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20 UNITED STATES DISTRICT COURT
21 FOR THE CENTRAL DISTRICT OF CALIFORNIA
22 WESTERN DIVISION

23 PAINT ZOOM, LLC,
24
25 Plaintiff,
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27 v.
28 GLOBAL PHOENIX COMPUTER
TECHNOLOGIES SOLUTIONS,
INC.,
Defendant.

Case No. 2:17-CV-06790-PSG(E)

**AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF**

Judge: Phillip S. Gutierrez
Magistrate Judge: Charles F. Eick

JURY TRIAL DEMANDED

1 and benefit from the laws of the State of California; Defendant regularly conducts
2 business and/or other activities within the State of California and within the Central
3 District of California; Plaintiff's causes of action arise directly from Defendant's
4 business contacts and other activities in the State of California and in the Central
5 District of California; and Plaintiff maintains its principal place of business within
6 the State of California and the Central District of California.

7 4. More specifically, Defendant, directly and/or through authorized
8 intermediaries, makes, sells, offers to sell, distributes, imports and/or uses products
9 and services in the United States, the State of California, and the Central District of
10 California as described more fully below, and which products and services are
11 infringing Plaintiff's rights. Upon information and belief, Defendant has committed
12 patent infringement, trademark infringement, trade dress infringement, and
13 copyright infringement and engaged in acts constituting unfair competition in the
14 State of California and in the Central District of California.

15 5. Venue is proper in the Central District of California pursuant to 28
16 U.S.C. §§ 1391 and/or 1400(a) and (b).

17 **PARTIES**

18 6. PZ is a corporation organized and existing under the laws of the State
19 of Delaware, with its principal place of business at 14724 Ventura Boulevard, Suite
20 200, Sherman Oaks, California 91403.

21 7. On information and belief, Global Phoenix is a corporation organized
22 and existing under the laws of the State of New York with its principle place of
23 business at 21 Dutch Mill Road, Ithaca, New York 14850, and has and maintains a
24 "Los Angeles Warehouse" at 2708 8th Avenue, Buena Park, California 90622-5009.

1 **FACTUAL ALLEGATIONS**

2 **Background**

3 8. PZ is an affiliate of Ideal Living Management, LLC (“ILM”). ILM is a
4 vertically integrated multi-channel marketer of consumer products specializing in
5 direct response television advertising (DRTV), internet and retail sales. Dedicated
6 to selling better products for a better life through a family of brands, ILM has been
7 successfully conducting business through DRTV and retail since 1993 and is
8 responsible for worldwide sales of products in excess of \$3 billion.

9 9. “Paint Zoom” was created by Actervis GmbH, which, with its affiliate,
10 Industex S.L., sought to commercialize “Paint Zoom” through an exclusive licensing
11 program, summarized below (collectively, “Actervis” and “Industex” are referred to
12 herein as “Licensor”).

13 10. In May, 2010, PZ entered into a “Product And Infomercial License
14 Agreement Paint Zoom” with Licensor, whereby PZ obtained, *inter alia*, exclusive
15 rights to manufacture, promote and sell a power paint sprayer named “Paint Zoom”
16 in the United States. The May 2010 license was replaced by an October 2012
17 license of the same name that amended and restated the exclusive license to PZ (the
18 “Exclusive License”). The Exclusive License grants PZ exclusive rights to the
19 intellectual property described hereinbelow (the “PZ Intellectual Property”). At
20 various times from May, 2010 to the present, PZ and Licensor have amended and
21 restated the terms of PZ’s exclusive license, however, PZ’s exclusive rights in and to
22 the PZ Intellectual Property has continued, uninterrupted, at all times relevant
23 hereto.

24 11. As a result of PZ’s extensive and ongoing advertising campaign,
25 Plaintiff’s distinctive “Paint Zoom” product has been extremely successful,
26 generating sales of hundreds of thousands of units representing tens of millions of
27 dollars in sales from 2010 to the present. On information and belief, beginning in
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1 2014, recognizing the popularity, and in a brazen and improper effort to capitalize on
2 Plaintiff's hard-earned success, Defendant began selling counterfeit "Paint Zoom"
3 products.

4 **The PZ Intellectual Property**

5 12. On October 12, 2010, Licensor applied for a design patent for the
6 ornamental design for a paint spray system, which issued as US D639,387 on June 7,
7 2011 (the "'387 patent" or the "patent-in-suit"). Attached as Exhibit A is a true and
8 correct copy of the patent-in-suit. By virtue of provisions in the Exclusive License,
9 PZ is the exclusive licensee of the '387 patent and has the exclusive right to enforce
10 such patent against all infringers.

11 13. In addition to PZ's common law rights, pursuant to the Exclusive
12 License, PZ obtained a registered trademark for the name "Paint Zoom" in the
13 United States on May 24, 2011 (Reg. No. 3,967,782).

14 14. In addition to PZ's common law rights, on September 8, 2015, Licensor
15 obtained federal registration of a copyright for the "Paint Zoom Packaging,"
16 Registration Number 8-217-125 (the "First Copyright"). A true and correct copy of
17 Plaintiff's notice of issuance is attached hereto as Exhibit B. Under the Exclusive
18 License, PZ is the exclusive licensee of the First Copyright.

19 15. In addition to PZ's common law rights, on May 30, 2017, Licensor filed
20 an application for federal registration of a copyright for the "Paint Zoom Instruction
21 Manual" (the "Second Copyright"). A true and correct copy of Plaintiff's
22 application is attached hereto as Exhibit C. Under the Exclusive License, PZ is the
23 exclusive licensee of the Second Copyright.

24 **Defendant's Infringing Activity**

25 16. In December, 2014, PZ learned that counterfeit paint sprayer products
26 were being sold on www.amazon.com using the "Paint Zoom" name. Plaintiff
27 obtained the counterfeit product, which was filled by IcyDeals, Inc., a company
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1 located in Torrance, California. In addition to using the “Paint Zoom” name,
2 IcyDeals copied the Paint Zoom Packaging for its sales of the counterfeit products.
3 In February, 2015, IcyDeals identified Global Phoenix as their supplier and agreed
4 to close the listing for the counterfeit “Paint Zoom.”

5 17. In addition, in February, 2015, PZ ordered other counterfeit “Paint
6 Zoom” products from www.amazon.com, which was filled by “Keep On Savings”
7 and “Best Deals,” both of whom identified LHT Sales, Inc., in Lakewood, New
8 Jersey. In February, 2015, LHT Sales, in turn, identified Global Phoenix as their
9 supplier and agreed to close the listing for the counterfeit “Paint Zoom.”

10 18. On February 20, 2015, PZ sent Global Phoenix a letter, notifying
11 Global Phoenix of the counterfeit sales of its products by IcyDeals and LHT Sales.
12 PZ notified Global Phoenix as follows:

13 [W]e are the sole authorized distributor of Paint Zoom®,
14 having exclusive rights under the U.S. patent and trademark to
15 sell the Paint Zoom® paint sprayer. Thus, your sale of these
16 items is in violation of our exclusive rights. Moreover, we have
17 determined that the products you are selling are counterfeit, and
thus you may now be in violation of a number of civil, state and
federal laws.

18 PZ also demanded that Global Phoenix “cease and desist selling these items” and
19 destroy any remaining products.

20 19. In March, 2015, Plaintiff caused other listings for counterfeit “Paint
21 Zoom” products on www.alibaba.com to be taken down. On information and belief,
22 the counterfeit products were obtained from Global Phoenix.

23 20. In October, 2015, Plaintiff obtained counterfeit “Paint Zoom” products
24 directly from Groupon, Inc (“Groupon”). When they were delivered, the products
25 were packaged in PZ’s copyrighted, Paint Zoom Packaging. Global Phoenix had
26 changed the name of the product to “iMounTEK.” The design of the product,
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1 however, was the same. In addition, Groupon used PZ’s manual, with the only
2 change being the removal of the name “Paint Zoom.”

3 21. On information and belief, in October, 2015, Plaintiff’s broker
4 contacted Groupon and informed them of the counterfeit products. In
5 communications over the next several months, PZ learned that Groupon was
6 refusing to take down Global Phoenix’s counterfeit products down unless Plaintiff
7 beat the Global Phoenix pricing.

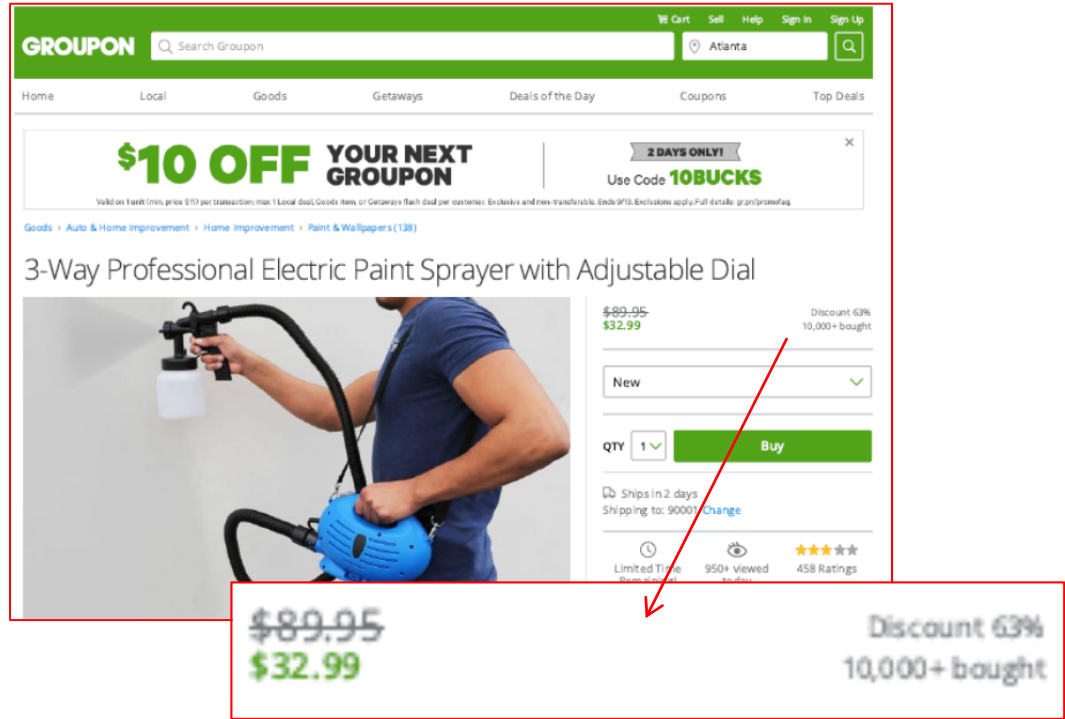
8 22. Then, in March, 2016, PZ contacted Groupon and notified it that PZ is
9 the owner/maker of Paint Zoom; that PZ was authorized to enforce the Paint Zoom
10 copyrights, patent, and trademarks; that Groupon’s listing violated PZ’s intellectual
11 property rights, including the following:

12 The box packaging of this knock-off has our exact copyright
13 images, design, text, etc., and they [Global Phoenix] simply
14 replaced the words “Paint Zoom” with “Mount Tek.” As well, it
15 has our exact manual (design, images, drawings, text) and again
16 they just replaced the words “Paint Zoom” with “Mount Tek.”
This is a counterfeit that should be removed right away.

17 In response, Groupon informed PZ that they “pulled this [product] off the site the
18 day you alerted us.” This was again confirmed by Groupon in an email dated March
19 29, 2016.

20 23. Nevertheless, after discovering continuing sales, on May 9 and June 8,
21 2017, PZ again demanded in writing that Groupon cease and desist from selling the
22 infringing products. Groupon still sells the product today, as is evidenced by PZ’s
23 purchase of an infringing product in August, 2017. On information and belief,
24 Groupon has been “dumping” the product and driving the price down for legitimate
25 PZ products. As can be seen from Groupon’s website, below, Groupon’s current
26 sales price is discounted by 63% from Plaintiff’s own established retail pricing to
27 generate more than 10,000 sales of counterfeit products.

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24. In March, June, and July 2016, and January, February, April 2017, PZ identified sales of infringing products by Global Phoenix through: EBay, Walmart, and Amazon. Unlike Groupon, after evaluating Plaintiff’s intellectual property, these companies took down the counterfeit products from each of these sites. Finally, in May, 2017 PZ again demanded that Global Phoenix cease and desist from infringing sales. However, sales of Global Phoenix’s “knock off” product continue to this day, which include direct copies of PZ’s “Paint Zoom Instruction Manual.”

FIRST CAUSE OF ACTION

(Infringement of Design Patent)

25. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1 26. The '387 patent was duly and legally issued by the United States Patent
2 and Trademark Office on June 7, 2011. Plaintiff is the exclusive licensee of the '387
3 patent and possesses all substantive rights and rights of recovery under the '387
4 patent, including the right to sue for infringement and recover past damages.

5 27. Defendant has infringed and continue to infringe, pursuant to 35 U.S.C.
6 §§ 271 and 289, the '387 patent by manufacturing, selling and/or offering to sell in
7 the United States paint sprayer products which copy the design covered by the '387
8 patent. Specifically, the counterfeit "Paint Zoom" and iMounTEK product
9 incorporates several elements covered by the patent-in-suit, including but not limited
10 to the paint machine, hose pipe, carrying belt, paint container/reservoir, paint spray
11 gun, viscosity measuring cup. The paint sprayers are so similar as to be nearly
12 identical such that an ordinary observer, giving such attention as a purchaser usually
13 gives, would be so deceived by the substantial similarity between the designs so as
14 to be induced to purchase iMounTEK products believing them to be substantially the
15 same as the paint sprayer design protected by the '387 patent. A comparison of the
16 infringing products with the patented design is provided below:

17 **Plaintiff's '387 Patent, Figure 1**

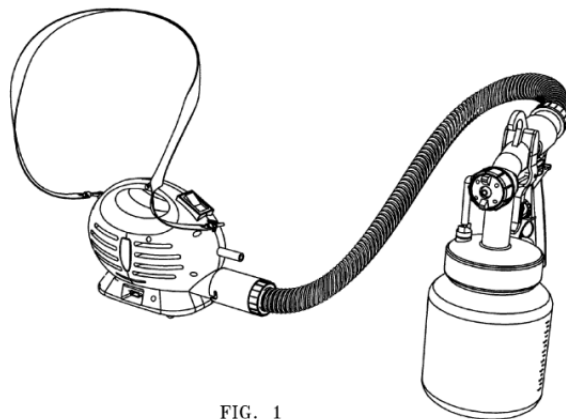


FIG. 1

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Icy Deals Sale Of Global Phoenix Sprayer



Paint Zoom Paint Sprayer

Sold by: icydeals

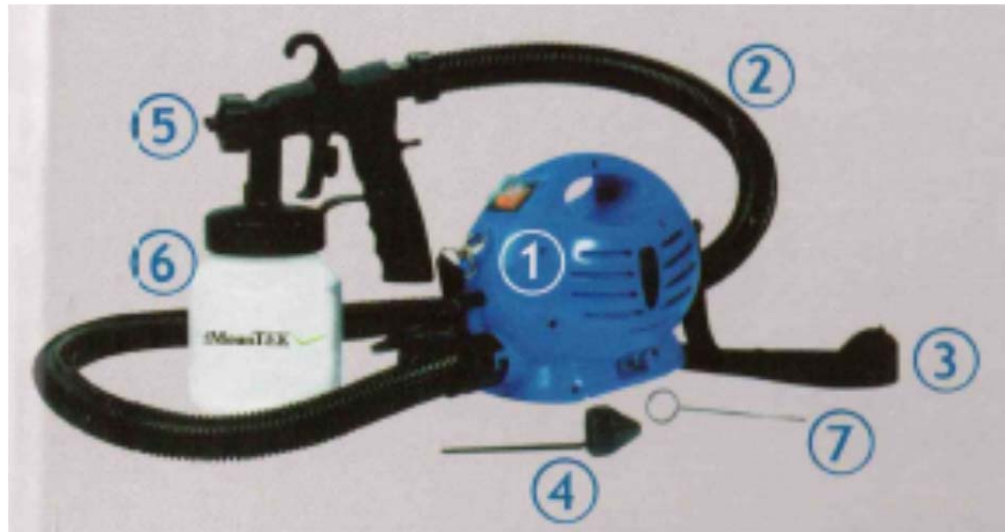
Shipped: Dec 13, 2014

Quantity: 1

This item is no longer eligible for return.
The return window closed on Jan 31, 2015.

[View return policy](#)

Groupon Sale of Global Phoenix Sprayer



28. Defendant’s aforesaid activities has been with actual notice of the ‘387 patent, and without authority and/or license from Plaintiff.

29. Plaintiff will be irreparably injured by Defendant’s continued patent infringement, in a manner which may be difficult or impossible to quantify, unless enjoined by this Court. Plaintiff has no adequate remedy at law for this ongoing injury. Plaintiff therefore seeks a preliminary and permanent injunction, pursuant to 35 U.S.C. §283, to prohibit Defendant from any further infringement of the ‘387 patent.

30. As a result of Defendant’s infringement, and in addition to injunctive relief, Plaintiff is entitled to damages in an amount no less than a reasonable royalty

1 for the use made of the invention by Defendant, plus interest and costs. Plaintiff is
2 also entitle to Defendant’s profits, pursuant to 35 U.S.C. § 289.

3 31. In addition, because Defendant has willfully infringed the ‘387 patent
4 with both knowledge and notice of Plaintiff’s rights, and with the intent to infringe
5 those rights, Plaintiff is entitled to increased damages of three times the damages
6 assessed pursuant to 35 U.S.C. § 285, and attorneys’ fees pursuant to 35 U.S.C. §
7 285.



8 **SECOND CAUSE OF ACTION**
9 **(Copyright Infringement)**

10 32. Plaintiff incorporates by reference all preceding allegations as though
11 fully set forth herein.

12 33. Through its exclusive license, PZ owns the rights to the First Copyright,
13 the copyright for the “Paint Zoom®” product packaging, including the following:



34. Defendant has infringed the First Copyright by directly copying images (e.g., red arrow) from Plaintiff’s packaging. For example, the following packaging including images taken directly from the First Copyright, was used by Defendant:

PaintZoom First Copyright	iMounTEK’s Counterfeit Packaging
	

35. In addition, Plaintiff also owns the rights to a copyright (the Second Copyright) to the “Paint Zoom® Instruction Manual.”

36. Defendant has infringed the Second Copyright by directly copying Plaintiff’s copyrighted instruction manual.

37. The foregoing acts of infringement constitute a collective enterprise of shared, overlapping facts and have been willful, intentional, and in disregard of and with interference to, the rights of Plaintiff.

38. As a result of Defendant’s infringement of Plaintiff’s exclusive rights under copyright, Plaintiff is entitled to relief pursuant to 17 U.S.C. § 505.

39. The conduct of each Defendant is causing and, unless enjoined and restrained by this Court, will continue to cause, Plaintiff irreparable injury, for which Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and 503, Plaintiff is entitled to injunctive relief prohibiting each Defendant from further

1 infringing Plaintiff's copyrights and ordering that each Defendant destroy all
2 unauthorized copies of the PZ packing and product manuals.

3 **THIRD CAUSE OF ACTION**

4 **(Trade Dress Infringement)**

5 40. Plaintiff incorporates by reference all preceding allegations as though
6 fully set forth herein.

7 41. Plaintiff owns the design of the Paint Zoom product as trade dress.

8 42. Plaintiff's Paint Zoom trade dress, including but not limited to the total
9 image of the product incorporating features such as size, shape, color combinations,
10 texture, and/or graphics and/or the Paint Zoom product packaging is distinctive. This
11 trade dress is known as the "Paint Zoom® Trade Dress." Specifically, the Paint
12 Zoom® Trade Dress includes the following combination of features and design
13 elements is distinctive and nonfunctional: a monochromatic blue paint machine with
14 a red on/off switch; black, nylon carrying strap; a ribbed, cylindrical black hose
15 pipe; a white, opaque cylindrical paint container/reservoir with a tapered opening;
16 matte black sprayer; and packaging with images of people using the product, as well
17 as bullet-point text in italicized red and blue font below the product name describing
18 the product in different languages. It is the combination of all these decorative
19 features that gives Paint Zoom's product and the Paint Zoom® Trade Dress its
20 distinctive, non-functional look.

21 43. Paint Zoom has continuously advertised, marketed, sold and distributed
22 its product and packaging with the Paint Zoom® Trade Dress.

23 44. Upon information and belief, the Paint Zoom® Trade Dress is
24 inherently distinctive. Paint Zoom has promoted, advertised and sold products with
25 the Paint Zoom® Trade Dress for over 5 years. Paint sprayers bearing the Paint
26 Zoom® Trade Dress are sold nationally. Paint Zoom has marketed the Paint Zoom®
27 Trade Dress extensively through advertisements, brick and mortar retailers, online
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1 retailers, sales representatives, and catalogs. Based on the extensive marketing, sales
2 and distribution, consumers have come to associate the Paint Zoom® Trade Dress of
3 the Paint Zoom product only with Plaintiff and acquired distinctiveness. Further,
4 upon information and belief, as a result of Paint Zoom's sales and advertising, in the
5 mind of consumers, the Paint Zoom® Trade Dress has come to symbolize the source
6 and quality of the product.

7 45. The Paint Zoom® Trade Dress is nonfunctional. The Paint Zoom®
8 Trade Dress is an ornamental arrangement of features, designed solely to distinguish
9 it from other paint sprayers on the market. None of these trade dress features is
10 essential to the use or performance of Paint Zoom's products. These design choices
11 do not lower the cost of the product.

12 46. Defendant used trade dress similar to the Paint Zoom® Trade Dress of
13 the Paint Zoom product and packaging without the consent of Plaintiff in a manner
14 that is likely to cause confusion among ordinary consumers as to the source,
15 sponsorship, affiliation, or approval of the Defendant's goods.

16 47. As a direct and proximate result of Defendant's conduct, Plaintiff is
17 entitled, pursuant to 15 U.S.C. § 1117(a), to recovery of: (i) Defendant's profits
18 related to all uses of Plaintiff's trade dress; (ii) any damages sustained by Plaintiff as
19 a result of Defendant's conduct, the precise amount of which shall be established by
20 Plaintiff at trial; and (iii) the costs of this action.

21 48. In addition, Plaintiff will be irreparably injured by Defendant's
22 continued trade dress infringement, in a manner which may be impossible to
23 quantify, unless enjoined by this Court. Plaintiff has no adequate remedy at law for
24 this ongoing injury. Plaintiff therefore seeks a preliminary and permanent injunction
25 to prohibit Defendant from any further use of Plaintiff's trade dress without
26 Plaintiff's express written consent in advance.

1 Plaintiff. Plaintiff is therefore entitled to recovery of treble damages pursuant to 15
2 U.S.C. § 1117(a).

3 56. Global Phoenix’s knowing, intentional and/or willful actions make this
4 an exceptional case, entitling Plaintiff to an award of reasonable attorney fees
5 pursuant to 15 U.S.C. § 1117(a).

6 57. Global Phoenix’s actions also constitute the use of a “counterfeit mark”.
7 Plaintiff therefore reserves the right to elect, at any time before final judgment is
8 entered in this case, an award of statutory damages pursuant to 15 U.S.C. §
9 1117(c)(1) and/or (2), which authorizes damages of up to \$2,000,000.00 per
10 counterfeit mark.

11 **FIFTH CAUSE OF ACTION**

12 **(False Designation of Origin, False or Misleading Advertising,**

13 **15 U.S.C. § 1125(a))**

14 58. Plaintiff incorporates by reference all preceding allegations as though
15 fully set forth herein.

16 59. Global Phoenix’s acts described above constitute direct and/or
17 contributory violation of 15 U.S.C. § 1125(a)(1)(A), as such actions are likely to: (a)
18 cause confusion; (b) cause mistake; or (c) deceive as to the affiliation, connection, or
19 association of Global Phoenix with Plaintiff and/or to the origin, sponsorship, and/or
20 approval of such goods by Plaintiff.

21 60. As a proximate result of Global Phoenix’s trademark infringement,
22 trade dress infringement, and copyright infringement, Plaintiff has been damaged in
23 an amount to be proven at trial.

24 61. Plaintiff alleges upon information and belief that, Global Phoenix has
25 unlawfully profited in an amount to be proven at trial.

26 62. Plaintiff reserves the right to elect, at any time before final judgment is
27 entered in this case, an award of statutory damages pursuant to 15 U.S.C. §
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1 1117(c)(1) and/or (2), which authorizes damages of up to \$2,000,000.00 per
2 counterfeit mark.

3 63. Global Phoenix's acts of violating, directly and/or contributorily,
4 Section 1125 have caused, and will continue to cause, Plaintiff irreparable harm
5 unless it is enjoined by this Court.

6 **SIXTH CAUSE OF ACTION**

7 **(Unfair Competition Cal. B&PC § 17200)**

8 64. Plaintiff incorporates by reference all preceding allegations as though
9 fully set forth herein.

10 65. Defendant's acts described above constitute unfair competition in
11 violation of California Business & Professions Code § 17200 et seq., as they are
12 unlawful, fraudulent, unfair, misleading and likely to deceive the public regarding
13 the design, origin and quality of the goods.

14 66. As a result of Defendant's acts of unfair competition, Plaintiff is
15 entitled to restitution of the profits and other ill-gotten gains by Defendant from
16 Defendant's infringement of the '387 patent, and infringement of Plaintiff's
17 copyrights, trade dress, and trademarks.

18 67. Plaintiff are also entitled to injunctive relief pursuant to California
19 Business & Professions Code § 17203.

20 **JURY DEMAND**

21 Plaintiff demands a trial by jury on issues so triable.

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23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays as follows:

- 25 a. For entry of a permanent injunction enjoining Defendant and its respective
26 officers, directors, agents, and employees and all those in concert or
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1 participation with them who receive notice of judgment by personal service
2 or otherwise, from:

3 (i) Making, importing, using, selling, and offering to sell
4 infringing products practicing the '387 patent and from
5 otherwise infringing, contributing to infringement of, and
6 actively inducing infringement of the '387 patent; and

7 (ii) Holding out in any manner whatsoever that its paint sprayer
8 products, such as "iMounTEK," are in any way sponsored,
9 approved, sourced, certified, affiliated, connected or
10 associated with Plaintiff, or Plaintiff's products.

11 b. A judgment and order that Defendant deliver to Plaintiff for destruction all
12 iMounTEK products, molds, sales literature, and other trade pieces used in
13 the infringement of the '387 patent.

14 c. A judgment and order that Defendant make an accounting to Plaintiff and
15 pay over to Plaintiff:

16 (i) The extent of Defendant's total profit and revenue realized
17 and derived from its infringement of the '387 patent, and
18 actual damages to Plaintiff in an amount not less than a
19 reasonable royalty for Defendant's infringement;

20 (ii) All damages suffered by Plaintiff; and

21 (iii) Treble damages pursuant to 35 U.S.C. § 284 for Defendant's
22 willful and deliberate infringement.

23 d. For an award of Defendant's profits and Plaintiff's damages in an amount
24 to be proven at trial for trademark infringement under 15 U.S.C. §1114(a);

25 e. For an award of Defendant's profits and Plaintiff's damages in an amount
26 to be proven at trial for false designation of origin and unfair competition
27 under 15 U.S.C. §1125(c);
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- 1 f. In the alternative for actual damages and Defendant’s profits for the
- 2 infringement of Plaintiff’s trademarks pursuant to the Lanham Act, for
- 3 statutory damages pursuant to 15 U.S.C. §1117(c), which election Plaintiff
- 4 will make prior to final judgment;
- 5 g. For an award of Defendant’s profits and Plaintiff’s damages in an amount
- 6 to be proven at trial for copyright infringement under 17 U.S.C. §504(b);
- 7 h. In the alternative to actual damages and Defendant’s profits for the
- 8 infringement of Plaintiff’s copyrights, for statutory damages pursuant to 17
- 9 U.S.C. §504(c), which election Plaintiff will make prior to final judgment;
- 10 i. For an award of Plaintiff’s actual damages in an amount to be proven at
- 11 trial for deceptive trade practices pursuant to Cal. B&PC § 17200;
- 12 j. For a judgment for restitution of Defendant’s profits and ill-gotten gains
- 13 acquired through its acts of unfair competition.
- 14 k. Preliminarily and permanently enjoining Defendant and its agents,
- 15 employees, officers, directors, owners, representatives, successor
- 16 companies, affiliates, subsidiaries and related companies, and all persons
- 17 acting in concert or participation with it, and each of them, from:
 - 18 (i) The import, export, making, manufacture, reproduction,
 - 19 assemble, use, acquisition, purchase, offer, sale, transfer,
 - 20 brokerage, consignment, distribution, storage, shipment,
 - 21 licensing, development, display, delivery, marketing,
 - 22 advertising or promotion of the infringing and diluting
 - 23 products identified in the Complaint and any other product
 - 24 which infringes or dilutes any of Plaintiff’s copyrights,
 - 25 intellectual property, trademarks, trade name and/or trade
 - 26 dress including, but not limited to, Plaintiff’s marks at issue in
 - 27 this action.

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(ii) The unauthorized use, in any manner whatsoever, of any of Plaintiff’s copyrights, intellectual property, trademarks, trade names and/or trade dress including, but not limited to, Plaintiff’s marks at issue in this action, any variants, colorable imitations, translations, and/or simulations thereof and/or any items that are confusingly similar thereto, including specifically:

1. On or in conjunction with any product or service; and
2. On or in conjunction with any advertising, promotional materials, labels, hangtags, packaging or containers.

(iii) The use of any Plaintiff’s copyrights, intellectual property, trademark, trade name, or trade dress that falsely represents, or is likely to confuse, mislead, or deceive purchasers, customers, or members of the public to believe that unauthorized product imported, exported, manufactured, reproduced, distributed, assembled, acquired, purchased, offered, sold, transferred, brokered, consigned, distributed, stored, shipped, marketed, advertised and/or promoted by Defendant originate from Plaintiff, or that said merchandise has been sponsored, approve, licensed by, or associated with Plaintiff or is in some way, connected or affiliated with Plaintiff.

(iv) Engaging in any conduct that falsely represents that, or is likely to confuse, mislead, or deceive purchasers, customers, or members of the public to believe that Defendant are connected with, or are in some way sponsored by or affiliated

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with Plaintiff, purchases product from or otherwise have a business relationship with Plaintiff.

(v) Affixing, applying, annexing, or using in connection with the manufacture, distribution, advertising, sale, and/or offering for sale or other use of any goods, a false description or representation, including words or symbols, tending to falsely describe or represent such goods as being those of Plaintiff.

(vi) Hiding, disposing of, destroying, moving, relocating or transferring any and all products, advertising, promotional materials, labels, hangtags, packaging or containers bearing any of Plaintiff's trademarks or which otherwise refer or relate to Plaintiff or any of Plaintiff's marks.

- l. Pursuant to 15 U.S.C. §1116(a), directing Defendant to file with the court and serve on Plaintiff within thirty (30) days after issuance of an injunction, a report in writing and under oath setting forth in detail the manner and form in which Defendant complied with the injunction.
- m. For an order from the Court requiring Defendant to provide complete accountings and for equitable relief, including that Defendant disgorge and return or pay its ill-gotten gains obtained from the illegal transactions entered into and/or pay restitution, including the amounts of monies that should have been paid if Defendant complied with its legal obligations, or as equity requires.
- n. For an order from the Court that an asset freeze or constructive trust be imposed over all monies and profits in Defendant's possession which rightfully belong to Plaintiff;
- o. Pursuant to 15 U.S.C. §1118 requiring that Defendant and all others acting under Defendant's authority at its cost, be required to deliver up to Plaintiff

- 1 for destruction all products, accessories, labels, signs, prints, packages,
- 2 wrappers, receptacles, advertisements, and other material in its possession,
- 3 custody or control bearing any of Plaintiff’s marks alone, or in
- 4 combination with any other word, words, or design.
- 5 p. For treble damages suffered by Plaintiff as a result of the willful and
- 6 intentional infringements engaged in by Defendant, under 15 U.S.C.
- 7 §1117(b).
- 8 q. For an award of exemplary or punitive damages in an amount to be
- 9 determined by the Court.
- 10 r. Attorney’s fees and costs of suit incurred herein;
- 11 s. Interest thereon as permitted by law; and
- 12 t. Such other and further relies as the Court may deem just and proper.

13 Respectfully submitted,

14 Dated: December 29, 2017

15 /s/ Steven W. Ritcheson
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26 Attorneys For Plaintiff
 27 *Paint Zoom, LLC*

CERTIFICATE OF SERVICE

1 This is to certify that I have this day caused to be electronically filed the
2 foregoing using this Court’s CM/ECF system which caused the document to be
3 served by electronic mail on counsel for Defendant deemed to have consented to
4 electronic service.
5

6 Dated: December 29, 2017

7 /s/ Steven W. Ritcheson
8 Steven W. Ritcheson
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