

Hon. Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LOOPS LLC, a Delaware limited liability
company, LOOPS FLEXBRUSH LLC, a
Delaware limited liability company,

Plaintiffs,

vs.

PHOENIX TRADING, INC., dba
AMERCARE PRODUCTS, INC., a
Washington corporation; WENDY
HEMMING, an individual; JEFFREY R.
HEMMING, an individual; H&L
INDUSTRIAL, a business of unknown
formation; and DOES 1 through 50, inclusive,

Defendants.

NO. CV08 – 1064 RSM

LOOPS LLC AND LOOPS
FLEXBRUSH, LLC'S FIRST
AMENDED COMPLAINT FOR
PATENT INFRINGEMENT;
TRADEMARK AND TRADE DRESS
INFRINGEMENT; UNFAIR
COMPETITION; FRAUD; INJUNCTIVE
RELIEF AND DAMAGES

DEMAND FOR JURY TRIAL

COME NOW Plaintiffs LOOPS LLC and LOOPS FLEXBRUSH LLC to file their First Amended Complaint, pursuant to Fed. R. Civ. P. 15(a)(1), to correct clerical errors in Paragraphs 68, 69 and 81 of their original Complaint. Plaintiffs may file the First Amended Complaint as a matter of right, as the Defendants in this action have yet to answer.

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ALLEGATIONS REGARDING PARTIES

1. Plaintiff LOOPS, LLC is a Delaware limited liability company with its principal place of business in Ferndale, Washington.

2. Plaintiff LOOPS FLEXBRUSH, LLC is a Delaware limited liability company with its principal place of business in Ferndale, Washington.

3. STEVEN L. KAYSER is an individual residing in Ferndale, Washington and also is the president, the managing member and majority owner of LOOPS, LLC and LOOPS FLEXBRUSH, LLC.

4. Defendant PHOENIX TRADING INC. dba AMERCARE PRODUCTS, INC., upon information and belief, is a Washington corporation doing business within and with its principal place of business in Seattle, Washington (hereinafter "AMERCARE").

5. Defendant WENDY HEMMING, upon information and belief, is an individual residing in Seattle, Washington and also the president, a shareholder, and the registered agent of Defendant PHOENIX TRADING INC.

6. Defendant JEFFREY R. HEMMING, upon information and belief, is an individual residing in Seattle, Washington and also the vice-president, secretary, a director and shareholder of PHOENIX TRADING, INC.

7. Defendant H&L INDUSTRIAL, upon information and belief, is a business of unknown origin, doing business within and with its principal place of business in Seattle, Washington, owned and operated by Defendant PHOENIX TRADING INC. dba AMERCARE PRODUCTS. The U.S. agent for H&L INDUSTRIAL is Defendant WENDY HEMMING.

8. The true names, conduct and capacities of the defendants sued herein as DOES 1 through 50 are presently unknown and therefore are sued by such fictitious names. Plaintiff will include the DOE defendants' true names and capacities when ascertained. On information and belief, each fictitiously named defendant is responsible in some manner, including, *inter*

1 *alia*, as partners or affiliated entities, for the conduct alleged herein and for the damages
2 suffered by plaintiffs.

3 9. On information and belief and based thereon, at all times mentioned in all the
4 causes of action alleged herein, each and every defendant was the agent, representative,
5 affiliate, controlling party, or employee of each and every other defendant, and in doing the
6 things alleged in the causes of action stated herein, each and every defendant was acting within
7 the course and scope of such agency, representation, affiliation, control or employment and was
8 acting with the consent, permission, or authorization of the other defendants.

9 JURISDICTION AND VENUE

10 10. This Court has jurisdiction pursuant to both 28 U.S.C. §1338(a) and 28 U.S.C.
11 §1331 because this is an action arising under the patent laws of the United States and under
12 section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), as this is an action for trade dress and
13 trademark infringement. This Court also has jurisdiction of the action under 28 U.S.C. § 1332
14 as there is diversity of citizenship between the parties, and the amount in controversy exceeds
15 the sum of seventy five thousand dollars (\$75,000.00).

16 11. The United States District Court for the Western District of Washington is the
17 appropriate venue for this action in accordance with 28 U.S.C. §1391 and §1400(b), among
18 others, as Defendants are doing business and have committed acts of infringement within the
19 Western District of Washington.

20 COMMON FACTUAL ALLEGATIONS

21 12. Plaintiff LOOPS LLC designs, manufactures, markets and sells a variety of oral
22 hygiene products principally designed for use by prison populations in correctional facilities,
23 including Floss Loops Safety Dental Floss, U.S. Patent No. 6,371,133 B1. Floss Loops are
24 breakable, making the product less dangerous for use by prisoners. The product was designed
25 to prevent prison inmates from harming other inmates and correctional officers. Regular string
and nylon dental floss is a major weapon in the hands of prison inmates and is generally banned

1 for inmate usage as inmates can use regular dental floss as a hacksaw-type device and to use as
2 rope material to escape and also use as a garroting-type device to strangle other inmates and
3 correctional officers.

4 13. Plaintiff LOOPS LLC's Floss Loops Safety Dental Floss was designed to be
5 used for proper oral care by inmates and to eliminate safety concerns for its usage as a tooth
6 flossing device by inmates. This product is unique and widely used by correctional facilities
7 throughout the U.S. and is preferred for inmate use over regular string and nylon dental floss of
8 the type sold by AMERCARE.

9 14. Plaintiff LOOPS LLC is the owner and assignee of several patents and
10 trademarks associated with the Floss Loops and Loops Flexbrush and related products.

11 15. Plaintiff LOOPS FLEXBRUSH, LLC also designs, manufactures and sells a
12 variety of oral hygiene products principally designed for use in correctional facilities, including
13 the Loops Flexbrush Safety Toothbrush and other products related to its toothbrush including
14 flexible toothbrush holders. The Loops Flexbrush toothbrush, U.S. Patent No. 7,334,286 B2, is
15 unique in that it was designed with a flexible handle and flexible materials and other features to
16 be used in the prison environment for the safety of prison inmates and correctional officers.
17 The Loops Flexbrush was also designed to enable prison inmates to maintain proper oral health
18 care while incarcerated, without being used as a weapon. Regular toothbrushes in the
19 correctional environment are a major weapon in the hands of prison inmates as they can be
20 sharpened into stabbing and slashing devices. Regular toothbrush holders are likewise weapons
21 for the same reason.

22 16. Plaintiff's Loops Flexbrush and related flexible toothbrush holders eliminate
23 these safety concerns and are used by many U.S. correctional facilities as a substitute for
24 regular toothbrushes and other related products such as those sold by AMERCARE. For
25 example, the New York City Department of Corrections (hereafter "NYC-DOC") purchased
the Loops Flexbrush toothbrushes as a substitute and replacement for the regular toothbrushes

1 sold by AMERCARE who previously had a contract with the New York City Department of
2 Citywide Administrative Services (hereafter "NYC-DCAS") for the sale of regular
3 toothbrushes.

4 17. STEVEN L. KAYSER ("KAYSER") is the inventor of the Loops Flexbrush as
5 well as other inventions including the flexible toothbrush holder. KAYSER assigned the
6 ownership of these inventions to LOOPS LLC.

7 18. On April 16, 2002, the U.S. Patent & Trademark Office issued Patent No.
8 6,371,133 B1 to LOOPS LLC titled "VARIABLE GAUGE TOOTH-FLOSSING LOOPS" for
9 the Floss Loops invention.

10 19. On August 18, 2004, LOOPS LLC submitted an application for a Utility Patent
11 for a flexible handle toothbrush to the U.S. Patent & Trademark Office, Application No.
12 10/920,822, titled "TOOTHBRUSH AND METHODS OF MAKING AND USING SAME."

13 20. On August 18, 2004, LOOPS LLC submitted an application for a trademark for
14 the LOOPS FLEXBRUSH to the U.S. Patent & Trademark Office, Application No.
15 76/607,905.

16 21. On December 29, 2004, STEVEN L. KAYSER assigned the Patent Application
17 and Invention for "TOOTHBRUSH AND METHODS OF MAKING AND USING SAME" to
18 LOOPS LLC.

19 22. On January 3, 2005, the U.S. Patent & Trademark Office issued a Notice of
20 Recordation of Assignment evidencing KAYSER's assignment to LOOPS LLC.

21 23. On October 4, 2005, the trademark "LOOPS FLEXBRUSH" was first published
22 in the Official Gazette by the U.S. Patent & Trademark Office.

23 24. On November 23, 2005, LOOPS LLC engaged in the first use in commerce of
24 the trademark "LOOPS FLEXBRUSH" utilizing the trademark on the product, packaging,
25 marketing, correspondence, ordering and sales documents.

1 25. On November 30, 2005, LOOPS LLC and LOOPS FLEXBRUSH, LLC
2 engaged in the first use in commerce of the trademark "DESIGNED FOR PRISON SAFETY,"
3 utilizing the trademark on the packaging, marketing, correspondence, ordering and sales
4 documents for the Floss Loops and Loops Flexbrush products.

5 26. On January 13, 2006, LOOPS LLC received a call from WENDY HEMMING
6 with PHOENIX TRADING, INC. dba AMERCARE PRODUCTS, INC. HEMMING
7 represented that she owned AMERCARE PRODUCTS, INC. and provided products to
8 correctional facilities. HEMMING requested price quotations for products sold by LOOPS
9 LLC, namely Floss Loops Safety Dental Floss, U.S. Patent No. 6,371,133 B1, which she
10 represented was for one of AMERCARE's customers. HEMMING also requested samples of
11 all products sold by LOOPS LLC and LOOPS FLEXBRUSH, LLC be sent to her attention at
12 AMERCARE's Woodinville, Washington address, including the Floss Loops Safety Dental
13 Floss and Loops Flexbrush toothbrushes.

14 27. On January 13, 2006, at the request of HEMMING, KAYSER shipped to
15 HEMMING samples of all products sold by LOOPS LLC and LOOPS FLEXBRUSH LLC
16 including Floss Loops Safety Dental Floss and Loops Flexbrush Toothbrushes in both 3" and
17 4.25" sizes. The Loops Flexbrush Toothbrushes were shipped in original factory packaging
18 which included "patents pending" and "LOOPS FLEXBRUSH" marks on both the
19 toothbrushes and packaging. The Floss Loops Safety Dental Floss was shipped in original
20 packaging which included thereon the U.S. Patent No. 6,371,133 B1 and the wording "other
21 patents pending."

22 28. On January 26, 2006, HEMMING contacted LOOPS LLC to order Floss Loops
23 Safety Dental Floss for AMERCARE. From January 26, 2006 through January 23, 2007,
24 HEMMING ordered on six (6) separate occasions Floss Loops Safety Dental Floss. With each
25 order of Floss Loops product, LOOPS LLC provided factory packaging labeled "U.S. Patent
No. 6,371,133 B1, Other Patents Pending." Also, with each order of Floss Loops product

1 shipped to AMERCARE, there were included marketing materials, color photographs and
2 samples of Loops Flexbrush toothbrushes. Further, on December 7, 2006, the Flexible
3 Toothbrush Holder was first used in commerce and AMERCARE was also provided samples,
4 marketing materials and color photographs of the product with their Floss Loops orders.

5 29. On February 23, 2006, the U.S. Patent & Trademark Office first published the
6 Utility Patent application for flexible handle toothbrush Patent Application No. 10/902,822,
7 entitled "TOOTHBRUSH AND METHODS OF MAKING AND USING SAME" in the
8 Official Gazette.

9 30. On March 3, 2006, LOOPS FLEXBRUSH, LLC engaged in the first use of the
10 LOOPS MINI-FLEXBRUSH trademark for its 3" size Loops Flexbrush toothbrush.

11 31. On August 9, 2006 LOOPS FLEXBRUSH LLC began doing business with the
12 NYC-DOC. That agency began purchasing Plaintiff's Loops Flexbrush toothbrushes for use by
13 its inmates on an invitation to bid basis and issued orders thereon to Plaintiff approximately
14 every two to three months. On August 9, 2006, the NYC-DOC purchased 96,000 Loops
15 Flexbrush toothbrushes. Between August 9, 2006 and June 6, 2007, the NYC-DOC purchased
16 329,376 Loops Flexbrush toothbrushes.

17 32. On August 15, 2006, LOOPS FLEXBRUSH, LLC engaged in the first use in
18 commerce of the trademark LOOPS MINI-FLEXBRUSH for the 3" size Loops Flexbrush,
19 utilizing the trademark on the packaging, marketing, ordering and sales documents.

20 33. On August 22, 2006, LOOPS LLC submitted an application for a trademark for
21 the LOOPS FLEXBRUSH TOOTHBRUSH HOLDER to the U.S. Patent & Trademark Office,
22 Serial No. 78957851.

23 34. On September 19, 2006, the U.S. Patent & Trademark Office issued a Certificate
24 of Registration for the trademark "LOOPS FLEXBRUSH" in the Principal Register,
25 Registration No. 3.146,009.

1 35. On September 26, 2006, LOOPS LLC submitted an application for a trademark
2 for the LOOPS MINI-FLEXBRUSH to the U.S. Patent & Trademark Office, Application No.
3 77-007,857.

4 36. On November 28, 2006, the NYC-DOC issued its second purchase order to
5 LOOPS FLEXBRUSH LLC for 87,264 of the Loops Flexbrush toothbrushes.

6 37. On January 12, 2007, LOOPS LLC submitted an application for a Utility Patent
7 for a flexible toothbrush holder to the U.S. Patent & Trademark Office, Application No.
8 11,653,153, titled "PACKAGED TOOTHBRUSH AND TOOTHBRUSH CONTAINER AND
9 METHODS OF MAKING SAME."

10 38. On January 23, 2007, HEMMING contacted LOOPS LLC to place what turned
11 out to be AMERCARE's last order for Floss Loops Safety Dental Floss. HEMMING indicated
12 her interest in selling both the Floss Loops Safety Dental Floss and Loops Flexbrush
13 toothbrushes. HEMMING requested that LOOPS LLC and LOOPS FLEXBRUSH, LLC give
14 AMERCARE any and all contracts LOOPS LLC and LOOPS FLEXBRUSH, LLC had for the
15 sale of these products to allow AMERCARE to manage these contracts with LOOPS LLC and
16 LOOPS FLEXBRUSH, LLC supplying the product to AMERCARE. On behalf of LOOPS
17 LLC and LOOPS FLEXBRUSH, LLC, KAYSER refused HEMMING's request.

18 39. On January 24, 2007, LOOPS LLC submitted an application for the trademark
19 "DESIGNED FOR PRISON SAFETY" to the U.S. Patent & Trademark Office, Serial No. 77-
20 090,434.

21 40. On January 24, 2007, LOOPS FLEXBRUSH LLC received a call from Michelle
22 McCoy from the NYC-DCAS requesting the material composition of the flexible handle Loops
23 Flexbrush. LOOPS FLEXBRUSH, LLC provided NYC-DCAS with product specification
24 sheets describing the material composition for the Loops Flexbrush.

25 41. On January 26, 2007, LOOPS LLC personally delivered what turned out to be
the last order of Floss Loops Safety Dental Floss to AMERCARE. KAYSER met with

1 HEMMING personally. HEMMING asked for additional samples of Loops Flexbrushes in 3"
2 and 4.25" sizes and Flexible Toothbrush Holders. HEMMING again requested that LOOPS
3 LLC and LOOPS FLEXBRUSH, LLC give AMERCARE any and all contracts LOOPS LLC
4 and LOPS FLEXBRUSH, LLC had for the sale of these products to allow AMERCARE to
5 manage these contracts with LOOPS LLC and LOOPS FLEXBRUSH, LLC supplying the
6 product to AMERCARE. HEMMING specifically requested that LOOPS FLEXBRUSH, LLC
7 give AMERCARE the New York City contracts for the sale of the Loops Flexbrushes.
8 KAYSER, on behalf of LOOPS FLEXBRUSH, LLC again refused HEMMING's request.

9 42. On January 30, 2007, Michelle McCoy of the NYC-DCAS e-mailed a request to
10 LOOPS FLEXBRUSH, LLC for samples of the Loops Flexbrush being purchased at that time
11 by the NYC-DOC. LOOPS FLEXBRUSH, LLC sent ten samples of the 4.25" Loops
12 Flexbrush to NYC-DCAS that same day. The ten samples were shipped in original packaging
13 with the Loops Flexbrush trademark appearing on the back of each toothbrush and on the
14 original packaging along with the wording "patent pending" on each package. The trademark
15 "Designed For Prison Safety" also appeared on each original package.

16 43. On February 7, 2007, LOOPS FLEXBRUSH, LLC sent AMERCARE, at the
17 request of HEMMING, one case of 48 pieces of Loops Flexbrush samples of both 3" and 4.25"
18 sizes and a partial case of Loops Flexbrush Toothbrush Holders with price quotations. All
19 samples of the Loops Flexbrush toothbrushes were sent in original packaging bearing the
20 Loops Flexbrush trademark, the "Designed For Prison Safety" trademark and other trademarks
21 in addition to "patent pending" on each package. The Loops Flexbrush trademark appeared in
22 raised lettering on the back of each toothbrush. The Loops Flexible Toothbrush Holders
23 packaging had the wording "Patent Pending" and the "Loops Flexible Toothbrush Holder"
24 trademark thereon. The 3" Loops Flexbrush toothbrushes had the "Loops Mini-Flexbrush"
25 trademark on the original packaging and the "Loops Flexbrush" trademark on the back of each
toothbrush.

1 44. On March 8, 2007, the NYC-DOC issued its third purchase order to LOOPS
2 FLEXBRUSH, LLC for 24,000 of its Loops Flexbrush toothbrushes.

3 45. On March 21, 2007, the trademark "LOOPS FLEXBRUSH TOOTHBRUSH
4 HOLDER" was first published in the Official Gazette by the U.S. Patent & Trademark Office
5 as Serial No. 78/957,851.

6 46. On March 30, 2007, LOOPS FLEXBRUSH, LLC received a call from the NYC-
7 DCAS requesting additional information regarding the material composition of the Loops
8 Flexbrush. The NYC-DCAS advised LOOPS FLEXBRUSH, LLC they were preparing to put
9 the contract for Loops Flexbrush toothbrush out to bid and they had Loops Flexbrush samples
10 to compare with samples submitted by bidders.

11 47. On April 4, 2007, the NYC-DOC issued its fourth purchase order to LOOPS
12 FLEXBRUSH, LLC for 24,480 of the Loops Flexbrush toothbrushes.

13 48. On April 12, 2007, LOOPS FLEXBRUSH, LLC received an Invitation to Bid
14 from NYC-DCAS. Item 2 of the Invitation to Bid provided the product specifications of the
15 Loops Flexbrush which LOOPS FLEXBRUSH, LLC had previously sent to the NYC-DCAS at
16 the request of the NYC-DCAS. The Invitation to Bid was for a 39 month contract from August
17 30, 2007 through November 29, 2010. The Invitation to Bid referred to the manufacturer as
18 "Loops Flexbrush or Equal" and the brand as "Loops Flexbrush #FBM02 or equal." The
19 Invitation to Bid required a manufacturer's authorization.

20 49. On April 23, 2007, HEMMING contacted LOOPS FLEXBRUSH, LLC.
21 HEMMING represented that NYC-DCAS used AMERCARE for all toothbrush orders in the
22 past until LOOPS FLEXBRUSH, LLC started to supply the Loops Flexbrushes. HEMMING
23 communicated her displeasure with LOOPS FLEXBRUSH, LLC for not giving her the NYC-
24 DCAS contract.

25 50. On information and belief, in the last week of April 2007, AMERCARE
submitted four (4) samples of their counterfeit and infringing Loops Flexbrush toothbrush to

1 NYC-DCAS for the Invitation to Bid for the Loops Flexbrush. AMERCARE bid the Loops
2 Flexbrush toothbrush contract at a price of \$7.32 per dozen toothbrushes, which was 42 percent
3 of the price submitted by LOOPS FLEXBRUSH, LLC with its bid. The contract information
4 was withheld from LOOPS FLEXBRUSH, LLC and LOOPS FLEXBRUSH, LLC did not
5 discover this information until July 25, 2007 when the documents were produced to LOOPS
6 FLEXBRUSH, LLC as a result of a FOIL request for public documents.

7 51. On May 17, 2007, NYC-DCAS issued a Notice of Award for Invitation to Bid
8 #700788 to AMERCARE PRODUCTS, INC. for the Loops Flexbrush Toothbrush for the time
9 period of August 30, 2007 through November 29, 2010. This information was withheld from
10 LOOPS FLEXBRUSH, LLC and LOOPS FLEXBRUSH, LLC did not discover this
11 information until July 25, 2007, when the documents were produced to LOOPS FLEXBRUSH,
12 LLC as a result of a FOIL request for public documents. The FOIL document production
13 indicating the award to AMERCARE did not include a manufacturer's authorization from
14 LOOPS FLEXBRUSH, LLC.

15 52. On May 31, 2007, the U.S. Patent & Trademark Office published the LOOPS
16 FLEXIBLE TOOTHBRUSH HOLDER Utility Patent Application No. 11/653,153 in the
17 Official Gazette as Publication No. US 2007/0119736 A1.

18 53. On June 6, 2007, LOOPS FLEXBRUSH, LLC received its fifth and last order
19 for its Loops Flexbrush toothbrushes from the NYC-DOC for 97,632 toothbrushes. From
20 August 9, 2006 through June 6, 2007, LOOPS FLEXBRUSH, LLC received orders from the
21 NYC-DOC for 329,376 Loops Flexbrush toothbrushes.

22 54. On June 26, 2007, the U.S. Patent & Trademark Office recorded the LOOPS
23 MINI-FLEXBRUSH trademark in the Principal Register as Registration No. 3,254,567.

24 55. On July 10, 2007, and unbeknownst to LOOPS FLEXBRUSH, LLC, NYC-
25 DCAS initiated an order with AMERCARE for 191,808 Loops Flexbrush counterfeit and
infringing toothbrushes pursuant to the contract awarded to AMERCARE. This information

1 was withheld from LOOPS FLEXBRUSH, LLC and LOOPS FLEXBRUSH, LLC only
2 discovered this information for the first time as a result of a FOIL document request from
3 NYC-DCAS which were produced February 21, 2008. The order by NYC-DCAS was placed
4 well before the contract date of August 30, 2007. AMERCARE shipped 182,304 of its
5 counterfeit and infringing toothbrushes to NYC-DOC on December 12, 2007 and 9,504 of its
6 counterfeit and infringing toothbrushes to NYC-DOC on February 5, 2008, pursuant to
7 purchase orders released by NYC-DOC to AMERCARE based on the July 10, 2007 purchase
8 order. The reason for the delay in the NYC-DOC releasing its July 10, 2007 purchase order has
9 been withheld from LOOPS FLEXBRUSH, LLC.

10 56. On July 25, 2007, LOOPS FLEXBRUSH, LLC discovered for the first time that
11 the Invitation to Bid for the Loops Flexbrush was awarded to AMERCARE. LOOPS
12 FLEXBRUSH, LLC learned this information only when documents were produced to LOOPS
13 FLEXBRUSH, LLC as a result of a FOIL request for public documents. The FOIL document
14 production indicating the award to AMERCARE did not include a manufacturer's authorization
15 from LOOPS FLEXBRUSH, LLC.

16 57. On August 15, 2007, KAYSER traveled to New York City on behalf of LOOPS
17 FLEXBRUSH, LLC to meet with representatives of NYC-DCAS and review documents and
18 samples to be produced pursuant to additional FOIL requests for public records by LOOPS
19 FLEXBRUSH, LLC. KAYSER was shown four (4) toothbrush samples submitted by
20 AMERCARE in support of their winning Invitation to Bid. The four (4) toothbrush samples
21 were identical (which the Invitation to Bid required) to the Loops Flexbrush toothbrushes.
22 KAYSER informed representatives of NYC-DCAS that LOOPS FLEXBRUSH, LLC was the
23 sole source of the trademarked and patent pending Loops Flexbrush toothbrushes and that
24 LOOPS FLEXBRUSH, LLC had not authorized anyone to manufacture the products, including
25 but not limited to, AMERCARE.

1 58. On September 4, 2007, LOOPS LLC filed Loops Trade Dress Trademarks with
 2 the U.S. Patent & Trademark Office. The marks referred to and identified the nonfunctional
 3 total image, design and appearance of the Loops Flexbrush flexible handle toothbrush product
 4 as a source identifying role and to prevent consumer confusion of any other product. One
 5 application was assigned Serial No. 77271421 for that mark for three symmetrical dot pattern
 6 reliefs depicted on the toothbrush. The second application was assigned Serial No. 77271405
 7 for that mark for the design of the three-dimensional overall appearance of a toothbrush. The
 8 two applications for the trade dress trademarks were first published on March 4, 2008, in the
 9 Official Gazette of the U.S. Patent & Trademark Office.

10 59. On September 27, 2007, and unbeknownst to LOOPS FLEXBRUSH, LLC,
 11 NYC-DCAS placed an additional order with AMERCARE for 34,080 Loops Flexbrush
 12 counterfeit and infringing toothbrushes pursuant to the contract awarded to AMERCARE. This
 13 information was withheld from LOOPS FLEXBRUSH, LLC and LOOPS FLEXBRUSH, LLC
 14 only discovered this information for the first time as a result of a FOIL document request from
 15 NYC-DCAS which were produced February 21, 2008.

16 60. On November 17, 2007, LOOPS LLC and LOOPS FLEXBRUSH, LLC
 17 personally served HEMMING with LOOPS LLC's Utility Patent application for a flexible
 18 handle toothbrush to the U.S. Patent & Trademark Office, Application No. 10/920,822, titled
 19 "TOOTHBRUSH AND METHODS OF MAKING AND USING SAME."

20 61. On December 12, 2007, AMERCARE shipped 182,304 of its counterfeit and
 21 infringing toothbrushes to the NYC-DOC pursuant to the July 10, 2007 purchase order. This
 22 information was withheld from LOOPS FLEXBRUSH, LLC and LOOPS FLEXBRUSH, LLC
 23 only discovered this information for the first time as a result of a FOIL document request from
 24 NYC-DOC which were produced June 5, 2008.

25 62. On February 5, 2008, AMERCARE shipped 9,504 of its counterfeit and
 infringing toothbrushes to the NYC-DOC pursuant to the July 10, 2007 purchase order. This

1 information was withheld from LOOPS FLEXBRUSH, LLC and LOOPS FLEXBRUSH, LLC
2 only discovered this information for the first time as a result of a FOIL document request from
3 NYC-DOC which were produced June 5, 2008.

4 63. On February 12, 2008, the U.S. Patent & Trademark Office recorded the
5 LOOPS FLEXIBLE TOOTHBRUSH HOLDER trademark in the Principal Register as
6 Registration No. 3,383,396.

7 64. On February 26, 2008, the U.S. Patent & Trademark Office granted LOOPS
8 LLC's Utility Patent application for a flexible handle toothbrush, Application No. 10/920,822,
9 titled "TOOTHBRUSH AND METHODS OF MAKING AND USING SAME." The U.S.
10 Patent & Trademark Office issued United States Patent No. 7,334,286 for Toothbrush and
11 Methods of Making and Using Same (hereinafter '286 Patent).

12 65. On March 4, 2008, the U.S. Patent & Trademark Office published the
13 DESIGNED FOR PRISON SAFETY trademark Application Serial No. 77-090,434.

14 66. On March 4, 2008, the U.S. Patent & Trademark Office published the two
15 Loops Trade Dress Trademark Applications for Trademark Serial Nos. 77/271,405 and
16 77/271,421 for the marks "Loops Flexbrush Trade Dress" and "Loops Flexbrush Relief Pattern
Trade Dress" respectively in the Official Gazette.

17 67. On May 6, 2008, the U.S. Patent & Trademark Office recorded the DESIGNED
18 FOR PRISON SAFETY trademark in the Supplemental Register as Registration No. 3,424,838.

19 68. On May 20, 2008, the U.S. Patent & Trademark Office recorded the LOOPS
20 FLEXBRUSH Trade Dress Trademark for the three symmetrical dot pattern reliefs depicted on
21 the toothbrush for Serial No. 77271421 in the Principal Register as Registration No. 3,430,305.

22 69. On May 20, 2008, the U.S. Patent & Trademark Office recorded the LOOPS
23 FLEXBRUSH Trade Dress Trademark for the design consisting of a three dimensional overall
24 appearance of a toothbrush for Serial No. 77271405 in the Principal Register as Registration
25 No. 3,430,304.

70. On June 8, 2008, LOOPS LLC and LOOPS FLEXBRUSH, LLC personally served JEFFREY R. HEMMING of AMERCARE with LOOPS LLC Utility Patent No. US 7,334,286 B2 recorded by the U.S. Patent & Trademark Office on February 26, 2008 for the Loops Flexbrush "TOOTHBRUSH AND METHODS OF MAKING SAME." JEFFREY R. HEMMING was also personally served with LOOPS, LLC Trade Dress Trademark, Serial No. 77271421 recorded in the Principal Register May 20, 2008, and the LOOPS LLC trademark "LOOPS FLEXBRUSH" registered in the Principal Register on September 19, 2006, and the LOOPS LLC Utility Patent No. US 6,371,133 B1 recorded by the U.S. Patent & Trademark Office on April 16, 2002 for the Floss Loops Dental Floss.

FIRST CLAIM FOR RELIEF

(Patent Infringement against All Defendants of '286 Patent)

71. Plaintiffs re-allege and incorporate the allegations of Paragraphs 1 through 70 above as though fully set forth herein.

72. On February 26, 2008, United States Patent No. 7,334,286 for TOOTHBRUSH AND METHODS OF MAKING AND USING SAME (hereinafter '286 Patent) was duly and legally issued to Plaintiff.

73. Plaintiff is informed and believes and based thereon alleges that since the issue date of the '286 Patent, AMERCARE has infringed and is now infringing Claims 1-32 of the '286 Patent by using, offering for sale and selling the AMERCARE Toothbrush embodying the invention described and claimed in the '286 Patent.

74. The infringement was, and continues to be, willful.

75. Plaintiff has complied with 35 U.S.C. §287 in providing notice to AMERCARE.

76. Plaintiff is entitled to recover damages as provided by 35 U.S.C. §284 and reasonable attorneys' fees as provided by 35 U.S.C. §285.

SECOND CLAIM FOR RELIEF

(Trademark and Trade Dress Trademark Infringement against All Defendants)

77. Plaintiffs re-allege and incorporate the allegations of Paragraphs 1 through 76 above as though fully set forth herein.

78. At all material times herein, Plaintiffs have been and are engaged in the design, manufacture, marketing and sale of a variety of oral hygiene products designed for use in prisons, including toothbrushes, toothbrush holders, and dental floss under trademark and trade dress trademarks.

79. Plaintiff first adopted and used the Loops Flexbrush trademarks and trade dress trademarks in commerce on November 23, 2005.

80. Plaintiff submitted its application for trademark registration for "LOOPS FLEXBRUSH" on August 18, 2004, to the U.S. Patent & Trademark Office. The application for the trademark was first published on October 4, 2005, in the Official Gazette of the U.S. Patent & Trademark Office. On September 19, 2006 the U.S. Patent & Trademark Office issued a Certificate of Registration No. 3,146,009 for the trademark LOOPS FLEXBRUSH. Plaintiff owns the registration, which is and continues to be in full force and effect. Plaintiff initially displayed Loops Flexbrush TM and then displayed Loops Flexbrush R with its trademark on its products.

81. Plaintiff submitted its two applications for trade dress trademark registration on September 4, 2007 with the U.S. Patent & Trademark Office. The applications for the trade dress trademarks were first published on March 4, 2008, in the Official Gazette of the U.S. Patent & Trademark Office. On May 20, 2008 the U.S. Patent & Trademark Office issued Certificate of Registration Nos. 3,430,304 and 3,430,305 for the two trade dress trademarks. Plaintiff owns the registration, which is and continues to be in full force and effect.

1 82. Plaintiff has used the trademark and trade dress trademarks continuously since
2 November 23, 2005 to identify Plaintiff's toothbrushes. In this connection, Plaintiff uses its
3 trademarks on products and packaging.

4 83. Plaintiff has been engaging in the sale of hygiene products, including but not
5 limited to, toothbrushes, to the prison industry since 1996. Plaintiff has actively and
6 continuously promoted the sale of its full line of products, including the toothbrush, to the
7 prison industry bearing its trademarks and trade dress trademarks since November 23, 2005.

8 84. Plaintiff's toothbrushes, have been and continue to be extensively advertised and
9 sold throughout the United States, including the State of Washington, under the trademark
10 LOOPS FLEXBRUSH. By virtue of advertising and sales, together with customer acceptance
11 and recognition, Plaintiff's trademarks and trade dress trademarks identify Plaintiff's
12 toothbrushes only, and distinguish them from toothbrushes manufactured and sold by others.
13 Plaintiff's trademarks and trade dress trademarks have thus become and are valuable assets
14 symbolizing Plaintiff, its quality toothbrushes, and its goodwill.

15 85. Plaintiff is informed and believes, and thereon alleges, that Defendants, with
16 actual knowledge of Plaintiff's ownership of the trademarks and trade dress trademarks, has
17 been and is selling and offering for sale the LOOPS FLEXBRUSH toothbrush to the New York
18 City Department of Corrections and other correctional facilities.

19 86. Plaintiff is informed and believes, and thereon alleges, that Defendants are
20 infringing on Plaintiff's trademarks and trade dress trademarks by selling, and offering for sale
21 to the New York City Department of Corrections and other correctional facilities toothbrushes
22 which are identical to the LOOPS FLEXBRUSH toothbrush which is protected by Plaintiff's
23 trademarks and trade dress trademarks without the permission or authority of Plaintiff and said
24 use by Defendants is likely to cause confusion, to cause mistake and to deceive consumers as to
25 the source, quality, and nature of Defendants' goods.

1 87. Defendants' acts of trademark and trade dress trademark infringement have been
 2 committed with the intent to cause confusion, to cause mistake and to deceive consumers as to
 3 the source, quality, and nature of Defendants' goods.

4 88. Plaintiff has provided notice to Defendants of their trademarks and trade dress
 5 trademarks by supplying Defendants with samples of the products, packaging, marketing and
 6 sales documents which are prominently displayed and marked with pending trademarks. In
 7 addition, on June 8, 2008, LOOPS LLC and LOOPS FLEXBRUSH, LLC personally served
 8 JEFFREY R. HEMMING of AMERCARE with LOOPS LLC Utility Patent No. US 7,334,286
 9 B2 recorded by the U.S. Patent & Trademark Office on February 26, 2008 for the Loops
 10 Flexbrush "TOOTHBRUSH AND METHODS OF MAKING SAME." JEFFREY R.
 11 HEMMING was also personally served with LOOPS, LLC Trade Dress Trademark, Serial No.
 12 77271421 recorded in the Principal Register May 20, 2008, and the LOOPS LLC trademark
 13 "LOOPS FLEXBRUSH" registered in the Principal Register on September 19, 2006, and the
 14 LOOPS LLC Utility Patent No. US 6,371,133 B1 recorded by the U.S. Patent & Trademark
 15 Office on April 16, 2002 for the Floss Loops Dental Floss.

16 89. By reason of Defendants' acts alleged herein, Plaintiff has and will suffer
 17 damage to its business, reputation, and goodwill and the loss of sales and profits Plaintiff would
 18 have made but for Defendants' acts.

19 90. Defendants continue to do the acts complained of herein, and unless restrained
 20 and enjoined, will continue to do so, all to the Plaintiff's irreparable damage. It would be
 21 difficult to ascertain the amount of compensation which could afford Plaintiff adequate relief
 22 for such continuing acts, and a multiplicity of judicial proceedings would be required.
 23 Plaintiff's remedy at law is not adequate to compensate it for injuries threatened.
 24
 25

THIRD CLAIM FOR RELIEF

(Violation of the Lanham Act against All Defendants)

91. Plaintiffs re-allege and incorporate the allegations of Paragraphs 1 through 90 above as though fully set forth herein.

92. Defendants have caused Loops Flexbrush Toothbrushes to enter into interstate commerce with representations that the products source is AMERCARE. Such designation of origin is false and is likely to cause confusion, to cause mistake and to deceive as to the affiliation, connection or association of defendant with Plaintiff as to the origin, sponsorship, or approval of such Loops Flexbrush Toothbrushes by Plaintiff. These acts are in violation of 15 U.S.C. 1125(a) in that Defendants are palming and/or passing off which is recognized as a false designation of origin under section 43(a) of the Lanham Act.

93. Plaintiff has been harmed, among other ways, in that its toothbrushes were misused in that Defendants' acts have allowed Defendants to unfairly reap the advertising and promotional value that would otherwise go to Plaintiff. By presenting customers with a sample of Plaintiff's product, represented to be Plaintiff's product or equal, and either falsely or impliedly representing that they have the authorization to sell or offer for sale the product, Defendants have misrepresented the origin of Plaintiff's product, as well as the origin of its own product, resulting in harm to Plaintiff.

94. Plaintiff has been damaged and will continue to be damaged by diversion of business, injury to its business, reputation and goodwill, reduced association of Plaintiff's trademarks and trade dress trademarks with its toothbrushes, and the false association of Defendants with Plaintiff's goods and business. Plaintiff is entitled to all available relief under 15 U.S.C. §1117, including but not limited to, damages, costs, treble damages, interest, compensation for corrective advertising, and an accounting and disgorgement of Defendants' profits, according to proof.

1 95. If not enjoined by the Court, Defendants' acts will continue to mislead
 2 customers, and continue to confuse and mislead consumers as to the origin of Plaintiff's
 3 toothbrushes and as to the origin and authorization of the toothbrushes actually sold by
 4 Defendants.

5 **FOURTH CLAIM FOR RELIEF**

6 **(Unfair Competition under the Washington Consumer Protection Act** 7 **against All Defendants)**

8 96. Plaintiffs re-allege and incorporate the allegations of Paragraphs 1 through 95
 9 above as though fully set forth herein.

10 97. RCW § 19.86.020 provides that unfair methods of competition and unfair or
 11 deceptive acts or practices in the conduct of any trade or commerce are declared unlawful.
 12 RCW § 19.86.090 makes such violations remediable through a civil action.

13 98. Defendants WENDY HEMMING, JEFFREY R. HEMMING, H&L
 14 INDUSTRIAL, and PHOENIX TRADING INC. dba AMERCARE PRODUCTS are engaged
 15 in trade or commerce in the State of Washington.

16 99. Because of Defendants' actions, more particularly described herein, including
 17 but not limited to, palming and/or passing off Plaintiff's goods without authorization and false
 18 designation of origin, Plaintiff has been damaged in its business or property in an amount to be
 19 proven at trial.

20 100. Defendants' conduct impacts the public interest.

21 101. Plaintiff is entitled to recover costs of suit and reasonable attorney's fees to
 22 enjoin Defendants' unlawful conduct.

23 102. Due to the nature of Defendants' actions and the circumstances described herein,
 24 Plaintiff is also entitled to treble damages within the limits of RCW § 19.86.090.

25 103. Plaintiff is further entitled to an injunction enjoining Defendants WENDY
 HEMMING, JEFFREY R. HEMMING, H&L INDUSTRIAL, and PHOENIX TRADING INC.

1 dba AMERCARE PRODUCTS from committing such further acts in violation of RCW §
2 19.86.020.

3 **FIFTH CLAIM FOR RELIEF**

4 **(Unfair Competition under Washington Common Law**
5 **against All Defendants)**

6 104. Plaintiffs re-allege and incorporate the allegations of Paragraphs 1 through 103
7 above as though fully set forth herein.

8 105. By committing the above described acts, including but not limited to, palming
9 and/or passing off Plaintiff's goods without authorization and false designation of origin,
10 Defendants WENDY HEMMING, JEFFREY R. HEMMING, H&L INDUSTRIAL, and
11 PHOENIX TRADING INC. dba AMERCARE PRODUCTS have violated the common law of
12 unfair competition.

13 106. Plaintiff is entitled to all relief available pursuant to such common law,
14 including but not limited to, an injunction restraining Defendants from impliedly or
15 affirmatively representing the nature, quality, and characteristics of its own products or those of
16 Plaintiff, or falsely stating the origin of Plaintiffs' products and/or their authorization from
17 Plaintiff concerning the Plaintiff's products.

18 **SIXTH CLAIM FOR RELIEF**

19 **(Fraud against Defendants Wendy Hemming and Phoenix Trading Inc.**
20 **dba Americare Products, Inc.)**

21 107. Plaintiff re-alleges and incorporates the allegations of Paragraphs 1 through 106
22 above as though fully set forth herein.

23 108. On January 13, 2006, Defendant WENDY HEMMING represented that she
24 owned AMERCARE PRODUCTS, INC. and provided products to correctional facilities.
25 HEMMING requested price quotations for products sold by LOOPS LLC, namely Floss Loops
Safety Dental Floss, U.S. Patent No. 6,371,133 B1 which she represented was for one of

1 AMERCARE's customers. HEMMING also requested samples of all products sold by
2 Plaintiffs be sent to her attention at AMERCARE's Woodinville, Washington address,
3 including the Floss Loops Safety Dental Floss and Loops Flexbrush toothbrushes. On January
4 13, 2006, at the request of HEMMING, KAYSER shipped samples of all products sold by
5 Plaintiffs including Floss Loops Safety Dental Floss and Loops Flexbrush Toothbrushes in both
6 3" and 4.25" sizes.

7 109. On January 26, 2006, HEMMING contacted Plaintiffs to order Floss Loops
8 Safety Dental Floss for AMERCARE. From January 26, 2006 through January 23, 2007,
9 HEMMING ordered on six (6) separate occasions Floss Loops Safety Dental Floss. With each
10 order of Floss Loops product, Plaintiffs provided factory packaging labeled "U.S. Patent No.
11 6,371,133 B1, Other Patents Pending." Also, with each order of Floss Loops product shipped
12 to AMERCARE, there were included marketing materials, color photographs and samples of
13 Loops Flexbrush toothbrushes.

14 110. On January 23, 2007, HEMMING contacted Plaintiffs to place what turned out
15 to be AMERCARE's last order for Floss Loops Safety Dental Floss. HEMMING represented
16 her interest in selling both the Floss Loops Safety Dental Floss and Loops Flexbrush
17 toothbrushes. HEMMING requested that Plaintiffs give AMERCARE any and all contracts
18 Plaintiffs had for the sale of these products to allow AMERCARE to manage these contracts
19 with Plaintiffs supplying the product to AMERCARE. On behalf of Plaintiffs, KAYSER
20 refused HEMMING's request.

21 111. On January 26, 2007, Plaintiffs personally delivered what turned out to be the
22 last order of Floss Loops Safety Dental Floss to Amercare. HEMMING asked for additional
23 samples of Loops Flexbrushes in 3" and 4.25" sizes and Flexible Toothbrush Holders.
24 HEMMING again requested that LOOPS LLC and LOOPS FLEXBRUSH, LLC give
25 AMERCARE any and all contracts LOOPS LLC and LOOPS FLEXBRUSH, LLC had for the
sale of these products to allow AMERCARE to manage these contracts with LOOPS LLC and

1 LOOPS FLEXBRUSH, LLC supplying the product to AMERCARE. HEMMING specifically
2 requested that LOOPS FLEXBRUSH, LLC give AMERCARE the New York City contracts
3 for the sale of the Loops Flexbrushes. KAYSER, on behalf of LOOPS FLEXBRUSH, LLC
4 again refused HEMMING's request.

5 112. HEMMING's representations concerning the need for samples of Loops
6 Flexbrush toothbrushes were false, as the true reason for the need for samples of Loops
7 Flexbrush toothbrushes was HEMMING's intent to manufacture counterfeit toothbrushes in
8 China to unfairly compete with Plaintiffs.

9 113. Defendants made these representations knowing they were false and with the
10 intent to induce Plaintiffs to provide samples of the Loops Flexbrush toothbrushes under the
11 false premise that HEMMING intended to order the product for resale to correctional facilities
12 in the same manner as she had ordered the Floss Loops Safety Dental Floss from Plaintiffs.

13 114. Plaintiffs detrimentally relied on the representations of Defendants by agreeing
14 to supply and then actually supplying Loops Flexbrush toothbrush samples to Defendants on
15 several occasions. Defendants thereafter counterfeited the Loops Flexbrush toothbrush by
16 manufacturing and then importing into the United States from China counterfeit and infringing
17 Loops Flexbrush toothbrushes.

18 115. As a result of Defendants' fraudulent representations, Plaintiffs have been
19 damaged in an amount subject to proof.

20 116. The misrepresentations by Defendants were motivated and practiced through
21 fraud, malice and oppression with the intent to harm Plaintiffs in their business operations.

22 **DEMAND FOR JURY TRIAL**

23 117. Plaintiffs demand trial by jury on all causes of action.
24
25

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs LOOPS LLC and LOOPS FLEXBRUSH, LLC pray for judgment against Defendants WENDY HEMMING, JEFFREY R. HEMMING, H&L INDUSTRIAL, and PHOENIX TRADING INC. dba AMERCARE PRODUCTS as follows:

1. That Defendants be required to make an accounting and pay all damages based on Defendants' infringement of Plaintiffs' patents;

2. For damages pursuant to 35 U.S.C. §284 and reasonable attorney's fees pursuant to 35 U.S.C. §285;

3. For compensatory and special damages subject to proof;

4. That this Court grant preliminary and permanent injunctions enjoining Defendants WENDY HEMMING, JEFFREY R. HEMMING, H&L INDUSTRIAL, and PHOENIX TRADING INC. dba AMERCARE PRODUCTS, and their agents, servants, employees, and successors, from directly or indirectly importing, manufacturing, contracting out for manufacture, advertising, marketing, using, selling, or offering for sale Loops Flexbrush toothbrushes and/or their equals embodying the '286 patent including, but not limited to, the 3" flexible handle toothbrush and the 4.25" flexible handle toothbrush sold or offered for sale to the New York City Department of Corrections and New York City Department of Citywide Administrative Services pursuant to Notice of Award for Invitation to Bid #700788 and to other correctional facilities and non-correctional consumers;

5. That Defendants be ordered to surrender for destruction all products, advertisements, marketing materials, and other materials constituting a false designation of origin of Defendants' toothbrushes;

6. That Defendants be ordered to surrender for destruction all products, advertisements, marketing materials, and other materials concerning or related to Loops Flexbrush toothbrushes and/or their equals;

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on October 13, 2008, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Rick Klingbeil
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LEE SMART, P.S., INC.

By: /s/ William R. Kiendl
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Of Attorneys for Plaintiffs
LOOPS LLC and LOOPS FLEXBRUSH LLC