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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
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7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
10 WESTERN DIVISION  
11

12  
13 HOMELAND HOUSEWARES,  
14 LLC,

15 Plaintiff,

16 vs.

17  
18 E. MISHAN & SONS, INC. d/b/a  
19 EMSON; EDDIE MISHAN; STEVEN  
20 MISHAN; and DOES 1-10 inclusive,

21 Defendants.  
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CASE NO. CV11-1935 JFW (AGR<sub>x</sub>)

AMENDED COMPLAINT FOR:

1. Patent Infringement (35 U.S.C. § 271)
2. False Designation of Origin and Trade Dress Infringement (15 U.S.C. § 1125(a))
3. Unfair Competition (15 U.S.C. § 1125(a))
4. Common Law Trade Dress Infringement
5. Copyright Infringement
6. Misappropriation of Trade Secrets
7. Breach of Confidence
8. Unfair Competition (Cal. Bus. & Prof. Code § 17200)
9. Unjust Enrichment

DEMAND FOR JURY TRIAL

1 Plaintiff Homeland Housewares, LLC (hereinafter “Homeland”) hereby  
2 alleges as follows:

3 1. This is an action for patent infringement, false designation of origin and  
4 trade dress infringement, copyright infringement, misappropriation of trade secrets,  
5 breach of confidence, unfair competition and unjust enrichment pursuant to federal  
6 and state law against Defendants E. Mishan & Sons, Inc. d/b/a Emson (hereinafter  
7 “Emson”), Eddie Mishan (hereinafter “E. Mishan”) and Steven Mishan (hereinafter  
8 “S. Mishan”) (hereinafter collectively with Does 1 through 10 “Defendants”).

9 2. Plaintiff seeks injunctive relief, money damages, profits, treble  
10 damages, punitive damages, as well as attorneys’ fees and costs of suit, against  
11 Defendants for the above-mentioned unlawful acts.

12 **JURISDICTION AND VENUE**

13 3. This action arises under the Patent Laws of the United States, Title 35,  
14 United States Code, the Lanham Act of 1946, as amended, 15 U.S.C. § 1051, *et seq.*,  
15 Federal Copyright Law 17 U.S.C. §§ 100 et seq. of the Copyright Act of 1976, and  
16 35 U.S.C. §§ 100 et seq., Cal. Bus. & Prof. Code § 17200, *et seq.* and California  
17 common law.

18 4. The Court has original subject matter jurisdiction over Plaintiff’s  
19 federal claims pursuant to 28 U.S.C. §§ 1331, 1337(a), 1338(a), and 17 U.S.C. §§  
20 100 et seq. of the Copyright Act of 1976 and 35 U.S.C. §§ 100 et seq.

21 5. The Court has supplemental subject matter jurisdiction over the  
22 Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367(a) because the federal and  
23 state claims arise from a common nucleus of operative facts.

24 6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§  
25 1391(b) and 1391(c), as Defendants are subject to personal jurisdiction in this  
26 district and because a substantial portion of the events giving rise to this action  
27 occurred in this district.

28 ///

**THE PARTIES**

1  
2 7. Homeland is a California limited liability corporation with its principal  
3 place of business located in Los Angeles, California. Homeland is a subsidiary of  
4 Capital Brands.

5 8. Homeland designs, sells and markets a well-known product called the  
6 Magic Bullet® which is a portable kitchen blender of novel design and appearance.

7 9. Homeland is informed and believes, and based thereon alleges, that  
8 Emson is a New York corporation in the business of manufacturing, distributing  
9 and/or selling consumer appliances. Emson maintains its principal place of business  
10 at 230 Fifth Avenue, New York, New York 10001. Emson regularly conducts  
11 business throughout the United States and in this judicial district.

12 10. Homeland is informed and believes, and based thereon alleges, that E.  
13 Mishan is, and at all times relevant was, an individual residing in the state of New  
14 York. Homeland is further informed and believes, and based thereon alleges, that  
15 E. Mishan currently is, and at all relevant times was, a principal of Emson and is  
16 subject to the jurisdiction of this Court as a result of his active and personal  
17 involvement in connection with the matters complained of herein.

18 11. Homeland is informed and believes, and based thereon alleges, that S.  
19 Mishan is, and at all times relevant was, an individual residing in the state of New  
20 York. Homeland is further informed and believes, and based thereon alleges, that  
21 S. Mishan currently is, and at all relevant times was, a principal of Emson and is  
22 subject to the jurisdiction of this Court as a result of his active and personal  
23 involvement in connection with the matters complained of herein.

24 12. Defendants, acting in concert, have developed, manufactured, imported  
25 distributed, promoted, offered for sale and sold the Big Boss Blender and Sharper  
26 Image Multi Blender products, both of which are the subject of this litigation. Both  
27 the Big Boss Blender and Sharper Image Multi Blender, along with various  
28 infomercials developed by Defendants, were made using trade secret information

1 misappropriated from Homeland. Moreover, each of the Big Boss Blender and  
2 Sharper Image Multi Blender infringe Homeland's patents and trade dress in its  
3 Magic Bullet® blender.

4 13. Homeland is presently unaware of the true names and capacities,  
5 whether individual, corporate, associate, or otherwise of the defendants sued herein  
6 as Does 1 through 10, inclusive, but will seek leave of Court to amend this  
7 Complaint to show their true names and capacities when the same have been  
8 ascertained. Homeland is informed and believes, and based thereon alleges, that  
9 each of the Defendants designated as "Doe" is responsible in some manner for the  
10 events and happenings referred to herein, and caused damages thereby to Homeland  
11 as alleged herein.

12 14. Homeland is informed and believes, and based thereon alleges, that at  
13 all times herein mentioned, Defendants, including Does 1 through 10, inclusive,  
14 were and still are the agents or employees of the other named Defendants, and that  
15 in doing the things alleged herein, said Defendants were acting within the course  
16 and scope of said agency or employment, and with the knowledge and consent of  
17 each of the other Defendants, and all of them jointly.

18 **FACTS COMMON TO ALL CLAIMS**

19 **HOMELAND'S MAGIC BULLET® BLENDER**

20 15. Homeland introduced its Magic Bullet® blender to the market in 2003  
21 and from 2003 to date has invested over \$150 million in promoting the product. The  
22 Magic Bullet® blender is a blender which includes, among other features, a power  
23 base, a tall cup, a short cup, Party Mugs, Comfort Lip-Rings, Shaker Tops, Steamer  
24 Tops, Stay Fresh Re-Sealable Lids, a Stainless Steel Cross Blade, a Stainless Steel  
25 Flat Blade and a combined User Manual and Recipe Book. Each mug and cup is  
26 designed as a clear plastic vessel that functions as both a blender jar and, upon  
27 application of a lip-ring, as a drinking cup. The mugs include design features,  
28 which allow them to rest stably in an upright position as a cup and yet enable the

1 mugs to be connected with a watertight seal to a blender base and then inverted and  
2 connected to a power base for blending. The blender is operated by applying  
3 pressure to the top of the mug while inserted in the base. Once blending is  
4 accomplished, a mug may be returned to an upright position (the blender base may  
5 be removed) and a lip-ring may be attached, thereby rendering the mug suitable for  
6 use as a drinking vessel. Alternatively, a shaker lid may be attached allowing for  
7 use of the mugs as, among other things, grated cheese shakers and sealed containers.

8 16. The Magic Bullet® blender is of novel design and features a distinctive  
9 trade dress including its unique shape and black, red and silver colors. The novel  
10 design and distinctive trade dress of the Magic Bullet® are protected by numerous  
11 patents and trademarks.

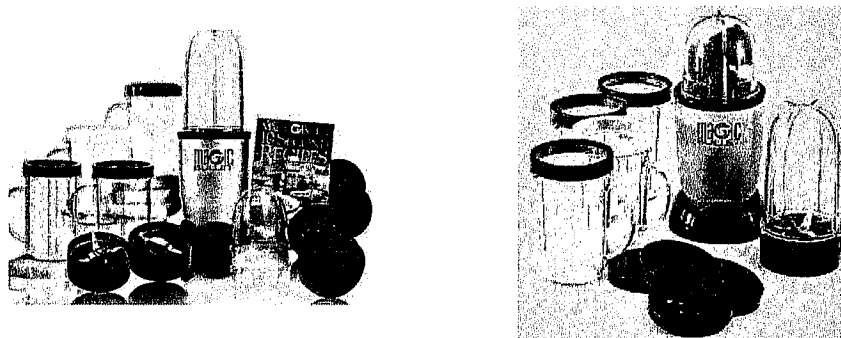
12 **HOMELAND’S MAGIC BULLET TRADEMARKS AND TRADE DRESS**

13 17. Homeland is the owner of eight trademarks related to the Magic  
14 Bullet® blender (hereinafter the “Magic Bullet® Marks”), which are registered  
15 marks. The Magic Bullet® Marks are as follows: MAGIC BULLET (stylized  
16 design mark, U.S. Registration No. 2,947,494); MAGIC BULLET (word mark, U.S.  
17 Registration No. 2,947,492); DOES ANY JOB IN 10 SECONDS OR LESS (word  
18 mark, U.S. Registration No. 3,166,838); THE MAGIC BULLET (word mark in  
19 stylized form, U.S. Registration No. 2,929,383); MAGIC BULLET EXPRESS  
20 (word mark in stylized form, U.S. Registration No. 3,043,909); BULLET  
21 BLENDER (word mark, U.S. Registration No. 2,947,491); BULLET JUICER (word  
22 mark U.S. Registration No. 2,947,493) (hereinafter collectively the “Magic Bullet®  
23 Marks”).

24 18. Homeland is also the owner of the following trade dress registrations:  
25 Product Configuration (Design only, U.S. Registration No. 3,300,425); Product  
26 Configuration (Design only, U.S. Registration 3,315,116); and Product  
27 Configuration (Design only, U.S. Registration 3,610,732) (hereinafter collectively  
28 the “trade Dress Registrations”). Moreover, Homeland’s trade dress for the Magic

1 Bullet® blender comprises the blender’s overall round-shaped clear top silhouette  
2 over a distinctive black/silver/black color scheme with matching trim and  
3 rounded/scalloped base in combination with clear blender that utilizes “lip-rings,”  
4 shaker lids and sealing lids. (hereinafter referred to collectively with the Trade  
5 Dress Registrations as the “Magic Bullet® Trade Dress”).

6 19. Pictures of Homeland’s Magic Bullet® Trade Dress are shown below:



12 20. Homeland has continuously used the Magic Bullet® Marks and Magic  
13 Bullet® Trade Dress in connection with the importation and sale of the Magic  
14 Bullet® blender since at least as early as August 19, 2003, or well before the acts of  
15 Defendants complained of herein.

16 21. The unique Magic Bullet® Trade Dress, enhanced by years of costly  
17 and substantial advertising, has made the Magic Bullet® immediately recognizable  
18 to consumers regardless of whether the “Magic Bullet®” trademark and/or other  
19 identifying markings are present on the product and are associated by consumers  
20 exclusively with Homeland. Among other advertising, the 30 minute television  
21 advertisement for the Magic Bullet® has aired hundreds of thousands of times  
22 during the past 8 years and continues to air between 800 and 1200 times per week.  
23 The Magic Bullet® Marks and Magic Bullet® Trade Dress are invaluable assets of  
24 substantial and inestimable worth to Homeland.

25 22. In the years since its introduction, the Magic Bullet® blender has  
26 established an outstanding reputation for quality and versatility. As a direct and  
27 proximate result of its excellent reputation for quality and versatility along with  
28 heavy advertising promotion via television infomercials, the Magic Bullet®



1 commands a dominant position in the market for portable kitchen blenders, and is  
2 believed to be the largest selling product in the market by a substantial margin over  
3 all competitors. Indeed, the Magic Bullet® has become such a national phenomena  
4 that it is sold in major national retailers, has been featured in television programs  
5 and has appeared in a number of movies.

6 **HOMELAND'S PATENTS**

7 23. Homeland is also the owner of all right, title and interest to the  
8 following U.S. Patents relating to its Magic Bullet® blender:

- 9 a. U.S. Patent No. D501,759 (hereinafter the “‘759 patent’”) entitled  
10 “Mugs.” The ‘759 patent was filed April 2, 2004 and issued on  
11 February 15, 2005. The patent was issued to Homeland. Attached  
12 hereto as Exhibit “A” is a copy of the ‘759 patent. The ‘759 patent is  
13 valid and in force.
- 14 b. U.S. Patent No. D519,321 (hereinafter the “‘321 patent’”) entitled  
15 “Mug.” The ‘321 patent was filed November 5, 2004 and issued on  
16 April 25, 2006. The patent was issued to Homeland. Attached hereto  
17 as Exhibit “B” is a copy of the ‘321 patent. The ‘321 patent is valid  
18 and in force.
- 19 c. U.S. Patent No. D532,255 (hereinafter the “‘255 patent’”) entitled  
20 “Mug.” The ‘255 patent was filed April 3, 2006 and issued on  
21 November 21, 2006. The patent was issued to Homeland. Attached  
22 hereto as Exhibit “C” is a copy of the ‘255 patent. The ‘255 patent is  
23 valid and in force.

24 (hereinafter collectively the “Magic Bullet® Patents”).

25 **HOMELAND'S COPYRIGHTED MATERIALS**

26 24. Attached hereto as Exhibit “D” is a copy of Homeland's United States  
27 Register of Copyrights Certificate of Registration for the copyrighted Magic  
28 Bullet® 10 Second Recipes and a combined User Guide, which Defendants

1 substantially copied and included with their sale of their infringing products.

2 **DEFENDANTS' UNLAWFUL CONDUCT**

3 25. On or about March 15, 2004, Homeland and Emson entered into a  
4 written agreement pursuant to which Emson was to serve as the exclusive distributor  
5 in the United States and Canada of Homeland's Magic Bullet® blender for retail,  
6 catalog and print advertising channels, subject to the terms and conditions of the  
7 agreement (hereinafter the "2004 Distribution Agreement"). Homeland specifically  
8 retained all other distribution rights in the Magic Bullet® including the right to sell  
9 in all geographic markets other than the United States and Canada and the right to  
10 sell through all other distribution channels including direct response advertising via  
11 television, radio, internet and all distribution channels of the Home Shopping  
12 Network and QVC home shopping entities. Pursuant to the 2004 Distribution  
13 Agreement, Emson would distribute the Magic Bullet® by purchasing units from  
14 Homeland and reselling those units to retailers.

15 26. The 2004 Distribution Agreement expired by its terms on April 30,  
16 2006. Thereafter, the parties continued doing business on a "purchase order" basis,  
17 pursuant to which Emson would submit purchase orders to Homeland for the Magic  
18 Bullet®, and if the terms were acceptable, Homeland would agree to the purchase  
19 order and fill the order. The exclusive right to sell the Magic Bullet® in the United  
20 States and Canada granted to Emson pursuant to the 2004 Distribution Agreement  
21 terminated upon the expiration of that agreement.

22 27. Over the course of the effective period of the 2004 Distribution  
23 Agreement and the subsequent purchase order based sales of the Magic Bullet® by  
24 Homeland to Emson, pursuant to Defendants' request, Homeland provided  
25 Defendants with substantial and detailed confidential, proprietary and trade secret  
26 information (hereinafter the "Magic Bullet® Marketing Materials") for the sole  
27 purpose of furthering the parties' mutual interests in the sale, marketing and  
28 promotion of the Magic Bullet® blender. The Magic Bullet® Marketing Materials



1 provided by Homeland to Defendants included at least the following:

- 2 a. Confidential results of several years of the performance of the Magic  
3 Bullet® blender media including such things as results on a per station  
4 basis, media spending and trending results, and media purchasing  
5 strategies and results;
- 6 b. Confidential financial information including breakeven, profit analysis,  
7 profit margins, and cost of goods sold, including cost of upsell  
8 products;
- 9 c. Confidential detailed customer feedback information that demonstrated  
10 the best configuration of pricing and upsell items to determine the most  
11 cost effective and successful offer to consumers;
- 12 d. Confidential information regarding Magic Bullet® product and  
13 customer satisfaction and return rate management;
- 14 e. Confidential information regarding customer satisfaction management  
15 strategy;
- 16 f. Confidential information regarding Better Business Bureau  
17 management strategy;
- 18 g. Confidential information regarding the Magic Bullet® blender’s sales,  
19 sales projections in the future and in which areas of the United States  
20 sales were the strongest;
- 21 h. Confidential information regarding Homeland’s strategy for pursuing  
22 counterfeiters and others who “palm off” or improperly trade off the  
23 Magic Bullet® blender’s good will;
- 24 i. Confidential information regarding brand extensions of the Magic  
25 Bullet® blender, new products in development, product sourcing,  
26 product development and product manufacturing; and
- 27 j. Footage of Magic Bullet® television advertising, and confidential  
28 information regarding the identity of the producers of such advertising,

1 and the relative effectiveness of Homeland's various advertising styles,  
2 strategies and methods.

3 28. In or about May 2010, Homeland took all Magic Bullet® blender sales  
4 activities in-house and, as a result, ceased all sales of the Magic Bullet® to Emson.  
5 This decision was made for a number of reasons, including that Homeland had  
6 learned that Emson was coercing retailers of the Magic Bullet® blender to purchase  
7 Emson's own products as a condition of being permitted to purchase the Magic  
8 Bullet® blender from Emson.

9 29. Unbeknownst to Homeland, Defendants had long been using  
10 Homeland's Magic Bullet® Marketing Materials in the course of their dealings with  
11 Homeland to develop products which wrongfully compete directly with the Magic  
12 Bullet® blender and which infringe Homeland's patents and trade dress. Moreover,  
13 Defendants had used Homeland's Magic Bullet® Marketing Materials to produce  
14 and air infringing infomercials to market and sell their competing products.

15 30. Specifically, in or about March 2008, Emson approached Homeland's  
16 Chinese factory and requested a quotation to manufacture: (1) a knock off of  
17 Homeland's Magic Bullet® blender; and (2) a knock off of Homeland's Bullet  
18 Express®, a food processing type product. Previously, Emson had sought from  
19 Homeland the rights to distribute the Bullet Express®, but Homeland had declined  
20 to permit Emson to serve as a distributor of that product.

21 31. Subsequently, Emson released its "Torpedo" blender and food  
22 processor which competes directly with the Bullet Express® and the Magic Bullet®.  
23 Emson has promoted the Torpedo by way of an infomercial made using Homeland's  
24 Magic Bullet® Marketing Materials including the inclusion of an "up sell" whereby  
25 purchasers are offered a "Party Mugs" set along with the Torpedo. Defendants even  
26 took the description of this mug set from Plaintiff's "Party Mugs" set sold with the  
27 Magic Bullet®.

28 32. Thereafter, at or about the time Homeland informed Defendants that it

1 would limit and or entirely cease sales of the Magic Bullet® blender to Emson,  
2 Defendants released to the market two knock offs of the Magic Bullet®: the “Big  
3 Boss” blender and the “Sharper Image Multi Blender.”

4 33. Each of the Big Boss Blender and the Sharper Image Multi Blender  
5 was developed and is being marketed and sold by Defendants through the  
6 continuing use of Homeland’s Magic Bullet® Marketing Materials.

7 **A. Defendants’ Improper Use of Homeland’s Trade Secrets in**  
8 **Producing and Airing Defendants’ Infomercials**

9 34. The Torpedo infomercial produced by Defendants is substantially  
10 similar in its features and thematic content to that of Homeland’s copyright  
11 protected 2009 Bullet Express® Trio infomercial and has been aired pursuant to a  
12 strategy based on Homeland’s Magic Bullet® Marketing Materials. Both  
13 infomercials feature substantially the same scenes, kitchen demonstrations, shot  
14 timing, shot angles and other demonstrations.

15 35. Similarly, in creating an infomercial to promote the Big Boss Grill,  
16 Defendants sought out and hired the producer of certain of Homeland’s  
17 infomercials, whose identity Defendants had learned in confidence from Homeland.  
18 The Big Boss Grill infomercial thereafter produced by Defendants is substantially  
19 similar in its features and thematic content to that of Homeland’s copyright  
20 protected 2003 Magic Bullet® infomercial and has been aired pursuant to a strategy  
21 based on Homeland’s Magic Bullet® Marketing Materials. Both infomercials  
22 feature substantially the same scenes, kitchen demonstrations, shot timing, shot  
23 angles and other demonstrations.

24 36. In addition to using the same producers for their infringing Big Boss  
25 Grill infomercial, Defendants even went so far as to use the same actors featured in  
26 Homeland’s Bullet Express® infomercial. Further, adding to the confusion, the Big  
27 Boss Grill infomercial offers a free Big Boss Blender (which is a knock-off of the  
28 Magic Bullet® blender) with the purchase of a Big Boss Grill.

1           37. In 2009, Defendants created and aired on television an infomercial  
2 promoting the Big Boss Blender that appropriates key marketing points of Plaintiff's  
3 2003 Magic Bullet® infomercial. In particular, a unique selling point of the Magic  
4 Bullet® prominently featured in the 2003 Magic Bullet® infomercial is the concept  
5 that the Magic Bullet® can do "ANY JOB IN 10 SECONDS OR LESS®." The  
6 2003 Magic Bullet® infomercial features food dish and/or drink preparation  
7 demonstrations associated with time claims. For instance, the 2003 Magic Bullet®  
8 infomercial features "6 second sorbet," "10 second smoothie," "chopped onions in 3  
9 seconds," "guacamole in 3 seconds," "chocolate mousse in 15 seconds," "margaritas  
10 in 10 seconds" and other like demonstrations. In producing Defendants' competing  
11 Big Boss Blender infomercial, Defendants closely the "time to make a dish" concept  
12 featured in the Magic Bullet® infomercial. So closely did Defendants copy this  
13 concept that the Big Boss Blender infomercial features demonstrations where  
14 substantially the same dishes are made, in substantially the manner, in substantially  
15 the same amount of time, as those made in the 2003 Magic Bullet® infomercial.

16           38. Homeland is informed and believes, and based thereon alleges, that  
17 Defendants also used Homeland's Magic Bullet® Marketing Materials in  
18 developing their media spending and placement strategies, their pricing strategies  
19 and their overall marketing and/or upsell strategies for each of the Torpedo food  
20 processor, the Big Boss Blender, the Sharper Image Multi Blender and the Big Boss  
21 Grill.

22           **B. Defendants' Infringement of the Magic Bullet® Patents in**  
23 **Connection with the Sharper Image Multi Blender**

24           39. Defendants have directly infringed and continue to directly infringe the  
25 Magic Bullet® Patents by making, using, importing, selling or offering to sell the  
26 Sharper Image Multi Blender.

27           40. Homeland is informed and believes, and based thereon alleges, that at  
28 all times relevant Defendants have had actual notice of their infringement of the

1 Magic Bullet® Patents, and Defendants' infringement of those patents is and has  
2 been willful.

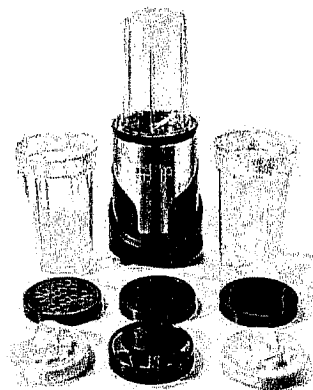
3 41. Defendants' acts of patent infringement have injured Homeland, and  
4 Homeland is entitled to recover damages adequate to compensate it for the  
5 infringement, but in no event less than a reasonable royalty.

6 42. Homeland is informed and believes, and based thereon alleges, that  
7 Defendants' acts of patent infringement will continue after service of this  
8 Complaint, thereby causing further injury to Homeland, unless and until such  
9 infringement is enjoined by this Court.

10 **C. Defendants' Infringement of the Magic Bullet® Trade Dress in**  
11 **Connection with the Sharper Image Multi Blender**

12 43. Through their manufacture, importation, promotion, advertising, offer  
13 for sale and sale, in this judicial district and elsewhere, of the Sharper Image Multi  
14 Blender without permission or authority from Homeland, Defendants have infringed  
15 the Magic Bullet® Trade Dress in interstate commerce.

16 44. A picture of the infringing Sharper Image Multi Blender is shown  
17 below:



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23 45. As shown above, Defendants' Sharper Image Multi Blender is sold  
24 bearing a trade dress that is confusingly similar in appearance to the Magic Bullet®  
25 Trade Dress. Moreover, Defendants have copied the unique configuration and  
26 components of the Magic Bullet® in connection with their sale of the Sharper Image  
27 Multi Blender. In doing so, Defendants have gone so far as to use Plaintiff's unique  
28 and distinctive names for those features. For instance, Defendants describe the

1 Sharper Image Blender as including a “power unit base,” “comfort rings,” “assorted  
2 lids” (referring to copies of Plaintiff’s Shaker Lids, Steamer Lids and Stay-Fresh  
3 Resealable lids) and a User Manual and Recipe Book. Each of these unique features  
4 and many of their names were taken directly from Plaintiff’s Magic Bullet® box  
5 and promotional materials. The use of Plaintiff’s product configurations and unique  
6 descriptions by Defendants contributes to consumer confusion as to the affiliation of  
7 the Sharper Image Multi Blender with Plaintiff. Further evidencing Defendants’  
8 intent and wrongful conduct, the Sharper Image Multi Blender’s blade is a copy of  
9 the unique Magic Bullet® blade.

10 46. Defendants’ ongoing unauthorized use of the Magic Bullet® Trade  
11 Dress was, and is, intended to trade upon the goodwill and substantial recognition  
12 associated with Homeland’s Magic Bullet®.

13 47. Defendants have used and are continuing to use the Magic Bullet®  
14 Trade Dress in an attempt to associate themselves with Homeland or otherwise trade  
15 upon Homeland’s reputation and goodwill.

16 48. Defendants’ ongoing use of the Magic Bullet® Trade Dress is designed  
17 to cause confusion, mistake and/or deception.

18 49. Defendants’ purpose in using the Magic Bullet® Trade Dress was, and  
19 is, to cause consumers and potential consumers to believe that Defendants’ Sharper  
20 Image Multi Blender is actually the Magic Bullet® product or otherwise associated,  
21 affiliated with or authorized by Homeland. Consumers have been, and are likely to  
22 continue to be, misled as to the source, sponsorship and/or affiliation of the Sharper  
23 Image Multi Blender.

24 50. Defendants were, and are, aware of Homeland’s rights arising under  
25 trademark law but have refused, and continue to refuse, to respect them.  
26 Accordingly, in this action Homeland seeks to enjoin Defendants from using the  
27 Magic Bullet® Trade Dress or any confusingly similar trade dress. One of the  
28 classic functions of a trademark is to serve as a unique identifier of a predictable



1 nature and quality of goods coming from a single source. Defendants' unauthorized  
2 association of the Magic Bullet® Trade Dress with Defendants' comparatively  
3 inferior products has diluted the Magic Bullet® Trade Dress by diminishing  
4 consumer capacity to associate it with the quality goods signified by the Magic  
5 Bullet® Trade Dress.

6 51. Defendants' acts of trade dress infringement have injured Homeland,  
7 and Homeland is entitled to recover damages adequate to compensate it for the  
8 infringement, all profits derived by Defendants from the infringement, treble  
9 damages and reasonable attorneys' fees.

10 52. The trademark laws prohibit "latecomers," such as Defendants, from  
11 copying a famous mark or trade dress and to "free ride" on its attendant goodwill.  
12 Homeland's extensive investment in the Magic Bullet® Trade Dress has made the  
13 same synonymous with quality and Homeland, and Defendants, direct competitors  
14 of Homeland, must not be allowed to benefit from that investment at the expense of  
15 Homeland and to the detriment of consumers.

16 53. Homeland is informed and believes, and based thereon alleges, that  
17 Defendants' acts of trade dress infringement will continue after service of this  
18 Complaint, thereby causing further injury to Homeland, unless and until such  
19 infringement is enjoined by this Court.

20 **D. Defendants' Infringement of the Magic Bullet® Patents in**  
21 **Connection with the Big Boss Blender**

22 54. Defendants have directly infringed and continue to directly infringe the  
23 Magic Bullet® Patents by making, using, importing, selling or offering to sell the  
24 Big Boss Blender.

25 55. Homeland is informed and believes, and based thereon alleges, that at  
26 all times relevant Defendants have had actual notice of their infringement of the  
27 Magic Bullet® Patents, and Defendants' infringement of those patents is and has  
28 been willful.

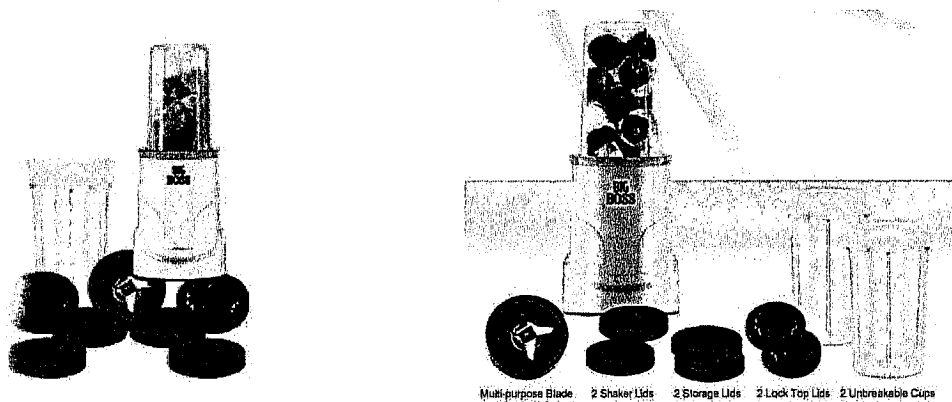
1 56. Defendants' acts of patent infringement have injured Homeland, and  
2 Homeland is entitled to recover damages adequate to compensate it for the  
3 infringement, but in no event less than a reasonable royalty.

4 57. Homeland is informed and believes, and based thereon alleges, that  
5 Defendants' acts of patent infringement will continue after service of this  
6 Complaint, thereby causing further injury to Homeland, unless and until such  
7 infringement is enjoined by this Court.

8 **E. Defendants' Infringement of the Magic Bullet® Trade Dress in**  
9 **Connection with the Big Boss Blender**

10 58. Through their manufacture, importation, promotion, advertising, offer  
11 for sale and sale, in this judicial district and elsewhere, of the Big Boss Blender  
12 without permission or authority from Homeland, Defendants have infringed the  
13 Magic Bullet® Trade Dress in interstate commerce.

14 59. A picture of the infringing Big Boss Blender is shown below:



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23 60. As shown above, Defendants' Big Boss Blender is sold bearing a trade  
24 dress that is confusingly similar in appearance to the Magic Bullet® Trade Dress,  
25 This confusion is exacerbated by the fact that Defendants also have copied  
26 Homeland's 2009 Magic Bullet® infomercial and used the substantially similar Big  
27 Boss Blender infomercial in connection with the promotion and sale of the Big Boss  
28 Blender. Additionally, Defendants have copied the unique configuration and

1 components of the Magic Bullet® in connection with their sale of the Big Boss  
2 Blender. Defendants have gone as far as to use Plaintiff's unique and distinctive  
3 names for various product features. For instance, Defendants describe their  
4 infringing product as including a "power unit base," "comfort rings," "shaker lids"  
5 and a combined User Manual and Recipe Book. These unique features, and their  
6 names, were taken directly from Plaintiff's Magic Bullet ® box and promotional  
7 materials. The use of Plaintiff's product configurations and unique descriptions  
8 contributes to consumer confusion as to the affiliation of the Big Boss Blender with  
9 Plaintiff. Indeed, the packaging for the Big Boss Blender substantially mirrors  
10 Plaintiff's Magic Bullet packaging in appearance and content. Further evidencing  
11 Defendants' intent and wrongful conduct, the Big Boss Blender's blade is a copy of  
12 the unique Magic Bullet® blade.

13         61. Defendants' ongoing unauthorized use of the Magic Bullet® Trade  
14 Dress was, and is, intended to trade upon the goodwill and substantial recognition  
15 associated with Homeland's Magic Bullet®.

16         62. Defendants have used and are continuing to use the Magic Bullet®  
17 Trade Dress in an attempt to associate themselves with Homeland or otherwise trade  
18 upon Homeland's reputation and goodwill.

19         63. Defendants' ongoing use of the Magic Bullet® Trade Dress is designed  
20 to cause confusion, mistake and/or deception.

21         64. Defendants' purpose in using the Magic Bullet® Trade Dress was, and  
22 is, to cause consumers and potential consumers to believe that Defendants' Big Boss  
23 Blender is actually the Magic Bullet® product or otherwise associated, affiliated  
24 with or authorized by Homeland. Consumers are likely to be misled as to the  
25 source, sponsorship and/or affiliation of the Big Boss Blender.

26         65. Defendants were, and are, aware of Homeland's rights arising under  
27 trademark law but have refused, and continue to refuse, to respect them.

28 Accordingly, in this action Homeland seeks to enjoin Defendants from using the

1 Magic Bullet® Trade Dress or any confusingly similar trade dress. One of the  
2 classic functions of a trademark is to serve as a unique identifier of a predictable  
3 nature and quality of goods coming from a single source. Defendants' unauthorized  
4 association of the Magic Bullet® Trade Dress with Defendants' comparatively  
5 inferior products has diluted the Magic Bullet® Trade Dress by diminishing  
6 consumer capacity to associate it with the quality goods signified by the Magic  
7 Bullet® Trade Dress.

8 66. Defendants' acts of trade dress infringement have injured Homeland,  
9 and Homeland is entitled to recover damages adequate to compensate it for the  
10 infringement, all profits derived by Defendants, treble damages and reasonable  
11 attorneys' fees.

12 67. The trademark laws prohibit "latecomers," such as Defendants, from  
13 copying a famous mark or trade dress and to "free ride" on its attendant goodwill.  
14 Homeland's extensive investment in the Magic Bullet® Trade Dress has made the  
15 same synonymous with quality and Plaintiffs, and Defendants, direct competitors of  
16 Homeland, must not be allowed to benefit from that investment at the expense of  
17 Homeland and to the detriment of consumers.

18 68. Homeland is informed and believes, and based thereon alleges, that  
19 Defendants' acts of trade dress infringement will continue after service of this  
20 Complaint, thereby causing further injury to Homeland, unless and until such  
21 infringement is enjoined by this Court.

22 **F. Defendants' Infringement of the Copyrighted Magic Bullet® 10**  
23 **Second Recipes and User Guide.**

24 69. In the course of the parties' dealings Defendants had access to the  
25 Copyrighted Magic Bullet® 10 Second Recipes and User Guide.

26 70. In connection with the sale, manufacture and distribution of both the  
27 Big Boss Blender and the Sharper Image Multi Blender, Defendants have  
28 substantially copied and are including the Copyrighted Magic Bullet® 10 Second

1 Recipes and User Guide along with such products.

2 **FIRST CLAIM FOR RELIEF**

3 **Patent Infringement by Plaintiff Homeland against All Defendants (Patent**  
4 **Laws of the United States § 271, 35 U.S.C. § 271)**

5 71. Homeland realleges each of the paragraphs herein above as though  
6 fully set forth herein.

7 72. Defendants have directly infringed and continue to directly infringe the  
8 Magic Bullet® Patents by making, using, importing, selling or offering to sell the  
9 Big Boss Blender, in violation of the Patent Laws of the United States, § 271, 35  
10 U.S.C. § 271.

11 73. Homeland is informed and believes, and based thereon alleges, that at  
12 all times relevant Defendants are and have been on actual notice of their  
13 infringement of the Magic Bullet® Patents and their infringement of those patents is  
14 and has been willful.

15 74. Defendants' infringing acts have irreparably injured Homeland. Such  
16 irreparable injury will continue unless Defendants are preliminarily and permanently  
17 enjoined by this Court from continuing to engage in their ongoing infringement of  
18 the Magic Bullet® Patents, for which Homeland has no adequate remedy at law.  
19 Defendants' acts of infringement also have economically injured Homeland in an  
20 amount that is presently undetermined.

21 75. Homeland is entitled to recover from Defendants damages adequate to  
22 compensate it for the infringement, but in no event less than a reasonable royalty, in  
23 an amount to be determined according to proof at trial. Homeland also requests that  
24 this Court exercise its power to grant an injunction against Defendants to prevent  
25 future violations by Defendants of Homeland's rights in the Magic Bullet® Patents  
26 and under Section 271 of the Patent Laws of the United States, 35 U.S.C. § 271.

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**SECOND CLAIM FOR RELIEF**

**Patent Infringement by Plaintiff Homeland against All Defendants (Patent Laws of the United States § 271, 35 U.S.C. § 271)**

76. Homeland realleges paragraphs 1 through 70 herein above as though fully set forth herein.

77. Defendants have directly infringed and continue to directly infringe the Magic Bullet® Patents by making, using, importing, selling or offering to sell the Sharper Image Multi Blender in violation of the Patent Laws of the United States, § 271 (35 U.S.C. § 271).

78. Homeland is informed and believes, and based thereon alleges, that at all times relevant Defendants are and have been on actual notice of their infringement of the Magic Bullet® Patents and their infringement of those patents is and has been willful.

79. Defendants' infringing acts have irreparably injured Homeland. Such irreparable injury will continue unless Defendants are preliminarily and permanently enjoined by this Court from continuing to engage in their ongoing infringement of the Magic Bullet® Patents, for which Homeland has no adequate remedy at law. Defendants' acts of infringement also have economically injured Homeland in an amount that is presently undetermined.

80. Homeland is entitled to recover from Defendants damages adequate to compensate it for the infringement, but in no event less than a reasonable royalty, in an amount to be determined according to proof at trial. Homeland also requests that this Court exercise its power to grant an injunction against Defendants to prevent future violations by Defendants of Homeland's rights in the Magic Bullet® Patents and under Section 271 of the Patent Laws of the United States, 35 U.S.C. § 271.

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**THIRD CLAIM FOR RELIEF**

**False Designation of Origin and Trade Dress Infringement by Plaintiff  
Homeland against All Defendants (Lanham Act § 43(a), 15 U.S.C. § 1125(a))**

81. Homeland realleges paragraphs 1 through 70 herein above as though fully set forth herein.

82. The Magic Bullet® Trade Dress is used in commerce, is nonfunctional, is inherently distinctive and has acquired substantial secondary meaning in the marketplace.

83. Defendants' Big Boss Blender contains a collection of design elements and trade dress which is confusingly similar to the Magic Bullet® Trade Dress. In addition, Defendants copied Homeland's distinctive infomercial, presentation, and packaging. Defendants have infringed the Magic Bullet® Trade Dress and created a false designation of origin by manufacturing, distributing, offering for sale, selling, and/or promoting in commerce, without Homeland's permission, their Big Boss Blender with the intent to unfairly compete against Homeland, to trade upon Homeland's reputation and goodwill by causing confusion and mistake among consumers and the public, and to deceive the public into believing that Defendants' Big Boss Blender is associated with, sponsored by or approved by Homeland, when it is not.

84. Defendants' infringing acts have irreparably injured Homeland. Such irreparable injury will continue unless Defendants are preliminarily and permanently enjoined by this Court from continuing to engage in their ongoing infringement of the Magic Bullet® Trade Dress, for which Homeland has no adequate remedy at law. Defendants' acts of infringement also have economically injured Homeland in an amount that is presently undetermined.

85. Homeland is entitled to recover from Defendants monetary damages adequate to compensate Homeland's damages and Defendants' profits from infringing the Magic Bullet® Trade Dress, according to proof at trial. Homeland

1 also requests that this Court exercise its power to grant an injunction against  
2 Defendants to prevent future violations by Defendants of the Magic Bullet® Trade  
3 Dress rights and Homeland's rights under Section 43(a) of the Lanham Act, 15  
4 U.S.C. § 1125(a).

5 86. Defendants had actual knowledge of Homeland's ownership and prior  
6 use of its Magic Bullet® Trade Dress, and without the consent of Homeland have  
7 willfully violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), through  
8 use of the Magic Bullet® Trade Dress in connection with the manufacture, import,  
9 offer for sale, advertisement and sale of the Big Boss Blender. Accordingly, this is  
10 an exceptional case within the meaning of 15 U.S.C. § 1117(a) entitling Homeland  
11 to treble damages and its reasonable costs, including attorneys' fees.

12 **FOURTH CLAIM FOR RELIEF**

13 **False Designation of Origin and Trade Dress Infringement by Plaintiff**

14 **Homeland against All Defendants (Lanham Act § 43(a), 15 U.S.C. § 1125(a))**

15 87. Homeland realleges paragraphs 1 through 70 herein above as though  
16 fully set forth herein.

17 88. The Magic Bullet® Trade Dress is used in commerce, is nonfunctional,  
18 is inherently distinctive and has acquired substantial secondary meaning in the  
19 marketplace.

20 89. Defendants' Sharper Image Multi Blender contains a collection of  
21 design elements and trade dress which is confusingly similar to the Magic Bullet®  
22 Trade Dress. In addition, Defendants copied Homeland's distinctive presentation,  
23 and packaging. Defendants have infringed the Magic Bullet® Trade Dress and  
24 created a false designation of origin by manufacturing, distributing, offering for sale,  
25 selling, and/or promoting in commerce, without Homeland's permission, their  
26 Sharper Image Multi Blender with the intent to unfairly compete against Homeland,  
27 to trade upon Homeland's reputation and goodwill by causing confusion and  
28 mistake among consumers and the public, and to deceive the public into believing

1 that Defendants' Sharper Image Multi Blender is associated with, sponsored by or  
2 approved by Homeland, when it is not.

3 90. Defendants' infringing acts have irreparably injured Homeland. Such  
4 irreparable injury will continue unless Defendants are preliminarily and permanently  
5 enjoined by this Court from continuing to engage in their ongoing infringement of  
6 the Magic Bullet® Trade Dress, for which Homeland has no adequate remedy at  
7 law. Defendants' acts of infringement also have economically injured Homeland in  
8 an amount that is presently undetermined.

9 91. Homeland is entitled to recover from Defendants monetary damages  
10 adequate to compensate Homeland's damages and Defendants' profits from  
11 infringing the Magic Bullet® Trade Dress, according to proof at trial. Homeland  
12 also requests that this Court exercise its power to grant an injunction against  
13 Defendants to prevent future violations by Defendants of the Magic Bullet® Trade  
14 Dress rights and Homeland's rights under Section 43(a) of the Lanham Act, 15  
15 U.S.C. § 1125(a).

16 92. Defendants had actual knowledge of Homeland's ownership and prior  
17 use of its Magic Bullet® Trade Dress, and without the consent of Homeland have  
18 willfully violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), through  
19 use of the Magic Bullet® Trade Dress in connection with the manufacture, import,  
20 offer for sale, advertisement and sale of the Sharper Image Multi Blender.  
21 Accordingly, this is an exceptional case within the meaning of 15 U.S.C. § 1117(a)  
22 entitling Homeland to treble damages and its reasonable costs, including attorneys'  
23 fees.

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**FIFTH CLAIM FOR RELIEF**

**Unfair Competition by Plaintiff Homeland against All Defendants**

**(Lanham Act § 43(a), 15 U.S.C. § 1125(a))**

93. Homeland realleges paragraphs 1 through 70 herein above as though fully set forth herein.

94. Homeland is the owner of the Magic Bullet® Trade Dress.

95. Homeland's use of the Magic Bullet® Trade Dress inures to the benefit of Homeland, which exercises quality control over the same to maintain a consistent and predictable quality for all goods and services for which the Magic Bullet® Trade Dress is used.

96. The Magic Bullet® Trade Dress is inherently distinctive and Homeland has developed and maintained substantial secondary meaning in the same.

97. Defendants have infringed and are infringing the Magic Bullet® Trade Dress by virtue of their use of the substantially similar trade dress in connection with their directly competitive goods in the form of the Big Boss Blender. Such conduct has caused, and will continue to cause, consumer confusion as to Homeland's association with, affiliation with, or sponsorship of Defendants' goods and services.

98. Defendants' conduct constitutes unfair competition pursuant to Section 43(a) of The Lanham Act, 15 U.S.C. § 1125(a). Defendants' conduct was intended to cause confusion, has caused confusion, and will continue to cause confusion unless enjoined.

99. Defendants' acts of unfair competition have irreparably injured Homeland. Such irreparable injury will continue unless Defendants are preliminarily and permanently enjoined by this Court from continuing to engage in their ongoing acts of unfair competition, for which Homeland has no adequate remedy at law. Defendants' acts of infringement also have economically injured Homeland in an amount that is presently undetermined.

1 100. For each of Defendants' completed acts of unfair competition,  
2 Homeland is entitled to recover its actual damages as well as Defendants' profits  
3 from such conduct. Homeland also requests that this Court exercise its power to  
4 grant an injunction against Defendants to prevent future acts of unfair competition  
5 by Defendants and future violations by Defendants of Homeland's rights under  
6 Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

7 101. Defendants' acts of unfair competition in violation of Section 43(a) of  
8 the Lanham Act, 15 U.S.C. § 1125(a), have been, and are, willful, intentional and  
9 knowing. Accordingly, this is an exceptional case within the meaning of 15 U.S.C.  
10 § 1117(a) entitling Homeland to treble damages and its reasonable costs, including  
11 attorneys' fees.

12 **SIXTH CLAIM FOR RELIEF**

13 **Unfair Competition by Plaintiff Homeland against All Defendants**

14 **(Lanham Act § 43(a), 15 U.S.C. § 1125(a))**

15 102. Homeland realleges paragraphs 1 through 70 herein above as though  
16 fully set forth herein.

17 103. Homeland is the owner of the Magic Bullet® Trade Dress.

18 104. Homeland's use of the Magic Bullet® Trade Dress inures to the benefit  
19 of Homeland, which exercises quality control over the same to maintain a consistent  
20 and predictable quality for all goods and services for which the Magic Bullet®  
21 Trade Dress is used.

22 105. The Magic Bullet® Trade Dress is inherently distinctive and Homeland  
23 has developed and maintained substantial secondary meaning in the same.

24 106. Defendants have infringed and are infringing the Magic Bullet® Trade  
25 Dress by virtue of their use of the substantially similar trade dress in connection  
26 with their directly competitive goods in the form of the Sharper Image Multi  
27 Blender. Such conduct has caused, and will continue to cause, consumer confusion  
28 as to Homeland's association with, affiliation with, or sponsorship of Defendants'

1 goods and services.

2 107. Defendants' conduct constitutes unfair competition pursuant to Section  
3 43(a) of The Lanham Act, 15 U.S.C. § 1125(a). Defendants' conduct was intended  
4 to cause confusion, has caused confusion, and will continue to cause confusion  
5 unless enjoined.

6 108. Defendants' acts of unfair competition have irreparably injured  
7 Homeland. Such irreparable injury will continue unless Defendants are  
8 preliminarily and permanently enjoined by this Court from continuing to engage in  
9 their ongoing acts of unfair competition, for which Homeland has no adequate  
10 remedy at law. Defendants' acts of infringement also have economically injured  
11 Homeland in an amount that is presently undetermined.

12 109. For each of Defendants' completed acts of unfair competition,  
13 Homeland is entitled to recover its actual damages as well as Defendants' profits  
14 from such conduct. Homeland also requests that this Court exercise its power to  
15 grant an injunction against Defendants to prevent future acts of unfair competition  
16 by Defendants and future violations by Defendants of Homeland's rights under  
17 Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

18 110. Defendants' acts of unfair competition in violation of Section 43(a) of  
19 the Lanham Act, 15 U.S.C. § 1125(a) have been, and are, willful, intentional and  
20 knowing. Accordingly, this is an exceptional case within the meaning of 15 U.S.C.  
21 § 1117(a) entitling Homeland to treble damages and its reasonable costs, including  
22 attorneys' fees.

23 **SEVENTH CLAIM FOR RELIEF**

24 **Common Law Trade Dress Infringement**

25 **by Plaintiff Homeland against All Defendants**

26 111. Homeland realleges paragraphs 1 through 70 herein above as though  
27 fully set forth herein.

28 112. Homeland is informed and believes, and based thereon alleges, that by



1 virtue of the acts complained of herein, Defendants have intentionally infringed  
2 Homeland's Magic Bullet® Trade Dress and caused a likelihood of confusion  
3 among the consuming public, thereby committing common law trade dress  
4 infringement.

5 113. Homeland is informed and believes, and based thereon alleges, that  
6 Defendants' aforementioned acts have been fraudulent, oppressive and malicious.

7 114. Defendants' infringing acts have irreparably injured Homeland. Such  
8 irreparable injury will continue unless Defendants are preliminarily and permanently  
9 enjoined by this Court from continuing to engage in their ongoing infringement of  
10 the Magic Bullet® Trade Dress, for which Homeland has no adequate remedy at  
11 law. Defendants' acts of infringement also have economically injured Homeland in  
12 an amount that is presently undetermined.

13 115. Homeland is entitled to recover from Defendants monetary damages  
14 adequate to compensate Homeland's damages, according to proof at trial.  
15 Homeland also requests that this Court exercise its power to grant an injunction  
16 against Defendants to prevent future violations by Defendants of Homeland's Magic  
17 Bullet® common law trade dress rights.

18 **EIGHTH CAUSE OF ACTION**

19 **Copyright Infringement (17 U.S.C. § 101 et seq.) by Plaintiff Homeland**  
20 **against All Defendants**

21 116. Plaintiff Homeland realleges paragraphs 1 through 70 herein above as  
22 though fully set forth herein.

23 117. Homeland's copyrighted Magic Bullet® 10 Second Recipes and User  
24 Guide, which was created by Homeland and contains a substantial amount of  
25 original material that constitutes copyrightable subject matter protected under the  
26 Copyright Act of 1976, 17 U.S.C. §§ 101 et seq.

27 118. Homeland has applied for and received from the United States Register  
28 of Copyrights, a Certificate of Registration for the copyrighted Magic Bullet® 10

1 Second Recipes and User Guide as set forth in Exhibit "D."

2 119. Homeland has at all times complied in all respects with the Copyright  
3 Act of 1976 and all other laws of the United States with regard to Homeland's  
4 copyrighted materials.

5 120. All of the Defendants have had access to Homeland's Magic Bullet® 10  
6 Second Recipes and User Guide and, subsequent to Homeland's publication of the  
7 same and with full knowledge of the rights and interests of Homeland therein,  
8 Defendants infringed Homeland's copyright in the Magic Bullet® 10 Second  
9 Recipes and User Guide by reproducing, displaying, manufacturing, printing,  
10 reprinting, publishing, vending, distributing, selling promoting, importing and/or  
11 advertising to the public counterfeit copies of Homeland's Magic Bullet® 10 Second  
12 Recipes and User Guide in violation of Homeland's exclusive rights under 17 U. S.  
13 C. § 106.

14 121. Defendants have knowingly, willfully, and deliberately infringed  
15 Homeland's copyrights in Homeland's copyrighted materials and continue to do so  
16 in conscious disregard and violation of Homeland's exclusive rights.

17 122. By reason of Defendants' acts of copyright infringements, Homeland is  
18 entitled to recover all profits received or otherwise achieved, directly or indirectly,  
19 by Defendants in connection with their manufacturing, importing, advertising and  
20 sales of the Big Boss Blender and Sharper Image Multi Blender products which are  
21 copies of Homeland's proprietary products.

22 123. Defendants' acts of copyright infringement have irreparably injured  
23 Homeland. Such irreparable injury will continue unless Defendants are  
24 preliminarily and permanently enjoined by this Court from continuing to engage in  
25 their ongoing acts of copyright infringement, for which Homeland has no adequate  
26 remedy at law. Homeland will continue to suffer irreparable injury unless and until  
27 this Court (1) enters an order enjoining and restraining Defendants, and each of  
28 them, from making, importing, advertising, and/or selling the counterfeit Recipes

1 and User Guides, and (2) orders all the counterfeit Recipes and User Guides to be  
2 impounded. Defendants' continuing acts of copyright infringement, unless enjoined,  
3 will continue to cause irreparable damage to Homeland in that Homeland will have  
4 no adequate remedy at law to compel Defendants to cease such acts, Homeland will  
5 be compelled to prosecute a multiplicity of actions, one action each time  
6 Defendants, or anyone of them, commits such acts, and in each such action it will be  
7 extremely difficult to ascertain the amount of compensation which will afford  
8 Homeland adequate relief. Defendants' acts of infringement also have economically  
9 injured Homeland in an amount that is presently undetermined.

10 124. Defendants' aforementioned infringing conduct has been willful,  
11 wanton and malicious, in bad faith and was undertaken with the intent to deceive.  
12 Homeland is therefore entitled to an award of its actual damages according to proof,  
13 profits of Defendants attributable to the infringing conduct, statutory damages, costs  
14 of suit and/or its reasonable attorneys' fees.

15 **NINTH CAUSE OF ACTION**

16 **Misappropriation of Trade Secrets by Plaintiff**

17 **Homeland against All Defendants**

18 125. Homeland realleges paragraphs 1 through 70 herein above as though  
19 fully set forth herein.

20 126. The above described activities of Defendants constitute the  
21 misappropriation of Homeland's trade secrets consisting of at least the following  
22 highly confidential and proprietary information and materials (referred to previously  
23 herein as the "Magic Bullet® Marketing Materials"):

- 24 a. The confidential results of several years of the performance of the  
25 Magic Bullet® blender media including such things as results on a per  
26 station basis, media spending and trending results, media purchasing  
27 strategies and results;
- 28 b. Confidential financial information including breakeven, profit analysis,

1 profit margins, and cost of goods sold, including cost of upsell  
2 products;

- 3 c. Confidential detailed customer feedback information that demonstrated  
4 the best configuration of pricing and upsell items to determine the most  
5 cost effective and successful offer to consumers;
- 6 d. Confidential information regarding Magic Bullet® product and  
7 customer satisfaction and return rate management;
- 8 e. Confidential customer satisfaction management strategy;
- 9 f. Confidential Better Business Bureau management strategy;
- 10 g. Confidential information regarding the Magic Bullet® blender's sales,  
11 sales projections in the future and in which areas of the United States  
12 sales were the strongest;
- 13 h. Confidential information regarding Homeland's strategy for pursuing  
14 counterfeiters and others who "palm off" or improperly trade off of the  
15 Magic Bullet® blender's good will;
- 16 i. Confidential information regarding brand extensions of the Magic  
17 Bullet® blender, new products in development, product sourcing,  
18 product development and product manufacturing; and
- 19 j. Footage of Magic Bullet® television advertising, confidential  
20 information regarding the identity of the producers of such advertising,  
21 and the relative effectiveness of Homeland's various advertising styles,  
22 strategies and methods.

23 127. The Magic Bullet® Marketing Materials were securely protected by  
24 Homeland on password protected computers on a private network. Only  
25 Homeland's high level managers had direct access to the information. Other  
26 employees of Homeland could only access the information under the direction and  
27 control of a high level manager of Homeland.

28 128. The Magic Bullet® Marketing Materials are unique and valuable

1 business information developed by Homeland that are not generally known to the  
2 public and derived independent economic value thereby. The Magic Bullet  
3 Marketing Materials are securely maintained as confidential information and were  
4 disclosed to Defendants under an obligation of confidentiality.

5 129. Homeland confidentially provided the Magic Bullet® Marketing  
6 Materials to Defendants beginning in 2004 and thereafter throughout the parties'  
7 dealings. At all relevant times, Defendants understood that the Magic Bullet®  
8 Marketing Materials were confidential and proprietary to Homeland and were not to  
9 be disclosed to third parties or used other than for the Defendants' sales and  
10 marketing of the Magic Bullet®.

11 130. Without Homeland's authorization, Defendants converted the Magic  
12 Bullet® Marketing Materials to their own use in creating and marketing the Big  
13 Boss Blender and the Sharper Image Multi Blender, as well as in creating the  
14 Torpedo, Big Boss Blender and Big Boss Grill infomercials. Homeland is informed  
15 and believes, and based thereon alleges, that Defendants also used the Magic  
16 Bullet® Marketing Materials to develop a broadcast strategy for airing the Torpedo,  
17 Big Boss Blender and Big Boss Grill infomercials. Homeland is further informed  
18 and believes, and based thereon alleges, that in the course of undertaking the  
19 foregoing acts, Defendants disclosed the Magic Bullet® Marketing Materials to  
20 third parties.

21 131. Defendants have profited enormously by realizing increased sales of  
22 the Torpedo, Big Boss Grill, Big Boss Blender and Sharper Image Multi Blender,  
23 which are the direct and proximate result of Defendants' development and/or  
24 marketing of these products through the use of Homeland's confidential Magic  
25 Bullet® Marketing Materials.

26 132. As a proximate result of Defendants' acts of misappropriation as  
27 alleged herein, Homeland has suffered damages, and will continue to suffer  
28 damages, unless Defendants are enjoined from using the confidential trade secret

1 information they misappropriated and are ordered to immediately return the  
2 information, and unless Homeland is compensated for its actual damages consisting  
3 of the loss of customers and revenues.

4 133. While the exact amount of its damages will be proven at trial,  
5 Homeland is informed and believes, and based thereon alleges, that the value of the  
6 actual and potential customer sales and associated revenues lost through  
7 Defendants' wrongful conduct exceeds \$1,000,000. Alternatively, and at a  
8 minimum, Homeland is entitled to a reasonable royalty for Defendants'  
9 misappropriation and use of Homeland's trade secrets, in an amount to be proven at  
10 trial.

11 134. Defendants, in engaging in the aforementioned acts, were willful and  
12 malicious in that they deliberately intended to harm Homeland's business and  
13 improve their own by misappropriation and, in so doing, acted in conscious  
14 disregard of Homeland's rights. Therefore, Homeland is entitled to recover its  
15 attorneys' fees and costs plus exemplary damages in an amount equal to twice  
16 Homeland's actual losses, Defendants' unjust enrichment or a reasonable royalty  
17 awarded in accordance with California *Civil Code* §3426.3.

18 135. In addition, due to the continued sale of the Big Boss Blender and  
19 Sharper Image Multi Blender, along with the broadcasting by Defendants of the  
20 Torpedo, Big Boss Blender and Big Boss Grill infomercials, which each incorporate  
21 Homeland's trade secrets and the broadcast strategies of which are determined from  
22 Homeland's trade secrets, Homeland is entitled to preliminary and permanent  
23 injunctions prohibiting future misappropriation.

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**TENTH CAUSE OF ACTION**

**Breach of Confidence by Plaintiff Homeland against All Defendants, In the  
Alternative to Trade Secret Misappropriation**

136. Homeland realleges paragraphs 1 through 70 herein above as though fully set forth herein.

137. Homeland’s disclosures to Defendants included the confidential and proprietary Magic Bullet® Marketing Materials. Defendants agreed to accept this information for the purposes of distributing and marketing the Magic Bullet® only, and promised not to use the information for any other purpose without Homeland’s permission, and likewise promised not to disclose the information to third parties.

138. Despite their promises, Defendants disclosed the Magic Bullet® Marketing Materials to third parties. In addition, Defendants used the materials to create the Big Boss Blender and Sharper Image Multi Blender (which both compete directly with the Magic Bullet® blender) and to create the Torpedo, Big Boss Blender and Big Boss Grill infomercials and attendant broadcast strategies.

139. Defendants have profited enormously from sales of the Torpedo, Big Boss Blender, Big Boss Grill and Sharper Image Multi Blender, which profits are directly attributable to Defendants’ use of Homeland’s Magic Bullet® Marketing Materials.

140. Homeland has been injured by Defendants’ past and ongoing sale of the Big Boss Blender and Sharper Image Multi Blender, as well as by the airing of the Torpedo, Big Boss Blender and Big Boss Grill infomercials (which incorporate and are broadcast based on Homeland’s trade secrets and other confidential information), in an amount to be determined at trial. As a direct and proximate result of Defendants’ unlawful conduct, Homeland is entitled to recover such sums.

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**ELEVENTH CAUSE OF ACTION**

**Unfair Competition (Cal. Bus. & Prof. Code § 17200)**

**by Plaintiff Homeland against All Defendants**

141. Homeland realleges the allegations contained in each of the above paragraphs as though fully set forth herein.

142. By engaging in the above-described practices and actions, Defendants committed one or more acts of unfair competition within the meaning of California *Business and Professions Code* (hereinafter “BPC”) §§ 17200 *et seq.* As used in this Complaint, and in BPC § 17200, “unfair competition” means (1) an unlawful, unfair or fraudulent business act or practice, (2) unfair, deceptive, untrue or misleading advertising and/or (3) an act prohibited by Chapter 1 (commencing with BPC § 17500) of Part 3 of Division 7 of the BPC. This conduct as alleged herein is actionable pursuant to BPC §§ 17200 and 17203.

143. Beginning in at least March 2008 and continuing to the present, Defendants have engaged in, and continue to engage in, such unfair competition. Defendants’ acts and practices are wrongful, arbitrary, without reasonable business or commercial justification, unethical and oppressive, and have caused substantial harm and injury to Homeland.

144. Defendants’ acts of unfair competition are described herein and include, without limitation, Defendants’ manufacture, importation, distribution, offer for sale, promotion, advertisement and sale of the Big Boss Blender and Sharper Image Multi Blender in violation of the Homeland’s intellectual property rights and through the use of Homeland’s trade secrets and confidential information provided to Defendants in confidence.

145. Defendants’ conduct, as described above, is unlawful, unfair, and deceptive, and violates BPC §§ 17200 *et seq.* and constitutes, *inter alia*, patent infringement, trade dress infringement and misappropriation of trade secrets.

146. Homeland s has suffered injury in fact and has lost revenue, profits,

1 market share, business value and good will, and business opportunities as a result of  
2 Defendants' unlawful actions and practices in violation of BPC §§ 17200 *et seq.*

3 147. As a direct and proximate result of Defendants' unlawful conduct,  
4 Homeland is entitled to restitution and disgorgement of profits in an amount  
5 according to proof at trial and Homeland has suffered and will continue to suffer  
6 irreparable harm.

7 148. Defendants will continue to engage in such unlawful acts, unless and  
8 until restrained and enjoined by this Court. Homeland's remedy at law is not by  
9 itself adequate to compensate it for the harm that has been and will be inflicted by  
10 Defendants. Homeland is therefore entitled to preliminary and permanent injunctive  
11 relief restraining Defendants, their officers, directors, members, agents and  
12 employees, and all persons acting in concert with them, from engaging in any  
13 further acts in violation of Section 17200 of the California *Business and Professions*  
14 *Code*.

15 **TWELFTH CLAIM FOR RELIEF**

16 **Unjust Enrichment by Plaintiff Homeland against All Defendants**

17 149. Homeland realleges each of the paragraphs herein above as though  
18 fully set forth herein.

19 150. Defendants, and each of them, jointly and individually, by the wrongful  
20 acts alleged herein (specifically engaging in the sale of the Big Boss Blender and  
21 Sharper Image Multi Blender in violation of Homeland's intellectual property rights,  
22 misappropriating Homeland's trade secrets and engaging in unfair competition),  
23 have been unjustly enriched by receiving monies under false pretenses and as a  
24 result of their wrongful conduct. Defendants should be required to disgorge and pay  
25 to Homeland the amount of such unjust enrichment, according to proof at trial.

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**PRAYER OF RELIEF**

WHEREFORE, Plaintiff Homeland Housewares, LLC respectfully pray for a judgment as follows:

(a) Adjudging that Defendants willfully:

1. Infringed the Magic Bullet® Patents in violation of Section 271(a) of the Patent Laws of the United States, 35 U.S.C. § 271;
2. Violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), with respect to the Magic Bullet® Trade Dress;
3. Committed common law trade dress infringement with respect to the Magic Bullet® Trade Dress;
4. Committed copyright infringement with respect to the copyrighted Magic Bullet® 10 Second Recipes and User Guide;
5. Misappropriated Plaintiff's trade secrets and confidential information and/or committed a breach of confidence with respect to Plaintiff's trade secrets and confidential information;
6. Violated California *Business and Professions Code* § 17200, by engaging in unfair business practices; and
7. Were unjustly enriched at the expense of Plaintiff.

(b) Granting an injunction, pursuant to Rule 65 of the *Federal Rules of Civil Procedure*, 15 U.S.C. § 1116, 17 U.S.C. § 502, 35 U.S.C. § 283 and California *Business and Professions Code* § 17200 *et seq.*, preliminarily and permanently restraining and enjoining Defendants, their officers, agents, employees, and attorneys, and all those persons or entities in active concert or participation with them as follows:

1. Manufacturing, importing, advertising, marketing, promoting, supplying, distributing, offering for sale, and/or selling any products that infringe the Magic Bullet® Patents, infringe or bear the Magic Bullet® Trade Dress and/or any other mark or design element substantially similar or confusing thereto,

1 including, without limitation, the Big Boss Blender and Sharper Image Multi  
2 Blender, and engaging in any other activity constituting an infringement of any of  
3 Plaintiff's rights in the Magic Bullet® Patents and/or the Magic Bullet® Trade  
4 Dress;

5           2. Engaging in any other activity constituting unfair competition  
6 with Plaintiff, or acts or practices that deceive consumers, the public, and/or trade,  
7 including without limitation, the use of designations and design elements associated  
8 with Plaintiff and the Magic Bullet® product or through use of the Magic Bullet®  
9 Marketing Materials;

10           3. Requiring Defendants to recall from any suppliers,  
11 manufacturers, distributors, shippers and retailers and to deliver to Plaintiff for  
12 destruction or other disposition all remaining inventory of all Big Boss Blenders and  
13 Sharper Image Multi Blenders or parts thereof, including all advertisements,  
14 promotional and marketing materials, as well as the means of making same;

15           4. Requiring Defendants to file with this Court and to serve on  
16 Plaintiff within 30 days after entry of the injunction a report in writing under oath  
17 setting forth in detail the manner and form in which Defendants have complied with  
18 the injunction; and

19           5. Making any use of the Magic Bullet® Marketing Materials,  
20 including without limitation, by way of airing the Torpedo, Big Boss Blender and  
21 Big Boss Grill infomercials, and requiring Defendants to return to Plaintiff all  
22 materials containing or otherwise reflecting the Magic Bullet® Marketing Materials.

23           (c) Awarding damages adequate to compensate Plaintiff for Defendants'  
24 willful infringement of the Magic Bullet® Patents.

25           (d) Awarding statutory damages or, alternatively, Plaintiff's actual  
26 damages and Defendants' profits from infringing Magic Bullet® Trade Dress.

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1 (e) Awarding treble damages for Defendants' willful and knowing  
2 infringement and counterfeiting of the Magic Bullet® Trade Dress pursuant to 15  
3 U.S.C. § 1117(a).

4 (f) Awarding Plaintiff's actual losses, Defendants' unjust enrichment or a  
5 reasonable royalty for Defendants' misappropriation and disclosure of the Magic  
6 Bullet® Marketing Materials.

7 (g) Awarding Plaintiff all of Defendants' profits attributable to  
8 Defendants' infringing conduct.

9 (h) Awarding punitive damages to which Plaintiff is entitled under  
10 applicable Federal or State law.

11 (i) Awarding Plaintiff statutory damages as provided for by applicable  
12 law.

13 (j) Awarding Plaintiff's costs, attorney's fees, investigatory fees and  
14 expenses to the full extent provided by Section 35 of the Lanham Act, 15 U.S.C. §  
15 1117, 35 U.S.C. § 285 and California *Civil Code* §3426.3.

16 (k) Awarding exemplary damages in an amount twice Plaintiff's actual  
17 losses, Defendants' unjust enrichment or a reasonable royalty in accordance with  
18 California *Civil Code* §3426.3.

19 (l) Awarding pre-judgment interest on any monetary award made part of the  
20 judgment against Defendants.

21 (m) Awarding such other and further relief against Defendants as this Court  
22 or a jury may deem just and proper.

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**DEMAND FOR JURY TRIAL**

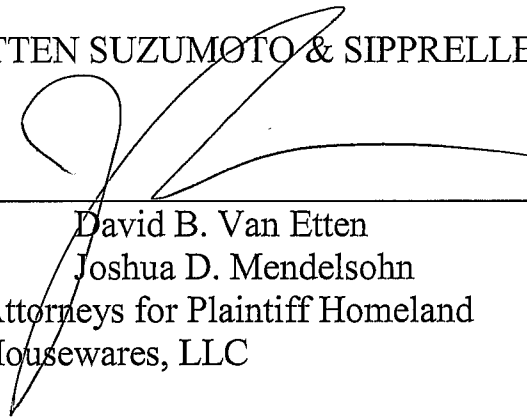
Plaintiff Homeland Housewares, LLC hereby demands a trial by jury.

DATED: March 8, 2011

Respectfully submitted,

VAN ETTEN SUZUMOTO & SIPPRELLE LLP

By:



---

David B. Van Etten  
Joshua D. Mendelsohn  
Attorneys for Plaintiff Homeland  
Housewares, LLC



(12) **United States Design Patent** (10) Patent No.: **US D501,759 S**  
**Sands** (45) Date of Patent: **Feb. 15, 2005**

(54) MUGS  
 (75) Inventor: Lenny Sands, Encino, CA (US)  
 (73) Assignee: Homeland Housewares, LLC, Los Angeles, CA (US)  
 (\*\*) Term: 14 Years  
 (21) Appl. No.: 29/202,701  
 (22) Filed: Apr. 2, 2004  
 (51) LOC (7) Cl. .... 07-01  
 (52) U.S. Cl. .... D7/536; D7/507; D7/510; D7/378; D7/413  
 (58) Field of Search .... D7/533, 536, 510, D7/511, 507, 531, 509, 376, 377, 378, 412, 413, 415; 366/199, 197, 251, 314, 205, 206, 130, 325.8; 215/390, 387, 398; 312/390; 241/282.2, 282.1, 195; 220/718, 705, 710.5, 703, 603, 713, 729; 219/433

4,708,487 A 11/1987 Marshall ..... 366/206  
 4,889,248 A \* 12/1989 Bennett ..... 215/390  
 D347,966 S \* 6/1994 Doggett ..... D7/378  
 5,531,353 A \* 7/1996 Ward et al. .... 220/729  
 D385,149 S \* 10/1997 Feil ..... D7/378  
 5,720,552 A \* 2/1998 Schindlegger ..... 366/197  
 D470,050 S 2/2003 Renz et al. .... D9/434  
 6,523,994 B2 \* 2/2003 Lawson ..... 366/199  
 D486,997 S \* 2/2004 Janly ..... D7/531  
 D487,668 S \* 3/2004 Sands ..... D7/378  
 2001/0036124 A1 \* 11/2001 Rubenstein ..... 366/205  
 2001/0046183 A1 \* 11/2001 Lawson ..... 366/205  
 2002/0176320 A1 \* 11/2002 Wulf et al. .... 366/325.8  
 2003/0214875 A1 \* 11/2003 Dickson ..... 366/206

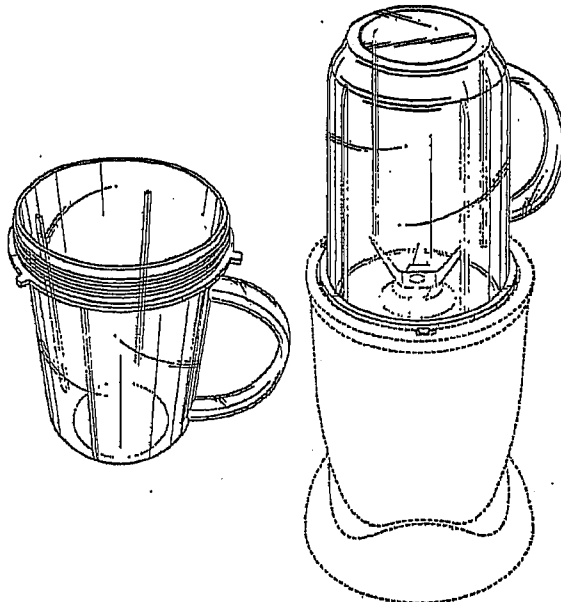
\* cited by examiner  
 Primary Examiner—M. N. Pandozzi  
 (74) Attorney, Agent, or Firm—Cislo & Thomas, LLP

(57) **CLAIM**  
 The ornamental design for mugs, as shown and described herein.

(56) **References Cited**  
**U.S. PATENT DOCUMENTS**  
 2,299,730 A 10/1942 Bornstein ..... 65/131  
 3,064,949 A 11/1962 Dewenter ..... 259/108  
 3,085,710 A 4/1963 McIlroy ..... 220/90.4  
 3,315,946 A 4/1967 Nissman ..... 259/108  
 3,704,864 A \* 12/1972 Lee ..... 366/205  
 D231,068 S \* 4/1974 Douglas ..... D7/533  
 3,881,705 A 5/1975 Greenspan ..... 259/108  
 4,435,084 A \* 3/1984 Calhoun et al. .... 366/130  
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 4,487,509 A 12/1984 Boyce ..... 366/199  
 4,523,083 A \* 6/1985 Hamilton ..... 219/433  
 D281,945 S \* 12/1985 Boyce ..... D7/378

**DESCRIPTION**  
 FIG. 1 is a perspective view of mugs;  
 FIG. 2 is a top plan view thereof;  
 FIG. 3 is a bottom plan view thereof;  
 FIG. 4 is a left side elevation view;  
 FIG. 5 is a rear side elevation view;  
 FIG. 6 is a rear right side elevation view;  
 FIG. 7 is a front side elevation view; and,  
 FIG. 8 is an environmental perspective view.  
 The broken line portions of the disclosure are for illustrative purposes only and form no part of the claimed design.

1 Claim, 2 Drawing Sheets



**EXHIBIT A**



(12) **United States Design Patent** (10) Patent No.: **US D519,321 S**  
**Sands** (45) Date of Patent: **\*\* Apr. 25, 2006**

(54) MUG  
 (75) Inventor: **Lenny Sands, Los Angeles, CA (US)**  
 (73) Assignee: **Homeland Housewares, LLC, Los Angeles, CA (US)**  
 (\*\*) Term: **14 Years**  
 (21) Appl. No.: **29/216,603**  
 (22) Filed: **Nov. 5, 2004**

4,889,248 A \* 12/1989 Bennett ..... 215/390  
 D347,966 S \* 5/1994 Doggett ..... D7/378  
 5,531,353 A \* 7/1996 Ward et al. .... 220/729  
 D385,149 S \* 10/1997 Fell ..... D7/378  
 5,720,552 A \* 2/1998 Schindlegger ..... 366/197  
 D395,200 S \* 6/1998 Bidwell ..... D7/509  
 D470,050 S 2/2003 Renz et al.  
 6,523,994 B1 \* 2/2003 Lawson ..... 366/199  
 D486,997 S \* 2/2004 Janly ..... D7/531  
 D487,668 S \* 3/2004 Sands ..... D7/378  
 2001/0036124 A1 \* 11/2001 Rubenstein ..... 366/205  
 2001/0046183 A1 \* 11/2001 Lawson ..... 366/205  
 2002/0176320 A1 \* 11/2002 Wulf et al. .... 366/325.8  
 2003/0214875 A1 \* 11/2003 Dickson ..... 366/206

**Related U.S. Application Data**

(60) Division of application No. 29/205,079, filed on May 7, 2004, now Pat. No. Des. 500,633, which is a continuation-in-part of application No. 29/202,101, filed on Apr. 2, 2004, now Pat. No. Des. 501,759.  
 (51) LOC (8) Cl. .... 07-01  
 (52) U.S. Cl. .... D7/523; D7/378; D7/413  
 (58) Field of Classification Search ..... 220/212, 220/574, 592.15; D7/523, 538, 510, 511, D7/507, 509, 376, 377, 378, 413, 412, 415, D7/380; 366/199, 197, 251, 314, 205, 206, 366/130; 215/390, 387, 395, 398; 312/390; 241/282.2, 195, 282.1; D9/500, 537, 546  
 See application file for complete search history.

**OTHER PUBLICATIONS**

<http://www.kcissmixer.com/order/order1.htm> (attached hereto).  
<http://www.kcissmixer.com/feature/feature1.htm> (2 pages) (attached hereto).  
 \* cited by examiner

Primary Examiner—M. N. Pandozzi  
 (74) Attorney, Agent, or Firm—Cislo & Thomas, LLP

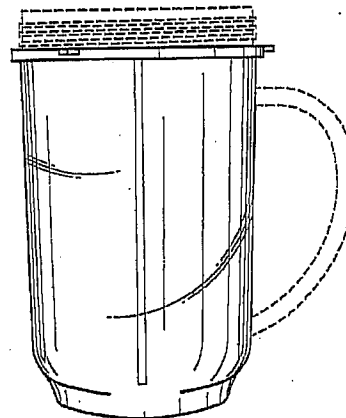
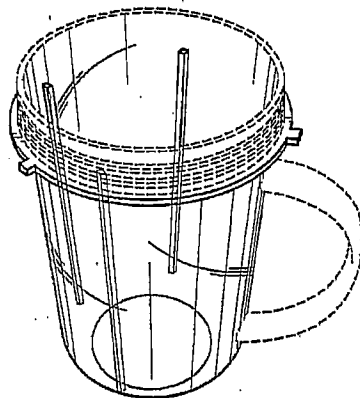
(57) **CLAIM**

The ornamental design for a mug, as shown and described.

**DESCRIPTION**

FIG. 1 is a top perspective view of a mug showing my new design;  
 FIG. 2 is a top plan perspective view thereof;  
 FIG. 3 is a bottom plan perspective view thereof;  
 FIG. 4 is a left side elevational perspective view thereof;  
 FIG. 5 is a rear elevational perspective view thereof;  
 FIG. 6 is a right side elevational perspective view thereof;  
 FIG. 7 is a front elevational perspective view thereof;  
 FIG. 8 is an environmental perspective view thereof; and,  
 FIG. 9 is an environmental perspective view showing a second embodiment of my new design.  
 The broken line portions of the disclosure are for illustrative purposes only and form no part of the claimed design.

1 Claim, 3 Drawing Sheets



**EXHIBIT B**

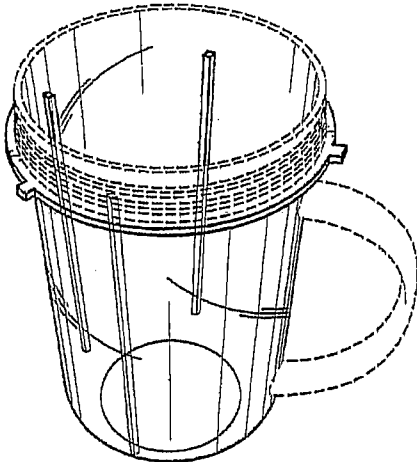


FIG. 1

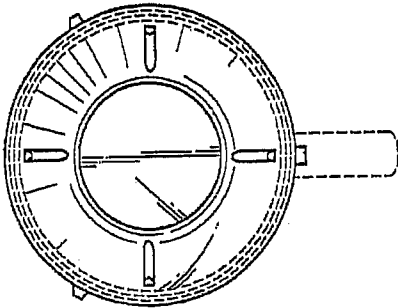


FIG. 2

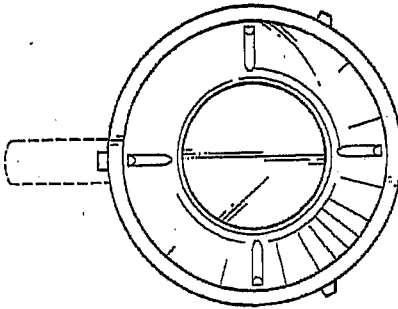


FIG. 3

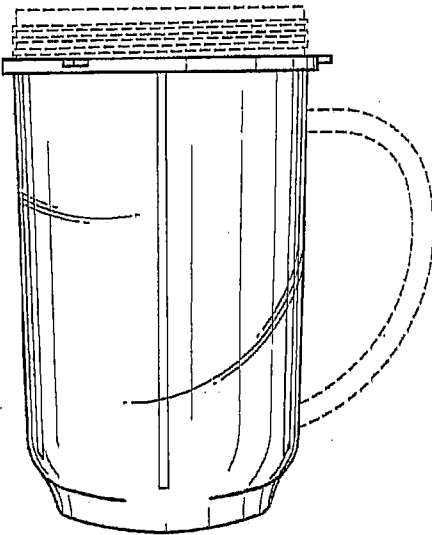


FIG. 4

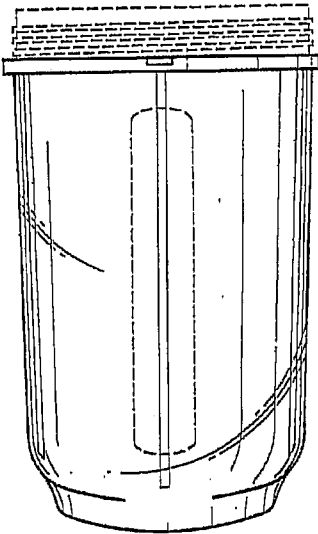


FIG. 5

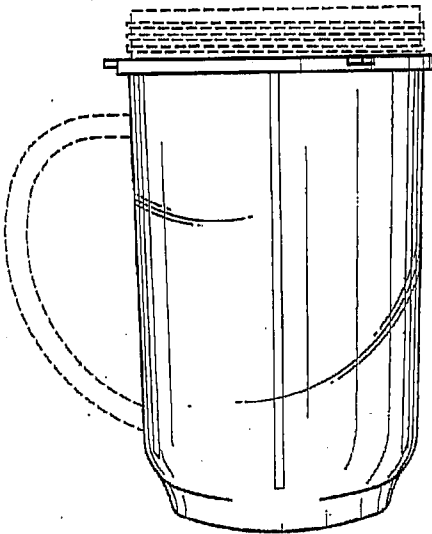


FIG. 6

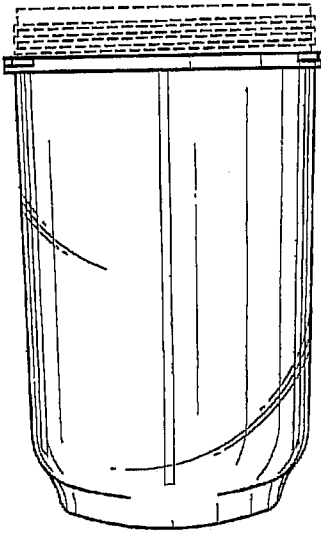


FIG. 7

U.S. Patent

Apr. 25, 2006

Sheet 3 of 3

US D519,321 S

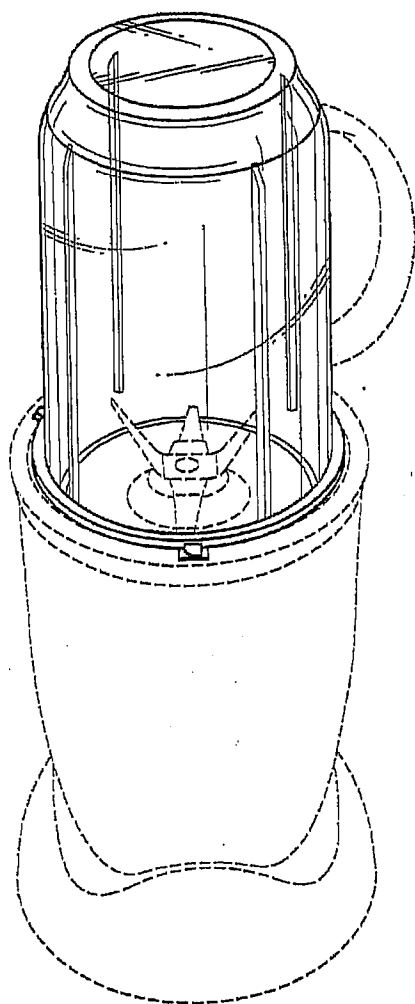


FIG. 8

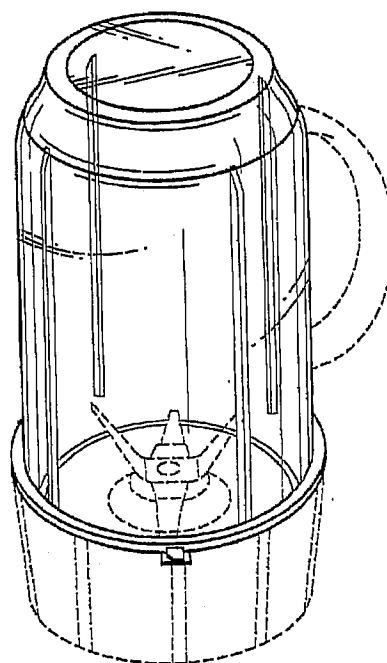


FIG. 9





(12) **United States Design Patent** (10) Patent No.: **US D532,255 S**  
**Sands** (45) Date of Patent: **\*\* Nov. 21, 2006**

(54) MUG 3,085,710 A 4/1963 McIlroy  
 3,299,226 A \* 1/1967 Edwards ..... 200/16 C  
 3,315,946 A 4/1967 Nissman  
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 4,889,248 A 12/1989 Bennett  
 5,720,552 A 2/1998 Schindiegger  
 D470,050 S 2/2003 Renz et al.  
 D487,668 S \* 3/2004 Sands ..... D7/378  
 6,817,750 B1 \* 11/2004 Sands ..... 366/205  
 2001/0036124 A1 11/2001 Rubenstein

**Related U.S. Application Data**

(60) Division of application No. 29/242,332, filed on Nov. 9, 2005, which is a division of application No. 29/216,603, filed on Nov. 5, 2004, now Pat. No. Des. 519,321, which is a division of application No. 29/205,079, filed on May 7, 2004, now Pat. No. Des. 500,633, and a continuation-in-part of application No. 29/202,701, filed on Apr. 2, 2004, now Pat. No. Des. 501,759.  
 (51) LOC (8) Cl. .... 07-99  
 (52) U.S. Cl. .... D7/413; D7/396.2  
 (58) Field of Classification Search ..... D7/533, D7/536, 510, 511, 507, 509, 396.2, 413, 376, D7/377, 378, 412, 415; 366/199, 197, 251, 366/314, 205, 206, 130; 215/390, 387, 398; 241/282.2, 195, 301  
 See application file for complete search history.

(56) **References Cited**

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 3,064,949 A 11/1962 Dewanter

**OTHER PUBLICATIONS**

<http://www.kissmixer.com/order/order1.htm>; Downloaded Oct. 27, 2004.  
<http://www.kissmixer.com/feature/feature1.htm> (2 pages); Downloaded Oct. 28, 2004.  
 \* cited by examiner

Primary Examiner—M. N. Pandozzi  
 (74) Attorney, Agent, or Firm—Cislo & Thomas, LLP

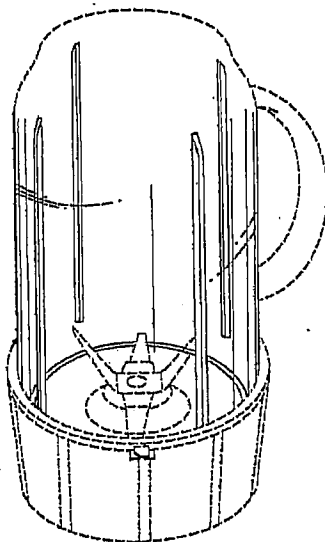
(57) **CLAIM**

The ornamental design for a mug, as shown and described.

**DESCRIPTION**

FIG. 1 is a perspective view of a mug, in accordance with the present invention. The broken line portions of the disclosure are included for illustrative purposes only and form no part of the claimed design.

1 Claim, 1 Drawing Sheet



**EXHIBIT C**

U.S. Patent

Nov. 21, 2006

US D532,255 S

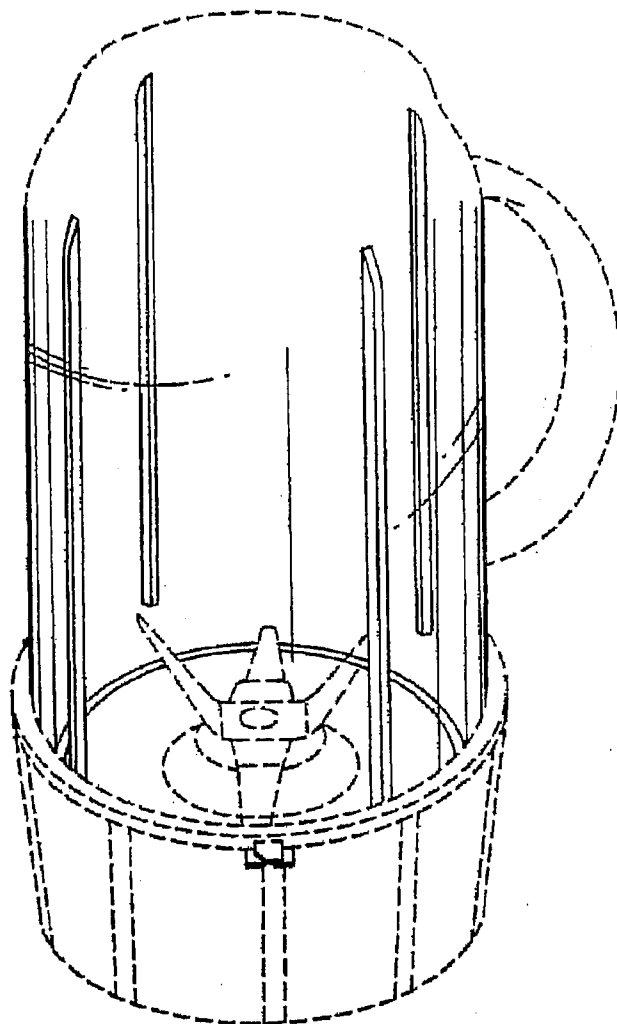


FIG. 1

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Marybeth Peters*

Register of Copyrights, United States of America

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For a Nontransferable Library Work  
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TX 5-947-888

EFFECTIVE DATE OF REGISTRATION

02 13 2004

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK

The Magic Bullet 10 Second Recipes and User Guide

PREVIOUS OR ALTERNATIVE TITLES

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

Published in a periodical or serial give: Volume Number Issue Date On Page

2

NAME OF AUTHOR

a Homeland Housewares, LLC

DATE OF BIRTH AND DEATH  
Year Born Year Died

Was this contribution to the work a "work made for hire"?

AUTHOR'S NATIONALITY OR DOMICILE

OR Citizen of: USA  
Domiciled in: USA

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. Words, images and graphics of recipe book and user guide for food preparation product.

NOTE

Under the law, the "maker" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

b NAME OF AUTHOR

Was this contribution to the work a "work made for hire"?

AUTHOR'S NATIONALITY OR DOMICILE

OR Citizen of:  
Domiciled in:

DATE OF BIRTH AND DEATH  
Year Born Year Died

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.

c NAME OF AUTHOR

Was this contribution to the work a "work made for hire"?

AUTHOR'S NATIONALITY OR DOMICILE

OR Citizen of:  
Domiciled in:

DATE OF BIRTH AND DEATH  
Year Born Year Died

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.

3

a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED  
2003

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK  
Country: UNITED STATES Day: 19 Year: 2003  
ONLY if first work has been published. N/A

4

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.  
Homeland Housewares, LLC  
11755 Wilshire Blvd., Suite 1150  
Los Angeles, CA 90025

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

APPLICACION RECEBIDA  
FEB 13 2004  
ONE DEPOSIT RECEIVED  
TWO DEPOSITS RECEIVED  
FEB 13 2004  
FUNDS RECEIVED

MORE ON BACK Complete all applicable spaces (numbers 3-5) on the reverse side of this page. See detailed instructions. Sign the form at the end.

EXHIBIT

TX 5-047-608  
[Redacted]

EXAMINED BY	FORM TX
CHECKED BY	
<input type="checkbox"/> CORRESPONDENCE	FOR
<input type="checkbox"/> Yes	COPYRIGHT
	OFFICE
	USE
	ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

**REVOLVING REGISTRATION** Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes  No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) **5**

a.  This is the first published edition of a work previously registered in unpublished form.

b.  This is the first application submitted by this author as copyright claimant.

c.  This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number > \_\_\_\_\_ Year of Registration > \_\_\_\_\_

**DERIVATIVE WORK OR COMPILATION**

Presenting Material Identify any preexisting work or works that this work is based on or incorporates. **a 6**

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. **b**

**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name > \_\_\_\_\_ Account Number > \_\_\_\_\_ **a 7**

Cisco & Thomas, LLP IDA092282

**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name / Address / Apt./City/State/ZIP > **b**

Daniel M. Cisco, Esq.  
Cisco & Thomas, LLP  
233 Wilshire Blvd., Suite 900  
Santa Monica, CA 90401

Area code and telephone number > 310-451-0647 Fax number > 310-394-4477

E-mail > dcisco@cisco.com

**CERTIFICATION** I, the undersigned, hereby certify that I am the  author  other copyright claimant  owner of exclusive rights  authorized agent of \_\_\_\_\_ **8**

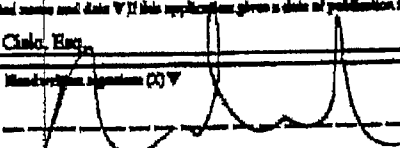
Check only one > \_\_\_\_\_

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

If authorized agent of: Hornhead Homeowners, LLC  
Name of author or other copyright claimant, or owner of exclusive rights > \_\_\_\_\_

Typed or printed name and date > If this application gives a date of publication in space 3, do not sign and submit it before that date.

Daniel M. Cisco, Esq. \_\_\_\_\_ Date > 2-6-04

Handwritten signature (CV) > 

Certification will be mailed in window envelopes to this address:	Name > Daniel M. Cisco, Esq.	<input type="checkbox"/> Complete an electronic filing <input type="checkbox"/> Don't pay registration fee, space 8 <input type="checkbox"/> Publication form <input type="checkbox"/> Manuscript form (use this to check or recheck only papers in Office of Copyright) <input type="checkbox"/> E-file form only <input type="checkbox"/> Library of Congress <input type="checkbox"/> Copyright Clearance Center, Inc. <input type="checkbox"/> Copyright Clearance Center, Inc. <input type="checkbox"/> Copyright Clearance Center, Inc.	<b>9</b>
	Address > 233 Wilshire Blvd., Suite 900		
	City > Santa Monica, CA 90401		
	State > CA		

BY FILING THIS APPLICATION, YOU REPRESENT AND WARRANT THAT YOU ARE THE AUTHOR OR OTHER COPYRIGHT CLAIMANT, OWNER OF EXCLUSIVE RIGHTS, OR AUTHORIZED AGENT OF THE AUTHOR OR OTHER COPYRIGHT CLAIMANT, OR OWNER OF EXCLUSIVE RIGHTS OF THE WORK IDENTIFIED IN THIS APPLICATION, AND THAT YOU HAVE THE RIGHT TO FILE THIS APPLICATION.