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ALEXX, INC.

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AUG 7 2009

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ISLP

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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

CV 09

3623

11
12 ALEXX, INC., a California corporation,
13 Plaintiff,

14 v.

15 CHARM ZONE INC.; ABEL TRADING
16 INC., COUNTRY HOMEMADE INC.,
17 UR ETERNITY, LOCLAR UNIQUES
18 INC., YOUNG'S TRADING, INC., ALL
19 THINGS POSH,
LAURENCE/FRIEDMAN
ENTERPRISES, LLC and DOES 1-20,
20 Inclusive

21 Defendants.

Civil Action No.:

COMPLAINT FOR

- 22 **(1) PATENT INFRINGEMENT;**
- 23 **(2) COPYRIGHT INFRINGEMENT;**
- 24 **(3) CALIFORNIA UNFAIR**
COMPETITION (BUS. & PROF. CODE
§17200);
- 25 **(4) COMMON LAW UNFAIR**
COMPETITION; AND
- 26 **(5) UNJUST ENRICHMENT**
- 27 **(6) INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

28 Plaintiff Alexx, Inc. (hereinafter "Alexx") brings this action against Charm Zone Inc., Abel Trading Inc., Country Homemade Inc., UR Eternity Fashion Jewelry (d/b/a/ Fancy4Less), LoClar Uniques, Inc., Young's Trading, Inc., All Things Posh, Laurence/Friedman Enterprises, LLC, collectively ("Defendants").

THE PARTIES

1
2 1. This case involves infringement of Plaintiff Alexx's intellectual property rights in
3 its FINDERS KEY PURSE decorative locator clips. Plaintiff Alexx invented the FINDERS KEY
4 PURSE decorative locator clips for locating easily misplaced items, such as keys, in a purse or
5 other forms of handbags and articles. Plaintiff Alexx has enjoyed tremendous commercial
6 success selling this innovative product. Defendants have illegally profited from Plaintiff Alexx's
7 innovation by selling infringing knock-offs of plaintiff Alexx's decorative locator clip.

8 2. Plaintiff Alexx is a California corporation, having its principal place of business at
9 6430 Variel #101, Woodland Hills, California, 91367.

10 3. On information and belief, defendant Charm Zone Inc. is a New York corporation,
11 with its principal place of business at 175 Allen Boulevard, Farmingdale, New York 11735.

12 4. On information and belief, defendant Abel Trading Inc. is a Georgia corporation,
13 with its principal place of business at 5231 Buford Highway NE, Atlanta Georgia, 30340.

14 5. On information and belief, defendant Country Homemade Inc. is a North Carolina
15 corporation, with its principal place of business at 1490 NC 772 Highway, Pine Hall, North
16 Carolina, 27042.

17 6. On information and belief, defendant UR Eternity Fashion Jewelry is a New York
18 corporation, with its principal place of business at 1189 Broadway, New York, New York, 10001.

19 7. On information and belief, defendant LoClar Uniques, Inc. is a Florida
20 corporation, with its principal place of business at 205 Flame Avenue, Maitland, Florida 32718.

21 8. On information and belief, defendant Young's Trading, Inc. is a Tennessee
22 Corporation, with its principal place of business at 5529 Summer Ave, Memphis, Tennessee
23 38134.

24 9. On information and belief, defendant All Things Posh is a Florida Corporation,
25 with its principal place of business at 10660 NW 18th Place, Plantation, Florida, 33322.

26 10. On information and belief, defendant Laurence/Friedman Enterprises, LLC, is an
27 Arizona Corporation, with its principal place of business at 3310 W. Bell Road, #165, Phoenix,
28 Arizona 85053.

FACTS

1
2 16. In April 2004, Sandra Stein, founder of plaintiff Alexx, invented the FINDERS
3 KEY PURSE clip, which is an innovative decorative locator clip for locating keys or other easily
4 misplaced objects. The decorative locator clip allows a person to attach such easily misplaced
5 objects to the clip and hang the clip on a purse, backpack, briefcase, or other article. From the
6 outside of the purse, backpack, briefcase, or other article, the decorative clip is visible and, on the
7 inside of the article, the attached objects are securely attached to the clip and can therefore be
8 easily located within the article.

9 17. Plaintiff Alexx has enjoyed substantial commercial success with the decorative
10 locator clip, distributing the clips through more than 1000 sales representatives throughout the
11 United States, including retail gift stores, chains, and catalogs such as Hallmark, Coach House
12 Gifts, The Mole Hole, and Casual Living. Through this network of vendors, plaintiff Alexx has
13 sold more than 2.5 million of the decorative locator clips.

14 18. The innovativeness of plaintiff Alexx's decorative locator clip has received
15 national recognition. In November 2006, reporter Mark R. Madler wrote an article in the San
16 Fernando Valley Business Journal highlighting the novelty of Alexx's decorative locator clip. In
17 February 2007, Sandra Stein, founder of plaintiff Alexx, was featured in an episode of the
18 nationally syndicated Oprah Winfrey television series showcasing unique innovations.

19 19. Plaintiff Alexx has vigorously sought to claim its valuable intellectual property
20 rights in the decorative locator clips by pursuing United States trademark, patent, and copyright
21 protection.

THE FINDER KEY PATENTS

22
23 20. Beginning in August 2004, plaintiff Alexx filed U.S. patent applications for its
24 decorative locator clip that have, to date, resulted in the issuance of one United States design
25 patent and two United States utility patents.

THE FINDER KEY PURSE COPYRIGHT

26
27 21. Since December 2004, plaintiff's decorative locator clips have been sold attached
28 to a purse-shaped backer card that provides source identifying indicia for the product. The purse-

1 shaped backer card bears the trademark FINDERS KEY PURSE in a stylized font and there is an
2 image of a purse handle on the front of the purse-shaped backer card.

3 22. On April 13, 2007, Alexx obtained Copyright registration VA0001398150 / 2007-
4 04-13 for the purse-shaped backer card.

5 **DEFENDANTS' WRONGFUL ACTS**

6 23. Alexx discovered that Defendants are selling knockoffs of plaintiff Alexx's
7 decorative locator clips throughout the United States using the Internet.

8 24. Defendants are packaging these knock-off decorative locator clips with an
9 unauthorized copy of plaintiff Alexx's artistic purse-shaped backer card. A comparison of a
10 sample of plaintiff Alexx's decorative locator clip packaged together with plaintiff Alexx's purse-
11 shaped backer to defendant Charm Zone's infringing product is illustrated in Exhibit 1.

12 25. The decorative locator clips distributed and sold by Defendants are either identical
13 to plaintiff Alexx's decorative locator clips or are modified decorative locator clips that bear
14 substantial resemblance to plaintiff Alexx's decorative locator clips and infringe Alexx's patents.

15 **FIRST CLAIM FOR RELIEF**

16 **(Infringement Of United States Design Patent No. D539526)**

17 26. Alexx incorporates by this reference the allegations of paragraphs 1 through 25, as
18 though fully set forth here.

19 27. On April 3, 2007, United States Design Patent No. D539526 ("the '526 design
20 patent"), for plaintiff's decorative locator clip was duly and legally issued in the name of Sandra
21 Stein. By virtue of proper assignment, plaintiff Alexx acquired and duly owns all right, title, and
22 interest in the '526 design patent, including the right to sue and recover for any infringement. A
23 copy of the '526 design patent is attached as Exhibit 2.

24 28. Defendants have infringed the '526 design patent by offering to sell and selling
25 decorative locator clips embodying the invention claimed in the '526 design patent within the
26 United States.

27 29. The decorative locator clips that Defendants have offered to sell or sold are either
28 identical to plaintiff's decorative locator clips or bear substantial resemblance to plaintiff's

1 decorative locator clips such that the ordinary observer would be deceived into purchasing
2 defendants' knock-off products thinking that they were Alexx's decorative locator clips.

3 30. By reason of Defendants' acts of infringement, Alexx has suffered damages the
4 full amount of which has yet to be determined.

5 31. Defendants' acts of infringement have caused irreparable harm to Alexx.

6 32. Upon information and belief, Defendants' acts were committed willfully and with
7 knowledge of plaintiff's patent rights and have resulted in substantial unjust profits and unjust
8 enrichment on the part of defendants. Although the full amount of the damages has yet to be
9 determined, Alexx reasonably estimates they exceed the jurisdictional minimum of this Court.

10 **SECOND CLAIM FOR RELIEF**

11 **(Infringement of United States Patent No. 7,308,922 B2)**

12 33. Alexx incorporates by this reference the allegations of paragraphs 1 through 32, as
13 though fully set forth here.

14 34. On December 18, 2007, United States Patent No. 7,308,922 B2 ("the '922 utility
15 patent") for plaintiff's decorative locator clip was duly and legally issued in the name of Sandra
16 Stein. By virtue of proper assignment, Alexx acquired and duly owns all right, title, and interest
17 in the '922 patent, including the right to sue and recover for any infringement. A copy of the '922
18 utility patent is attached as Exhibit 3.

19 35. Defendants have infringed the '922 utility patent by offering to sell and selling
20 decorative locator clips embodying the invention claimed in the '922 utility patent within the
21 United States. By reason of Defendants' acts of infringement, Alexx has suffered damages the
22 full amount of which has yet to be determined.

23 36. Defendants' acts of infringement have caused irreparable harm to Alexx.

24 37. Upon information and belief, Defendants' acts were committed willfully and with
25 knowledge of Alexx's patent rights and have resulted in substantial unjust profits and unjust
26 enrichment on the part of Defendants. Although the full amount of the damages has yet to be
27 determined, Alexx reasonably estimates they exceed the jurisdictional minimum of this Court.
28

THIRD CLAIM FOR RELIEF

(Infringement of United States Patent No. 7,537,032 B2)

38. Alexx incorporates by this reference the allegations of paragraphs 1 through 37, as though fully set forth here.

39. On May 26, 2009, United States Patent No. 7,537,032 B2 (“the ‘032 utility patent”), for plaintiff’s decorative locator clip was duly and legally issued in the name of Sandra Stein. By virtue of proper assignment, Alexx acquired and duly owns all right, title, and interest in the ‘922 patent, including the right to sue and recover for any infringement. A copy of the ‘032 utility patent is attached as Exhibit 4.

40. Defendants have infringed the ‘032 utility patent by offering to sell and selling decorative locator clips embodying the invention claimed in the ‘032 utility patent within the United States. By reason of defendants’ acts of infringement, plaintiff has suffered damages the full amount of which has yet to be determined.

41. Defendants’ acts of infringement have caused irreparable harm to plaintiff.

42. Upon information and belief, Defendants’ acts were committed willfully and with knowledge of Alexx’s patent rights and have resulted in substantial unjust profits and unjust enrichment on the part of Defendants. Although the full amount of the damages has yet to be determined, Alexx reasonably estimates they exceed the jurisdictional minimum of this Court.

FOURTH CLAIM FOR RELIEF

(Copyright Infringement – 17 U.S.C. § 501(A) Et Seq.)

43. Alexx incorporates by this reference the allegations of paragraphs 1 through 42, as though fully set forth here.

44. By assignment, duly recorded in the Copyright Office, Alexx, Inc. is the owner of an original work entitled Finders Key Purse backer card.

45. The Finders Key Purse backer card constitutes copyrightable subject matter under the laws of the United States.

46. Alexx applied for, obtained and is the owner of a Certificate of Registration from the Register of Copyrights for the Finders Key Purse backercard.

1 47. The Finders Key Purse backcard is the subject of a valid copyright enforceable
2 throughout the United States. A copy of the Certificate of Registration, bearing U.S. Registration
3 No. VA0001398150 ("the '150 copyright registration"), is attached hereto as Exhibit 5.

4 48. After Alexx first sold decorative locator clips affixed to the Finders Key Purse
5 backcard identified above, Defendants sold decorative locator clips affixed to backcards that
6 were substantially copied from the works that are the subject of the Federal Copyright
7 Registration asserted herein.

8 49. Defendants' activities constitute copyright infringement in violation of 17 U.S.C. §
9 501(a) to the substantial and irreparable injury of Alexx.

10 50. On information and belief, as a result of their acts, Defendants have been and will
11 continue to be unjustly enriched by profits which Defendants have made in connection with the
12 marketing and sale of its decorative locator clips affixed to infringing backcards.

13 51. On information and belief, as a result of the acts of Defendants, Alexx has suffered
14 and will continue to suffer monetary damages. Additionally, Alexx has incurred and will incur
15 costs and attorneys' fees.

16 52. On information and belief, Defendants' acts were in willful and conscious
17 disregard for Alexx's rights.

18 53. Alexx lacks an adequate remedy at law. Unless Defendants are restrained and
19 enjoined by the Court, Defendants' actions will continue to cause irreparable harm and injury to
20 Alexx.

21 **FIFTH CLAIM FOR RELIEF**

22 **(California Unfair Competition; Business and Professions Code § 17200)**

23 54. Alexx incorporates by this reference the allegations of paragraphs 1 through 53, as
24 though fully set forth here.

25 55. Defendants have violated Business & Professions Code, Section 17200 et seq., by
26 engaging in unlawful, unfair and deceptive conduct including, but not limited to, those actions
27 described above.
28

1 56. The acts and omissions of Defendants constitute unlawful, unfair and/or deceptive
2 business practices as set forth in Business & Professions Code, Section 17200 et seq.

3 57. As a proximate result of Defendants' unlawful, unfair and/or deceptive business
4 practices, Alexx has suffered an injury in fact by, among other things, incurring additional
5 business expenses in dealing with Defendants' misconduct, and investigation expenses.

6 58. Pursuant to Business & Professions Code, Section 17200 *et seq.*, Alexx is entitled
7 to equitable relief, including restitution or disgorgement of all monies Defendants have received
8 as a consequence of Defendants' unlawful, unfair and/or deceptive business practices.

9 59. Alexx is also entitled to injunctive relief restraining Defendants from continuing
10 the unlawful, unfair and/or deceptive business practices described in this Complaint. Defendants'
11 conduct in this cause of action is willful, wanton, malicious, oppressive, and in conscious
12 disregard of the rights of Alexx, justifying the imposition of punitive and exemplary damages
13 under California Civil Code § 3294.

14 **SIXTH CLAIM FOR RELIEF**

15 **(Common Law Unfair Competition)**

16 60. Alexx realleges and incorporates by reference the allegations contained in
17 paragraphs 1 through 59 above as though fully set forth here.

18 61. Defendants have engaged in unlawful, unfair and deceptive conduct including, but
19 not limited to, those actions described above.

20 62. Defendants' actions outlined above constitute common law unfair competition
21 against Alexx.

22 63. Defendants' actions have caused damage and irreparable injury to Alexx. The
23 damage to Alexx will continue unless Defendants are restrained by this court from the
24 commission of these acts. Alexx has no adequate remedy at law.

25 64. As a direct and proximate result of Defendants' misconduct, Alexx's business and
26 goodwill have been harmed in an amount to be proven at trial.

27 65. Alexx is informed and believes, and on that basis alleges, that Defendants'
28 wrongful actions were carried out willfully, maliciously, oppressively, and in conscious disregard

1 of Alexx's rights, and Alexx is therefore entitled to an award of exemplary damages to punish
2 Defendants' wrongful conduct and to make an example of them.

3 **SEVENTH CLAIM FOR RELIEF**

4 **(Unjust Enrichment)**

5 66. Alexx realleges and incorporates by reference the allegations contained in
6 paragraphs 1 through 65 above as though fully set forth here.

7 67. By engaging in the acts described above, Defendants have and continue to benefit
8 from their wrongdoing, and have been unjustly enriched by reaping the benefits of their unlawful
9 activities to the damage and irreparable harm of Alexx.

10 68. Defendants have no right to any resulting from their infringement of Alexx's
11 intellectual property and have been unjustly enriched through their wrongful conduct.

12 69. As a direct and proximate result of Defendants' misconduct, Alexx has been
13 damaged in an amount to be proven at trial, but in excess of \$3,000,000.

14 70. Defendants' unjust enrichment was willful, malicious, oppressive and in conscious
15 disregard of Alexx's rights. Alexx therefore is entitled to an award of exemplary damages to
16 punish Defendants' wrongful conduct and to make an example of them.

17 **EIGHTH CLAIM FOR RELIEF**

18 **(Injunctive Relief)**

19 71. Alexx realleges and incorporates by reference the allegations contained in
20 paragraphs 1 through 70 above as though fully set forth here.

21 72. Defendants are intentionally causing harm to Alexx.

22 73. Alexx does not have an adequate remedy at law, and will suffer irreparable harm if
23 Defendants' actions are not enjoined.

24 74. Alexx is entitled to preliminary and permanent injunctive relief such that
25 Defendants, their officers, directors, agents, servants, employees, attorneys, confederates, and all
26 persons and/or entities acting for, with, by, through, or in concert with them or any of them are
27
28

- 1 a) Required to destroy any and all products in their possession, custody,
2 and/or control that infringe the '526 design patent, the '922 utility patent, the '032
3 utility patent, or the '150 copyright registration;
- 4 b) Required to account for their profits by reason of their unlawful acts of
5 patent infringement, copyright infringement, unfair competition, and unjust
6 enrichment;
- 7 c) Enjoined from infringing the '526 design patent, the '922 utility patent, the
8 '032 utility patent, and the '150 copyright registration either directly or
9 contributorily;
- 10 d) Enjoined from continuing to distribute, reproduce, modify, or otherwise
11 use the purse-shaped backer card;
- 12 e) Enjoined from using the following terms in any paid Internet search engine
13 program, such as, but not limited to Google Adwords: "Alexx", "KeyPurse",
14 "Key Purse", "Keeper" or "Keepers"; and
- 15 f) Enjoined from using the expressions "Alexx", "KeyPurse", "Key Purse",
16 "Keeper" or "Keepers" in any hidden links or hidden text in their web pages, or in
17 the meta description tag for each of their web pages.

18 WHEREFORE, Alexx prays for judgment as more specifically set forth below.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Alexx respectfully prays that judgment be entered in its favor and against
21 all defendants, jointly and severally, as follows:

22 (1) For compensatory damages in excess of \$3,000,000 or as proven at trial. With respect
23 to its first through third claims for relief, patent infringement, Alexx seeks a judgment in the
24 amount of three times its damages, or an amount that the Court deems just. With respect to its
25 fourth claim for relief, copyright infringement, Alexx seeks the greater of: (a) monetary damages
26 sustained by Alexx and all profits realized by Defendants as a result of Defendants' unauthorized
27 use of the '150 copyright registration under 17 U.S.C. § 504(b) in an amount to be proven at trial
28 or (b) statutory damages under 17 U.S.C. § 504(c), enhanced under 17 U.S.C. § 504(c)(2) by

1 Defendants' willful and deliberate activities to an amount of \$150,000 per copyrighted work
2 infringed by Defendants.

3 (2) For restitutionary relief and disgorgement of the amount by which Defendants have
4 been unjustly enriched, in an amount in excess of \$3,000,000 or as proven at trial.

5 (3) For punitive damages according to proof.

6 (4) For costs of suit.

7 (5) For reasonable attorney's fees according to statute.

8 (6) For pre-judgment and post-judgment interest.

9 (7) For preliminary and permanent injunctive relief such that Defendants, their officers,
10 directors, agents, servants, employees, attorneys, confederates, and all persons and/or entities
11 acting for, with, by, through, or in concert with them or any of them are

12 a) Required to destroy any and all products in their possession, custody,
13 and/or control that infringe the '526 design patent, the '922 utility patent, the '032
14 utility patent, or the '150 copyright registration;

15 b) Required to account for their profits by reason of their unlawful acts of
16 patent infringement, copyright infringement, unfair competition, and unjust
17 enrichment;

18 c) Enjoined from infringing the '526 design patent, the '922 utility patent, the
19 '032 utility patent, and the '150 copyright registration either directly or
20 contributorily;

21 d) Enjoined from continuing to distribute, reproduce, modify, or otherwise
22 use the purse-shaped backer card;

23 e) Enjoined from using the following terms in any paid Internet search engine
24 program, such as, but not limited to Google Adwords: "Alexx", "KeyPurse",
25 "Key Purse", "Keeper" or "Keepers"; and

26 f) Enjoined from using the expressions "Alexx", "KeyPurse", "Key Purse",
27 "Keeper" or "Keepers" in any hidden links or hidden text in their web pages, or in
28 the meta description tag for each of their web pages.

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(8) For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, demand is hereby made for trial by jury on all issues triable to a jury.

Dated: August 7, 2009

RODERICK A. McLEOD
BRETT A. LOVEJOY
JONES DAY

By:  _____
Brett A. Lovejoy

Attorneys for Plaintiff Alexx, Inc.