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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION**

UL LLC, a Delaware Limited Liability Company,

*Plaintiff,*

v.

SWAGWAY, LLC, an Indiana Limited Liability Company, and JIANQING “JOHNNY” ZHU, an individual,

*Defendants.*

Case No.

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff UL LLC (“Plaintiff” or “UL”) by and through undersigned counsel, and for its Complaint against Defendants Swagway, LLC (“Swagway”) and Jianqing “Johnny” Zhu (“Zhu”) (collectively, “Defendants”), states as follows:

**SUMMARY OF NATURE OF ACTION**

1. Plaintiff brings this Complaint against Defendants seeking relief for Defendants’ past and continued willful and deliberate use of Plaintiff’s trademarks, illegal counterfeiting, false and misleading solicitation of consumers and promotion of Defendants’ products in a manner calculated to deceive the consuming public into believing that Defendants’ products are associated with Plaintiff, Plaintiff’s marks, and Plaintiff’s testing, inspection, and certification services.

2. This is an action for: (i) trademark infringement and trademark counterfeiting pursuant to Section 43(a) of the Lanham Act (15 U.S.C. § 1114 *et seq.*); (ii) unfair competition, false designation of origin and false advertising pursuant to Section 43(a) of the Lanham Act (15 U.S.C. § 1125 *et seq.*); (iii) a violation of the Illinois Uniform Deceptive Trade Practices Act

(815 ILCS 510/1 *et seq.*); and (iv) a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.*).

### **THE PARTIES**

3. Plaintiff UL LLC is Delaware limited liability company with its principal place of business at 333 Pfingsten Road, Northbrook, Illinois 60062.

4. Defendant Swagway, LLC is an Indiana limited liability company with its principal place of business at 3431 William Richardson Drive, Suite F, South Bend, Indiana 46628.

5. Defendant Jianqing “Johnny” Zhu is an individual who resides in Granger, Indiana, and who works at Defendant Swagway’s principal place of business in South Bend, Indiana.

### **JURISDICTION AND VENUE**

6. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, 1337, and 1338(a) and (b) and 15 U.S.C. §§ 1114, 1116, 1121, and 1125(a).

7. This Court has supplemental subject matter jurisdiction over Plaintiff’s state claims under 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367, because the claims are joined with a substantial and related federal claim and form a part of the same case or controversy and derive from a common nucleus of operative fact under Article III of the United States Constitution.

8. This Court also has subject matter jurisdiction under 28 U.S.C. § 1332(a)(3) because this action is between citizens of different states and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest or costs.

9. This Court has personal jurisdiction over Defendants because Defendants have regularly and purposefully directed their business activities toward Indiana and its residents and

derive substantial revenue from goods used or consumed in Indiana and in this District. For example, Defendants have transacted business in the State of Indiana and within this District, Defendants have sent advertisements and promotional materials to Indiana residents, Defendants have shipped products to Indiana residents, Defendants offer products for sale in Indiana, Defendants have committed tortious acts within, and directed to, Indiana, and Defendants' website along with other retailers' websites features content that is available to Indiana residents. Defendants' sale of counterfeit goods caused substantial injury to Plaintiff in Indiana and Defendants' reasonably expected to cause injury to Plaintiff in Indiana. On information and belief, Defendants are also causing tortious injury in Indiana by acts or omissions outside of Indiana. All of Defendants' activities have caused injury to Plaintiff in Indiana.

10. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391, 1400(a), because Defendants reside in this District and Defendants are subject to personal jurisdiction in this District. Venue is also proper in this District pursuant to 28 U.S.C. §§ 1391(b), (c) and (d), because a substantial portion of the events or omissions giving rise to the claims herein occurred in this District.


## **FACTUAL BACKGROUND**

### **Plaintiff and Plaintiff's Marks**

11. Plaintiff was founded in 1894 and is one of the oldest certification companies in the United States. For over a century, UL has tested, inspected, and certified products, as well as developed safety standards.

12. Plaintiff is a global independent safety science company. Plaintiff's services include promulgating safety standards, certifying that representative samples of products satisfy applicable safety standards, and providing follow-up testing and inspection services to confirm that manufacturers are in compliance with safety standards.

13. Plaintiff offers certification, validation, testing, inspection, advising, training, and auditing services for a variety of industries around the world.

14. Plaintiff owns an extensive family of trademarks featuring the UL mark. Among other applications and registrations, Plaintiff owns the well-known and renowned UL-in-a-circle certification mark  and variations thereof (the “UL Certification Marks”). UL also owns the service mark UL (the “UL Service Mark”).

15. Plaintiff has been providing testing reports and certifying products that conform to UL’s Standards for Safety since at least 1906. Since at least 1906, Plaintiff, including its affiliates and predecessors, has continuously used the UL Service Mark in interstate commerce.

16. Plaintiff has been testing products and authorizing use of the well-known UL Certification Marks on products that conform to UL’s Standards for Safety in interstate commerce in the United States since at least 1937. Plaintiff’s authorized customers have been using the UL Certification Marks on products offered for sale and distributed in interstate commerce since 1937.

17. Plaintiff serves all members of the general public, including, but not limited to, consumers, manufacturers, suppliers, retailers, vendors, trade groups, industry associations, regulatory bodies, and governmental entities.

18. Plaintiff’s thousands of authorized customers have used Plaintiff’s well-known UL Certification Marks on billions of household, consumer, commercial, and industrial products including refrigeration equipment, lighting products, cable, wiring, building materials, life safety vests, electric signs, batteries and power packs for computers and consumer electronics, traffic signals, sprinklers, and cash registers.



19. Over the past century, Plaintiff has promoted recognition of its certification programs through a wide variety of marketing channels on a national, regional, and local basis, including television, radio, consumer and trade newspapers, consumer and trade magazines, industry trade journals, promotional literature, brochures, direct mail, email campaigns, and its interactive website located at <ul.com>. Plaintiff also promotes its UL Certification Marks and the UL Service Mark through its participation in standards development activities, follow-up conformity assessment and inspection services, community involvement, and safety science research.

20. As a result of Plaintiff's extensive use of the UL Service Mark to promote its certification programs, including standards development activities, follow-up conformity assessment and inspection services, community involvement, and safety science research, the UL Service Mark and the UL Certification Marks have attained a national and global reputation for technical expertise and integrity and have become a symbol of trust and objectivity.

21. The UL Service Mark and the UL Certification Marks are well-known and recognized by the general public, as well as by members of local, state and federal government regulatory bodies and industry trade associations, as marks indicating testing, inspection, validation, certification, training, advising, and auditing services originating with UL. The UL Certification Marks and the UL Service Mark are highly distinctive, are widely and favorably known throughout the United States, and have acquired secondary meaning.

22. The UL Service Mark and the UL Certification Marks are renowned among the general public as symbols of UL's testing, inspection, and certification services, and have been renowned since long before Defendants began engaging in the conduct alleged in this Complaint.

23. Plaintiff has duly and properly registered the UL Service Mark and the UL Certification Marks in the United States Patent and Trademark Office (“USPTO”) on the Principal Register. Plaintiff owns the following federally registered marks, among others. Copies of these registrations are attached as **Exhibits A through C**.

Mark	Reg. No.	Exhibit	Type
	782,589	A	Certification Mark
	2,391,140	B	Certification Mark
UL	4,201,014	C	Service Mark

(Table 1: List of Plaintiff’s UL Certification and Service Marks)

24. The federal trademark registrations referenced above are valid and subsisting, and provide conclusive evidence of the right of Plaintiff to use the UL Service Mark and authorize the use of the UL Certification Marks in commerce.

25. Plaintiff certifies the products of others in a variety of industries (the “Certification Services”) under its UL Certification Marks (Exhibits A-B), and offers educational, business advisory, product safety testing, and public safety services (the “UL Services”) under the UL Service Mark.

26. Plaintiff’s and its customers’ use and Plaintiff’s registration of the UL Certification Marks and/or the UL Service Mark establish that Plaintiff has senior trademark rights in the UL Certification Marks and the UL Service Mark, and consequently there is no question of priority of rights, as such priority belongs to Plaintiff.

27. Plaintiff's United States Trademark Registration Nos. 2391140 and 782589 referenced above are incontestable under 15 U.S.C. § 1115(b) because they have been in continuous use for more than five years after registration. Plaintiff's incontestable federal trademark registrations confer exclusive use of the UL Certification Marks throughout the United States in connection with the UL Certification Services. The registration of these marks constitutes *prima facie* evidence of their validity and conclusive evidence of Plaintiff's exclusive right to use the marks in commerce in connection with the UL Certification Services named therein. The registration of the marks also constitutes constructive notice to Defendants of Plaintiff's ownership and exclusive rights in the marks.

28. Plaintiff has expended significant time, energy, and money promoting and marketing its business and its services under the UL Service Mark. Plaintiff has extensively used the UL Service Mark and has advertised, promoted, and offered the UL Services under the UL Service Mark in interstate commerce through various channels of trade. As a result, the customers and potential customers of Plaintiff, and the consuming public in general, have come to know and recognize the UL Service Mark as identifying Plaintiff's UL Services as services of the highest quality offered by Plaintiff, and associate the UL Service Mark with Plaintiff's UL Services. Plaintiff has thus built up extensive and invaluable goodwill in connection with the sale of its UL Services offered under its UL Service Mark.

29. Plaintiff has expended significant time, energy, and money promoting and marketing its business and its services under the UL Certification Marks. Plaintiff's authorized customers have extensively used the UL Certification Marks in interstate commerce through various channels of trade. As a result, the customers and potential customers of Plaintiff, and the consuming public in general, have come to know and recognize the UL Certification Marks as

identifying third-party products as tested, inspected, and certified by Plaintiff. Plaintiff has thus built up extensive and invaluable goodwill in connection with the UL Certification Marks.

30. In addition to rights in the United States, the UL Service Mark and the UL Certification Marks are applied for and registered in many countries throughout the world.

31. Plaintiff's "General Guidelines and Rules" for use of its marks appears on Plaintiff's website at ul.com and states: "References to UL can be made only once you are authorized by UL to use the appropriate UL mark on your product" and "Do not use the UL Mark on packaging for products that are not UL certified."

### **Safety Concerns Relating to Hoverboard Products Exploding and Setting on Fire**

32. Hoverboards, also known as self balancing scooters or skateboards, became very popular in 2015.

33. By mid to late 2015, there were numerous reports about hoverboards self-combusting and catching on fire. Hoverboards that were exploding and setting on fire became a significant safety concern because users were being injured and homes and cars were being damaged as a result of such unsafe hoverboards.

34. On November 9, 2015, the BuzzFeedNews website published an article entitled "Those Hoverboard Things Kids Ride Around On Keep Exploding." Then on December 3, 2015, the Wall Street Journal published a video captioned "Hoverboard Fire Safety Concern Grows." Similarly, on December 9, 2015, Newsweek published an article with the headline "Another Day, Another Hoverboard Explosion: Concern Over Safety Continues to Grow."

35. On December 15, 2015, the United States Consumer Product Safety Commission ("CPSC") opened an investigation into hoverboard safety. The CPSC was prompted to open its



investigation because it had received at least 29 reports of personal injuries from hoverboards that required emergency room treatment and 10 other reports of hoverboards catching fire.

36. On or around mid-December, 2015, retailers Amazon.com and Target temporarily halted hoverboard sales in response to the safety concerns that had been raised.

37. On December 10, 2015, Defendant Swagway and Modell's Sporting Goods, Inc. were sued in a class action lawsuit because a Swagway hoverboard product caught on fire and damaged the plaintiff's home. *See Brown v. Swagway, LLC*, Case No. 3:15-cv-588 (N.D. Ind.)

38. On or about January 21, 2016, the CPSC announced that it is investigating 13 brands of hoverboards as a result of 40 hoverboard-related fires in 19 states. Defendant Swagway was one of the brands being investigated by the CPSC.

39. A January 28, 2016, Allentown Morning Call article discusses a Swagway hoverboard that burst into flames in South Whitehall, Pennsylvania.

40. A February 5, 2016, Erie Times News article discusses a Swagway hoverboard that caught on fire in Erie, Pennsylvania.

#### **Defendants' Illegal and Willfully Infringing Activities**

41. Defendants make and sell hoverboards. Defendants' hoverboards have been sold on the Swagway website at swagway.com and through retailers such as Modell's Sporting Goods, BJ's Wholesale Club, Anthem Sports, Amazon.com, Evine.com, Newegg.com, Pcdirect.com, Target.com, and Walmart.com. An example of Defendants' Swagway hoverboard is shown below:



(Photograph 1: Defendants' Swagway Hoverboard Product)

42. Defendants are not customers of Plaintiff and Plaintiff has yet to certify any hoverboards for safety. In response to safety concerns regarding hoverboards exploding and setting on fire, Plaintiff began to offer a certification program for hoverboard products on February 2, 2016.

43. Notwithstanding Plaintiff's exclusive rights in and to the UL Certification Marks and the UL Service Mark, and well after Plaintiff's adoption and registration of such marks, Defendants used a mark that is identical to or substantially indistinguishable from the UL Certification Marks (the "Counterfeit UL Mark") to falsely suggest that their Swagway hoverboard products have been tested, inspected, and certified by Plaintiff. Defendants have placed a Counterfeit UL Mark on their Swagway hoverboard products and packaging, when in fact Defendants' Swagway hoverboard products have never been tested, inspected, or certified by Plaintiff.

44. Defendants' unauthorized placement of the Counterfeit UL Mark on the packaging of the Swagway hoverboard product is shown below:



(Photograph 2: The Counterfeit UL Mark on the Packaging of a Swagway Hoverboard Product)

45. Defendants' unauthorized placement of the Counterfeit UL Mark on the Swagway hoverboard product is shown below:



(Photograph 3: The Counterfeit UL Mark on a Swagway Hoverboard Product)

46. Certain of Defendants' Swagway hoverboard products also include power adapters that bear a mark that is identical to or substantially indistinguishable from the UL Certification Marks to falsely suggest that the power adapter contained in such Swagway hoverboard products has been tested, inspected, and certified by Plaintiff.

47. Notwithstanding that: (i) Defendants are not customers of Plaintiff; (ii) Plaintiff has yet to certify any hoverboards for safety; and (iii) Swagway hoverboard products have not been tested, inspected, and certified by Plaintiff, Defendants Swagway and Zhu also made numerous public statements that, taken alone or in combination with, Defendants' placement of the Counterfeit UL Mark on their Swagway hoverboard products and packaging, associate Defendants' Swagway hoverboard products and their components with Plaintiff, Plaintiff's marks, and Plaintiff's testing, inspection, and certification services.

48. In an October 19, 2015, press release discussing Defendants' Swagway hoverboard product, that was also available on Swagway's website at [swagway.com](http://swagway.com), Defendants stated: "Swagway also adheres to all required environmental standards and certifications – UL, FCC, CE, RohS, Prop 65 and Un38.3."

49. In a December 17, 2015, [dailymail.com](http://dailymail.com), article, Defendant Zhu stated: "We meet all the regulations and industry standards" and "We believe that our parts meet government regulations and industry standards. We take care to make sure our parts are going to be safe in the future."

50. In a press release that was available on Swagway's website at [swagway.com](http://swagway.com) on or about December 17, 2015, the "Swagway Management Team" stated: "In light of recent concerns of poor quality batteries causing potential danger, we wanted to address those concerns

and reassure our consumer that Swagway is committed to producing only top quality products and puts safety above anything else. Swagway takes safety very seriously and makes it a top priority. In keeping safety first, Swagway from the start, has and continues to use ONLY Top Brand UL approved battery cells which has a built in circuit to regulate power and keep from overcharging and ONLY use UL certified adapters as well. Swagway also takes extra measures to prevent overcharging including circuits in the aforementioned battery pack and UL certified adapter and has an additional circuit inside the unit itself. Swagway is FCC, CE, RohS, certified and Battery packs were UN38.3 certified with UL approved battery cells and has passed all testing in adherence to government guidelines.”

51. A January 7, 2016, article on mashable.com states: “He [Defendant Zhu] claims that his product was the first to have a UL-approved adapter.”

52. In the same January 7, 2016 article on mashable.com, Zhu stated: “The internal wiring [of Swagway’s new SwagTron hoverboard product] will now adhere to UL standards.”

53. In a January 22, 2016, article on wired.com, a Swagway spokesperson stated: “As Swagway informed [Plaintiff] several weeks ago, Swagway has always ordered and used UL-certified battery cells and UL-certified adapters for its hoverboards.”

54. In the same January 22, 2016, article on wired.com, a Swagway spokesperson stated: “Swagway says it plans to keep working closely with [Plaintiff] on creating safety standards going forward.”

55. Defendants used the Counterfeit UL Marks to deceive the applicable regulatory authorities into believing that Defendants’ Swagway hoverboard products have been tested, inspected, and certified by Plaintiff. This presents a potential public safety risk as the electrical safety of such hoverboards is unknown and falsely represented as being certified by Plaintiff.

56. Defendants have never been authorized to apply the UL Certification Marks to any hoverboards they have manufactured since 2015. Defendants were never a client of Plaintiff and therefore never had authorization to apply UL Certification Marks to Defendants' Swagway hoverboard products and their packaging.

57. On information and belief, the customers who purchased the uncertified hoverboard products from Defendants each paid hundreds of dollars based on their understanding that the Swagway hoverboard products were safe because they were tested, inspected, and certified by Plaintiff.

58. Defendants' use of the Counterfeit UL Mark is identical to and confusingly similar to the UL Certification Marks in appearance, sound, meaning, and commercial impression.

59. Defendants' Swagway hoverboard products that bear a Counterfeit UL Mark falsely suggest that Defendants' hoverboard products have been tested, inspected, and certified by Plaintiff.

60. Defendants' use of a Counterfeit UL Mark trades off the goodwill of the UL Service Mark and the UL Certification Marks, and is without permission or license from Plaintiff.

61. Defendants advertise and/or sell their Swagway hoverboard products in commerce using a Counterfeit UL Mark.

62. Defendants' Swagway hoverboard products that bear a Counterfeit UL Mark have not been tested and certified by Plaintiff to any safety requirements, and as such, may place the health and safety of the public at risk.

63. Defendants are engaged in a regular business of selling Swagway hoverboard products bearing a Counterfeit UL Mark.

64. On information and belief, Defendants use and intend to continue using a Counterfeit UL Mark without the authorization of Plaintiff, thereby confusing consumers as to the certification of the Swagway hoverboard products by Plaintiff, and resulting in damage and detriment to Plaintiff and to Plaintiff's reputation and goodwill.

65. Defendants knew or had reason to know of the UL Certification Marks and the UL Service Mark at the time Defendants commenced use of the Counterfeit UL Mark. Defendants were on constructive notice of the UL Certification Marks and the UL Service Mark because such marks had been federally registered.

66. Defendants intentionally adopted and used the Counterfeit UL Mark so as to create consumer confusion and traffic off of Plaintiff's reputation and goodwill under the UL Certification Marks and UL Service Mark.

67. As a result of hoverboard safety concerns, consistent with Plaintiff's routine issuance of public notices every year as part of its safety testing, inspection, and certification services, and because Plaintiff had determined that Defendants' Swagway hoverboard products continued to bear Counterfeit UL Marks in the marketplace, Plaintiff issued the following public notice on January 15, 2016:

**NORTHBROOK, Ill., Jan. 15, 2016** —The following is a notification from UL that hoverboards marketed and sold by Swagway, LLC bear counterfeit UL Marks. Swagway Hoverboards have not been evaluated by UL to any Standard for Safety and it is unknown if the Swagway Hoverboards comply with any safety requirements. To date, UL has yet to certify any hoverboards for safety. Further, UL certification of components such as a battery pack or power supply in hoverboards is different from certification of the hoverboards themselves. For technology such as hoverboards that use lithium-ion batteries, it is important to understand the interaction among components and UL has yet to evaluate any power supplies or battery packs in a hoverboard system. For more information on

UL's Involvement in Hoverboard Certifications refer to:  
<http://ul.com/newsroom/featured/uls-involvement-in-hoverboard-certification/>

**Name of Product:**

Swagway Hoverboard

**Distributor:**

Swagway.com

3431 William Richardson Dr., Suite F

South Bend, IN 46628

www.swagway.com

**Identification:**

The product bears a label on the bottom with a counterfeit UL Mark and the packaging is provided with a counterfeit UL Mark.

**Defendant Zhu's Personal Liability**

68. As the president, CEO, founder, and owner of Defendant Swagway, Defendant Zhu controls and makes all of Defendant Swagway's decisions. Defendant Zhu has full responsibility for Defendant Swagway's business. Defendant Zhu stands to benefit personally from the business of Defendant Swagway. On information and belief, Defendant Zhu provided most, if not all, of Defendant Swagway's startup capital.

69. Defendant Zhu holds himself out as the owner, principal director, and person who controls Defendant Swagway and makes all of Defendant Swagway's decisions.

70. Defendant Zhu holds himself out as the person who personally set up and formed the Defendant Swagway entity because it was a great opportunity as hoverboards were becoming popular.

71. From the outset, Defendant Zhu willfully, knowingly, and actively participated in and supervised, the illegal and willfully infringing activities of Defendant Swagway, and used Defendant Swagway to carry out his illegal and willfully infringing activities.

72. Defendant Zhu's active participation in and supervision of, Defendant Swagway's wrongful misconduct was intentional, unjustified and/or malicious, and done to purposefully harm Plaintiff.



73. On information and belief, outside of Defendant Zhu's duties as president, principal, member, director, manager, and/or corporate officer of Defendant Swagway, Defendant Zhu was motivated by an improper purpose to disrupt, harass, defraud, interfere, and cause damages and injury to Plaintiff.

74. Defendant Zhu also personally participated in and supervised the design, manufacture, offer for sale, and sale of the Swagway hoverboard products that bear the Counterfeit UL Mark.

75. Defendant Zhu was the individual at Defendant Swagway with the responsibility for selecting the products that Defendant Swagway manufactures and markets.

76. Defendant Zhu was the individual at Defendant Swagway with the responsibility for selecting and designing the packaging for the products that Defendant Swagway manufactures and markets.

77. Defendant Zhu was the individual at Defendant Swagway with the responsibility for placing the Counterfeit UL Mark on the Swagway hoverboard product and its packaging.

78. On information and belief, Defendant Zhu was the individual at Defendant Swagway with the responsibility for deliberately choosing to trade on the goodwill established by Plaintiff by placing the Counterfeit UL Mark on the Swagway hoverboard product and its packaging.

79. Defendant Zhu made the decision to go forward with the manufacture, marketing, and sale of the Swagway hoverboard product and its packaging bearing the Counterfeit UL Mark.

80. On information and belief, Defendant Zhu was the individual at Defendant Swagway who deliberately chose to trade on the goodwill established by Plaintiff by continuing

to place the Counterfeit UL Mark on the Swagway hoverboard product and its packaging and, in connection with Defendants' Swagway hoverboard products, by continuing to mention Plaintiff, Plaintiff's marks, and Plaintiff's testing, inspection, and certification services to the press and the public after Plaintiff demanded that Defendants cease and desist their illegal and willfully infringing activities.

81. Defendant Zhu stood to benefit personally and to personally profit from the decision to manufacture, market, and sell the Swagway hoverboard products bearing the Counterfeit UL Mark.

82. Defendant Zhu was the individual at Defendant Swagway who personally negotiated to have the Swagway hoverboard product bearing the Counterfeit UL Mark sold by each online and big box retailer that has offered for sale or sold a Swagway hoverboard product.

83. Defendant Zhu was the individual at Defendant Swagway who personally directed others at Defendant Swagway to manufacture, market, and sell the Swagway hoverboard products bearing the Counterfeit UL Mark.

84. Defendant Zhu personally marketed and promoted the Swagway hoverboard products bearing the Counterfeit UL Mark at tradeshow and to the press.

85. Defendant Zhu personally made numerous public statements that, taken alone or in combination with, Defendants' placement of the Counterfeit UL Mark on their Swagway hoverboard products and packaging, associate Defendants' Swagway hoverboard products and their components with Plaintiff, Plaintiff's marks, and Plaintiff's testing, inspection, and certification services.

86. Defendant Zhu personally authorized the issuance of numerous public statements that, taken alone or in combination with, Defendants' placement of the Counterfeit UL Mark on

their Swagway hoverboard products and packaging, associate Defendants' Swagway hoverboard products and their components with Plaintiff, Plaintiff's marks, and Plaintiff's testing, inspection, and certification services.

87. On information and belief, Defendant Zhu personally decided to place the UL marks on Defendants' Swagway.com website in connection with a press release relating to Defendants' Swagway hoverboard products, after Defendants had received numerous cease and desist letters from Plaintiff.

88. Defendant Zhu is also personally liable for the acts of Defendant Swagway because the corporate veil of Defendant Swagway should be pierced and/or because Defendant Zhu is the alter ego of Defendant Swagway. A unity of interest and ownership causes any separate personalities of Defendant Swagway and Defendant Zhu to no longer exist. Further, circumstances exist such that adherence to the fiction of a separate corporate existence would sanction a fraud or promote injustice. More specifically, on information and belief: (1) Defendant Swagway fails to maintain adequate corporate records or to comply with corporate formalities; (2) funds and other assets of Defendant Zhu are commingled with the funds and other assets of Defendant Swagway; (3) Defendant Zhu treats the assets of Defendant Swagway as his own; (4) Defendant Swagway and Defendant Zhu's other entities fail to maintain arm's length relationships; (5) Defendant Swagway was inadequately capitalized; (6) Defendant Swagway has nonfunctioning officers or directors; and/or (7) Defendant Swagway is a mere façade for the operation of Defendant Zhu.

**Plaintiff's Demands That Defendants Cease Their Illegal and Willfully Infringing Activities**

89. On December 14, 2015, Plaintiff sent a cease and desist letter to Defendants requesting that Defendants cease and desist from their illegal trademark infringement on the Swagway.com website. Specifically, Plaintiff requested that Defendants cease and desist from making the following statement in their October 19, 2015 press release discussing Defendants' Swagway hoverboard product: "Swagway also adheres to all required environmental standards and certifications – UL, FCC, CE, RohS, Prop 65 and Un38.3."

90. After it had been discovered that Defendants had also placed a Counterfeit UL Mark on their Swagway hoverboard products and packaging, Plaintiff sent another cease and desist letter to Defendants requesting that Defendants cease and desist from their illegal trademark infringement and counterfeiting on December 17, 2015.

91. A Swagway hoverboard product that was ordered directly from Defendants at swagway.com on or about December 24, 2015, bore a Counterfeit UL Mark on the Swagway hoverboard product and its packaging.

92. In response to Plaintiff's cease and desist letters, Defendants informed Plaintiff that on January 8, 2016, the retailer Modell's had pulled all Swagway hoverboard products bearing a Counterfeit UL Mark from its shelves and returned them to Defendants.

93. Contrary to Defendants' representations and despite Plaintiff's earlier December 14 and 17, cease and desist letters to Defendants, a Swagway hoverboard product that was purchased at a Modell's store on January 12, 2016, bore a Counterfeit UL Mark on the Swagway hoverboard product and its packaging.

94. On January 13, 2016, Plaintiff's outside counsel sent another cease and desist letter to Defendants because Swagway hoverboard products bearing Counterfeit UL Marks

remained in the marketplace. Plaintiff's outside counsel's letter included numerous demands relating to Defendants' illegal and willfully infringing activity.

95. On January 15, 2016, Defendants responded to Plaintiff's outside counsel's letter. Defendants represented that they would acquiesce to Plaintiff's demands and agree to produce certain documents and information to Plaintiff.

96. On January 19, 2016, an inspection at Defendants' South Bend, Indiana, warehouse confirmed that Swagway hoverboard products in Defendants' possession bore Counterfeit UL Marks.

97. On January 23, 2016, Plaintiff's outside counsel sent another letter to Defendants requesting additional information and documents from Defendants relating to Defendants' illegal and willfully infringing activity.

98. On January 25, 2016, Defendants responded to Plaintiff's outside counsel's letter by agreeing to produce certain additional information to Plaintiff.

99. Despite Plaintiff's numerous cease and desist letters to Defendants concerning Defendants' illegal trademark infringement and counterfeiting, on or about January 23, 2016, Plaintiff discovered that Defendants had placed very large depiction of Plaintiff's UL marks on their website in connection with a section discussing Defendants' Swagway hoverboard products and entitled "Swagway and UL certification" Defendants' unauthorized placement of Plaintiff's UL mark on their website is shown below:



(Photograph 5: Plaintiff's UL mark on Defendants' Website)

100. On or about January 28, 2016, it was discovered that a BJ's Wholesale Store in Raleigh, North Carolina continued to sell Defendants' Swagway hoverboard products with a Counterfeit UL Mark on their packaging.

101. On or about February 9, 2016, Defendants notified Plaintiff that they were no longer agreeing to honor their prior representations and offers to produce documents and information relating to Defendants' illegal and willfully infringing activity.

\*\*\*\*

**COUNT I**  
**FEDERAL TRADEMARK COUNTERFEITING AND TRADEMARK INFRINGEMENT**  
**(15 U.S.C. § 1114)**

102. Plaintiff realleges and incorporates by reference paragraphs 1 – 101 as if fully set forth herein.

103. Plaintiff is the owner of all right, title, and interest in and to the UL Certification Marks and the UL Service Marks (collectively, the “UL Marks”).

104. The UL Marks and the goodwill of the businesses associated with them in the United States and throughout the world are of great value, are highly distinctive and arbitrary, and have become universally associated in the public mind with Plaintiff and Plaintiff’s safety testing, inspection, and certification services, and other services of the very highest quality and reputation finding their source in Plaintiff.

105. Defendants’ commercial advertising, promotional materials, marketing materials, press releases, public interviews, and website content (collectively, “Advertisements”) employed UL Marks. Defendants’ Swagway hoverboard products and their packaging bear Counterfeit UL Marks. Without Plaintiff’s authorization or consent, and with knowledge of Plaintiff’s well-known rights in the UL Marks, Defendants’ Advertisements and Defendants’ Swagway hoverboard products bear marks which are identical, confusingly similar, or substantially indistinguishable to the UL Marks.

106. Defendants’ unauthorized interstate use in commerce of copies or simulations of the UL Marks and the use of Counterfeit UL Marks to sell, offer for sale, distribute, and/or advertise their Swagway hoverboard products constitutes a reproduction, copying, and colorable imitation of Plaintiff’s UL Marks, and is presumed to cause confusion, mistake and deception among the general purchasing public as to the identity and origin of the Swagway hoverboard products, and is presumed to deceive the public into believing the Swagway hoverboard products

being sold by Defendants, originate from, are associated with, tested, inspected, and certified by, or are otherwise authorized by Plaintiff, all to the damage and detriment of Plaintiff's reputation, goodwill and sales. Consumers are likely to purchase or engage Defendants' Swagway hoverboard products being offered under the Counterfeit UL Mark, believing them to have been tested, inspected, and certified by Plaintiff, thereby resulting in a loss of goodwill and economic harm to Plaintiff.

107. Defendants' Counterfeit UL Mark is identical to or substantially indistinguishable from the UL Marks in appearance, sound, meaning, and commercial impression, such that the use thereof is also likely to cause: (i) confusion, mistake, and deception as to the testing, inspection, and certification of Defendants' Swagway hoverboard products; (ii) the public to be confused, deceived, and to assume erroneously that Defendants' Swagway hoverboard products have been tested, inspected, and certified by Plaintiff or that Defendants are in some way connected with, licensed, authorized, certified by, or affiliated with Plaintiff; and (iii) irreparable injury and damage to Plaintiff and to the goodwill and reputation symbolized by the UL Marks.

108. Likelihood of confusion is further enhanced by the fact that the UL Marks are strong, well-known, and entitled to a broad scope of protection. Likelihood of confusion is also enhanced by the fact that the Counterfeit UL Mark, the UL Certification Marks and the UL Service Mark prominently incorporate the key component "UL."

109. Despite their actual and constructive knowledge of Plaintiff's ownership of the UL Marks and Plaintiff's and/or its customers' prior use of the UL Marks, Defendants have continued to use Plaintiff's UL Marks without Plaintiff's authorization or consent. Defendants' actions are deliberate and willful and have been done with the intention of trading upon the valuable goodwill built up by Plaintiff in the UL Marks.



110. On information and belief, because of the safety concerns that have surrounded hoverboard products, Defendants intentionally adopted and used the Counterfeit UL Mark so as to create consumer confusion and traffic off of Plaintiff's reputation and goodwill under the UL Marks. Defendants have recklessly placed Swagway hoverboard products into the marketplace and have represented to the public that such products have been tested, inspected, and certified by Plaintiff under appropriate safety standards, when in fact Plaintiff has never performed any such testing, inspection, and certification on the Swagway hoverboard products Defendants are selling.

111. Plaintiff has sustained injury, damage, and loss based on Defendants' actions.

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

**COUNT II**  
**FEDERAL UNFAIR COMPETITION – FALSE DESIGNATION OF ORIGIN**  
**(15 U.S.C. § 1125)**

113. Plaintiff realleges and incorporates by reference paragraphs 1 – 112 as if fully set forth herein.

114. Plaintiff has spent substantial sums of money to promote its safety testing, inspection, certification, validation, advising, training, and auditing services under the UL Marks and names. Plaintiff has also generated substantial revenue from the UL Marks and names. The UL Marks and names are distinctive and have become impressed upon the minds of the trade and public as identifying Plaintiff's safety testing, inspection, certification, validation, advising, training, and auditing services. Plaintiff's UL Marks and names also indicate a source of origin of the safety testing, inspection, certification, validation, advising, training, and auditing services

provided in association with the UL Marks and names. The reputation and goodwill that has been built-up in Plaintiff's UL Marks and names is of great value to Plaintiff.

115. Defendants' unauthorized interstate use in commerce of Plaintiff's UL Marks and names to promote, advertise, market, and/or sell their Swagway hoverboard products as tested, inspected, and certified by Plaintiff constitutes false designation of origin pursuant to 15 U.S.C. §§ 1125(a).

116. Defendants' use of Plaintiff's UL Marks and names constitutes false designation of origin that is likely to cause confusion, mistake, and deception among consumers as to the affiliation, connection, or association of Plaintiff and/or its services with Defendants and/or their goods, and/or as to the origin, sponsorship, testing, inspection, certification, or approval of Defendants and/or their goods by or with Plaintiff and/or its services, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Defendants' deceptive actions are likely to influence the consuming public's purchasing decisions. Defendants' unfair competition jeopardizes the goodwill built up by Plaintiff in its UL Marks and names and is causing irreparable harm to Plaintiff for which there is no adequate remedy at law.

117. Defendants' representations and descriptions in Advertisements that Defendants' Swagway hoverboard products are tested, inspected, and certified by Plaintiff are false and misleading and were done to deceive the consuming public and to capitalize on the goodwill developed by Plaintiff. Defendants use of the UL Marks on their hoverboard products and packaging to represent that Defendants' Swagway hoverboard products are tested, inspected, and certified by Plaintiff are false and misleading and were done to deceive the consuming public and to capitalize on the goodwill developed by Plaintiff. Defendants misrepresented the nature, characteristics, qualities, or geographic origin of Defendants' goods by falsely indicating that the

Swagway hoverboard products come from, or are connected with, sponsored by, affiliated with, licensed by, authorized by, tested by, inspected by, certified by, or related to Plaintiff and its testing, inspection, and certification services.

118. Despite their actual and constructive knowledge of Plaintiff's ownership and Plaintiff's and its customers' prior use of the UL Marks and names, Defendants have continued to use Plaintiff's UL Marks and names without Plaintiff's authorization or consent. Defendants' actions are deliberate and willful and have been done with the intention of trading upon the valuable goodwill built up by Plaintiff in its UL Marks and names.

119. Plaintiff has sustained injury, damage, and loss based on Defendants' actions.

120. By reason of the foregoing acts, Defendants are liable for false designation of origin under 15 U.S.C. § 1125(a).

**COUNT III**  
**FEDERAL UNFAIR COMPETITION – FALSE ADVERTISING**  
**(15 U.S.C. § 1125)**

121. Plaintiff realleges and incorporates by reference paragraphs 1 – 120 as if fully set forth herein.

122. Plaintiff has spent substantial sums of money to promote its safety testing, inspection, certification, validation, advising, training, and auditing services under the UL Marks and names. Plaintiff has also generated substantial revenue from the UL Marks and names. The UL Marks and names are distinctive and have become impressed upon the minds of the trade and public as identifying Plaintiff's safety testing, inspection, certification, validation, advising, training, and auditing services. Plaintiff's UL Marks and names also indicate a source of origin of the safety testing, inspection, certification, validation, advising, training, and auditing services

provided in association with the UL Marks and names. The reputation and goodwill that has been built-up in Plaintiff's UL Marks and names is of great value to Plaintiff.

123. Defendants' unauthorized interstate use in commerce of Plaintiff's UL Marks and names to promote, advertise, market, and/or sell their Swagway hoverboard products as tested, inspected, and certified by Plaintiff constitutes false advertising pursuant to 15 U.S.C. §§ 1125(a).

124. Defendants' false or misleading descriptions or representations of fact in Advertisements in connection with Defendants' Swagway hoverboard products constitutes false advertising that is likely to cause confusion, mistake, and deception among consumers as to the affiliation, connection, or association of Plaintiff and/or its services with Defendants and/or their goods, and/or as to the origin, sponsorship, testing, inspection, certification, or approval of Defendants or Defendants' goods by or with Plaintiff and/or its services, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Defendants' deceptive actions are likely to influence the consuming public's purchasing decisions. Defendants' unfair competition jeopardizes the goodwill built up by Plaintiff in its UL Marks and names and is causing irreparable harm to Plaintiff for which there is no adequate remedy at law.

125. Defendants' representations and descriptions in Advertisements that Defendants' Swagway hoverboard products are tested, inspected, and certified by Plaintiff are false and misleading and were done to deceive the consuming public and to capitalize on the goodwill developed by Plaintiff. Defendants misrepresented the nature, characteristics, qualities, or geographic origin of Defendants' goods by falsely indicating that the Swagway hoverboard products come from, or are connected with, sponsored by, affiliated with, licensed by, authorized by, tested by, inspected by, certified by, or related to Plaintiff and its testing, inspection, and

certification services. Defendants' actions constitute literally false and/or misleading descriptions and representations of fact.

126. Despite their actual and constructive knowledge of Plaintiff's ownership and Plaintiff's and its customers' prior use of the UL Marks and names, Defendants have continued to use Plaintiff's UL Marks and names without Plaintiff's authorization or consent. Defendants' actions are deliberate and willful and have been done with the intention of trading upon the valuable goodwill built up by Plaintiff in its UL Marks and names.

127. Plaintiff has sustained injury, damage, and loss based on Defendants' actions.

128. By reason of the foregoing acts, Defendants are liable for false advertising under 15 U.S.C. § 1125(a).

**COUNT IV**  
**VIOLATION OF THE ILLINOIS DECEPTIVE TRADE PRACTICES ACT**  
**(815 ILCS 510/1 *et seq.*)**

129. Plaintiff realleges and incorporates by reference paragraphs 1 – 128 as if fully set forth herein.

130. The acts of Defendants complained of herein constitute deceptive trade practices in violation of 815 ILCS 510/1 *et seq.* insofar as Defendants have:

- (a) passe[d] off goods or services as those of another;
- (b) cause[d] likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (c) cause[d] likelihood of confusion or of misunderstanding as to affiliation, connection, or association with or certification by another;
- (d) represent[ed] that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have;  
and
- (e) represent[ed] that goods or services are of a particular standard, quality, or grade.

131. Defendants' unauthorized, intentional, and willful use of Plaintiff's UL Marks and names to promote, advertise, market, and/or sell their Swagway hoverboard products constitutes unfair competition within the meaning of the Illinois Deceptive Trade Practices Act, 815 I.L.C.S. § 510 *et seq.*

132. Defendants' unauthorized, intentional, and willful representations that Defendants' Swagway hoverboard products are tested, inspected, and certified by Plaintiff are false and misleading and were done to deceive the consuming public in Illinois and to capitalize on the goodwill developed by Plaintiff.

133. Defendants' use of Plaintiff's UL Marks and names in connection with Defendants' sale of Swagway hoverboard products constitutes unfair competition that is likely to cause confusion, mistake, and deception among consumers as to the affiliation, connection, or association of Plaintiff and/or its services with Defendants and/or their goods, and/or as to the origin, sponsorship, testing, inspection, certification, or approval of Defendants or Defendants' goods by or with Plaintiff and/or its services. Defendants' deceptive actions are likely to influence the consuming public's purchasing decisions. Defendants' unfair competition jeopardizes the goodwill built up by Plaintiff in its UL Marks and names and is causing irreparable harm to Plaintiff for which there is no adequate remedy at law.

134. Despite their actual and constructive knowledge of Plaintiff's ownership and Plaintiff's and its customers' prior use of the UL Marks and names, Defendants have continued to use Plaintiff's UL Marks and names without Plaintiff's authorization or consent. Defendants' actions are deliberate and willful and have been done with the intention of trading upon the valuable goodwill built up by Plaintiff in its UL Marks and names.

135. Plaintiff, an Illinois resident, has sustained injury, damage, and loss in Illinois based on Defendants' actions. Defendants' actions directly or indirectly affected Illinois.

136. By reason of the foregoing acts, Defendants are liable for a violation of the Illinois Deceptive Trade Practices Act, 815 I.L.C.S. § 510 *et seq.*

137. Pursuant to the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510 *et seq.*, Plaintiff is entitled to permanent injunctive relief ordering Defendants to cease this unfair competition.

**COUNT V**  
**VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS**  
**PRACTICES ACT**  
**(815 ILCS 505/1 et seq.)**

138. Plaintiff realleges and incorporates by reference paragraphs 1 – 137 as if fully set forth herein.

139. The acts of Defendants complained of herein constitute fraud and deceptive business practices in violation of 815 ILCS 505/1 *et seq.*

140. Plaintiff, an Illinois resident, has sustained injury, damage, and loss in Illinois based on Defendants' actions. Defendants' actions directly or indirectly affected Illinois.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- A. Judgment be entered for Plaintiff on all of its respective claims;
- B. A finding that Defendants' acts constitute a violation of the claims alleged in Count I through V;
- C. Order that Defendants, their officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through or under it be enjoined permanently:

- (1) imitating, copying, or making any other infringing use of the UL Service Mark and the UL Certification Marks by Defendants' Counterfeit UL Mark, and any other mark now or hereafter confusingly similar to the UL Service Mark or the UL Certification Mark;
- (2) manufacturing, assembling, producing, distributing, offering for distribution, circulating, selling, offering for sale, advertising, importing, promoting, or displaying any simulation, reproduction, counterfeit, copy, or colorable imitation of the UL Service Mark, the UL Certification Marks, Defendants' Counterfeit UL Mark, or any mark confusingly similar thereto;
- (3) using any false designation of origin, false description or statement, or literally false or misleading description or representation of fact that can or is likely to erroneously lead the trade or public or individuals to believe that any good has been provided, produced, distributed, offered for distribution, circulated, sold, offered for sale, imported, advertised, promoted, displayed, licensed, sponsored, approved, or authorized by or for Plaintiff, when such is not true in fact;
- (4) using the names, logos, or other variations thereof of the UL Service Mark, the UL Certification Marks, or Defendants' Counterfeit UL Mark in any of Defendants' trade or corporate names;
- (5) engaging in any other activity constituting an infringement of the UL Service Mark, the UL Certification Marks, or of the rights of Plaintiff in, or right to use or to exploit the UL Service Marks and the UL Certification Marks;
- (6) from using in any manner the UL Service Mark and UL Certification Marks, alone or in combination with any word or words which so resemble each said trademark as to be likely to cause confusion, deception, or mistake on or in connection with the advertising, offering for sale, or sale of any product not Plaintiff's, or not authorized by Plaintiff to be sold in connection with each of the UL Marks;
- (7) from committing any acts calculated to cause purchasers to believe that Defendants' products are those sold under the control and supervision of Plaintiff, or sponsored or approved by Plaintiff, or connected with Plaintiff, or tested, inspected, or certified by Plaintiff, or guaranteed by Plaintiff, or produced under the control and supervision of Plaintiff;
- (8) from further infringing all of the UL Marks and damaging Plaintiff's goodwill;
- (9) from otherwise competing unfairly with Plaintiff in any manner; and
- (10) from shipping, delivering, distributing, returning or otherwise disposing of, in any manner, products or inventory not manufactured by or for Plaintiff, nor



authorized by Plaintiff to be sold or offered for sale, and which bear any of the UL Marks.

D. Order that Defendants be required upon service of this Complaint to immediately deliver up to Plaintiff any and all products, guarantees, circulars, price lists, labels, signs, prints, packages, wrappers, pouches, receptacles, advertising matter, promotional, and other materials in the possession of Defendants or under their control bearing any of the UL Marks and names, or each of them, alone or in combination with any other words, or used in connection with the advertising, offering for sale or sale of products not Plaintiff's, or not made under the authorization and control of Plaintiff;

E. Order that Defendants be required upon service of this Complaint to immediately supply Plaintiff with a complete list of entities to whom they distributed and/or sold products falsely bearing the UL Certification Mark as well as complete information regarding the sourcing and manufacture of Defendants' products bearing the Counterfeit UL Mark;

F. Order that Defendants be required upon service of this Complaint to immediately deliver up for destruction their entire inventory of said products bearing any of the aforesaid infringing UL Marks;

G. Order that Defendants be required to pay Plaintiff an amount of money for Plaintiff to effectively engage in a corrective advertising campaign to undo the damage to its business caused by Defendants;

H. Order Defendants, at their own expense, and subject to review by Plaintiff, to recall all products and marketing, promotional, and advertising materials that bear or incorporate a Counterfeit UL Mark, or any mark confusingly similar to the UL Certification Marks or the UL Service Mark, which have been manufactured, distributed, sold, or shipped by Defendants or on their behalf, and to reimburse all customers from which said materials are recalled;

I. Order Defendants to immediately produce and turn over to Plaintiff, all products, labels, signs, prints, packages, molds, plates, dies, wrappers, receptacles, and advertisements in their possession or under their control, bearing a Counterfeit UL Mark, and/or any simulation, reproduction, copy, or colorable imitation thereof, and all plates, molds, matrices, and any other means of making the same;

J. Order expedited discovery to commence immediately;

K. Order Defendants to publish notice to all customers or members of the trade who may have seen or heard of Defendants' use of any Counterfeit UL Mark, as well as to the appropriate regulatory bodies, which notice shall disclaim any connection with Plaintiff and Plaintiff's testing, inspection, and certification services, and shall advise them Defendants' discontinuance from all use of any Counterfeit UL Mark;

L. Order Defendants to file with this Court and to serve upon Plaintiff within thirty (30) days after service upon Defendants of an injunction in this action, a written report by Defendants, under oath, setting forth in detail the manner in which Defendants have complied with the injunction;

M. Order Defendants to pay the costs of corrective advertising and any public, regulatory or other notices issued by Plaintiff;

N. Order Defendants to hold in trust, as constructive trustees for the benefit of Plaintiff, their profits obtained from their provision of the Defendants' Swagway hoverboard products offered for sale and sold under any Counterfeit UL Mark;

O. Order Defendants to provide Plaintiff a full and complete accounting of all amounts due and owing to Plaintiff as a result of Defendants' illegal and willfully infringing activities;

P. Order that Defendants account for and pay over to Plaintiff profits realized by Defendants by reason of Defendants' unlawful acts herein alleged and, that the amount of damages for infringement of Plaintiff's registered trademarks be increased by a sum not exceeding three times the amount thereof as provided by law;

Q. Order that Plaintiff be awarded actual damages of at least \$75,000.00 and punitive damages of at least \$100,000.00;

R. Order that Plaintiff be awarded statutory damages of \$2,000,000 per UL Mark for Defendants' willful counterfeiting of the three UL Marks;

S. Order that this case be designated exceptional and that Plaintiff be awarded reasonable attorney's fees and have such other and further relief as the Court may deem equitable including, but not limited to, any relief set forth under Sections 34-39 of the 1946 Trademark Act;

T. Award Plaintiff its prejudgment interest; and

U. Award such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff respectfully requests a jury trial on all issues so triable.

Dated: February 17, 2016

Respectfully submitted,

By: /s/ Thomas F. Waggoner

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