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Storus Corporation

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

STORUS CORPORATION, a California
Corporation

Plaintiff,

v.

AROA MARKETING, INC., a California
Corporation, DBA GADGET UNIVERSE,
DBA STEINHAUSEN ONLINE; SKYMALL
INC., a Delaware Corporation; STRONG
IDEAS CORPORATION, a California
corporation and DOES 1 through 20,
inclusive,

Defendants.

Case No. C 06-2454 MMC

**FIRST AMENDED CONSOLIDATED
COMPLAINT FOR:**

- (1) INFRINGEMENT OF UNITED STATES PATENT NO. 6,082,422;
- (2) INFRINGEMENT OF U.S. PATENT NO. 5,520,230;
- (3) TRADE DRESS AND PRODUCT IMITATION INFRINGEMENT;
- (4) FEDERAL UNFAIR COMPETITION VIOLATIONS;
- (5) CALIFORNIA STATE UNFAIR COMPETITION VIOLATIONS;
- (6) TRADEMARK INFRINGEMENT;
- (7) CONVERSION;
- (8) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;
- (9) NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;
- (10) FALSE ADVERTISING;
- (11) INTENTIONAL MISREPRESENTATION;
- (12) NEGLIGENT MISREPRESENTATION

DEMAND FOR JURY TRIAL

1 Plaintiff, Storus Corporation (“STORUS”), for its First Amended Consolidated Complaint
2 against Defendants AROA Marketing dba Gadget Universe, dba Steinhausen Online, Skymall and
3 Strong Ideas Corporation (collectively “Defendants”) states as follows:

4
5 **PARTIES**

6 1. Plaintiff STORUS is a California corporation, with its principal place of business in San
7 Ramon, California. STORUS manufactures and sells money clips and other personal storage
8 products throughout the United States and the world.

9 2. STORUS is the owner by assignment of all right, title and interest in U.S. Patent No.
10 6,082,422, entitled “Money Clip and Card Holder” issued on July 4, 2000 by the U.S. Patent and
11 Trademark Office (“the ‘422 Patent”).

12 3. STORUS is the exclusive licensee of U.S. Patent No. 5,520,230, entitled “Pocket Card
13 Holder with Money Clip” issued on May 28, 1996 by the U.S. Patent and Trademark Office (“the
14 ‘230 Patent”) to Yancey Sumner III.

15 4. AROA Marketing dba Gadget Universe, dba Steinhausen Online (“AROA”) is a
16 California corporation having a principal place of business at 12621 Encinitas Avenue, Sylmar,
17 California 91342. AROA is a mail-order catalog and internet store for gifts and gadgets
18 promoting easier living and personal safety.

19 5. AROA sells money clips through its mail order catalogs, its internet store and through
20 other retailers with which it enters into business dealings.

21 6. SkyMall Inc. is an Arizona corporation having a principal place of business at 1520 E.
22 Pima Street, Phoenix, Arizona 85034. SkyMall is a mail-order catalog and internet store for gifts
23 and gadgets and its catalogs are commonly found on airplanes.

24 7. SkyMall sells money clips through its mail order catalogs and internet store and
25 commonly carries other manufacturer’s products, including AROA money clips.

1 8. Storus is the owner by assignment of all right, title and interest in United States
2 Trademark Registration No. 2,436,613 for the Mark "SMART MONEY CLIP" (the "Mark")
3 issued on March 20, 2001 by the United States Patent and Trademark Office ("USPTO").

4 9. Strong Ideas Corporation, a California corporation ("STRONG IDEAS") having a
5 principal place of business at 12621 Encinitas Avenue, Sylmar, California 91342 is a mail-order
6 catalog and internet store for gifts and gadgets promoting easier living and personal safety

7 10. The true names or capacities, whether individual, corporate, associate, or otherwise, of
8 Defendants DOES 1 through 20, inclusive, are unknown to Plaintiff, who therefore sue said
9 Defendants by such fictitious names.

10 11. Each defendant designated herein as a DOE is responsible in some manner for the events
11 and happenings herein referred to, and caused injury and damages as herein alleged. Plaintiff will
12 seek leave of court to amend this Complaint to set forth the true names and capacities of such
13 named Defendants when their identities become known.

14
15 **JURISDICTION AND VENUE**

16 12. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 (Federal
17 question), 28 U.S.C. §1332 and, 28 U.S.C. §1338 (a) (arising under the patent laws of the United
18 States, 35 U.S.C. §§101 et seq.).

19 13. Venue is proper in this Court under 28 U.S.C. §1391(b) and 28 U.S.C. §1400(b).

20
21 **INTRADISTRICT ASSIGNMENT**

22 14. This action is properly assigned to the San Jose Division of the United States District
23 Court for the Northern District of California because Plaintiff STORUS is found in San Ramon,
24 California.

STATEMENT OF FACTS

15. STORUS is the owner by assignment of the '422 patent.

16. STORUS is the exclusive licensee of the '230 patent.

17. STORUS manufactures and sells a variety of innovative and unique products designed to store personal items such as money, credit cards, identification and the like. Among these products is the patented STORUS Smart Money Clip ("STORUS Money Clip").

18. Each STORUS Money Clip manufactured by STORUS has stamped upon it "Patent No. 6,082,422" or "PAT 6082422" or is packaged in a container with a label marked "Patent No. 6,082,422" or "PAT 6082422".

19. The patented design of the STORUS Money Clip is unique in that it holds credit cards and personal identification cards with two inwardly oriented brackets tapering towards a stop at one end which keep the cards in place and prevent them from slipping out. STORUS began manufacturing and selling the patented STORUS Money Clip in February 1999. The STORUS Money Clip is also unique in that its purposefully rounded edges prevent it from damaging clothing.

20. STORUS sells the STORUS Money Clips through various retail channels, including internet stores, mail order catalogs, "brick and mortar" stores and television shopping channels.

21. More than 500,000 STORUS Money Clips have been sold by STORUS and its retailers to date.

22. AROA had previously sold the STORUS Money Clip incorporating the '422 patent.

23. AROA terminated its sales of the STORUS Money Clip and began manufacturing several styles of money clips, including money clips infringing the '422 patent, and offers them for sale through its own and various third party retail channels.

24. AROA also sells its infringing version of the STORUS Money Clip online through its own website at www.gadgetuniverse.com, the company under which it does its retail business.

25. Analysis of the AROA money clips makes it clear that these products infringe upon more than one claim in the '422 patent.

1 26. Analysis of the AROA money clips makes it clear that these products infringe upon
2 more than one claim in the '230 patent either literally or under the doctrine of equivalents.

3 27. On several occasions, STORUS notified AROA of the infringement referred to in this
4 complaint and demanded that such infringement cease.

5 28. AROA continues to sell the infringing money clip through various retail channels,
6 including its own website.

7 29. SkyMall was one of the retail channels through which AROA sold the money clip
8 which infringed at least one of the claims of the '422 patent.

9 30. In April 2001, STORUS notified Skymall that STORUS was the owner of the '422
10 patent and that Skymall was infringing at least one of the claims of the patent.

11 31. Upon information and belief Skymall ceased sales of the infringing money clip in
12 August 2001.

13 32. Upon information and belief sales of all products infringing the '422 patent were finally
14 discontinued sometime in 2002.

15 33. An actual controversy of a justiciable nature exists between Plaintiff and Defendants
16 involving Defendants' unauthorized use of Plaintiff's federally registered Trademark in
17 conjunction with the marketing and sale of the formers' directly competing products.

18 34. Defendant AROA designs, manufactures and sells products that directly compete with
19 those manufactured, marketed and sold by Plaintiff. Defendant AROA sells its products through
20 both retailers it owns as well as through third party retailers such as Defendant Skymall.

21 35. One product offered for sale by Defendants is the "Steinhausen Time'n Money Clip".
22 Defendants offer this item and, on information and belief, other products for sale using Plaintiff's
23 registered Trademark "SMART MONEY CLIP" to do so. Printouts from Defendants' websites
24 containing this item for sale are attached hereto as Exhibit A.

FIRST COUNT**Infringement of U.S. Patent No. 6,082,422**

36. Plaintiff incorporates and re-alleges paragraphs 1 through the immediately preceding paragraph as though fully set forth herein.

37. Defendant AROA has manufactured, has had manufactured for it, sold and offered for sale, products that infringe at least one claim of the '422 patent either literally or through the doctrine of equivalents.

38. Defendant AROA has sold and offered for sale products that infringe at least one claim of the '422 patent either literally or through the doctrine of equivalents.

39. Defendants are infringing the patent literally or through the doctrine of equivalents by inducing, contributing, encouraging and promoting the use, manufacture, offering for sale, and sale of such products.

40. STORUS has been damaged by Defendant's infringement of the patent and will continue to be damaged in the future, unless Defendants are preliminarily and permanently enjoined from infringing the patent, from inducing infringement of the patent and from contributing to the infringement of the patent.

41. As a result of Defendant's acts of infringement, STORUS has sustained and will continue to sustain economic damages. STORUS is entitled to recover its damages from Defendants pursuant to 35 U.S.C. §284.

42. Since AROA has actual knowledge of the '422 patent, and has chosen to disregard STORUS' patent rights, such further infringement will be willful, entitling STORUS to recover treble damages and attorney's fees pursuant to 35 U.S.C. §284 and §285.

SECOND COUNT**Infringement of U.S. Patent No. 5,520,230**

43. Plaintiff incorporates and re-alleges paragraphs 1 through the immediately preceding paragraph as though fully set forth herein.

1 44. Defendant AROA has manufactured, has had manufactured for it, sold and offered for
2 sale, products that infringe at least one claim of the '230 patent either literally or through the
3 doctrine of equivalents.

4 45. Defendant AROA has sold and offered for sale products that infringe at least one claim of
5 the '230 patent either literally or through the doctrine of equivalents.

6 46. Defendant AROA is infringing the patent literally or through the doctrine of equivalents
7 by inducing, contributing, encouraging and promoting the use, manufacture, offering for sale, and
8 sale of such products.

9 47. STORUS has been damaged by Defendant AROA's infringement of the patent and will
10 continue to be damaged in the future, unless Defendant AROA is preliminarily and permanently
11 enjoined from infringing the patent, from inducing infringement of the patent and from
12 contributing to the infringement of the patent.

13 48. As a result of Defendant AROA's acts of infringement, STORUS has sustained and will
14 continue to sustain economic damages. STORUS is entitled to recover its any damages available
15 from Defendant AROA pursuant to 35 U.S.C. §284, subject to the limitations under 35 U.S.C.
16 §41.

17 **THIRD COUNT**

18 **Trade Dress and Product Imitation Infringement**

19 49. Plaintiff incorporates and re-alleges paragraphs 1 through the immediately preceding
20 paragraph as though fully set forth herein.

21 50. The Court has jurisdiction over this action pursuant to 15 U.S.C. Section 1125, Section
22 43(a) of the Lanham Act.

23 51. Plaintiff STORUS is informed and believes and on that basis allege that Defendants have
24 and are copying the STORUS Money Clip produced by Plaintiff STORUS. It is further believed
25 that Defendants intentionally copied STORUS' Money Clip, and intended that consumers of
26 money clips be confused as to the source of origin of such money clips.

1 52. Defendants' copying of STORUS' Money Clip constitutes false designation of origin,
2 false description, and false representation to the effect that Defendants' money clips are Plaintiff
3 STORUS' product.

4 53. Defendants' money clip is of such inferior quality and is so similar in appearance to
5 STORUS' Money Clip that consumers could easily be lead to believe that Plaintiff STORUS'
6 Money Clip is also of such inferior quality. As a result, Plaintiff STORUS' goodwill and
7 reputation for superior products will be damaged.

8 54. Plaintiff STORUS believes that it is, or is likely to be, damaged by Defendants' use of the
9 herein-described false designation, description, and representation in that the public is likely to be
10 induced into dealing with Defendants in the mistaken belief that Defendants' products are
11 authorized, endorsed, or sponsored by Plaintiff STORUS.

12
13 **FOURTH COUNT**

14 **Federal Unfair Competition Violations**

15 55. Plaintiff incorporates and re-alleges paragraphs 1 through the immediately preceding
16 paragraph as though fully set forth herein.

17 56. This Court has jurisdiction of this action under its supplemental jurisdiction authority
18 pursuant to 18 U.S.C. § 1338(b) to hear Plaintiff STORUS' related federal claim of unfair
19 competition that arises out of the same operative facts as the federal patent infringement claim set
20 forth above.

21 57. Plaintiff STORUS is informed and believes and on that basis alleges that Defendants'
22 intentional infringement of Plaintiff STORUS' '422 patent and imitation of Plaintiff's STORUS'
23 Money Clip constitutes unfair competition under federal law.

24 58. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has sustained
25 and will sustain injury to its business and property in an amount not yet precisely ascertainable but
26 including, the loss of sales of its products, and the loss to its reputation and goodwill.

1 59. By reason of their conduct alleged herein, Defendants are guilty of malice, oppression,
2 and willful disregard of the rights of Plaintiff.

3 60. Defendants' unlawful, unfair, deceptive and fraudulent business practice constitutes
4 despicable, outrageous, oppressive and malicious conduct under § 3294 of the Code of Civil
5 Procedure and justifies an award of exemplary and punitive damages against Defendants, and each
6 of them as federal law allows for the importation of state punitive damages statutes where the
7 federal claim is tortious in nature.

8 61. As a direct and proximate result of Defendants' wrong conduct, STORUS has sustained
9 and will sustain injury to its business and property in an amount not yet precisely ascertainable but
10 including, the loss of sales of its products, and the loss to its reputation and goodwill.

11
12 **FIFTH COUNT**

13 **California State Unfair Competition Violations**

14 62. Plaintiff incorporates and re-alleges paragraphs 1 through the immediately preceding
15 paragraph as though fully set forth herein.

16 63. This Court has jurisdiction of this action under its supplemental jurisdiction to hear
17 Plaintiff STORUS' related state claim of unfair competition that arises out of the same operative
18 facts as the federal claims set forth above.

19 64. Plaintiffs STORUS' state claim is based upon California Business & Professional Code
20 Sections 17200 et seq.

21 65. Plaintiff STORUS is informed and believes and on that basis alleges that Defendants'
22 intentional infringement of Plaintiff STORUS' '422 patent and imitation of STORUS' Money
23 Clip is an unlawful, unfair and / or fraudulent business act or practice and constitutes unfair
24 competition under California state law.

25 66. Defendants' unlawful, unfair, deceptive and fraudulent business practice constitutes
26 despicable, outrageous, oppressive and malicious conduct under § 3294 of the Code of Civil
27

1 Procedure and justifies an award of exemplary and punitive damages against Defendants, and each
2 of them.

3 67. As a direct and proximate result of Defendants' wrong conduct, Plaintiff has sustained
4 and will sustain injury to its business and property in an amount not yet precisely ascertainable but
5 including, the loss of sales of its products, and the loss to its reputation and goodwill.

6 7 **SIXTH CLAIM**

8 **Trademark Infringement**

9 1. Plaintiff incorporates and re-alleges paragraphs 1 through the immediately preceding
10 paragraph as though fully set forth herein.

11 2. This claim is for trademark infringement pursuant to the Lanham Act, Title 15 U.S.C.
12 §§ 1051 et seq. Pursuant to 15 U.S.C. § 1125, any person who, in conjunction with any goods or
13 services, uses in commerce any word, term, name, symbol, or device, or any combination thereof,
14 or any false designation of origin, false or misleading description of fact, or false or misleading
15 representation of fact, which is likely to cause confusion or mistake as to affiliation may be held
16 liable in a civil action by any person who believes that he or she is likely to be damages by such
17 act.

18 3. Defendant AROA knowingly utilized Plaintiff's Mark "SMART MONEY CLIP" in
19 conjunction with the marketing and sale of its competing products including, but not limited to,
20 the "Steinhausen Time'n Money Clip", without Plaintiff's authorization, in violation of 15 U.S.C.
21 §§ 1051 et seq.

22 4. Defendant Skymall knowingly utilized Plaintiff's Mark "SMART MONEY CLIP" in
23 conjunction with the marketing and sale of AROA's competing products including, but not limited
24 to, the "Steinhausen Time'n Money Clip", without Plaintiff's authorization, in violation of 15
25 U.S.C. §§ 1051 et seq.

26 5. Plaintiff is informed and believes, and thereon alleges, that in doing the things alleged
27 herein, Defendants acted with malice, oppression and/or fraud, as those terms are defined in
28

1 Section 3294 of the California Civil Code, and Plaintiff therefore seeks and is entitled to recover
2 an award of punitive and exemplary damages against the Defendants, and each of them, in an
3 amount to be determined by the trier of fact.

4 6. As a direct and proximate cause of Defendants' unauthorized use of Plaintiff's
5 Trademark, Plaintiff has been damaged in an amount according to proof at trial.

6 7 **SEVENTH CLAIM**

8 **Conversion**

9 7. Plaintiff incorporates and re-alleges paragraphs 1 through the immediately preceding
10 paragraph as though fully set forth herein.

11 8. At all relevant times, Plaintiff was and is the owner of the US Trademark Registration
12 for the Mark "SMART MONEY CLIP".

13 9. Plaintiff is entitled to immediate possession of Plaintiff's Property, including
14 intellectual property. Despite Plaintiff's demand that Defendants cease using Plaintiff's
15 intellectual property, Defendants have failed and refused, and continue to fail and refuse to return
16 Plaintiff's Property to Plaintiff, thereby proximately causing Plaintiff to suffer, and continue to
17 suffer, damages in an amount according to proof.

18 10. As alleged hereinabove, Defendants have exercised, and continue to exercise,
19 wrongful dominion and control over and has unlawfully converted, and continues to unlawfully
20 convert, Plaintiff's Property.

21 11. Plaintiff is informed and believes, and thereon alleges, that in doing the things alleged
22 herein, Defendants acted with malice, oppression and/or fraud, as those terms are defined in
23 Section 3294 of the California Civil Code, and Plaintiff therefore seeks and is entitled to recover
24 an award of punitive and exemplary damages against the Defendants, and each of them, in an
25 amount to be determined by the trier of fact.

26 12. Plaintiff is informed and believes, and thereon alleges, that Defendants will continue
27 their wrongful conversion of Plaintiff's intellectual property, thereby causing Plaintiff to suffer,

1 and continue to suffer, irreparable harm for which damages would be an inadequate remedy unless
 2 the Court grants preliminary and permanent injunctive relief to Plaintiff ordering Defendants to
 3 immediately cease using Plaintiff's intellectual property. Plaintiff therefore seeks and is entitled to
 4 such preliminary and permanent injunctive relief ordering Defendants to immediately cease using
 5 Plaintiff's intellectual property.

7 **EIGHTH CLAIM**

8 **Intentional Interference With Prospective Economic Advantage**

9 13. Plaintiff incorporates and re-alleges paragraphs 1 through the immediately preceding
 10 paragraph as though fully set forth herein.

11 14. At all relevant times, Plaintiff had economic relationships with customers with the
 12 probability of future economic benefit to Plaintiff.

13 15. Plaintiff is informed and believes, and thereon alleges, that in doing the things alleged
 14 herein, including, without limitation, knowingly and willfully utilizing Plaintiff's Mark "SMART
 15 MONEY CLIP" in conjunction with the marketing and sale of competing products including, but
 16 not limited to, the "Steinhausen Time'n Money Clip", without Plaintiff's authorization,
 17 Defendants' caused economic harm to Plaintiff by wrongfully diverting customers to the products
 18 manufactured and sold by the respective Defendants.

19 16. Plaintiff is informed and believes, and thereon alleges, that as a result of the wrongful
 20 conduct by Defendants as alleged herein, there has been actual disruption of Plaintiff's above-
 21 alleged economic relationships, and that as a direct, proximate result Plaintiff has suffered, and
 22 continues to suffer, damages in an amount to be determined by the trier of fact according to proof.

23 17. Plaintiff is informed and believes, and thereon alleges, that in doing the things alleged
 24 herein, Defendants acted with malice, oppression and/or fraud, as those terms are defined in
 25 Section 3294 of the California Civil Code, and Plaintiff therefore seeks and is entitled to recover
 26 an award of punitive and exemplary damages against the Defendants, and each of them, in an
 27 amount to be determined by the trier of fact.

18. Plaintiff is informed and believes, and thereon alleges, that unless restrained by the Court, Defendants threaten to and will continue to wrongfully intentionally interfere with Plaintiff prospective economic advantages and relationships with customers, and Plaintiff will thereby suffer and continue to suffer irreparable harm for which there is no adequate legal remedy. Plaintiff therefore seeks and is entitled to preliminary and permanent injunctive relief restraining Defendants from intentionally interfering with Plaintiff's prospective economic advantages and relationships with customers.

NINTH CLAIM

Negligent Interference With Prospective Economic Advantage

19. Plaintiff incorporates and re-alleges paragraphs 1 through the immediately preceding paragraph as though fully set forth herein.

20. At all relevant times, Plaintiff had economic relationships with customers with the probability of future economic benefit to Plaintiff.

21. Plaintiff is informed and believes, and thereon alleges, that in negligently utilizing Plaintiff's Mark "SMART MONEY CLIP" in conjunction with the marketing and sale of competing products including, but not limited to, the "Steinhausen Time'n Money Clip", without Plaintiff's authorization, Defendants' caused economic harm to Plaintiff by negligently diverting customers to the products manufactured and sold by the respective Defendants.

22. Plaintiff is informed and believes, and thereon alleges, that as a result of the wrongful conduct by Defendants as alleged herein, there has been actual disruption of Plaintiff's above-alleged economic relationships, and that as a direct, proximate result Plaintiff has suffered, and continues to suffer, damages in an amount to be determined by the trier of fact according to proof.

23. Plaintiff is informed and believes, and thereon alleges, that unless restrained by the Court, Defendants may continue to interfere with Plaintiff prospective economic advantages and relationships with customers, and Plaintiff will thereby suffer and continue to suffer irreparable harm for which there is no adequate legal remedy. Plaintiff therefore seeks and is entitled to

1 preliminary and permanent injunctive relief restraining Defendants from interfering with
2 Plaintiff's prospective economic advantages and relationships with customers.

3
4 **TENTH CLAIM**

5 **False Advertising**

6 24. Plaintiff incorporates and re-alleges paragraphs 1 through the immediately preceding
7 paragraph as though fully set forth herein.

8 25. This action is brought under § 17500, the False Advertising Act, of the California
9 Business and Professions Code as well as § 43(a) of the Lanham Act, 15 U.S.C.A. § 1125.

10 26. Defendants offer for sale products including, but not limited to the "Steinhausen
11 Time'n Money Clip" knowingly utilizing Plaintiff's Trademark SMART MONEY CLIP without
12 authorization of any kind or scope. In doing so, Defendants misrepresented, and continue to
13 misrepresent, the nature, characteristics and qualities of Defendants' products.

14 27. Defendants' statements described in the immediately preceding paragraph are false
15 because Defendants' products are not associated with Plaintiff's products and are not authorized to
16 be sold under the auspices of Plaintiff's Trademark.

17 28. Defendants' misrepresentations in the referenced statements were disseminated to the
18 public at large as they were accessible on Defendants' websites and others. On information and
19 belief, potential purchasers of Defendants' products as well as Plaintiff's products, were actually
20 deceived or tended to be deceived by these statements.

21 29. Defendants' misrepresentations are likely to influence the purchasing decisions of the
22 persons to whom they was disseminated

23 30. Defendants' misrepresentations were made in commerce.

24 31. Defendants' misrepresentations are likely to cause Plaintiff harm by damaging
25 Plaintiff's reputation and the reputation of Plaintiff's products.

26 32. Defendants' misrepresentations injured Plaintiff by causing Plaintiff to lose customers
27 and sales, resulting in business losses in an amount not yet precisely ascertainable but including,

1 the loss of sales of its products, and the loss to its reputation and goodwill – the amount of which
2 will be proven at trial.

3
4 **ELEVENTH CLAIM**

5 **Intentional Misrepresentation**

6 33. Plaintiff incorporates and re-alleges paragraphs 1 through the immediately preceding
7 paragraph as though fully set forth herein.

8 34. Defendants' intentionally misrepresented to the public that they were associated with
9 Plaintiff by knowingly utilizing Plaintiff's Mark "SMART MONEY CLIP" in conjunction with
10 the marketing and sale of the formers' competing products including, but not limited to, the
11 "Steinhausen Time'n Money Clip", without Plaintiff's authorization.

12 35. Plaintiff is informed and believes, and thereon alleges, that as a result of the wrongful
13 conduct by Defendants as alleged herein and as a direct, proximate result, Plaintiff has suffered,
14 and continues to suffer, damages in an amount to be determined by the trier of fact according to
15 proof.

16 36. Plaintiff is informed and believes, and thereon alleges, that in doing the things alleged
17 herein, Defendants acted with malice, oppression and/or fraud, as those terms are defined in
18 Section 3294 of the California Civil Code, and Plaintiff therefore seeks and is entitled to recover
19 an award of punitive and exemplary damages against the Defendants, and each of them, in an
20 amount to be determined by the trier of fact.

21 37. Plaintiff is informed and believes, and thereon alleges, that unless restrained by the
22 Court, Defendants threaten to and will continue to intentionally misrepresent that Defendants'
23 products are associated with those of Plaintiff, and Plaintiff will thereby suffer and continue to
24 suffer irreparable harm for which there is no adequate legal remedy. Plaintiff therefore seeks and
25 is entitled to preliminary and permanent injunctive relief restraining Defendants from intentionally
26 misrepresenting their non-existent affiliation with Plaintiff and Plaintiff's products.

TWELFTH CLAIM

Negligent Misrepresentation

38. Plaintiff incorporates and re-alleges paragraphs 1 through the immediately preceding paragraph as though fully set forth herein.

39. Defendants' negligently misrepresented to the public that they were associated with Plaintiff by knowingly utilizing Plaintiff's Mark "SMART MONEY CLIP" in conjunction with the marketing and sale of the formers' competing products including, but not limited to, the "Steinhausen Time'n Money Clip", without Plaintiff's authorization.

Plaintiff is informed and believes, and thereon alleges, that as a result of the wrongful conduct by Defendants as alleged herein and as a direct, proximate result, Plaintiff has suffered, and continues to suffer, damages in an amount to be determined by the trier of fact according to proof.

RELIEF REQUESTED

WHEREFORE, PLAINTIFF prays for the following relief:

For a temporary restraining order and, subsequently, that a preliminary injunction be granted enjoining Defendants and all those in privity with Defendants during pendency of this action from further infringement of U.S. Patent Nos. 6,082,422 and 5,520,230;

(b) That a permanent injunction be granted perpetually enjoining all Defendants from further infringement of U.S. Patent No. 6,082,422 and Defendant AROA from infringing U.S. Patent No. 5,520,230;

(c) For a temporary restraining order and, subsequently, that a preliminary injunction be granted enjoining Defendants and all those in privity with Defendants during the pendency of this action from advertising, offering for sale, or selling money clips, which by imitation or other similarity to those of Plaintiff are likely to cause confusion, mistake, dilution, or persons to be deceived into the belief that Defendants' products are Plaintiff's products or that Defendants and their products are authorized, endorsed, or sponsored, by Plaintiff.

1 (d) For a permanent injunction enjoining Defendants and all those in privity with
2 Defendants during the pendency of this action from advertising, offering for sale, or selling money
3 clips, which by imitation or other similarity to those of Plaintiff are likely to cause confusion,
4 mistake, dilution, or persons to be deceived into the belief that Defendants' products are Plaintiff's
5 products or that Defendants and their products are authorized, endorsed, or sponsored, by Plaintiff.

6 (e) That Defendants be required to account and pay for Plaintiff's actual damages
7 suffered as the result of the infringement of Plaintiff's patents by Defendants, in an amount to be
8 proven at trial, and that such damages be trebled because of the willful and deliberate character of
9 the infringement, as provided by 35 U.S.C. Section 284 and Cal. Bus. & Prof. Code Sections
10 17000 et seq.;

11 (f) For an award of all general, compensatory, special and consequential
12 damages which Plaintiff is entitled to recover from each of the Defendants as according to
13 proof, in the minimum amount of at least \$100,000.00.

14 (g) For the imposition of a constructive trust upon, and for disgorgement and
15 restitution to Plaintiff of, all gains, profits and advantages, and the fruits and proceeds thereof,
16 obtained by each of the Defendants as a result of their wrongful conduct as alleged herein.

17 (h) For attorney's fees;

18 (i) For costs of the suit herein;

19 (j) For punitive damages;

20 (k) For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff STORUS hereby demands trial by jury of all issues so triable.

Dated: April 13, 2007

By: _____ \ylr\ _____

Yano L. Rubinstein, Esq.
Rubinstein Law Group
A Professional Law Corporation
Attorneys for Plaintiff
Storus Corporation