

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WACOM CO., LTD. and WACOM
TECHNOLOGY CORPORATION,

Plaintiffs,

v.

APPLEBOX, XU RUI RUI, BETHTOWN
STORE, BING BANG BOOM (also
known as DEALTRONICS), RALPH
POPHAM, BUY AT WHOLESALE (also
known as HIGH QUALITY
ACCESSORIES), PK VENTURES,
CHARGEWORLD, VICTOR
MCDUGAL, DEAL WITH US, INC.,
YONATHAN ENGLARD,
GOTUCOVERED, SHAANAN LETT-
SMITH, MIELE'S (also known as
MANSTORE), JEFFREY WINTON,
QUAVER (also known as STYLEBYTE),
MARTIN BALOG, SIMULSTORE,
KULAP SIMONIS, SPECIALTY
WAREHOUSE, RACHELLE OWENS,
TECHWAVE, MU WEN JUAN,
TRUNCATE HOME, AND SIMON
TRENT.

Defendants.

Civil Action No. _____

**COMPLAINT FOR PATENT
INFRINGEMENT, TRADEMARK
INFRINGEMENT, FALSE
DESIGNATION AND ADVERTISING,
AND UNFAIR COMPETITION**

DEMAND FOR JURY TRIAL

Plaintiffs Wacom Co., Ltd. and Wacom Technology Corporation (collectively
“Plaintiffs”), as and for their Complaint, allege as follows against Defendants AppleBox, Xu Rui
Rui, Bethtown Store, Bing Bang Boom (also known as DealTronics), Ralph Popham, Buy at
Wholesale (also known as High Quality Accessories), PK Ventures, ChargeWorld, Victor

COMPLAINT – 1

Kenyon & Kenyon LLP
1801 Page Mill Rd., Ste. 210
Palo Alto, CA 94304
650-384-4700

1 McDougal, Deal With Us, Inc., Yonathan England, gotUcovered, Shaanan Lett-Smith, Miele's
2 (also known as ManStore), Jeffrey Winton, Quaver (also known as StyleByte), Martin Balog,
3 Simulstore, Kulap Simonis, Specialty Warehouse, Rachelle Owens, TechWave, Mu Wen Juan,
4 Truncate Home, and Simon Trent. (collectively "Defendants").

5 SUMMARY OF ALLEGATIONS

6 1. Plaintiffs Wacom Co., Ltd. ("Wacom") and Wacom Technology Corporation
7 ("Wacom - U.S.") have pioneered the development of electronic tablets and stylus pens,
8 sometimes called touch pens. Wacom's tablets include innovative electronic interfaces that
9 allow artists, designers, students and other users to draw and electronically display figures,
10 cartoons, handwriting, or anything else that can be drawn by the human hand. Wacom's pens,
11 which are designed for use with its own and/or others' tablets or other products, are known for
12 being accurate, comfortable, balanced, and responsive.

13 2. Since Wacom introduced its first tablets and pens more than 25 years ago, Wacom
14 has developed a reputation for technical innovation and quality that have made it a market leader.
15 The company and its innovative products have received broad recognition and industry acclaim.
16 To protect its investment in its technology, designs and good name, Wacom has filed for and
17 obtained numerous issued U.S. patents and registered trademarks.

18 3. The Defendants have committed patent and trademark infringement and unfair
19 competition in an effort to capture for themselves the hard-earned benefits of Wacom's technical
20 leadership, designs and brand names. In particular, Defendants have offered and sold in the U.S.
21 counterfeits of Wacom pens that are protected by Wacom's patents and trademarks. Such pens
22 have been advertised and sold as though they were genuine Wacom products, whereas in fact
23 they are and were fakes. Such products are and were of inferior quality, leading to customer
24 complaints, some of which have been directed to Plaintiffs.

25 4. Plaintiffs now file this complaint to ask the Court to halt Defendants' wrongful
26 conduct, and to seek redress for the damages Defendants have caused.

27 PARTIES

28 5. Plaintiff Wacom is an entity organized under the laws of Japan, and has its

1 principal place of business in Saitama, Japan, near Tokyo.

2 **6.** Plaintiff Wacom - U.S. is a Washington corporation having its principal place of
3 business in Vancouver, Washington. Wacom - U.S. is a wholly-owned subsidiary of Wacom,
4 and sells and distributes Wacom tablet and pen products in the United States.

5 **7.** Defendant AppleBox is an entity located at 1830 10th Avenue, Monrovia,
6 California 91746.

7 **8.** Defendant Xu R. Rui is a person located at 1830 10th Avenue, Monrovia,
8 California 91746, and on information and belief is the owner of AppleBox or uses AppleBox as a
9 dba.

10 **9.** Defendant Bethtown Store is an entity located at 1901 North Dixie Highway,
11 Elizabethtown, Kentucky 42701.

12 **10.** Defendant Bing Bang Boom (also or previously known as DealTronics) is an
13 entity located at 1516 Howell Mill Road North West, Suite 15, Atlanta, Georgia 30318.

14 **11.** Defendant Ralph Popham is a person located at 1516 Howell Mill Road North
15 West, Suite 15, Atlanta, Georgia 30318, and on information and belief is the owner of Bing Bang
16 Boom and/or DealTronics or uses Bing Bang Boom and/or DealTronics as a dba.

17 **12.** Defendant Deal With Us, Inc. is an entity incorporated in New York, and whose
18 principal place of business is at 1900 51st Street, Apartment 3D, Brooklyn, New York.

19 **13.** Defendant Yonathan England is a person located in 1900 51st Street, Apartment
20 3D, Brooklyn, New York, and on information and belief is the owner of Deal With Us, Inc., or
21 uses Deal With Us, Inc. as a dba.

22 **14.** Defendant Buy at Wholesale (also or previously known as High Quality
23 Accessories) is an entity located at 1621 Central Avenue, Cheyenne, Wyoming 82001.

24 **15.** Defendant PK Ventures, LLC is an entity located at 1621 Central Avenue,
25 Cheyenne, Wyoming 82001, and on information and belief is the owner of Buy at Wholesale and
26 High Quality Accessories, or uses Buy at Wholesale and High Quality Accessories as dba's.

27 **16.** Defendant ChargeWorld is an entity located at 505 Harbor Ridge Drive, Brandon,
28 Mississippi 39047.

1 **17.** Defendant Victor McDougal is a person located at 505 Harbor Ridge Drive,
2 Brandon, Mississippi 39047, and on information and belief is the owner of ChargeWorld or uses
3 ChargeWorld as a dba.

4 **18.** Defendant gotUcovered is an entity located at 4240 West 62nd Street, Los
5 Angeles, California 90043.

6 **19.** Defendant Shaanan Lett-Smith is a person located at 4240 West 62nd Street, Los
7 Angeles, California 90043, and on information and belief is the owner of gotUcovered, or uses
8 gotUcovered as a dba.

9 **20.** Defendant Miele's (also or previously known as ManStore) is an entity located at
10 607 Jefferson Street, Springdale, Arizona 72764.

11 **21.** Defendant Jeffrey Winton is a person located at 607 Jefferson Street, Springdale,
12 Arizona 72764, and on information and belief is the owner of Miele's and/or ManStore, or uses
13 Miele's and/or ManStore as dba's.

14 **22.** Defendant Quaver (also or previously known as StyleByte) is an entity located at
15 2599 Casher Drive, Decatur, Georgia 30034.

16 **23.** Defendant Martin Balog is a person located at 2599 Casher Drive, Decatur,
17 Georgia 30034, and on information and belief is the owner of Quaver and/or StyleByte, or uses
18 Quaver and/or StyleByte as dba's.

19 **24.** Defendant Simulstore is an entity located at 627 Lea Bridge Road, London, GB
20 E10 6AJ.

21 **25.** Defendant Kulap Simonis is a person located at 627 Lea Bridge Road, London,
22 GB E10 6AJ, and on information and belief is the owner of Simulstore or uses Simulstore as a
23 dba.

24 **26.** Defendant Specialty Warehouse is an entity located at 379 Plantation Dr.,
25 Wewahitchka, Florida 32465.

26 **27.** Defendant Rachelle Owens is a person located at 379 Plantation Dr.,
27 Wewahitchka, Florida 32465, and on information and belief is the owner of Specialty
28 Warehouse, or uses Specialty Warehouse as a dba.

28. Defendant TechWave is an entity located at Chang Ning Xian Mang Shui Zhen He Wei Hui Xin Fang Zicun, Boa Shang, Yunnan, China 678100.

29. Defendant Mu Wen Juan is a person located at Chang Ning Xian Mang Shui Zhen He Wei Hui Xin Fang Zicun, Boa Shang, Yunnan, China 678100, and on information and belief is the owner of TechWave or uses TechWave as a dba.

30. Defendant Truncate Home is an entity located at 43 Nichols Street, Newark, New Jersey 07105.

31. Defendant Simon Trent is a person located at 43 Nichols Street, Newark, New Jersey 07105, and on information is the owner of Truncate Home, or uses Truncate Home as a dba.

JURISDICTION AND VENUE

32. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1332, 1338, and 1367.

33. The Court has personal jurisdiction over the Defendants. On information and belief, each of the Defendants has voluntarily entered into a Marketplace Seller agreement with Amazon.com, based in Seattle, Washington, pursuant to which such Defendant offered and sold counterfeit Wacom products to the consuming public. On information and belief, the Marketplace Seller agreements entered into between Defendants and Amazon.com provided for Washington law to apply to the agreements, and for Washington to be the exclusive venue for any disputes. Each Defendant purposefully availed itself of the benefits of Washington law by voluntarily entering into an agreement with Amazon.com, based in Seattle, Washington, pursuant to which such Defendant offered and sold the goods at issue. Further, each Defendant purposely availed itself of the benefits of Washington law by entering into an agreement pursuant to which the goods at issue were offered and sold and providing for Washington law to be applied and for the juridical forum to be in Washington.

34. Personal jurisdiction also exists over each Defendant because, on information and belief, each of the Defendants offered and/or sold the counterfeit goods at issue to residents of

1 the State of Washington.

2 **35.** Personal jurisdiction also exists over each Defendant because Plaintiff Wacom –
3 U.S., which is based in Washington State, was damaged and continues to be damaged by the
4 conduct of such Defendant as alleged herein. See Washington statute RCW 19.86.160.

5 **36.** The Western District of Washington is a proper venue for this action.

6 **GENERAL ALLEGATIONS**

7 **37.** Plaintiff Wacom manufactures and sells through its distributor in the U.S.,
8 Wacom-U.S., certain product lines of stylus pen products referred to as the Bamboo® Stylus
9 Solo and the Bamboo® Stylus Duo. The Bamboo® Stylus Solo is a stylus pen suitable for use
10 with touchscreens on tablets or other devices. The Bamboo® Stylus Solo is available in multiple
11 colors. It has a highly responsive, rubber, replaceable nib, and a stylish, clean design. The
12 Bamboo® Stylus Duo is available in one color. Like the Bamboo® Stylus Solo, the Bamboo®
13 Stylus Duo has a highly responsive, rubber, replaceable nib, and a stylish, clean design. In
14 addition, on the end opposite the nib there is a traditional ballpoint ink cartridge, so that the
15 product may be used either as a stylus pen on a touch-sensitive surface or as a traditional pen.
16 Wacom also sells through Wacom – U.S. replacement nibs for use with the Bamboo® Stylus
17 Solo and Duo.

18 **38.** Wacom is the owner of, among others, the following U.S. Patents (collectively,
19 the “Wacom Patents”):

20 a. D669,896, issued on October 30, 2012, and entitled “Stylus pen with
21 ballpoint pen;”

22 b. D669,897, issued on October 30, 2012, and entitled “Stylus pen with
23 ballpoint pen;”

24 c. D669,898, issued on October 30, 2012, and entitled “Stylus pen with
25 ballpoint pen;” and

26 d. D655,292 issued on March 6, 2012, and entitled “Stylus Pen.”

27 **39.** True and correct copies of the Wacom Patents are attached hereto as Exhibits A,
28 B, C, and D, respectively.

1 **40.** Wacom is the owner of, among others, the following U.S. trademark registrations
2 (collectively, the “Wacom Marks”):

3 a. 3,344,421, for the word mark WACOM for various goods including “input
4 writing pens, [and] input touch pens.” Said mark was registered in 2007 and has attained
5 the status of incontestability.

6 b. 3,509,376, for a stylized version of the word mark BAMBOO for various
7 goods and services, including “electronic pencils and erasers.” Said mark was registered
8 in 2008.

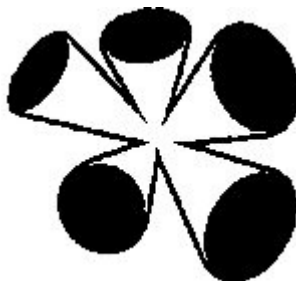
9 c. 3,537,343, for a stylized version of the word mark WACOM for various
10 goods including “computer input pens, namely, . . . touch pens” Said mark was
11 registered in 2008.

12 d. 3,534,336, for the design mark set forth immediately below, being a
13 stylized design made up of five cones, with various colors claimed as part of the mark,
14 for various goods including “computer input pens, namely, . . . touch pens”



20 Said mark was registered in 2008.

21 e. 3,540,537, for the stylized design mark set forth immediately below, being
22 a stylized design made up of five cones, with color not being a claimed feature of the
23 mark, for goods including “computer input pens, namely, . . . touch pens”



1 Said mark was registered in 2008.

2
3 **41.** The Wacom Marks have been used by Plaintiffs in connection with the offer and
4 sale of genuine Bamboo® Solo Stylus and Bamboo® Stylus Duo products sold by Plaintiffs,
5 appearing on the packaging and package inserts. In addition, the Bamboo mark has been used
6 on the stylus pen itself. The Wacom Marks have also been used by Plaintiffs in connection with
7 the offer and sale of replacement nibs for the Bamboo® Stylus Solo and Duo.

8 **42.** On information and belief, Defendants have each imported, distributed, offered
9 for sale and sold counterfeit Bamboo® Stylus Solo and/or Duo products, and/or counterfeit
10 replacement nibs for same (collectively, the “Counterfeit Products”) in the United States and in
11 this judicial district. Said Counterfeit Products each bore counterfeits of the Wacom Marks on
12 the product packaging, package inserts, and/or product.

13 **43.** The Counterfeit Products are not genuine Plaintiffs’ products. Plaintiffs did not
14 manufacture, inspect or package the Counterfeit Products, and did not approve or license the
15 Counterfeit Products.

16 **44.** Defendants’ use of any or all of the Wacom Marks on the Counterfeit Products is
17 likely to cause confusion or mistake or to deceive persons into the erroneous belief that
18 Defendants’ Counterfeit Products are genuine Wacom products or that Defendants or their
19 Counterfeit Products are authorized, endorsed or sponsored by Plaintiffs or are connected in
20 some way with Plaintiffs.

21 **45.** On information and belief, Defendants’ use of the Wacom Marks was deliberate
22 and intentional and designed to create confusion and mistake and to deceive persons into the
23 incorrect belief that the Counterfeit Products are genuine Wacom products or that Defendants or
24 the Counterfeit Products are authorized, endorsed or sponsored by Plaintiffs or are connected in
25 some way with Plaintiffs.

26 **46.** Defendants’ use of counterfeit Wacom Marks falsely designates the origin of
27 Defendants’ products and constitutes false descriptions and representations to the effect that
28 Defendants’ Counterfeit Products are genuine Wacom products or that Defendants or their

Counterfeit Products are authorized, endorsed or sponsored by Plaintiffs or are connected in some way with Plaintiffs.

47. Plaintiffs believe that they have been and are likely to be damaged by Defendants' use of said false designations, descriptions and representations in that purchasers are likely to buy Defendants' Counterfeit Products in the mistaken belief that they are genuine Wacom products or that Defendants or their Counterfeit Products are authorized, endorsed, or sponsored by Plaintiffs or are connected in some way with Plaintiffs.

48. On information and belief, Defendants had knowledge of Plaintiff's prior rights in the Wacom Marks.

49. Defendants' use of the counterfeit Wacom Marks is and has been without Plaintiffs' license, authorization or permission.

50. The acts and conduct of Defendants have damaged Plaintiffs and, unless restrained, will impair, if not destroy, the value of the Wacom Marks and the goodwill represented thereby, and Plaintiffs have no adequate remedy at law.

FIRST CAUSE OF ACTION

(By Plaintiff Wacom Against Defendants AppleBox, Xu Rui Rui, Bethtown Store, Bing Bang Boom (also known as DealTronics), Ralph Popham, Buy at Wholesale (also known as High Quality Accessories), PK Ventures, Chargeworld, Victor McDougal, Deal With Us, Inc., Yonathan Englard, Gotucovered, Shaanan Lett-Smith, Miele's (also known as Manstore), Jeffrey Winton, Quaver (also known as Stylebyte), Martin Balog, Simulstore, Kulap Simonis, Specialty Warehouse, Rachelle Owens, Techwave, Mu Wen Juan, Truncate Home, And Simon Trent for Patent Infringement Under 35 U.S.C. § 271)

51. Plaintiff Wacom realleges and incorporates paragraphs 1 to 50 as if fully set forth herein.

52. On information and belief, Defendants Bing Bang Boom (also or previously known as DealTronics), Ralph Popham, Buy at Wholesale (also or previously known as High Quality Accessories), PK Ventures, ChargeWorld, Victor McDougal, Deal With Us, Inc., Yonathan Englard, gotUcovered, Shaanan Lett-Smith, Miele's (also or previously known as ManStore), Jeffrey Winton, Quaver (also or previously known as StyleByte), Martin Balog, Simulstore, Kulap Simonis, Specialty Warehouse, Rachelle Owens, TechWave, Mu Wen Juan, Truncate Home, and Simon Trent have been and are aware of Wacom patent D655,292, at least

1 through cease and desist letters sent to them by Wacom.

2 **53.** The defendants identified in this cause of action, including all defendants
3 identified in the immediately preceding paragraph as well as AppleBox, Xu R. Rui and Bethtown
4 Store, have infringed and are infringing Wacom patent D655,292 under 35 U.S.C. § 271(a) by
5 making, using, offering for sale, and/or selling in the United States, or importing into the United
6 States, stylus pen products under the name Bamboo® Stylus Solo or similar names such as
7 “Wacom Tech Corp. Bamboo Stylus for iPad/Tablets,” “Wacom Bamboo Stylus for iPad While
8 (CS100W),” “Bamboo Solo Stylus for iPad – Green (CS100E)” or other similar names that refer
9 to other colors under which Wacom genuine Bamboo® Stylus Solo products are sold, including
10 Pink, Black, White, Blue, Green, and Orange.

11 **54.** On information and belief, the counterfeit Bamboo® Stylus Solo products sold by
12 the defendants identified in this cause of action were manufactured by or obtained from one or
13 more common sources.

14 **55.** Wacom will suffer irreparable damage due to the infringing acts of the identified
15 defendants unless said defendants are preliminarily and permanently enjoined by this Court from
16 infringing Wacom patent D655,292.

17 **56.** Wacom is entitled to damages as a result of the infringement as set forth in this
18 cause of action, in an amount to be proved at trial.

19 **SECOND CAUSE OF ACTION**

20 **(By Plaintiff Wacom Against Defendants Bing Bang Boom (also known as DealTronics),**
21 **Ralph Popham, Buy at Wholesale (also known as High Quality Accessories), PK Ventures,**
22 **Quaver (also known as StyleByte), and Martin Balog for Patent Infringement Under 35**
23 **U.S.C. § 271)**

24 **57.** Wacom realleges and incorporates paragraphs 1 to 56 as if fully set forth herein.

25 **58.** On information and belief, Defendants Bing Bang Boom (also or previously
26 known as DealTronics), Ralph Popham, Buy at Wholesale (also or previously known as High
27 Quality Accessories), PK Ventures, Quaver (also or previously known as StyleByte), and Martin
28 Balog have been and are aware of Wacom patents D669,896, D669,897 and D669,898, at least
through cease and desist letters sent to them by Wacom.

1 **59.** The defendants identified in the cause of action have infringed and are infringing
 2 under 35 U.S.C. § 271(a) each of Wacom patents D669,896, D669,897 and D669,898 by
 3 making, using, offering for sale, and/or selling in the United States, or importing into the United
 4 States, a combined stylus and traditional pen product under the name Bamboo® Stylus Duo,
 5 Stylus Bamboo Pen Duo, Stylus Bamboo Pen or a similar names.

6 **60.** On information and belief, the counterfeit Bamboo Stylus Duo products sold by
 7 the defendants identified in this cause of action were manufactured by or obtained from one or
 8 more common sources.

9 **61.** Wacom will suffer irreparable damage due to the infringing acts of the identified
 10 defendants unless said defendants are preliminarily and permanently enjoined by this Court from
 11 infringing Wacom patents D669,896, D669,897 and D669,898.

12 **62.** Wacom is entitled to damages as a result of Defendants' infringement, in an
 13 amount to be proved at trial.

14 **THIRD CAUSE OF ACTION**

15 **(By Plaintiff Wacom Against All Defendants for Federal Trademark Counterfeiting and** 16 **Infringement Under 15 U.S.C. § 1114)**

17 **63.** Plaintiff Wacom incorporates and re-alleges paragraphs 1 to 62 as if fully set forth
 18 herein.

19 **64.** As a result of its long-term and continuous use of the Wacom Marks and the
 20 quality of goods manufactured, distributed and sold under the Wacom Marks, Plaintiff Wacom
 21 has developed considerable goodwill in its Wacom Marks. The trade and consuming public have
 22 come to know, recognize and identify goods, including but not limited to the Bamboo® Stylus
 23 Solo and Duo products, and replacements nibs, bearing the Wacom Marks as the quality goods
 24 of Wacom.

25 **65.** On information and belief, without Wacom's authorization or consent, and having
 26 knowledge of Wacom's prior rights in the Wacom Marks and the fact that Defendants'
 27 Counterfeit Products bear counterfeits of those marks, Defendants have distributed, offered for
 28 sale and/or sold the Counterfeit Products at least to the consuming public in direct competition
 with Wacom's sale of genuine products and with the sales of its authorized distributors and

resellers, in or affecting interstate commerce.

66. Defendants' use of copies or simulations of the Wacom Marks is likely to cause and is causing confusion, mistake and deception among the trade and general purchasing public as to the origin of the Counterfeit Products, and is likely to deceive the trade and public into believing the Counterfeit Products being sold by Defendants originate from, are associated with or are otherwise authorized by Wacom, all to the damage and detriment of Wacom's reputation, goodwill and sales.

67. Wacom has no adequate remedy at law and, if Defendants' activities are not enjoined, Wacom will continue to suffer irreparable harm and injury to its goodwill and reputation.

68. By virtue of Defendants' counterfeiting activities, Wacom is, in addition to other remedies, entitled under Section 35 of the Lanham Act to recover from each of said Defendants either (a) the trebled amount of Defendants' profits and/or actual damages, or (b) statutory damages up to the amount of \$2 million for each mark counterfeited, for each type of good or service sold or offered. In addition, Wacom is entitled to recover its attorneys' fees and costs.

FOURTH CAUSE OF ACTION

(By All Plaintiffs Against All Defendants for False Designation, False Representation and False Advertising in Violation of 15 U.S.C. § 1125(a))

69. Plaintiffs incorporate and re-allege paragraphs 1 to 68 as if fully set forth herein.

70. The Counterfeit Products sold and offered for sale by Defendants are of the same general nature and type as Plaintiffs' products sold and offered for sale by Plaintiffs and, as such, Defendants' use is likely to cause confusion to the general purchasing public.

71. By misappropriating and using the Wacom Marks, Defendants misrepresent and falsely describe and advertise to the general public the origin and source of the Counterfeit Products and create a likelihood of confusion by the trade and ultimate purchasers as to both the source and sponsorship of such merchandise.

72. Defendants' unlawful, unauthorized and unlicensed distribution, offer for sale and/or sale of the Counterfeit Products creates express and implied but false misrepresentations

1 that the Counterfeit Products were created, authorized or approved by Plaintiffs, all to
 2 Defendants' profit and Plaintiffs' great damage and injury.

3 **73.** Defendants' aforesaid acts are in violation of Section 43(a) of the Lanham Act, 15
 4 U.S.C. § 1125(a), in that Defendants' use of the Wacom Marks, in connection with their goods
 5 and services, in interstate commerce constitutes a false designation of origin, false representation
 6 false advertising, and unfair competition. Said acts also constitute false advertising.

7 **74.** Plaintiffs have no adequate remedy at law and, if the Defendants' activities are
 8 not enjoined, Plaintiffs will continue to suffer irreparable harm and injury to their goodwill and
 9 reputations.

10 **FIFTH CAUSE OF ACTION**

11 **(By All Plaintiffs Against All Defendants for Unfair Competition and Unfair and Deceptive
 12 Practices in Violation of Washington Statute RCW 19.86.020)**

13 **75.** Plaintiffs incorporate and re-allege paragraphs 1 to 74 as if fully set forth herein.

14 **76.** Defendants' offer and sale of Counterfeit Products and their use of the Wacom
 15 Marks in commerce in connection with the sale of their Counterfeit Products constitutes an
 16 unfair, unlawful, and deceptive business practice and method of competition pursuant to
 17 Washington statute RCW § 19.86.020 *et seq.*

18 **77.** The actions of Defendants complained of herein constitute an unfair or deceptive
 19 practice occurring in trade or commerce that impacts the public interest and that has caused
 20 injury to Plaintiffs.

21 **78.** Among other things, Defendants have engaged in acts that are deceptive *per se* in
 22 that they violate multiple statutes aimed at protecting the public against confusion. Defendants'
 23 conduct affects and is contrary to the public interest and tends to mislead the public as to the
 24 source, origin or approval of the Counterfeit Products, causing injury in the State of Washington.
 25 Such impact and injury are reflected in complaints received by Wacom – U.S. relating to the
 26 Counterfeit Products, and in comments online complaining about the inferior quality of
 27 counterfeit Wacom products. As a result of Defendants' deceptive acts and practices, and the
 28 resulting consumer confusion, Plaintiffs have suffered and will continue to suffer losses and

1 irreparable injury to their business reputation and goodwill in amounts not yet ascertained.
 2 Plaintiffs' remedy at law is not itself adequate to compensate them for injuries inflicted and
 3 threatened by Defendants.

4 **79.** Pursuant to RCW § 19.86.090, Plaintiffs are further entitled to actual and trebled
 5 damages, attorneys' fees, and costs of suit.

6 **SIXTH CAUSE OF ACTION**

7 **(By All Plaintiffs Against All Defendants for Trademark Infringement Under 8 Washington State Common Law)**

8 **80.** Plaintiffs incorporate and re-allege paragraphs 1 to 79 as if fully set forth herein.

9 **81.** The acts and conduct of Defendants, as alleged above, constitute infringement of
 10 Plaintiffs' Washington State common law rights in the Wacom Marks. Plaintiff Wacom has
 11 registered the Wacom Marks and its use is prior to that of Defendants' efforts at
 12 misappropriation.

13 **82.** Defendants' acts and conduct as alleged above have damaged and will continue to
 14 damage Plaintiffs in an amount that is unknown at the present time.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs request entry of judgment in their favor and against Defendants
 17 as follows:

18 A. A determination that Defendants AppleBox, Xu R. Rui, Bethtown Store, Bing
 19 Bang Boom (also or previously known as DealTronics), Ralph Popham, Buy at Wholesale (also
 20 or previously known as High Quality Accessories), PK Ventures, ChargeWorld, Victor
 21 McDougal, Deal With Us, Inc., Yonathan England, gotUncovered, Shaanan Lett-Smith, Miele's
 22 (also or previously known as ManStore), Jeffrey Winton, Quaver (also or previously known as
 23 StyleByte), Martin Balog, Simulstore, Kulap Simonis, Specialty Warehouse, Rachelle Owens,
 24 TechWave, Mu Wen Juan, Truncate Home, and Simon Trent have infringed Wacom patent D
 25 D655,292;

26 B. A determination that Defendants Bing Bang Boom (also or previously known as
 27 DealTronics), Ralph Popham, Buy at Wholesale, PK Ventures, Quaver (also or previously
 28 known as StyleByte), and Martin Balog have infringed Wacom patents D669,896, D669,897 and

1 D669,898;

2 C. Issuance of a preliminary and permanent injunction enjoining Defendants, their
3 agents, officers, assigns and all others acting in concert with them from infringing the Wacom
4 Patents;

5 D. An award of damages to compensate Wacom for the acts of patent infringement
6 complained of herein;

7 E. That Defendants, their officers, agents, servants, employees, attorneys,
8 confederates, and agents and any persons in active concert or participation with them, and any
9 banks, savings and loan associations or other financial institutions, or agencies which engage in
10 the transfer of assets or real property, or holders of assets of the Defendants, who receive actual
11 notice of the Court's order, by personal service or otherwise, shall be temporarily restrained and
12 enjoined from transferring, disposing of, or secreting any money, stocks or other assets of
13 Defendants, without prior approval of the Court, except as to a Defendant that files with the
14 Court and serves upon Plaintiffs' counsel: (1) an accounting of Defendant's assets having a value
15 of five thousand dollars (\$5,000) or more, and the location and identity thereof; and (2)
16 uncontradicted documentary proof accepted by Plaintiffs (such acceptance not to be
17 unreasonably withheld) that particular assets are not proceeds of Defendant's counterfeiting
18 activities, in which case those particular assets shall be released to the Defendant.

19 F. That Defendants be required upon service of this Complaint to immediately
20 deliver up to Plaintiffs any and all products, guarantees, circulars, price lists, labels, signs, prints,
21 packages, wrappers, pouches, receptacles, advertising matter, promotional, and other materials in
22 the possession of Defendants or under their control bearing any of Wacom's Marks, or each of
23 them, alone or in combination with any other words, or used in connection with the advertising,
24 offering for sale or sale of products not Plaintiffs', or not made under the authorization and
25 control of Plaintiffs.

26 G. That Defendants be required upon service of this Complaint to immediately
27 supply Plaintiffs with a complete list of entities from whom they purchased and to whom they
28 distributed and/or sold products falsely bearing the Wacom Marks or products not authorized by

1 Plaintiffs to be sold in connection with such marks.

2 H. That Defendants be required upon service of this Complaint to immediately
3 deliver up for destruction their entire inventory of such products bearing the Wacom Marks.

4 I. An award of the Defendants' profits, treble Plaintiffs' damages, and costs of this
5 action, in an amount to be proved at trial, under 15 U.S.C. § 1117(a);

6 J. A determination that this case is exceptional;

7 K. An award of Plaintiffs' attorney fees under 15 U.S.C. § 1117;

8 L. An award of statutory damages of up to \$2 million per infringed mark and per
9 product, pursuant to Section 35(c) of the Lanham Act, 15 U.S.C., § 1117(c).

10 M. An award of Plaintiffs' actual damages and costs of suit, including attorney's fees,
11 in an amount to be proved at trial and as provided under RCW 19.86.090;

12 N. An award of treble damages to Plaintiffs as provided under RCW 19.86.090;

13 O. An award of damages to compensate Plaintiffs' for Defendants' acts of common
14 law trademark infringement.

15 P. An award of pre-judgment interest and post-judgment interest on all damages
16 awarded;

17 Q. Such other and further relief as the Court deems just.

18 **DEMAND FOR JURY TRIAL**

19 Pursuant to Fed. R. Civ. P. 38 and Local Rule 38.1(b), Plaintiffs demand a jury trial on all
20 issues triable to a jury.

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1 DATED this 5th day of February 2014

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