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8 ROLAND CORPORATION

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

13 ROLAND CORPORATION, a Japanese
14 corporation

14 Plaintiff,

15 vs.

16 MITCH HERBERT, MITCH HERBERT
17 d.b.a. UFODRUMS.COM, a New
18 Mexico business,

18 Defendant.

Case No: **CV08-07576**

ODW
(CTx)

**COMPLAINT FOR PATENT
INFRINGEMENT; JURY TRIAL
DEMAND**

20 Roland Corporation ("Roland") alleges:

21 ***JURISDICTION AND VENUE***

22 1. This is an action for patent infringement arising under the patent laws
23 of the United States. This Court has original and exclusive jurisdiction under 28
24 U.S.C. §§ 1331 and 1338(a).

25 2. Venue is proper in the Central District of California under 28 U.S.C.
26 §§ 1391 and 1400(b).

27 ***PARTIES***

28 3. Roland is a Japanese corporation with its principal place of business

1 in Hamamatsu, Japan. Roland is one of the world's leading musical instrument
2 and equipment manufacturers and designers. Roland maintains offices in Los
3 Angeles, California.

4 4. Roland is informed and believes and thereon alleges that Mitch
5 Herbert and Mitch Herbert d.b.a. UFODrums.com ("UFO") has a principal place of
6 business in 11023 Manganite CT, NW, Albuquerque, New Mexico.

7 5. Roland is informed and believes and thereon alleges that UFO
8 maintains and operates an internet website at *www.ufodrums.com* and eBay
9 auctions, through which it offers to sell and sells its products to purchase in, among
10 other places, the Central District of California as shown in Exhibit 1. UFO makes
11 and sells, among other things, products sold under the name "Cone Head" and
12 "Alien Skins", mesh heads for electronic drums, two ply mesh head, and foam
13 cones for electronic drums shown in attached Exhibit 1.

14
15 ***THE PATENTS***

16 6. United States Patent No. 6,121,538 (the "'538 patent") entitled
17 *Electronic Percussion Instrumental System and Percussion Detecting Apparatus*
18 *Therein* was duly and legally issued on September 19, 2000. A true and correct
19 copy of the '538 patent is attached as Exhibit 2. Roland owns all right, title, and
20 interest in the '538 patent. The '538 patent is valid, enforceable, and subsisting.

21 7. United States Patent No. 6,271,458 (the "'458 patent") entitled
22 *Electronic Percussion Instrumental system and Percussion Detecting Apparatus*
23 *Therein* was duly and legally issued on August 07, 2001. A true and correct copy
24 of the '458 patent is attached as Exhibit 3. Roland owns all right, title, and interest
25 in the '458 patent. The '458 patent is valid, enforceable, and subsisting.

26 8. United States Patent No. 6,756,535 (the "'535 patent") entitled
27 *Electronic Percussion Instrumental System and Percussion Detecting Apparatus*
28 *Therein* was duly and legally issued on June 29, 2004. A true and correct copy of

1 the '535 patent is attached as Exhibit 4. Roland owns all right, title, and interest in
2 the '535 patent. The '535 patent is valid, enforceable, and subsisting.

3 9. United States Patent No. 6,921,857 (the "'857 patent") entitled
4 *Electronic Percussion Instrumental System and Percussion Detecting Apparatus*
5 *Therein* was duly and legally issued on July 26, 2005. A true and correct copy of
6 the '857 patent is attached as Exhibit 5. Roland owns all right, title, and interest in
7 the '857 patent. The '857 patent is valid, enforceable, and subsisting.

8 10. United States Patent No. 7,385,135 (the "'135 patent") entitled
9 *Electronic Percussion Instrumental System and Percussion Detecting Apparatus*
10 *Therein* was duly and legally issued on June 10, 2008. A true and correct copy of
11 the '135 patent is attached as Exhibit 6. Roland owns all right, title, and interest in
12 the '135 patent. The '135 patent is valid, enforceable, and subsisting. The '538,
13 '458, '535, '857, and '135 are referred to herein collectively as the "patents-in-
14 suit."

15
16 **FIRST CLAIM FOR RELIEF**

17 (Patent Infringement Of '538 patent)

18 11. Roland incorporates paragraphs 1 through 10, above.

19 12. UFO has been and is currently infringing, directly and contributorily,
20 and has been and is, actively inducing the infringement of the '538 patent by
21 making, using, selling, offering for sale, and/or importing into the United States,
22 certain components for use in electronic percussion instruments as shown in
23 Exhibit 1.

24 13. Roland is informed and believes and thereon alleges that UFO's
25 infringement of the '538 patent has been willful and deliberate.

26 14. Roland has, at all times, complied with 35 U.S.C. § 287(a).

27 15. UFO's infringing activities has caused and will cause Roland
28 irreparable harm for which it has no adequate remedy at law.

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16. As a result of UFO’s acts of infringement, Roland has suffered and will continue to suffer damages in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF
(Patent Infringement Of ’458 patent)

17. Roland incorporates paragraphs 1 through 10, above.

18. UFO has been and is currently infringing, directly and contributorily, and has been and is, actively inducing the infringement of the ’458 patent by making, using, selling, offering for sale, and/or importing into the United States, certain components for use in electronic percussion instruments as shown in Exhibit 1.

19. Roland is informed and believes and thereon alleges that UFO’s infringement of the ’458 patent has been willful and deliberate.

20. Roland has, at all times, complied with 35 U.S.C. § 287(a).

21. UFO’s infringing activities has caused and will cause Roland irreparable harm for which it has no adequate remedy at law.

22. As a result of UFO’s acts of infringement, Roland has suffered and will continue to suffer damages in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF
(Patent Infringement Of ’535 patent)

23. Roland incorporates paragraphs 1 through 10, above.

24. UFO has been and is currently infringing, directly and contributorily, and has been and is, actively inducing the infringement of the ’535 patent by making, using, selling, offering for sale, and/or importing into the United States, certain components for use in electronic percussion instruments as shown in Exhibit 1.

25. Roland is informed and believes and thereon alleges that UFO’s

1 infringement of the '535 patent has been willful and deliberate.

2 26. Roland has, at all times, complied with 35 U.S.C. § 287(a).

3 27. UFO's infringing activities has caused and will cause Roland
4 irreparable harm for which it has no adequate remedy at law.

5 28. As a result of UFO's acts of infringement, Roland has suffered and
6 will continue to suffer damages in an amount to be proven at trial.

7

8 ***FOURTH CLAIM FOR RELIEF***
9 (Patent Infringement Of '857 patent)

10 29. Roland incorporates paragraphs 1 through 10, above.

11 30. UFO has been and is currently infringing, directly and contributorily,
12 and has been and is, actively inducing the infringement of the '857 patent by
13 making, using, selling, offering for sale, and/or importing into the United States,
14 certain components for use in electronic percussion instruments as shown in
15 Exhibit 1.

16 31. Roland is informed and believes and thereon alleges that UFO's
17 infringement of the '857 patent has been willful and deliberate.

18 32. Roland has, at all times, complied with 35 U.S.C. § 287(a).

19 33. UFO's infringing activities has caused and will cause Roland
20 irreparable harm for which it has no adequate remedy at law.

21 34. As a result of UFO's acts of infringement, Roland has suffered and
22 will continue to suffer damages in an amount to be proven at trial.

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24 ***FIFTH CLAIM FOR RELIEF***
25 (Patent Infringement Of '135 patent)

26 35. Roland incorporates paragraphs 1 through 10, above.

27 36. UFO has been and is currently infringing, directly and contributorily,
28 and has been and is, actively inducing the infringement of the '135 patent by

1 making, using, selling, offering for sale, and/or importing into the United States,
2 certain components for use in electronic percussion instruments as shown in
3 Exhibit 1.

4 37. Roland is informed and believes and thereon alleges that UFO's
5 infringement of the '135 patent has been willful and deliberate.

6 38. Roland has, at all times, complied with 35 U.S.C. § 287(a).

7 39. UFO's infringing activities has caused and will cause Roland
8 irreparable harm for which it has no adequate remedy at law.

9 40. As a result of UFO's acts of infringement, Roland has suffered and
10 will continue to suffer damages in an amount to be proven at trial.

11

12 WHEREFORE, Roland prays for the following relief:

13 A. That the Court enter judgment in favor of Roland and against UFO for
14 infringement of all of the patents-in-suit;

15 B. That UFO be preliminarily and permanently enjoined under 35 U.S.C.
16 § 283 from continuing to infringe the patents-in-suit;

17 C. That UFO be ordered to recall all infringing products from all
18 distribution channels, including all retailers;

19 D. That Roland recover compensatory damages for UFO's infringement
20 in an amount to be proven at trial, together with prejudgment interest at the
21 maximum legal rate;

22 E. That Roland recover enhanced damages under 35 U.S.C. § 284 for
23 UFO's willful infringement of the patents-in-suit;

24 F. That the Court determine that this case is exceptional within the
25 meaning of 35 U.S.C. § 285 and award Roland its attorney's fees, costs, and
26 expenses incurred in connection with this action, together with interest at the
27 maximum legal rate;

28 G. That the Court award Roland its costs of suit incurred herein; and,

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H. Such other and further relief as the Court deems just and proper.

DATED: November 17, 2008

FOLEY & LARDNER LLP
Victor de Gyarfas

By: 
Victor de Gyarfas
Attorney for Plaintiff
ROLAND CORPORATION

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JURY TRIAL DEMAND

Roland Corporation demands a trial by jury of all issues triable by a jury.

DATED: November 17, 2008

FOLEY & LARDNER LLP
Victor de Gyarfas

By: 
Victor de Gyarfas
Attorney for Plaintiff
ROLAND CORPORATION