days after the date this Order is executed, and it is further

5 ORDERED, that Plaintiffs shall post a corporate surety bond, cash or certified attorney's  
6 check in the amount of fifty thousand dollars (\$50,000) as security, determined adequate for the  
7 payment of such damages as any person may be entitled to recover as a result of a wrongful seizure,  
8 attempted seizure or restraint hereunder; and it is further

9 ORDERED, that sufficient cause having been shown, the above seizure shall take place and  
10 service of this Order shall be made on Defendants personally, or by delivery to an adult of suitable  
11 age, at Defendants' place of business or residence or where Defendants are selling or holding for  
12 sale the items to be seized, and that such service shall be made and such seizure shall take place  
13 within ten (10) days from the date of this Order or such time as may be extended by the Court; and it  
14 is further

15 ORDERED, that Plaintiffs' counsel file with the Court within ten (10) business days after the  
16 seizure is executed, whether goods and/or other materials were seized and a description thereof, and  
17 where the goods and/or other materials are stored; and it is further

18 **ASSET RESTRAINING ORDER**

19 ORDERED, that in accordance with Rule 64 of the Federal Rules of Civil Procedure, 15  
20 U.S.C. § 1116(a) and this Court's inherent equitable power to issue provisional remedies ancillary to  
21 its authority to provide final equitable relief, Defendants and their officers, servants, employees and  
22 agents and any person in active concert or participation with them, and any banks, savings and loan  
23 associations, payment processors or other financial institutions, including without limitation PayPal,  
24 Inc., or other merchant account providers, payment providers, or third party processors for any  
25 Defendant or any of Defendants' operations, who receive actual notice of this Order, shall  
26 immediately locate all accounts connected to Defendants and that such accounts be temporarily  
27 restrained and enjoined from transferring or disposing of any money or other of Defendants' assets,

1 not allowing such funds to be transferred or withdrawn, without prior approval of the Court, and it is  
2 further

3 ORDERED, that upon two (2) days written notice to the Court and Plaintiffs' counsel, any  
4 Defendant may, upon proper showing appear and move for dissolution or modification of the  
5 provisions of this Order concerning the restriction upon transfer of Defendants' assets, including the  
6 following modifications:

7 (1) allowing payments for ordinary living expenses not to exceed two thousand (\$2,000)  
8 per month, with an accounting of such payments to be filed with the Court and provided to Plaintiffs  
9 within ten (10) days following the end of each month;

10 (2) allowing Defendant to pay ordinary, legitimate business expenses as follows:

11 (a) rent or mortgage in the amount normally paid as required under any lease or  
12 loan on any premises by such Defendant or company, upon presentation of said lease or loan  
13 document to Plaintiffs' counsel and verification thereof;

14 (b) ordinary and regular salaries to any bona fide employees, other than any of the  
15 Defendants themselves, or any relatives or dependents thereof, to the extent such salaries are  
16 not excessive; provided, however, that such salaries shall be paid to persons who were on the  
17 payroll of such Defendant as of the date of this Order, and such salaries do not exceed the  
18 prior month's level and further provided that Defendant shall first present to Plaintiffs'  
19 counsel written documentation verifying all individuals proposed to be paid and the  
20 particulars of the salaries proposed therefor;

21 (c) ordinary and necessary bills for utilities;

22 (d) payments of any amounts less than two thousand dollars (\$2,000), not to  
23 exceed and aggregate of more than five thousand dollars (\$5,000) per month, for ordinary  
24 business expenses, which transfers shall be documented and this documentation provided to  
25 Plaintiffs' counsel within ten (10) days following the end of the month;

26 (3) Defendants shall provide Plaintiffs' counsel with an accounting of all payments of  
27 living expenses, business expenses and any transfers of assets made pursuant to this Order within ten  
28

1 (10) days following the end of each month; and it is further

2 **ORDER TO SHOW CAUSE RE: CONTEMPT SANCTIONS**

3 ORDERED, that Defendants or their respective attorney(s) show cause on the 31st day of  
4 May 2013, at 10:00 a.m., or as soon thereafter as counsel can be heard, in Courtroom 1, of the United  
5 States District Courthouse, Northern District of California, San Francisco Division, why an Order  
6 should not be issued granting Plaintiffs' request for contempt sanctions for Defendants' failure to  
7 abide by the Temporary Restraining Order and Preliminary Injunction issued by the this Court.

8 **IT IS FURTHER ORDERED** that Defendants shall have up to and including May 13, 2013  
9 at 5:00 p.m. within which to file and serve to Plaintiffs' counsel, Stubbs Alderton & Markiles, LLP,  
10 via email to akeats@stubbsalderton.com, or via facsimile to (310) 746-9822, or via hand delivery to  
11 Plaintiffs' counsel at their offices located at 1453 3<sup>rd</sup> Street Promenade, Suite 310, Santa Monica,  
12 CA 90401, with any briefs, affidavits or other evidence in opposition to the Application for Order to  
13 Show Cause Re: Contempt Sanctions. Defendants are hereby put on notice that failure to attend the  
14 order to show cause hearing shall result in the immediate issuance of the requested contempt  
15 sanctions.

16  
17 Date: April 24, 2013

18   
19 HON. SAMUEL CONTI  
20 UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

STANLEY BLACK & DECKER, INC., et al.,  
Plaintiffs,

Case Number: CV12-04516 SC

**CERTIFICATE OF SERVICE**

v.

D&L ELITE INVESTMENTS, LLC, et al.,  
Defendants.

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 24, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Anthony Michael Keats  
Stubbs Alderton & Markiles, LLP  
1453 3<sup>rd</sup> Street Promenade  
Suite 310  
Santa Monica, CA 90401

Dated: April 24, 2013

Richard W. Wieking, Clerk



By: William Noble, Deputy Clerk