

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

PURSEN, LLC,

Plaintiff,

v.

QVC, INC., GREAT INNOVATIONS, INC.,
and FOR LIFE PRODUCTS, INC.,

Defendants.

CIVIL ACTION FILE

NO. 1:12-cv-3997-WSD

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Plaintiff PURSEN, LLC (“PurseN”), by and through its undersigned counsel, files this First Amended Complaint against Defendants as follows:

PARTIES

1. PurseN is a limited liability company organized and existing under the laws of the State of Georgia, and having a principal place of business in Atlanta (Fulton County), Georgia. PurseN designs, manufactures and sells high-quality, stylish organizational products, including handbag organizers, jewelry cases, travel cases, totes and bags, and similar items.

2. Defendant QVC, INC. (“QVC”), is a Delaware corporation with a principal place of business in West Chester, Pennsylvania. QVC may be served with process in this action by and through its registered agent, Corporation Service Company, 2711 Centerville Rd., Ste. 400, Wilmington, DE 19808.

3. Defendant GREAT INNOVATIONS, INC. (“GI”), is a Florida corporation with a principal place of business in Miramar, Florida. GI may be served with process in this action by and through its registered agent, Joseph McDonnell, 2301 SW 145th Avenue, Miramar, FL 33027.

4. Defendant FOR LIFE PRODUCTS, INC. (“FLP”), is a Florida corporation with a principal place of business in Miramar, Florida. FLP may be served with process in this action by and through its registered agent, Gary Silberman, Offices at Grand Bay Plaza, 2665 S. Bayshore Dr., Suite #725, Coconut Grove, FL 33133.

JURISDICTION AND VENUE

5. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including, without limitation, 35 U.S.C. §§ 271, 281, 284, and 285; and under the Lanham Act, 15 U.S.C. § *et seq.*, including without limitation 15 U.S.C. § 1125. This Court has subject matter jurisdiction over the patent and unfair competition claims asserted in this case pursuant to 28 U.S.C. §§ 1331 and

1338. This Court has subject matter jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. § 1332 on the grounds that PurseN and Defendants are citizens of different states and the amount in controversy exceeds \$75,000 exclusive of interest and costs, and pursuant to 28 U.S.C. § 1367 on the grounds that such claims are so related to the patent infringement and unfair competition claims asserted herein that they form part of the same case or controversy.

6. This Court has personal jurisdiction over Defendants pursuant to O.C.G.A. § 9-10-91 and federal law on the grounds that, upon information and belief, (i) each Defendant transacts business within the State of Georgia; (ii) each Defendant has committed acts of patent infringement, and/or unfair competition within or directed toward residents of the State of Georgia; (iii) each Defendant's wrongful acts have caused injury within the State of Georgia, and each Defendant regularly does or solicits business, engages in other persistent courses of conduct, and/or derives substantial revenue from goods sold, used or consumed or services rendered in this state; (iv) each Defendant purposefully directs activities toward residents of the State of Georgia; (v) the causes of action set forth herein arise from or relate to each Defendant's activities in or directed toward the State of Georgia; and/or (vi) the exercise of jurisdiction over Defendants will not offend traditional notions of fair play and substantial justice.

7. More specifically, upon information and belief, each Defendant, directly and/or through intermediaries, has shipped, distributed, offered for sale, sold, and/or advertised its infringing products in the United States, the State of Georgia, and the Northern District of Georgia, either directly or indirectly, and/or has committed the tortious acts described herein purposefully directed toward PurseN, which acts have caused injury within the State of Georgia.

8. Venue is proper in the Northern District of Georgia pursuant to 28 U.S.C. §§ 1391 and 1400(b).

FACTUAL BACKGROUND

The PurseN Patent

9. PurseN's signature product is the PurseN Organizer Insert ("the PurseN Organizer"), which was invented by PurseN's CEO and Founder, Hardeep Melamed, and is the subject of United States Patent No. 8,225,829 ("the '829 patent") (copy attached as Ex. 1).

10. The application that became the '829 patent was filed on March 31, 2008, which claimed priority to a provisional application filed on March 29, 2007.

11. The '829 patent issued on July 24, 2012, after full and fair examination by the United States Patent Office.

12. The '829 patent is valid and enforceable.

13. PurseN has sold nearly one hundred thousand PurseN Organizers that embody the claims of the '829 patent.

14. PurseN continues to sell PurseN Organizers that embody the claims of the '829 patent.

15. After the application that became the '829 patent was filed, PurseN marked its products embodying the '829 patent "Patent Pending."

16. After the '829 patent issued, PurseN marked its embodying products with the '829 patent number.

17. PurseN is the assignee of all right, title and interest in and to the '829 patent and possesses full rights to sue for past, present, and future infringement thereof, such assignment having been executed and effective before the '829 patent issued.

The PurseN Trade Dress

18. PurseN announced the launch of its PurseN Organizer on August 1, 2008, and began selling its product to retailers at an industry trade show called "AccessoriesTheShow" in New York, New York, which took place on August 3-5, 2008. After the strong, positive response of retailers and customers at that show, PurseN began delivering product to customers in approximately October 2008.

19. From its launch in August of 2008 until the present, the PurseN Organizer has consistently featured the following non-functional trade dress (“the PurseN Trade Dress”), which includes at least the following elements that together and in combination create a total image and commercial impression of the product that serves to identify the source of the PurseN Organizer as PurseN:

- a. An overall generally rectangular shape approximately 9-11” wide, 6-7” tall, and 5” deep, defined by relatively flat, semi-rigid side walls, with soft fabric ends and bottom;
- b. Smooth, satiny matte fabric covering the product’s rigid side walls, and its soft fabric end and bottom walls;
- c. A decorative coordinating patterned fabric lining the inside of the organizer;
- d. A single ornamental fabric strip extending horizontally across the outer surface of each end wall between the expandable panels, at approximately mid-height, with the strip being approximately 7/8” wide and having a single-stitch straight seam on each of the top and bottom of the fabric strip;
- e. A single pocket centered on the outer surface of at least one side wall, which pocket is defined by a seam across the top

approximately ¼” wide, the bottom seam of the side wall, and two single-stitch seams along each pocket side extending from the bottom of the side wall beyond the pocket top to the top of the side wall;

- f. Rectangular-shaped zipper tabs; and
- g. A ¼” wide seam around the entire top of the sides and ends of the organizer.

20. Images of the PurseN Organizer showing the PurseN Trade Dress, appear below:



21. Customer response to the PurseN Organizer was so favorable that PurseN sold out of its initial production run in just a few months.

22. PurseN spent substantial time and money advertising and promoting the PurseN Organizer and its trade dress from its launch in August of 2008 until Defendants' infringing product appeared in the market place in or around October of 2009. PurseN's efforts during that time to advertise and promote the PurseN Organizer and the PurseN Trade Dress included:

- a) Attending at least 19 industry trade shows throughout the United States in which PurseN actively promoted and sold the PurseN Organizer to retailers and wholesalers for placement in stores and online retailers throughout the United States
- b) Distributing printed flyers depicting the PurseN Organizer and the PurseN Trade Dress;
- c) Distributing promotional samples of the PurseN Organizer;
- d) Placing the PurseN Organizer on Internet shopping web sites, such as ebags.com, including images of the product and the PurseN Trade Dress;
- e) Advertising and selling the PurseN Organizer on the PurseN.net Internet website, which included images of the PurseN Trade Dress;
- f) Providing retailer customers with product display material depicting the PurseN Trade Dress to be placed in stores to promote the PurseN organizer;
- g) Appearing on television programs in at least New York and Atlanta to demonstrate the PurseN Organizer;

- h) Publishing video demonstrations of the PurseN Organizer on Internet web sites such as YouTube; and
- i) Advertising in national magazines and catalogs.

23. By the end of 2008, the PurseN Organizer was being sold in approximately 240 retail stores.

24. By the end of 2009, a little more than a year after its launch, the PurseN Organizer was being sold to approximately 500 customers, mostly distributors and retailers, throughout the United States.

25. By October 2009, PurseN had sold approximately 22,000 PurseN Organizers bearing the PurseN Trade Dress.

26. Gross sales of PurseN Organizers in 2008 and 2009 exceeded half a million dollars.

27. Through PurseN's substantial and successful marketing and sales efforts, the PurseN Trade Dress has established secondary meaning in the marketplace such that purchasers (including retailers, distributors, and consumers) have come to associate it with PurseN; and the PurseN Trade Dress had established such secondary meaning before Defendants' introduced their copycat product in or around October 2009.

Defendants' Intentional Copying of the PurseN Organizer and Trade Dress

28. In early January of 2009, while attending an industry trade show in New York City to advertise, promote and sell its PurseN Organizer, PurseN met a representative of Defendant QVC to discuss the possibility of selling the PurseN Organizer on QVC's home shopping television network and Internet web site.

29. On or about January 30, 2009, PurseN provided samples of the PurseN Organizer featuring the PurseN Trade Dress to QVC's representative, so QVC could evaluate the samples for possible inclusion on QVC's television network and Internet web site.

30. Upon information and belief, QVC's representative showed or otherwise provided samples of the PurseN Organizer to QVC and/or the other Defendants.

31. QVC's representative kept, and never returned, the PurseN Organizer samples PurseN provided.

32. Instead of placing the PurseN Organizer on QVC's television network or Internet web site, upon information and belief, Defendants intentionally copied the PurseN Organizer to create Defendants' Pursfection Purse Organizer ("the Pursfection Organizer").

33. Defendants began selling their infringing, copycat Pursfection Organizer in or around October 2009 on Defendant QVC's television network and Internet web site, the pursfection.com web site, and other Internet retail web sites.

34. Defendants had, or had access to, samples of the PurseN Organizer, when they created the Pursfection Organizer.

35. Defendants' Pursfection Organizer is nearly identical to the PurseN Organizer, containing both the functional features protected by the '829 patent, and the non-functional features of the PurseN Trade Dress.

36. A side-by-side visual comparison of the PurseN Organizer and PurseN Trade Dress, with Defendant's Pursfection Organizer appears below:





37. PurseN notified Defendants of its pending patent application and trade dress infringement claims prior to filing suit.

COUNT I – PATENT INFRINGEMENT

38. PurseN realleges and incorporates by reference the allegations set forth in paragraphs 1-37, above, as if set forth verbatim herein.

39. Defendants have directly infringed the '829 patent in violation of 35 U.S.C. § 271(a) by making, importing, using, selling, or offering for sale in the

United States products that embody the patented invention. Defendants' infringing products include, without limitation, the "Pursfection™ Interchangeable Purse Organizer" and similar products, which infringe at least claim 1 of the '829 patent.

40. PurseN owned the '829 patent throughout the period of the Defendant's infringing acts and still owns the patent.

41. The Defendants will continue infringing the '829 patent unless enjoined by this court.

42. PurseN has complied with the marking requirements of the patent laws of the United States with respect to products sold by PurseN, including by marking "Patent Pending" on embodying products sold during the pendency of the application which became the '829 patent, and by marking embodying products with the number of the '829 patent once the patent issued.

43. Defendants have had actual knowledge of the '829 patent since at least as early as the filing of this action. Upon information and belief, Defendants have known about the '829 patent since it issued on or about July 24, 2012, PurseN having notified Defendants in writing of the pending patent application which became the '829 patent and PurseN's claims that Defendants' product would infringe the patent once issued, as early as November 19, 2010.

44. Defendants' infringing activities are and have been without authority or license from either the inventor or from PurseN.

45. PurseN is entitled to recover from Defendants the damages sustained by PurseN as a result of Defendants' infringing acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with increased damages, reasonable attorneys' fees, interest and costs as fixed by this Court pursuant to 35 U.S.C. §§ 284 and 285.

COUNT II – UNFAIR COMPETITION UNDER LANHAM ACT
SECTION 43(s) – TRADE DRESS INFRINGEMENT
(15 U.S.C. § 1125(a))

46. PurseN realleges and incorporates by reference the allegations set forth in paragraphs 1-45, above, as if set forth verbatim herein.

47. The PurseN Trade Dress is non-functional.

48. Defendants intentionally copied PurseN's product design and non-functional trade dress to create Defendants' infringing product.

49. For more than a year before Defendants' began selling their infringing Pursfection Organizer, and as detailed above, PurseN extensively advertised and promoted in multiple ways the PurseN Organizer and the PurseN Trade Dress in order to promote a conscious connection in the public's mind between the PurseN Trade Dress and PurseN's business.

50. As a result of PurseN's efforts, the public has come to identify the PurseN Trade Dress with PurseN, such that the PurseN Trade Dress has acquired secondary meaning and is therefore protectable.

51. The PurseN Trade Dress acquired secondary meaning before Defendants' began selling their infringing, copycat Pursfection Organizer.

52. Defendants have sold, and continue to sell products which incorporate and copy the PurseN Trade Dress including, without limitation, Defendants' Pursfection interchangeable purse organizer products. A sample of Defendants' advertising and promotion of the infringing Pursfection Organizer from Defendants' pursfection.com web site appears below:



53. Defendants' Pursfection Organizer infringes the PurseN Trade Dress, at least as shown in the images and comparison of elements between the PurseN Organizer and Trade dress, and Defendants' infringing, copycat product, below:

<i>PurseN Organizer / Trade Dress</i>	<i>Defendants' Pursfection Organizer</i>
	
	
	
<p>Generally rectangular shape approximately 9-11" wide, 6-7" tall, and 5" deep, defined by semi-rigid side walls, with fabric ends and bottom;</p>	<p>Generally rectangular shape approximately 9-11" wide, 6-7" tall, and 5" deep, defined by semi-rigid side walls, with fabric ends and bottom;</p>

<i>PurseN Organizer / Trade Dress</i>	<i>Defendants' Pursfection Organizer</i>
Smooth, satiny matte fabric covering the product's rigid side walls, and its soft fabric end and bottom walls;	Smooth, satiny matte fabric covering the product's rigid side walls, and its soft fabric end and bottom walls;
A decorative coordinating patterned fabric lining the inside;	A decorative coordinating patterned fabric lining the inside;
A single ornamental fabric strip extending horizontally across the outer surface of each end wall between the expandable panels, at approximately mid-height, with the strip being approximately 7/8" wide and having a single-stitch straight seam on each of the top and bottom of the fabric strip;	A single ornamental fabric strip extending horizontally across the outer surface of each end wall between the expandable panels, at approximately mid-height, with the strip being approximately 7/8" wide and having a single-stitch straight seam on each of the top and bottom of the fabric strip;
A single pocket centered on the outer surface of at least one side wall, which pocket is defined by a seam across the top approximately 1/4" wide, the bottom seam of the side wall, and two single-stitch seams along each pocket side extending from the bottom of the side wall beyond the pocket top to the top of the side wall;	A single pocket centered on the outer surface of at least one side wall, which pocket is defined by a seam across the top approximately 1/4" wide, the bottom seam of the side wall, and two single-stitch seams along each pocket side extending from the bottom of the side wall beyond the pocket top to the top of the side wall;
Rectangular-shaped zipper tabs; and	Rectangular-shaped zipper tabs; and
A 1/4" wide seam around the entire top of the sides and ends of the organizer.	A 1/4" wide seam around the entire top of the sides and ends of the organizer.

54. Defendants' infringing Pursfection products have caused, and are likely to continue causing, actual consumer confusion or mistake by falsely

suggesting that Defendants' infringing products are connected with, sponsored by, affiliated with, approved by, or related to PurseN.

55. The PurseN Trade Dress is strong, having established secondary meaning through extensive advertising, marketing and sales for more than a year before Defendants entered the market with their infringing, copycat product.

56. The design of the infringing, copycat Pursfection Organizer is highly similar, if not identical, to the PurseN Trade Dress.

57. The PurseN Organizer and the infringing, copycat Pursfection Organizer are similar products that provide similar benefits to customers.

58. The customers of the PurseN Organizer and the infringing, copycat Pursfection Organizer are similar.

59. The PurseN Organizer and the infringing, copycat Pursfection Organizer are advertised and marketed in similar ways, including by attendance at industry trade shows, via Internet web sites and retailers, by demonstrating the product on television shows, by posting demonstration videos on Internet web sites, and via social media web sites such as Facebook.

60. Upon information and belief, Defendants intentionally copied and adopted the PurseN Trade Dress with the intent of deriving benefit from the reputation and success of the PurseN Organizer and the PurseN Trade Dress.

61. Upon information and belief, Defendants infringing use of the PurseN Trade Dress has caused actual consumer confusion between the authentic PurseN Organizer, and Defendants' infringing, copycat product.

62. Defendants' sales of infringing, copycat Pursfection Organizers, which illegally and without authorization incorporate the PurseN Trade Dress, constitutes trade dress infringement, false designation of origin and unfair competition in violation of 15 U.S.C. § 1125(a).

63. Defendants' infringing activities have caused and, unless enjoined by this Court, will continue to cause irreparable injury and other damage to PurseN's business reputation and to the goodwill associated with the PurseN Trade Dress, including diversion of customers, lost sales and lost profits. PurseN has no adequate remedy at law.

COUNT III – GEORGIA DECEPTIVE TRADE PRACTICES ACT
(O.C.G.A. § 10-1-370 et seq.)

64. PurseN realleges and incorporates by reference the allegations set forth in paragraphs 1-63, above, as if set forth verbatim herein.

65. Defendants' unauthorized use of the PurseN Trade Dress constitutes deceptive trade practices under the Georgia Deceptive Trade Practices Act, O.C.G.A. § 10-1-370, *et seq.*

66. The public is likely to be substantially damaged as a result of Defendants' deceptive trade practices.

67. Unless enjoined by this Court, Defendants will continue said deceptive trade practices, thereby deceiving the public and causing PurseN immediate and irreparable injury for which it has no adequate remedy at law.

COUNT IV – GEORGIA STATUTORY UNFAIR COMPETITION
(O.C.G.A. § 23-2-55)

68. PurseN realleges and incorporates by reference the allegations set forth in paragraphs 1-67, above, as if set forth verbatim herein.

69. Upon information and belief, Defendants' unauthorized use of the PurseN Trade Dress has been with the intention of deceiving and misleading the public, and thereby attempting to encroach upon the business of PurseN in violation of O.C.G.A. § 23-2-55.

70. Defendants' unauthorized use of the PurseN Trade Dress has caused, and unless restrained by this Court, will continue to cause immediate and irreparable injury to PurseN because a substantial number of past, present and potential customers have been and are likely to be confused, deceived and misled as to the true source, origin, sponsorship, approval, authorization, association, affiliation and characteristics of the products offered for sale and sold by Defendants. PurseN has no adequate remedy at law for such injury.

COUNT V – GEORGIA COMMON LAW UNFAIR COMPETITION

71. PurseN realleges and incorporates by reference the allegations set forth in paragraphs 1-70, above, as if set forth verbatim herein.

72. Defendants' unauthorized use of the PurseN Trade Dress has been for the calculated purpose of passing off Defendants' products as those of PurseN, trading upon PurseN's goodwill and reputation, and deceiving the public as to the true nature and characteristics of Defendants' products, all to Defendants' profit and to PurseN's damage.

73. Defendants' aforesaid acts constitute unfair competition under the common law of the State of Georgia and have caused, and unless restrained by this Court will continue to cause, immediate and irreparable injury to PurseN's goodwill and reputation, for which it has no adequate remedy at law.

COUNT VI – GEORGIA COMMON LAW TRADE DRESS INFRINGEMENT

74. PurseN realleges and incorporates by reference the allegations set forth in paragraphs 1-73, above, as if set forth verbatim herein.

75. PurseN, by virtue of its prior adoption and use of the PurseN Trade Dress, in this judicial district and elsewhere, has acquired, established and owns valuable common law rights in said trade dress.

76. Defendants' unauthorized use of the PurseN Trade Dress constitutes copying and imitation of the PurseN Trade Dress, falsely designates the origin of Defendants' products, causes confusion, mistake and deception in the marketplace, and is likely to cause further confusion, mistake or deception in the marketplace, and therefore infringes PurseN's common law rights in the PurseN Trade Dress in violation of the common law of the State of Georgia.

77. Defendants' actions complained of herein, unless enjoined by this Court, will continue to result in a likelihood of further confusion, mistake and deception of the public concerning the sources or origin of products offered for sale and sold by Defendants, and will continue to produce irreparable injury and damage to PurseN and its goodwill and business reputation, for which PurseN has no adequate remedy at law.

COUNT VII – GEORGIA COMMON LAW UNJUST ENRICHMENT

78. PurseN realleges and incorporates by reference the allegations set forth in paragraphs 1-77, above, as if set forth verbatim herein.

79. Defendants' unauthorized use of the PurseN Trade Dress in connection with the advertising, promoting and sale of Defendants' goods and services, from which Defendants have derived substantial profits, has unjustly enriched Defendants by enabling them to unfairly appropriate the benefit of

PurseN's extensive use, promotion and development of the PurseN Trade Dress and the goodwill associated therewith.

80. Defendants have earned revenues and profits to which they are not legally entitled, and PurseN continues to be irreparably injured by the aforesaid acts of Defendants, which acts have greatly and unjustly enriched Defendants at PurseN's expense, for which injury PurseN has no adequate remedy at law.

**COUNT VIII - GEORGIA COMMON LAW
MISAPPROPRIATION AND CONVERSION**

81. PurseN realleges and incorporates by reference the allegations set forth in paragraphs 1-80, above, as if set forth verbatim herein.

82. Defendants, through the unauthorized use of the PurseN Trade Dress, have misappropriated the PurseN Trade Dress, and have unlawfully converted to their own use and exploited PurseN's property and commercial likeness, thereby reaping for themselves the benefits of PurseN's prior use, promotion and development of the PurseN Trade Dress, and the goodwill symbolized thereby.

PRAYER FOR RELIEF

WHEREFORE, PurseN prays for relief as follows:

A. Entry of an order and judgment requiring that Defendants and their agents, servants, employees, owners and representatives, and all other persons, firms or corporations in active concert or participation with them, be enjoined and

restrained from (a) any further infringement of the '829 patent; (b) using in any manner the PurseN Trade Dress, or any confusingly similar or colorable imitation of the PurseN Trade Dress; and (c) doing any act or thing that is calculated or likely to cause confusion or mistake in the minds of members of the public or prospective customers of PurseN's or Defendants' products or services as to the source of the products or services offered for sale, distributed, or sold, or that is likely to deceive members of the public, or prospective customers, into believing that there is some connection, affiliation, or sponsorship between Defendants and PurseN;

B. A judgment ordering Defendants, pursuant to 15 U.S.C. § 1116(a), to file with this Court and serve upon PurseN within thirty (30) days after entry of the injunction, a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the injunction and ceased all offering of services under the Defendants' trade names and trademarks as set forth above;

C. A judgment ordering Defendants, pursuant to 15 U.S.C. § 1118, to deliver up for destruction, or to show proof of said destruction or sufficient modification to eliminate the infringing matter, all articles, web pages, video, packages, wrappers, products, displays, labels, signs, vehicle displays or signs,

circulars, kits, packaging, letterhead, business cards, promotional items, clothing, literature, sales aids, receptacles or other matter in the possession, custody, or under the control of Defendants or their agents bearing the PurseN Trade Dress in any manner, or any trade dress or product configuration that is confusingly similar to or a colorable imitation of the PurseN Trade Dress;

D. An accounting and award of damages for Defendants infringement of the '829 patent, which by law cannot be less than a reasonable royalty, together with increased damages, pre- and post- judgment interest, costs and attorney's fees pursuant to 35 U.S.C. §§ 284 and 285.

E. A judgment in the amount of PurseN's actual trade dress infringement damages, Defendants' profits, PurseN's reasonable attorneys' fees and costs of suit, pre-judgment interest, and post-judgment interest;

F. A judgment for enhanced damages under 15 U.S.C. §1117 and punitive damages under state law as appropriate; and

G. A judgment granting PurseN such other and further relief as the Court deems just and proper.

JURY DEMAND

PurseN hereby demands a trial by jury of all issues so triable.

This 4th day of February, 2013.

KENT LAW, P.C.

/s/Daniel A. Kent

_____ Daniel A. Kent

Georgia Bar Number 415110

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all attorneys of record.

This 4th day of February, 2013.

KENT LAW, P.C.

/s/Daniel A. Kent

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