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6 Attorneys for Plaintiff,
7 XEO INT., LTD.

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

11 XEO INT., LTD, a business entity
12 organized under the laws of Great
13 Britain,

13 Plaintiff,

14 vs.

16 HOOKAHZZ, LLC, a California limited
17 liability company, and DOES 1-9,
18 inclusive,

18 Defendants.

) Case No.:

) **COMPLAINT FOR DESIGN**
) **PATENT INFRINGEMENT**

) **[JURY DEMAND]**

1 For its Complaint, Plaintiff XEO Int., Ltd. alleges as follows:
2

3 **PARTIES**

4 1. Plaintiff XEO Int., Ltd. (“XEO”) is a Limited Company incorporated
5 in Hull, Great Britain, with its principal place of business at Sauerweinstr. 4, 30167
6 Hanover, Germany. XEO’s products are sold and offered for sale internationally,
7 including in this judicial district.

8 2. Defendant Hookahzz, LLC (“Hookahzz”) is a California limited
9 liability company with a business address of 2647 Gateway Road #105-202,
10 Carlsbad, California 92009.

11 3. The true names and capacities, whether individual, corporate, or
12 otherwise of Defendants Does 1-9 inclusive, are unknown to XEO, who therefore
13 sues them by such fictitious names. XEO will seek leave to amend this complaint
14 to allege their true names and capacities when they have been ascertained. XEO is
15 informed and believes and thereon alleges that each of the fictitiously named
16 Defendants is responsible in some manner for the occurrences herein alleged. At
17 all times herein mentioned, Defendants Does 1-9 inclusive were the agents,
18 servants, employees or attorneys of their co-defendants, and in doing the things
19 hereinafter alleged were acting within the course and scope of their authority as
20 those agents, servants, employees or attorneys, and with the permission and consent
21 of their co-defendants.
22

23 **JURISDICTION AND VENUE**

24 4. This Court has subject matter jurisdiction over this action pursuant to
25 28 U.S.C. § 1331 and § 1338(a) as it arises under Acts of Congress related to
26 design patents.

27 5. This Court has personal jurisdiction over Defendant Hookahzz in that
28 it is a California limited liability company doing continuous and systematic

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1 business in this judicial district through its distributors located in this judicial
2 district.

3 6. Venue is proper in this judicial district as to Defendants pursuant to 28
4 U.S.C. § 1391(b)(2) and § 1391(c) in that Defendant are subject to personal
5 jurisdiction in this judicial district, and at least a substantial portion of the acts and
6 omissions giving rise to the asserted claims occurred in this district.

7
8 **FACTUAL ALLEGATIONS**

9
10 7. Markus Goch, XEO’s Chief Executive Officer, applied for a patent on
11 the design of an electronic smoking device on January 25, 2013. That application
12 resulted in Design Patent No. D687,181, which issued on July 30, 2013 (the “181
13 patent”). Said patent is attached hereto as **Exhibit 1**. The patent was duly and
14 legally issued and assigned to XEO. Figure 2 of the ‘181 patent appears below:



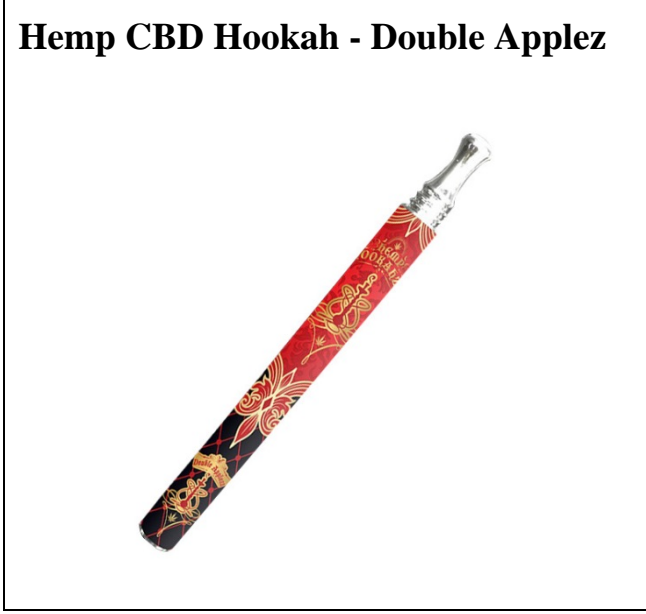
18 8. Defendants Hookahzz has been, and is still, making, using, importing,
19 offering to sell, and/or selling articles that are within the scope of the claim of the
20 ‘181 Patent. In particular, Hookahzz is selling at least the following items to re-
21 sellers within this judicial district and elsewhere, its: (1) Hemp CBD Hookah –
22 Double Applez; (2) Hemp CBD Hookah – Melon Madnezz; (3) Hemp CBD
23 Hookah – Fresh Mintzz; and, (4) Hemp CBD Hookah – Pink Diva (hereafter
24 collectively, the “Accused Products”). Such sales of the Accused Products are
25 being effectuated by Hookahzz, on information and belief, through industry trade
26 shows, business-to-business contacts, and other means.

27 9. Hookahzz’ Accused Products appear as follows:
28

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10. XEO has not licensed or otherwise authorized Hookahzz (or its dealers, customers, affiliates, or the like) to deal in articles within the scope of the ‘181 Patent, including the Accused Products. In other words, the making, using, importing, offering to sell, and selling of the Accused Products by Hookahzz and its re-sellers in unauthorized.

11. Hookahzz infringement of XEO’s ‘181 Patent is willful. Hookahzz was previously enjoined by a German court in Frankfurt, Germany, based on a non-U.S. counterpart of the ‘181 Patent, from selling the Accused Products or colorable

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1 imitations thereof. In addition, Mr. Goch spoke with Katarina Maloney, one of
2 Hookahzz’ principals, at the Frankfurt Fair in or about May of 2014 and made Ms.
3 Maloney aware of XEO’s U.S. patent at that time. On information and belief, Ms.
4 Maloney is an owner and/or officer/member of Hookahzz, LLC. As such,
5 Hookahzz had actual, prior knowledge that the XEO possessed design patent
6 protection, including in the U.S., for the design depicted in the ‘181 Patent, and yet
7 continued to infringe the ‘181 Patent. Furthermore, for approximately several
8 months prior to the filing of this lawsuit, XEO specifically placed Hookahzz on
9 notice of XEO’s ‘181 Patent (if Hookahzz did not already know about it), and
10 attempted through correspondence to cause Hookahzz to cease and desist from its
11 infringing actions. Hookahzz did not change its conduct in response to such letters,
12 and the Accused Products remain continue to be sold.

13 12. For all of these reasons, Hookahzz is liable for money damages in the
14 form of a disgorgement of profits pursuant to 35 U.S.C. § 289 to XEO. In addition,
15 Hookahzz must be deterred from any further violations of XEO’s rights in the ‘181
16 Patent through a permanent injunction. Hookahzz should also be required to pay
17 XEO’s attorneys’ fees, expenses, and costs for its willful and blatant disregard of
18 XEO’s patent rights.

20 **COUNT I – DESIGN PATENT INFRINGEMENT**

21 **35 U.S.C. §§ 101 ET SEQ.**

22 13. XEO hereby repeats and incorporates herein the allegations set forth in
23 paragraphs 1 through 12 above.

24 14. XEO’s ‘181 Patent (see, **Exhibit 1** attached hereto) has at all relevant
25 times subsequent to its issue date been fully enforceable and is now fully
26 enforceable.

27 15. Subsequent to the issuance of the ‘181 Patent, Hookahzz has infringed
28 the ‘181 Patent by making, using, importing, offering to sell, and/or selling, and

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1 continuing to make, use, import, offer to sell and/or sell products that come within
2 the scope of the claim of the patent, and/or that come within a range of equivalents
3 of the claim of the patent, and/or contributing to the infringing activities of others.

4 16. The making, using, importing, offering to sell, and/or selling of the
5 Accused Products by Hookahzz, and/or contributing to the infringing activities of
6 others, has been without authority or license from XEO and is in violation of
7 XEO’s rights, thereby infringing the ‘181 Patent.

8 17. For the reasons stated elsewhere herein, Hookahzz’ infringement of
9 XEO’s ‘181 Patent has been, and is, willful, with knowledge of, and in disregard
10 for the exclusive rights of XEO set forth in its patent, attached hereto as Exhibit 1.

11 18. The amount of money damages due XEO as a result of Hookahzz’
12 infringing acts cannot be determined without an accounting of Hookahzz’ profits,
13 and it is thus subject to proof at trial.

14 19. XEO is entitled to a complete accounting of all revenue and profits
15 derived by Hookahzz from the unlawful conduct alleged herein.

16 20. The harm to XEO arising from Hookahzz’ acts of infringement of
17 XEO’s ‘181 Patent is not fully compensable by money damages. Rather, XEO has
18 suffered and continues to suffer irreparable harm which has no adequate remedy at
19 law and which will continue unless Hookahzz’ conduct is enjoined.

20 21. XEO is therefore also entitled to a preliminary injunction, to be made
21 permanent on entry of the judgment, preventing Hookahzz from further acts of
22 infringement.

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PRAYER FOR RELIEF

WHEREFORE, XEO demands judgment against Hookahzz, as follows:

A. For an order preliminarily and permanently enjoining Hookahzz, and its officers, directors, agents, servants, attorneys, and employees and all other persons acting in concert with it from committing any further acts of infringement, including but not limited to, manufacturing, using, importing, offering to sell, and selling the Accused Products (or products colorably similar thereto), or aiding or abetting or assisting others in such infringing activities;

B. For an order directing Hookahzz to file with this Court and to serve on XEO within thirty (30) days after service on Hookahzz of the injunction granted herein, or such extended period as the Court may direct, a report in writing, under oath, setting forth in detail the manner and form in which Hookahzz has complied with the injunction and order of the Court;

C. For an order seizing and impounding all Accused Products, including those en route to the U.S. from Hookahzz’ overseas supplier(s);

D. For a judgment to be entered for XEO against Hookahzz in an amount equal to the profits Hookahzz made in connection with its sales of products that infringe the ‘181 Patent pursuant to 35 U.S.C. § 289 to be proven at trial, or in the alternative, a reasonable royalty;

E. For a judgment awarding to XEO prejudgment and postjudgment interest until the award is fully paid;

F. For a judgment that Hookahzz has willfully and deliberately infringed XEO’s patent rights, such that it is determined that this is an exceptional case entitling XEO to enhanced damages under the Patent Laws of the United States;

G. For an award to XEO of costs, expenses, and attorneys’ fees, incurred in bringing this action under the Patent Laws of the United States; and,

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1 H. For such other and further relief as this Court may deem just and
2 equitable under the circumstances.

3
4 Respectfully submitted:
5 CISLO & THOMAS LLP

6 Dated: July 10, 2015

7 By: /s/Daniel M. Cislo
8 Daniel M. Cislo, Esq.
9 Mark D. Nielsen, Esq.
10 Attorneys for Plaintiff, XEO INT.,
11 LTD.

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues raised by the Complaint so triable.

Respectfully submitted:
CISLO & THOMAS LLP

Dated: July 10, 2015

By: /s/Daniel M. Cislo
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