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6 Attorneys for Plaintiff,
SIMPLEHUMAN, LLC
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8

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

BY _____
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CENTRAL DIST. OF CALIF.
SANTA ANA

FILED

12 CV12-4222 JFW(AJWx)

13 SIMPLEHUMAN, LLC, a California
Limited Liability Company,

14 Plaintiff,

15 v.

16 EKO DEVELOPMENT LIMITED, of
17 Guangzhou, People's Republic of China,
ADW ECOMMERCE, LLC, a
18 Washington Limited Liability Company,
and ANDERSON DAYMON
19 WORLDWIDE, LLC, a Washington
Limited Liability Company,

20 Defendants.
21

Civil Action No.

**COMPLAINT FOR PATENT
INFRINGEMENT,
TRADEMARK
INFRINGEMENT, FALSE
DESIGNATION OF ORIGIN,
TRADEMARK DILUTION,
TRADE DRESS
INFRINGEMENT, AND
UNFAIR COMPETITION**

JURY DEMANDED

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1 Plaintiff Simplehuman, LLC (“Simplehuman”) hereby complains of
2 Eko Development Limited, ADW Ecommerce, LLC, and Anderson Daymon
3 Worldwide (“Defendants”) and alleges as follows:

4 **I. THE PARTIES**

5 1. Plaintiff Simplehuman, LLC, is a limited liability company
6 organized and existing under the laws of the State of California, having its
7 principal place of business at 19801 S. Vermont Avenue, Torrance, California,
8 90502.

9 2. Simplehuman is informed and believes, and thereon alleges, that
10 Eko Development Limited (“Eko”) is a company organized and existing under
11 the laws of the People’s Republic of China and having an office and a place of
12 business at Flat 1013-1015, R&F Profit Plaza, 76 Huangpu Ave. West,
13 Guangzhou, 510623, People’s Republic of China.

14 3. Simplehuman is informed and believes, and thereon alleges, that
15 ADW Ecommerce, LLC (“ADW Ecommerce”) is a limited liability company
16 organized and existing under the laws of the state of Washington and having an
17 office and a place of business at 845 Lake Drive, Suite 200, Issaquah,
18 Washington, 98027.

19 4. Simplehuman is informed and believes, and thereon alleges, that
20 Anderson Daymon Worldwide, LLC (“Anderson Daymon”) is a limited liability
21 company organized and existing under the laws of the state of Washington and
22 having an office and a place of business at 845 Lake Drive, Suite 200, Issaquah,
23 Washington, 98027, as well as at 11000 Garden Grove Boulevard, Suite 201,
24 Garden Grove, California, 92843.

25 5. Simplehuman is informed and believes, and thereon alleges, that
26 Defendants do business in this judicial district, and have committed the acts
27 alleged herein within this judicial district.

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1 **II. JURISDICTION AND VENUE**

2 6. This Court has original subject matter jurisdiction over the claims
3 in this action that relate to patent infringement, trademark infringement, false
4 designation of origin, trademark dilution, and unfair competition pursuant to
5 Sections 34(a) and 39 of the Lanham Act, 15 U.S.C. §§ 1116(a) and 1121(a),
6 and 28 U.S.C. §§ 1331 and 1338, as these claims arise under the laws of the
7 United States. The Court has supplemental jurisdiction over the claims in this
8 Complaint which arise under state statutory and common law pursuant to 28
9 U.S.C. § 1367(a) because the state law claims are so related to the federal claims
10 that they form part of the same case or controversy and derive from a common
11 nucleus of operative facts. Further, this Court has jurisdiction over all claims
12 under 28 U.S.C. § 1332 because there is complete diversity among the parties.

13 7. This Court has personal jurisdiction over Eko. Among other
14 things, Eko has committed acts of patent infringement, trademark infringement,
15 trademark dilution, false designation of origin, and unfair competition in this
16 judicial district, including but not limited to selling infringing trash cans into the
17 stream of commerce knowing that such products would be sold in this state and
18 this district, which acts form a substantial part of the events or omissions giving
19 rise to Simplehuman's claims.

20 8. This Court has personal jurisdiction over ADW Ecommerce.
21 Among other things, ADW Ecommerce has committed acts of patent
22 infringement, trademark infringement, trademark dilution, false designation of
23 origin, and unfair competition in this judicial district, including but not limited
24 to selling infringing trash cans directly to consumers in this district and selling
25 into the stream of commerce knowing that such products would be sold in this
26 state and this district, which acts form a substantial part of the events or
27 omissions giving rise to Simplehuman's claims.

28 9. This Court has personal jurisdiction over Anderson Daymon

1 because Anderson Daymon has a continuous, systematic, and substantial
2 presence within this judicial district. In addition, Anderson Daymon has
3 committed acts of patent infringement, trademark infringement, trademark
4 dilution, false designation of origin, and unfair competition in this judicial
5 district, including but not limited selling into the stream of commerce knowing
6 that such products would be sold in this state and this district, which acts form a
7 substantial part of the events or omissions giving rise to Simplehuman's claims.

8 10. Venue is proper in this judicial district under 28 U.S.C. §§ 1391
9 and 28 U.S.C. § 1400(b).

10 **III. GENERAL ALLEGATIONS**

11 11. Simplehuman has been actively engaged in the manufacture and
12 sale of highly stylistic and highly engineered trash cans since at least 2001.
13 Simplehuman is the manufacturer and retailer of several lines of trash cans that
14 have enjoyed substantial success and are protected by various intellectual
15 property rights owned by Simplehuman.

16 12. On September 30, 2003, the United States Patent and Trademark
17 Office ("U.S.P.T.O.") duly and lawfully issued United States Patent
18 No. 6,626,316 ("the '316 Patent"), entitled "TRASH CAN ASSEMBLY WITH
19 TOE-KICK RECESS." Simplehuman is the owner by assignment of all right,
20 title, and interest in the '316 Patent. A true and correct copy of the '316 Patent
21 is attached hereto as Exhibit A.

22 13. On January 3, 2006, the U.S.P.T.O. duly and lawfully issued
23 United States Patent No. 6,981,606 ("the '606 Patent"), entitled "TRASH CAN
24 ASSEMBLY." Simplehuman is the owner by assignment of all right, title, and
25 interest in the '606 Patent. A true and correct copy of the '606 Patent is
26 attached hereto as Exhibit B.

27 14. On October 17, 2006, the U.S.P.T.O. duly and lawfully issued
28 United States Patent No. 7,121,421 ("the '421 Patent"), entitled "TRASH CAN

1 ASSEMBLY.” Simplehuman is the owner by assignment of all right, title, and
2 interest in the ’421 Patent. A true and correct copy of the ’421 Patent is
3 attached hereto as Exhibit C.

4 15. On June 5, 2007, the U.S.P.T.O. duly and lawfully issued United
5 States Patent No. 7,225,943 (“the ’943 Patent”), entitled “TRASH CAN
6 ASSEMBLY AND IMPROVEMENTS THERETO.” Simplehuman is the
7 owner by assignment of all right, title, and interest in the ’943 Patent. A true
8 and correct copy of the ’943 Patent is attached hereto as Exhibit D.

9 16. On July 6, 2010, the U.S.P.T.O. duly and lawfully issued United
10 States Patent No. 7,748,556 (“the ’556 Patent”), entitled “TRASH CAN WITH
11 LID.” Simplehuman is the owner by assignment of all right, title, and interest in
12 the ’556 Patent. A true and correct copy of the ’556 Patent is attached hereto as
13 Exhibit E.

14 17. Simplehuman is the owner of several registered trademarks,
15 including Trademark Registration Nos. 2,812,654, 2,882,479, and 3,616,438
16 (the “Simplehuman Registered Marks”).

17 18. Trademark Registration No. 2,812,654 was registered with the
18 U.S.P.T.O. on February 10, 2004 on the Principal Register. Trademark
19 Registration No. 2,812,654 pertains to the word mark BUTTERFLY STEP
20 CAN and is associated with the following goods: metal trash cans, and
21 household containers sold empty that are used for recycling purposes. A true
22 and correct copy of the certificate of registration of Trademark Registration No.
23 2,812,654 is attached hereto as Exhibit F.

24 19. Trademark Registration No. 2,882,479 was registered with the
25 U.S.P.T.O. on September 7, 2004 on the Principal Register. Trademark
26 Registration No. 2,882,479 pertains to the word mark SIMPLEHUMAN and is
27 associated with the following goods: trash bags, trash cans, cleaning cloths for
28 cleaning trash cans, charcoal pads for absorbing odors, and food canisters. A

1 true and correct copy of the certificate of registration of Trademark Registration
2 No. 2,882,479 is attached hereto as Exhibit G.

3 20. Trademark Registration No. 3,616,438 was registered with the
4 U.S.P.T.O. on May 5, 2009 on the Principal Register. Trademark Registration
5 No. 3,616,438 pertains to the following mark:



11 Trademark Registration No. 3,616,438 is associated with following goods:
12 containers for household or kitchen use; containers with lid or cover for
13 household or kitchen use; portable household or kitchen containers; containers
14 for household or kitchen items; containers, namely, trash collecting containers;
15 trash cans; household containers for food; liquid dispensers for soap, lotions,
16 and cleaning fluids; dispensers for cleaning media, namely, for napkins and
17 paper towels; dispensers for cleaning agents; dispensers for soap and detergents;
18 household, bathroom, and kitchen scrubbing and cleaning brushes; housewares,
19 namely, holders for paper towels, paper napkins and bags, dish stands and racks;
20 containers for dispensing trash collection bags; grocery bag holders for
21 household use; support stand for holding bags for collecting trash; containers for
22 organizing kitchen utensils not of precious metal; and shower organizer caddies.

23 A true and correct copy of the certificate of registration of Trademark
24 Registration No. 3,616,438 is attached hereto as Exhibit H.

25 21. The Simplehuman Registered Marks have not been abandoned,
26 canceled, or revoked.

27 22. Each of the Simplehuman Registered Marks constitutes an
28 enforceable trademark that uniquely identifies, *inter alia*, trash cans as

1 emanating from, sponsored by, and/or authorized by Simplehuman.

2 23. As a result of the widespread use and display of each of the
3 Simplehuman Registered Marks as a distinctive trademark identifying, *inter*
4 *alia*, trash cans and related components, (a) the public has come to recognize
5 and identify products bearing any of the Simplehuman Registered Marks as
6 emanating from Simplehuman, (b) the public recognizes that products bearing
7 any of the Simplehuman Registered Marks constitute high quality products that
8 conform to the specifications created by Simplehuman, and (c) each of the
9 Simplehuman Registered Marks has established strong secondary meaning and
10 extensive goodwill. Furthermore, each of the Simplehuman Marks is inherently
11 distinctive.

12 24. Simplehuman also manufactures and sells trash cans bearing a
13 design mark that includes a symbolized side view of a trash can lid moving
14 between open and closed positions (“the Lid Close Mark”). An example of a
15 Simplehuman product bearing the distinctive Lid Close Mark is depicted in the
16 photograph attached as Exhibit I.

17 25. Simplehuman has used the distinctive Lid Close Mark in the state
18 of California at least as early as May 2007. Simplehuman is informed and
19 believes, and thereon alleges, that Simplehuman was the first to have adopted or
20 used the Lid Close Mark within the state of California and outside of the state of
21 California.

22 26. As a result of Simplehuman’s widespread use and display of the
23 Lid Close Mark in association with its trash cans, (a) the public has come to
24 recognize and identify trash cans bearing the Lid Close Mark as emanating from
25 Simplehuman, (b) the public recognizes that products bearing the Lid Close
26 Mark constitute high quality products that conform to the specifications created
27 by Simplehuman, and (c) the Lid Close Mark has established strong secondary
28 meaning and extensive goodwill. Furthermore, the Lid Close Mark is inherently

1 distinctive.

2 27. Simplehuman also manufactures and sells trash cans bearing the
3 word mark BULLET (“the BULLET Mark”). An example of the distinctive
4 BULLET Mark used in conjunction with a Simplehuman product is shown in
5 Exhibit J attached hereto.

6 28. Simplehuman has used the distinctive BULLET Mark in the state
7 of California at least as early as 2003. Simplehuman is informed and believes,
8 and thereon alleges, that Simplehuman was the first to have adopted or used the
9 BULLET Mark within the state of California for trash can goods.

10 29. As a result of Simplehuman’s widespread use and display of the
11 BULLET Mark in association with its trash cans, (a) the public has come to
12 recognize and identify trash cans bearing the BULLET Mark as emanating from
13 Simplehuman, (b) the public recognizes that products bearing the BULLET
14 Mark constitute high quality products that conform to the specifications created
15 by Simplehuman, and (c) the BULLET Mark has established strong secondary
16 meaning and extensive goodwill. Furthermore, the BULLET Mark is inherently
17 distinctive.

18 30. Simplehuman also manufactures and sells trash cans bearing an
19 informative sticker adhered or otherwise connected with the trash cans that
20 provides consumers details regarding the product (*e.g.*, product name and
21 features) and forms distinctive trade dress in the overall design of the labeling of
22 the trash cans (“Label Trade Dress”). An example of a Simplehuman product
23 bearing the distinctive Label Trade Dress is depicted in the photograph attached
24 as Exhibit K.

25 31. As a result of Simplehuman’s widespread use and display of the
26 Label Trade Dress in association with its trash cans, (a) the public has come to
27 recognize and identify trash cans bearing the Label Trade Dress as emanating
28 from Simplehuman, (b) the public recognizes that products bearing the Label

1 Trade Dress constitute high quality products that conform to the specifications
2 created by Simplehuman, and (c) the Label Trade Dress has established strong
3 secondary meaning and extensive goodwill. The Label Trade Dress is also
4 inherently distinctive.

5 32. Defendant Eko received actual written notice of at least some of
6 Simplehuman's intellectual property rights described herein as early as
7 September 4, 2009.

8 33. Simplehuman has provided constructive notice of its patent rights
9 in the '316 Patent, the '606 Patent, the '421 Patent, the '943 Patent, and the '556
10 Patent to the public in compliance with 35 U.S.C. § 287.

11 **IV. FIRST CLAIM FOR RELIEF**

12 (Patent Infringement Under 35 U.S.C. § 271)

13 34. Simplehuman repeats and re-alleges the allegations of paragraphs
14 1-33 of this Complaint as if set forth fully herein.

15 35. This is a claim for patent infringement arising under 35 U.S.C.
16 § 271.

17 36. Defendants, through their agents, employees and servants, have,
18 and continue to, knowingly, intentionally, and willfully directly infringe, engage
19 in acts of contributory infringement, and/or induce the infringement of the '316
20 patent by directly and/or indirectly making, using, selling, offering for sale
21 and/or importing trash cans that are covered by at least one claim of the '316
22 patent, including at least Eko's *35 Liter King Kong Step Bin* product, Eko
23 Product No. EK9208P-35L (the "35L King Kong Step Bin"). ADW
24 Ecommerce is believed to use Item No. EKO35L for the 35L King Kong Step
25 Bin.

26 37. Defendants' acts of infringement of the '316 Patent were
27 undertaken without permission or license from Simplehuman. Defendants had
28 actual and/or constructive knowledge of the '316 Patent, and their actions

1 constitute willful and intentional infringement of the '316 Patent.

2 38. Simplehuman is informed and believes, and thereon alleges, that
3 Defendants have derived and received, and will continue to derive and receive,
4 gains, profits and advantages from the aforesaid acts of infringement in an
5 amount that is not presently known to Simplehuman. By reason of the aforesaid
6 infringing acts, Simplehuman has been damaged and is entitled to monetary
7 relief in an amount to be determined at trial.

8 39. Due to the aforesaid infringing acts, Simplehuman has suffered and
9 continues to suffer great and irreparable injury, for which Simplehuman has no
10 adequate remedy at law.

11 **V. SECOND CLAIM FOR RELIEF**

12 (Patent Infringement Under 35 U.S.C. § 271)

13 40. Simplehuman repeats and re-alleges the allegations of paragraphs
14 1-39 of this Complaint as if set forth fully herein.

15 41. This is a claim for patent infringement arising under 35 U.S.C.
16 § 271.

17 42. Defendants, through their agents, employees and servants, have,
18 and continue to, knowingly, intentionally, and willfully directly infringe, engage
19 in acts of contributory infringement, and/or induce the infringement of the '606
20 Patent by directly and/or indirectly making, using, selling, offering for sale
21 and/or importing trash cans that are covered by at least one claim of the '606
22 Patent, including at least Defendants' 35L King Kong Step Bin and 30 Liter
23 Shell Bin, Eko Product No. EK9218MT-30L (the "30L Shell Bin"). ADW
24 Ecommerce is believed to use Item No. EKO30L for the 30L Shell Bin.

25 43. Defendants' acts of infringement of the '606 Patent were
26 undertaken without permission or license from Simplehuman. Defendants had
27 actual and/or constructive knowledge of the '606 Patent, and their actions
28 constitute willful and intentional infringement of the '606 Patent.

1 44. Simplehuman is informed and believes, and thereon alleges, that
2 Defendants have derived and received, and will continue to derive and receive,
3 gains, profits and advantages from the aforesaid acts of infringement in an
4 amount that is not presently known to Simplehuman. By reason of the aforesaid
5 infringing acts, Simplehuman has been damaged and is entitled to monetary
6 relief in an amount to be determined at trial.

7 45. Due to the aforesaid infringing acts, Simplehuman has suffered and
8 continues to suffer great and irreparable injury, for which Simplehuman has no
9 adequate remedy at law.

10 **VI. THIRD CLAIM FOR RELIEF**

11 (Patent Infringement Under 35 U.S.C. § 271)

12 46. Simplehuman repeats and re-alleges the allegations of paragraphs
13 1-45 of this Complaint as if set forth fully herein.

14 47. This is a claim for patent infringement arising under 35 U.S.C.
15 § 271.

16 48. Defendants, through their agents, employees and servants, have,
17 and continue to, knowingly, intentionally, and willfully directly infringe, engage
18 in acts of contributory infringement, and/or induce the infringement of the '421
19 Patent by directly and/or indirectly making, using, selling, offering for sale
20 and/or importing trash cans that are covered by at least one claim of the '421
21 Patent, including at least Defendants' 35L King Kong Step Bin and the 30L
22 Shell Bin.

23 49. Defendants' acts of infringement of the '421 Patent were
24 undertaken without permission or license from Simplehuman. Defendants had
25 actual and/or constructive knowledge of the '421 Patent, and its actions
26 constitute willful and intentional infringement of the '421 Patent.

27 50. Simplehuman is informed and believes, and thereon alleges, that
28 Defendants have derived and received, and will continue to derive and receive,

1 gains, profits and advantages from the aforesaid acts of infringement in an
2 amount that is not presently known to Simplehuman. By reason of the aforesaid
3 infringing acts, Simplehuman has been damaged and is entitled to monetary
4 relief in an amount to be determined at trial.

5 51. Due to the aforesaid infringing acts, Simplehuman has suffered and
6 continues to suffer great and irreparable injury, for which Simplehuman has no
7 adequate remedy at law.

8 **VII. FOURTH CLAIM FOR RELIEF**

9 (Patent Infringement Under 35 U.S.C. § 271)

10 52. Simplehuman repeats and re-alleges the allegations of paragraphs
11 1-51 of this Complaint as if set forth fully herein.

12 53. This is a claim for patent infringement arising under 35 U.S.C.
13 § 271.

14 54. Defendants, through their agents, employees and servants, have,
15 and continue to, knowingly, intentionally, and willfully directly infringe, engage
16 in acts of contributory infringement, and/or induce the infringement of the '943
17 Patent by directly and/or indirectly making, using, selling, offering for sale
18 and/or importing trash cans that are covered by at least one claim of the '943
19 Patent, including at least Defendants' 35L King Kong Step Bin.

20 55. Defendants' acts of infringement of the '943 Patent were
21 undertaken without permission or license from Simplehuman. Defendants had
22 actual and/or constructive knowledge of the '943 Patent, and their actions
23 constitute willful and intentional infringement of the '943 Patent.

24 56. Simplehuman is informed and believes, and thereon alleges, that
25 Defendants have derived and received, and will continue to derive and receive,
26 gains, profits and advantages from the aforesaid acts of infringement in an
27 amount that is not presently known to Simplehuman. By reason of the aforesaid
28 infringing acts, Simplehuman has been damaged and is entitled to monetary

1 relief in an amount to be determined at trial.

2 57. Due to the aforesaid infringing acts, Simplehuman has suffered and
3 continues to suffer great and irreparable injury, for which Simplehuman has no
4 adequate remedy at law.

5 **VIII. FIFTH CLAIM FOR RELIEF**

6 (Patent Infringement Under 35 U.S.C. § 271)

7 58. Simplehuman repeats and re-alleges the allegations of paragraphs
8 1-57 of this Complaint as if set forth fully herein.

9 59. This is a claim for patent infringement arising under 35 U.S.C.
10 § 271.

11 60. Defendants, through their agents, employees and servants, have,
12 and continue to, knowingly, intentionally, and willfully directly infringe, engage
13 in acts of contributory infringement, and/or induce the infringement of the '556
14 Patent by directly and/or indirectly making, using, selling, offering for sale
15 and/or importing trash cans that are covered by at least one claim of the '556
16 Patent, including at least Defendants' 35L King Kong Step Bin.

17 61. Defendants' acts of infringement of the '556 Patent were
18 undertaken without permission or license from Simplehuman. Defendants had
19 actual and/or constructive knowledge of the '556 Patent, and their actions
20 constitute willful and intentional infringement of the '556 Patent.

21 62. Simplehuman is informed and believes, and thereon alleges, that
22 Defendants have derived and received, and will continue to derive and receive,
23 gains, profits and advantages from the aforesaid acts of infringement in an
24 amount that is not presently known to Simplehuman. By reason of the aforesaid
25 infringing acts, Simplehuman has been damaged and is entitled to monetary
26 relief in an amount to be determined at trial.

27 63. Due to the aforesaid infringing acts, Simplehuman has suffered and
28 continues to suffer great and irreparable injury, for which Simplehuman has no

1 adequate remedy at law.



2 **IX. SIXTH CLAIM FOR RELIEF**

3 (Federal Trademark Infringement Under 15 U.S.C. § 1114)

4 64. Simplehuman repeats and re-alleges the allegations of paragraphs
5 1-63 of this Complaint as if set forth fully herein.

6 65. This is a claim for trademark infringement arising under 15
7 U.S.C. § 1114.

8 66. Upon information and belief, Defendant Eko is involved in the
9 manufacture, sale, offer for sale, distribution, import, and/or export of trash cans
10 that bear one or more of the Simplehuman Registered Marks without
11 Simplehuman’s consent. For example, on or about March 10, 2012 though
12 March 13, 2012, at the 2012 International Home and Housewares Show
13 (“IHHS”) in Chicago, Illinois, Eko distributed literature regarding its products
14 that included a logo labeled “Fingerprint proof” that is shown below and
15 infringes Simplehuman’s Trademark Registration No. 3,616,438, which is also
16 shown below for comparison purposes.

Eko’s Literature at IHHS	Simplehuman’s Reg. No. 3,616,438
 <p>17 s steels with fingerprint proof 18 processing keep the bins clean. 19 20 21 22 23 24 25</p>	 <p>26 27 28</p>

27 67. As an additional example, Eko uses the names “HUMANBINS” in
28 connection with the sale and advertising of certain of its trash cans, as shown

1 below. Such use infringes Simplehuman's Trademark Registration No.
2 2,882,479, which pertains to the word mark SIMPLEHUMAN.



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24 68. As a further example, Eko uses the name "BUTTERFLY PEDAL
25 BIN" in connection with the sale and advertising of certain of its metal trash
26 cans, as shown below. Such use infringes Simplehuman's Trademark
27 Registration No. 2,812,654, which pertains to the word mark BUTTERFLY
28 STEP CAN.

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69. Upon information and belief, long after Simplehuman’s adoption and use of each of the Simplehuman Registered Marks, and after the federal registration of each of the Simplehuman Registered Marks, Eko affixed and used each of the Simplehuman Marks without Simplehuman’s consent in a manner that infringes Simplehuman’s rights in the Simplehuman Marks in violation of 15 U.S.C. § 1114.

70. Without Simplehuman’s consent, Eko used in commerce marks that are confusing similar to the Simplehuman Registered Marks in connection with the sale, offering for sale, distribution or advertising of goods in a manner which is likely to cause confusion, or to cause mistake, or to deceive.

1 71. Simplehuman is informed and believes, and thereon alleges, that
 2 Eko did so with the intent to unfairly compete with Simplehuman, to trade upon
 3 Simplehuman’s reputation and goodwill by causing confusion and mistake
 4 among customers and the public, and to deceive the public into believing that
 5 Eko’s products are associated with, sponsored by, originated from, or are
 6 approved by Simplehuman, when they are not.

7 72. Eko’s activities constitute willful and intentional infringement of
 8 the Simplehuman Registered Marks in total disregard of Simplehuman’s
 9 proprietary rights, and were done despite Eko’s knowledge that the use of the
 10 Simplehuman Registered Marks was and is in direct contravention of
 11 Simplehuman’s rights.

12 73. Simplehuman is informed and believes, and thereon alleges, that
 13 Eko has derived and received, and will continue to derive and receive, gains,
 14 profits and advantages from the use of the Simplehuman Marks in an amount
 15 that is not presently known to Simplehuman. By reason of Eko’s actions,
 16 constituting unauthorized use of the Simplehuman Registered Marks,
 17 Simplehuman has been damaged and is entitled to monetary relief in an amount
 18 to be determined at trial.

19 74. Due to Eko’s actions, constituting unauthorized use of the
 20 Simplehuman Registered Marks, Simplehuman has suffered and continues to
 21 suffer great and irreparable injury, for which Simplehuman has no adequate
 22 remedy at law.

23 **X. SEVENTH CLAIM FOR RELIEF**

24 (Federal Unfair Competition & False Designation of Origin

25 Under 15 U.S.C. § 1125(a))

26 75. Simplehuman repeats and re-alleges the allegations of paragraphs
 27 1-74 of this Complaint as if set forth fully herein.

28 76. This is a claim for unfair competition and false designation of

1 origin arising under 15 U.S.C. § 1125(a).

2 77. Defendant Eko's use of the Simplehuman Registered Marks, as
3 well as the Lid Close Mark, without Simplehuman's consent constitutes a false
4 designation of origin, false or misleading description of fact or false or
5 misleading representation of fact, which is likely to cause confusion, or to cause
6 mistake, or to deceive as to the affiliation, connection, or association of such
7 person with another person, or as to the origin, sponsorship, or approval of his
8 or her goods or commercial activities by another person in violation of 15
9 U.S.C. § 1125(a).

10 78. Such conduct by Eko is likely to confuse, mislead, and deceive
11 Eko's customers, purchasers, and members of the public as to the origin of the
12 Simplehuman Registered Marks, as well as the Lid Close Mark, or cause said
13 persons to believe that Eko and/or its products have been sponsored, approved,
14 authorized, or licensed by Simplehuman or are in some way affiliated or
15 connected with Simplehuman, all in violation of 15 U.S.C. § 1125(a).

16 79. Upon information and belief, Eko's actions were undertaken
17 willfully with full knowledge of the falsity of such designation of origin and
18 false descriptions or representations, and with the express intent to cause
19 confusion, and to mislead and deceive the purchasing public.

20 80. Eko's use of the Simplehuman Registered Marks, as well as the Lid
21 Close Mark, without Simplehuman's consent also constitutes unfair competition
22 with Simplehuman.

23 81. Defendant Anderson Daymon's use of Simplehuman's BULLET
24 Mark without Simplehuman's consent constitutes a false designation of origin,
25 false or misleading description of fact or false or misleading representation of
26 fact, which is likely to cause confusion, or to cause mistake, or to deceive as to
27 the affiliation, connection, or association of such person with another person, or
28 as to the origin, sponsorship, or approval of his or her goods or commercial

1 activities by another person in violation of 15 U.S.C. § 1125(a).

2 82. Such conduct by Anderson Daymon is likely to confuse, mislead,
3 and deceive Anderson Daymon's customers, purchasers, and members of the
4 public as to the origin of the BULLET Mark, or cause said persons to believe
5 that Anderson Daymon and/or its products have been sponsored, approved,
6 authorized, or licensed by Simplehuman or are in some way affiliated or
7 connected with Simplehuman, all in violation of 15 U.S.C. § 1125(a).

8 83. Upon information and belief, Anderson Daymon's actions were
9 undertaken willfully with full knowledge of the falsity of such designation of
10 origin and false descriptions or representations, and with the express intent to
11 cause confusion, and to mislead and deceive the purchasing public.

12 84. Anderson Daymon's use of the BULLET Mark without
13 Simplehuman's consent also constitutes unfair competition with Simplehuman.

14 85. Simplehuman is informed and believes, and thereon alleges, that
15 Eko and Anderson Daymon have derived and received, and will continue to
16 derive and receive, gains, profits and advantages from Eko and Anderson
17 Daymon's respective false designation of origin, false or misleading description
18 of fact or false or misleading representation of fact, and unfair competition in an
19 amount that is not presently known to Simplehuman. By reason of Eko and
20 Anderson Daymon's respective actions, constituting false designation of origin,
21 false or misleading description of fact or false or misleading representation of
22 fact, and unfair competition, Simplehuman has been damaged and is entitled to
23 monetary relief in an amount to be determined at trial.

24 86. Due to Eko and Anderson Daymon's respective actions,
25 constituting false designation of origin, false or misleading description of fact or
26 false or misleading representation of fact, and unfair competition, Simplehuman
27 has suffered and continues to suffer great and irreparable injury, for which
28 Simplehuman has no adequate remedy at law.

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XI. EIGHTH CLAIM FOR RELIEF

(Federal Trademark Dilution Under (15 U.S.C. § 1125(c))

87. Simplehuman repeats and re-alleges the allegations of paragraphs 1-86 of this Complaint as if set forth fully herein.

88. This is a claim for trademark dilution under 15 U.S.C. § 1125(c).

89. The products sold by Simplehuman under the SIMPLEHUMAN word mark have been widely advertised, promoted, and distributed to the purchasing public throughout the United States and the world.

90. Products sold under the SIMPLEHUMAN word mark, by reason of their style and design and quality of workmanship, have come to be known to the purchasing public throughout the United States as representing products of high quality, which are sold under good merchandising and customer service conditions. As a result, the SIMPLEHUMAN word mark, and the goodwill associated therewith, are of great value to Simplehuman.

91. By virtue of the wide renown acquired by the SIMPLEHUMAN word mark, coupled with the national and international distribution and extensive sale of various products distributed under this trademark, the SIMPLEHUMAN word mark has become famous.

92. Eko's actions have diluted the distinctive qualities of the SIMPLEHUMAN word mark. Upon information and belief, Eko's actions were done willfully with intent to exploit Simplehuman's reputation and dilute the SIMPLEHUMAN word mark.

93. By reason of the aforesaid acts constituting trademark dilution, Simplehuman has been damaged and is entitled to monetary relief in an amount to be determined at trial.

94. Due to Eko's actions, constituting trademark dilution, Simplehuman has suffered and continues to suffer great and irreparable injury, for which Simplehuman has no adequate remedy at law.

1 **XII. NINTH CLAIM FOR RELIEF**

2 (Federal Trade Dress Infringement Under 15 U.S.C. § 1125(a))

3 95. Simplehuman repeats and re-alleges the allegations of paragraphs
4 1-94 of this Complaint as if set forth fully herein.

5 96. This is a claim for trade dress infringement under 15 U.S.C.
6 § 1125(a).

7 97. As a result of the widespread use and display of Simplehuman's
8 Label Trade Dress, the trade dress has acquired secondary meaning to potential
9 purchasers, in that potential purchasers have come to associate trash cans
10 bearing the overall design of the Label Trade Dress with Simplehuman.

11 98. Subsequent to Simplehuman's use and adoption of the Label Trade
12 Dress, Defendant Eko developed, advertised, and offered for sale trash cans that
13 use trade dress that is confusingly similar to the Label Trade Dress. For
14 example, on or about March 10, 2012 though March 13, 2012, at the 2012 IHHS
15 in Chicago, Illinois, Eko displayed trash can products bearing labels confusingly
16 similar to the Label Trade Dress, as shown in the picture below. For
17 comparison, an example of Simplehuman's Label Trade Dress is also depicted
18 below.

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Eko's Product Displayed at IHHS	Simplehuman's Label Trade Dress
	

22 99. Eko's use of this label in connection with its trash cans constitutes
23 a false designation of origin that is likely to cause confusion, or to cause
24 mistake, or to deceive as to the affiliation, connection, or association of Eko
25 with Simplehuman.

26 100. Eko's false designation of origin, when used in commercial
27 advertising or promotion, misrepresents the nature, characteristics, qualities, or
28 geographic origin of Eko's goods by representing to consumers that Eko's

1 products have the same nature, characteristics, qualities, and origin as
2 Simplehuman's products.

3 101. Upon information and belief, Eko's acts of trade dress infringement
4 were undertaken willfully with full knowledge of the falsity of such designation
5 of origin and false descriptions or representations, and with the express intent to
6 cause confusion, and to mislead and deceive the purchasing public.

7 102. Simplehuman is informed and believes, and thereon alleges, that
8 Eko has derived and received, and will continue to derive and receive, gains,
9 profits and advantages from Eko's trade dress infringement in an amount that is
10 not presently known to Simplehuman. By reason of Eko's actions, constituting
11 trade dress infringement, Simplehuman has been damaged and is entitled to
12 monetary relief in an amount to be determined at trial.

13 103. Due to Eko's actions, constituting trade dress infringement,
14 Simplehuman has suffered and continues to suffer great and irreparable injury,
15 for which Simplehuman has no adequate remedy at law.

16 **XIII. TENTH CLAIM FOR RELIEF**


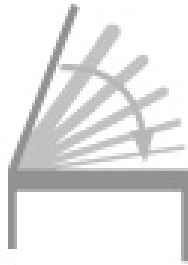
17 (California Common Law Trademark Infringement)

18 104. Simplehuman repeats and re-alleges the allegations of paragraphs
19 1-103 of this Complaint as if set forth fully herein.

20 105. This is a claim for trademark infringement arising under California
21 common law.

22 106. Defendant Eko's acts complained of herein constitute trademark
23 infringement under California common law. In particular, Eko's use of
24 trademarks that are confusingly similar to the Simplehuman Registered Marks,
25 as alleged above, constitutes trademark infringement under California common
26 law. Furthermore, Eko's use of trade dress that is confusingly similar to
27 Simplehuman's Label Trade Dress, as alleged above, constitutes trade dress
28 infringement under California common law.

1 107. In addition, on or about March 10, 2012 though March 13, 2012, at
 2 the 2012 IHHS in Chicago, Illinois, Eko distributed literature regarding its
 3 products that included a logo labeled “Soft Close” that is shown below and
 4 infringes the Lid Close Mark, which is also shown below for comparison
 5 purposes.

Eko’s Literature at IHHS	The Lid Close Mark
 <p>The image shows a sign with two logos. The left logo is a square with a hand and a fingerprint, labeled 'Fingerprint Proof' and '防指纹'. The right logo is a square with a hand and a fan-like shape, labeled 'Soft Close' and '静音缓降'. Above the logos is the text 'sing keep the bins clean.'</p>	 <p>The image shows a hand holding a fan-like shape, which is the Lid Close Mark.</p>

17 108. Eko’s “Soft Close” logo is confusingly similar to Simplehuman’s
 18 Lid Close Mark and constitutes trademark infringement under California
 19 common law.

20 109. Eko’s acts complained of herein are willful and deliberate and
 21 committed with knowledge that Eko’s unauthorized use of the Simplehuman
 22 Registered Marks, Label Trade Dress, and the Lid Close Mark causes a
 23 likelihood of confusion.

24 110. Furthermore, upon information and belief, Anderson Daymon is
 25 involved in the manufacture, sale, offer for sale, distribution, import, and/or
 26 export of trash cans that bear the BULLET Mark without Simplehuman’s
 27 consent. Anderson Daymon is the owner of the U.S. Trademark Serial
 28 No. 77,880,942, now abandoned, for the word mark URBAN INDOORS. Trash

1 cans under Anderson Daymon's Urban Indoors brand that bear the BULLET
2 Mark have been offered for sale and/or sold in the United States via certain
3 retailers, such as Costco Wholesale Corporation, as shown in Exhibit L which is
4 attached hereto. Such use of the BULLET Mark by Anderson Daymon
5 constitutes trademark infringement under California common law.

6 111. Anderson Daymon's acts complained of herein are willful and
7 deliberate and committed with knowledge that Anderson Daymon's
8 unauthorized use of the BULLET Mark causes a likelihood of confusion.

9 112. Simplehuman is informed and believes, and thereon alleges, that
10 Eko and Anderson Daymon have each derived and received and will continue to
11 derive and receive, gains, profits and advantages from their respective
12 trademark infringement in an amount that is not presently known to
13 Simplehuman.

14 113. By reason of Eko and Anderson Daymon's wrongful acts as
15 alleged in this Complaint, Simplehuman has been damaged and is entitled to
16 monetary relief in an amount to be determined at trial.

17 114. Due to Eko and Anderson Daymon's trademark infringement,
18 Simplehuman has suffered and continues to suffer great and irreparable injury
19 for which Simplehuman has no adequate remedy at law.

20 115. Eko and Anderson Daymon's willful acts of trademark
21 infringement under California common law constitute fraud, oppression, and
22 malice. Accordingly, Simplehuman is entitled to exemplary damages.

23 **XIV. ELEVENTH CLAIM FOR RELIEF**

24 (California Unfair Competition)

25 116. Simplehuman repeats and re-alleges the allegations of paragraphs
26 1-115 of this Complaint as if set forth fully herein.

27 117. This is a claim for unfair competition, arising under California
28 Business & Professions Code § 17200, *et seq.* and California common law.

1 118. Defendant Eko's acts of trademark infringement, false designation
2 of origin, trademark dilution, and trade dress infringement complained of herein
3 constitute unfair competition with Simplehuman under the common law and
4 statutory laws of the State of California, particularly California Business &
5 Professions Code § 17200 *et seq.*

6 119. Simplehuman is informed and believes, and thereon alleges, that
7 Eko has derived and received, and will continue to derive and receive, gains,
8 profits and advantages from Eko's unfair competition in an amount that is not
9 presently known to Simplehuman. By reason of Eko's wrongful acts as alleged
10 in this Complaint, Simplehuman has been damaged and is entitled to monetary
11 relief in an amount to be determined at trial.

12 120. By its actions, Eko has injured and violated the rights of
13 Simplehuman and has irreparably injured Simplehuman, and such irreparable
14 injury will continue unless Eko is enjoined by this Court.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Simplehuman prays for judgment in its favor against
17 Defendants for the following relief:

18 A. An Order adjudging Defendants to have directly and indirectly
19 infringed the '316 Patent under 35 U.S.C. § 271;

20 B. A preliminary and permanent injunction enjoining Defendants,
21 their respective officers, directors, agents, servants, employees and attorneys,
22 and those persons in active concert or participation with Defendants, from
23 directly or indirectly infringing the '316 Patent, in violation of 35 U.S.C. § 271;

24 C. That Defendants account for all gains, profits, and advantages
25 derived by Defendants' infringement of the '316 Patent, in violation of
26 35 U.S.C. § 271, and that Defendants pay to Simplehuman all damages suffered
27 by Simplehuman;

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1 D. An Order adjudging Defendants to have directly and indirectly
2 infringed the '606 Patent under 35 U.S.C. § 271;

3 E. A preliminary and permanent injunction enjoining Defendants,
4 their respective officers, directors, agents, servants, employees and attorneys,
5 and those persons in active concert or participation with Defendants, from
6 directly or indirectly infringing the '606 Patent, in violation of 35 U.S.C. § 271;

7 F. That Defendants account for all gains, profits, and advantages
8 derived by Defendants' infringement of the '606 Patent, in violation of
9 35 U.S.C. § 271, and that Defendants pay to Simplehuman all damages suffered
10 by Simplehuman;

11 G. An Order adjudging Defendants to have directly and indirectly
12 infringed the '421 Patent under 35 U.S.C. § 271;

13 H. A preliminary and permanent injunction enjoining Defendants,
14 their respective officers, directors, agents, servants, employees and attorneys,
15 and those persons in active concert or participation with Defendants, from
16 directly or indirectly infringing the '421 Patent, in violation of 35 U.S.C. § 271;

17 I. That Defendants account for all gains, profits, and advantages
18 derived by Defendants' infringement of the '421 Patent, in violation of
19 35 U.S.C. § 271, and that Defendants pay to Simplehuman all damages suffered
20 by Simplehuman;

21 J. An Order adjudging Defendants to have directly and indirectly
22 infringed the '943 Patent under 35 U.S.C. § 271;

23 K. A preliminary and permanent injunction enjoining Defendants,
24 their respective officers, directors, agents, servants, employees and attorneys,
25 and those persons in active concert or participation with Defendants, from
26 directly or indirectly infringing the '943 Patent, in violation of 35 U.S.C. § 271;

27 L. That Defendants account for all gains, profits, and advantages
28 derived by Defendants' infringement of the '943 Patent, in violation of

1 35 U.S.C. § 271, and that Defendants pay to Simplehuman all damages suffered
2 by Simplehuman;

3 M. An Order adjudging Defendants to have directly and indirectly
4 infringed the '556 Patent under 35 U.S.C. § 271;

5 N. A preliminary and permanent injunction enjoining Defendants,
6 their respective officers, directors, agents, servants, employees and attorneys,
7 and those persons in active concert or participation with Defendants, from
8 directly or indirectly infringing the '556 Patent, in violation of 35 U.S.C. § 271;

9 O. That Defendants account for all gains, profits, and advantages
10 derived by Defendants' infringement of the '556 Patent, in violation of
11 35 U.S.C. § 271, and that Defendants pay to Simplehuman all damages suffered
12 by Simplehuman;

13 P. An Order for a trebling of damages and/or exemplary damages
14 because of Defendants' willful conduct pursuant to 35 U.S.C. § 284;

15 Q. An Order adjudging that this is an exceptional case;

16 R. An award to Simplehuman of the attorneys' fees and costs incurred
17 by Simplehuman in connection with this action pursuant to 35 U.S.C. § 285;

18 S. That Defendant Eko, its officers, agents, servants, employees, and
19 attorneys, and those persons in active concert or participation with Eko, be
20 preliminarily and permanently enjoined and restrained from infringing the
21 Simplehuman Registered Marks as complained of in this Complaint;

22 T. That Eko, its officers, agents, servants, employees, and attorneys,
23 and those persons in active concert or participation with Eko, be preliminarily
24 and permanently enjoined and restrained from infringing Simplehuman's Label
25 Trade Dress as complained of in this Complaint;

26 U. That Eko, its officers, agents, servants, employees, and attorneys,
27 and those persons in active concert or participation with Eko, be preliminarily
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1 and permanently enjoined and restrained from infringing Simplehuman's Lid
2 Close Mark as complained of in this Complaint;

3 V. That Anderson Daymon, its officers, agents, servants, employees,
4 and attorneys, and those persons in active concert or participation with
5 Anderson Daymon, be preliminarily and permanently enjoined and restrained
6 from infringing Simplehuman's BULLET Mark as complained of in this
7 Complaint;

8 W. A preliminary and permanent injunction against Eko and Anderson
9 Daymon, their respective agents, servants, employees, representatives,
10 successors, and assigns, and all persons, firms, or corporations in active concert
11 or participation with Eko and Anderson Daymon, enjoining them from engaging
12 in the following activities and from assisting or inducing, directly or indirectly,
13 others to engage in the following activities:

- 14 1. falsely designating the origin of Eko and Anderson Daymon's
15 respective goods;
- 16 2. unfairly competing with Simplehuman in any manner
17 whatsoever; and
- 18 3. causing a likelihood of confusion or injuries to Simplehuman's
19 business reputation;

20 X. That Eko and Anderson Daymon be required to account to
21 Simplehuman for any and all profits derived by their respective acts of
22 trademark infringement, false designation of origin, trade dress infringement,
23 and unfair competition complained of in this Complaint;

24 Y. That Eko and Anderson Daymon be required to disgorge those
25 profits and pay them over to Simplehuman;

26 Z. That Eko and Anderson Daymon's acts of trademark infringement,
27 false designation of origin, trademark dilution, trade dress infringement, and
28 unfair competition complained of in this Complaint be deemed willful; that this

1 be deemed an exceptional case; that Simplehuman be entitled to enhanced
2 damages and an enhanced award of Eko and Anderson Daymon's disgorged
3 profits; and that Simplehuman recover its attorneys' fees under 15 U.S.C.
4 § 1117;

5 AA. That Simplehuman have and recover the costs of this civil action;

6 BB. An award of pre-judgment and post-judgment interest and costs of
7 this action against Defendants; and

8 CC. Such other and further relief as this Court may deem just.

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KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 5/15/12 By: Paul Conover
Paul A. Stewart
Paul N. Conover

Attorneys for Plaintiff,
SIMPLEHUMAN, LLC

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DEMAND FOR JURY TRIAL

Plaintiff Simplehuman, Inc. hereby demands a trial by jury on all issues so triable.

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 5/15/12 By: Paul A. Stewart
Paul A. Stewart
Paul N. Conover

Attorneys for Plaintiff,
SIMPLEHUMAN, LLC

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