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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202009
Party	Defendant Motorola Trademark Holdings, LLC
Correspondence Address	WILLIAM R ANDERSON MOTOROLA TRADEMARK HOLDINGS LLC 600 N US HIGHWAY 45 LIBERTYVILLE, IL 60048-5343 UNITED STATES
Submission	Motion to Suspend for Civil Action
Filer's Name	Cathay Y. N. Smith
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Signature	/s/
Date	11/14/2011
Attachments	Notice of Related Civil Action and Request to Suspend Proceeding.pdf (18 pages)(448511 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

XOOM CORPORATION, Opposer, v. MOTOROLA TRADEMARK HOLDINGS, LLC, Applicant.	)))))))))	Opposition No. 91202009

NOTICE OF RELATED CIVIL ACTION
AND REQUEST TO SUSPEND PROCEEDING

In accordance with the Trademark Trial and Appeal Board's ("Board") October 11, 2011 order (Docket No. 2), 37 CFR § 2.117(a), and TBMP 510.02(a), Applicant Motorola Trademark Holdings, LLC ("Applicant") hereby notifies the Board that the parties in this Opposition No. 91202009 (the "Board Proceeding") are parties in a civil action involving the same marks and similar issues of law and fact that overlap with the Board Proceeding, and Applicant further requests that the Board suspend the Board Proceeding pending resolution of the Civil Action. Specifically, Applicant states as follows:

1. On February 23, 2011, Opposer Xoom Corporation ("Opposer") filed a complaint in the United States District Court for the Northern District of California against Applicant for trademark infringement, unfair competition, false designation of origin, false advertising and unfair business practices arising from Applicant's alleged adoption and/or use of the XOOM or MOTOROLA XOOM brand for Applicant's mobile computer and related products and services (the "Civil Action"). A copy of the Complaint filed by Opposer in the Civil Action is attached hereto as **Exhibit A**.

2. In the Civil Action, Opposer, as plaintiff, requests that Applicant, as defendant, be enjoined from using the mark "XOOM," and alleges that Applicant's use of XOOM or MOTOROLA XOOM for its mobile computer and related products and services is likely to cause confusion with Opposer's XOOM brand and services. Similarly, in the Board Proceeding, Opposer has opposed Applicant's application for the mark XOOM for "mobile computers and related accessories" based on an alleged likelihood of confusion with Opposer's XOOM marks and registrations.

3. Pursuant to 37 CFR § 2.117(a), whenever it shall come to the attention of the Board that a party or parties to a pending case are engaged in a civil action which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action. It is the policy of the Board to suspend proceedings when the parties are involved in a civil action which may be dispositive of or have a bearing on the Board Proceeding. *See*, e.g., *Dallas C. Brown Jr. v. Courtney L. Bishop*, Can. No. 92050965, 2010 WL 2946844, at *3 (TTAB 2010); *George Vais v. Vais Arms, Inc.*, Opposition No. 91154485, 2004 WL 390936, at *1 (TTAB 2004). Suspension of a Board proceeding is appropriate even if the civil case may not be dispositive of the Board proceeding, so long as the ruling will have a bearing on the rights of the parties in the Board proceeding. *See Society of Mexican American*, Opp. No. 121723, 2002 WL 31488947, at *4 (TTAB 2002) (citing *Martin Beverage Co. Inc. v. Colita Beverage Company*, 169 USPQ 568, 570 (TTAB 1971)).

4. The Civil Action involves issues in common with those in the Proceeding before the Board, and the final resolution of the Civil Action may be dispositive of all of the issues involved in the Board Proceeding.

5. Accordingly, in accordance with 37 CFR § 2.117(a), in the interest of judicial economy and to prevent the potential for inconsistent rulings on issues similar in the Board Proceeding and the Civil Action, and because the decision of the District Court would be binding on this Board, Applicant respectfully requests that the Board suspend the Board Proceeding (Opposition No. 91202009) pending outcome of the Civil Action.

Date: November 14, 2011

Respectfully submitted,

Attorney for Applicant Motorola Trademark Holdings, LLC

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CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the Notice of Related Proceedings to be served upon:

Rochelle D. Alpert
Morgan Lewis & Bockius LLP
One Market, Spear Street Tower
San Francisco, CA 94105

by E-Mail and First Class Mail, postage prepaid, this 14th day of November, 2011.

Cathay Y. N. Smith

Exhibit A

Xoom Corporation v. Motorola Trademark Holdings, LLC
Opposition No. 91202009

Applicant's Exhibit

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

JCS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

XOOM CORPORATION, a California Corporation, Plaintiff, vs. MOTOROLA TRADEMARK HOLDINGS, LLC, a Delaware limited liability company, MOTOROLA MOBILITY, INC., a Delaware corporation, and MOTOROLA MOBILITY HOLDINGS, INC., a Delaware corporation, and DOES 1 through 10 inclusive Defendants.	Case No. CV11 0848 **COMPLAINT FOR TRADEMARK AND TRADE NAME INFRINGEMENT, UNFAIR COMPETITION, FALSE DESIGNATION OF ORIGIN, FALSE ADVERTISING AND UNFAIR BUSINESS PRACTICES** **DEMAND FOR JURY TRIAL**

Plaintiff Xoom Corporation ("Xoom") for its Complaint against Defendants alleges as follows:

1. Xoom brings this action against Defendants Motorola Trademark Holdings, LLC, Motorola Mobility, Inc. and Motorola Mobility Holdings, Inc. and DOES 1 through 10 (collectively "Defendants" or "Motorola") for trademark infringement, false designation of origin, unfair competition, false advertising and unfair business practices in violation of the Lanham Act, 15 U.S.C. §§ 1114(1), and 1125(a)(1), California Business and Professions Code §§ 17200 *et seq.*, and § 14335, and common law, arising from Defendants' adoption and/or use of the identical XOOM brand for Defendants' mobile computer and related products and services

offered to consumers via the Internet, which products and services are directly related to the products Xoom has long offered using its federally registered, incontestable XOOM® mark and its Xoom trade name to consumers via the Internet and accessible on computers and mobile devices over the Internet. Defendants' adoption and/or use of the XOOM and MOTOROLA XOOM brand has caused and is likely to continue to cause confusion with Xoom's long held and incontestable XOOM® mark and Xoom's Xoom trade name.

PARTIES

2. Xoom Corporation is a California corporation, with its principal place of business at 100 Bush Street, San Francisco, California 94104, doing business in San Francisco, throughout the United States and in foreign countries, since at least as early as 2003 under the Xoom trade name and the federally registered and incontestable XOOM® trademark.

3. Motorola Trademark Holdings, LLC is a Delaware limited liability company, with its principal place of business at 600 North U.S. Highway 45, Libertyville, Illinois 60048.

4. Motorola Mobility, Inc. is a Delaware corporation with its principal place of business at 600 North U.S. Highway 45, Libertyville, Illinois 60048.

5. Motorola Mobility Holdings, Inc. is a Delaware corporation with its principal place of business at 600 North U.S. Highway 45, Libertyville, Illinois 60048.

6. Xoom is informed and believes, and on that basis alleges, that Motorola Trademark Holdings, LLC, Motorola Mobility, Inc. and Motorola Mobility Holdings, Inc. acted together or in connection with DOES 1 through 10 in engaging in the acts giving rise to these claims and that they are liable for the acts of each other as agents, conspirators, principals or alter egos of each other in committing the acts described herein.

7. The true names and capacities of DOES 1 through 10 are unknown to Xoom, which therefore sues such defendants by fictitious names. Xoom will seek leave to amend this Complaint to allege the true names and capacities of such DOE defendants when the same are ascertained. Xoom is informed and believes, and on that basis alleges, that each of the fictitiously named defendants is responsible in some manner for the conduct, injuries and damages alleged in this Complaint.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over Xoom's federal, state and common law claims of trademark infringement and unfair competition pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a)-(b), and 1367(a).

9. This Court has personal jurisdiction over Motorola, and venue is proper in this district pursuant to 28 U.S.C. § 1391 (b)-(c), because on information and belief, Motorola has a presence in the state of California and in this District, and conducts regular and systematic business in California and in this District, has purposefully availed itself of conducting business in California and in this District, and/or the events giving rise to the claims alleged in this complaint have a substantial effect in California and a substantial part of such events occurred in this District. Xoom is informed and believes, and on that basis alleges, that Motorola is qualified to do business in California; Motorola sells, promotes and advertises its products and services in California, including its XOOM mobile computer and related product offerings; and has offices within California and in this District.

10. Xoom has its principal place of business in San Francisco, California, which is located within this District and has suffered and will continue to suffer injury and harm in this District as a result of Defendants' adoption and/or use of the Xoom designation without authorization from Xoom.

FACTUAL ALLEGATIONS

11. Xoom has long owned and prominently used the trade name Xoom and the federally registered, incontestable trademark XOOM® for its online business. Since at least as early as 2003, Xoom has offered consumers access to its remittance software services through its www.xoom.com web site using its distinctive XOOM® mark and trade name. Through this long online use accessible via computer and mobile devices, Xoom's trade name and the XOOM® products have become associated exclusively with Xoom. Until Defendants' adoption of the Xoom brand without authorization from Xoom, Xoom to its knowledge was the only entity currently using the name or mark Xoom for online product offerings. Xoom secured the www.xoom.com domain name in 2003 and has used it for its online product offerings.

12. At the website, xoom.com, and elsewhere on the Internet, Xoom features and promotes Xoom's computer accessible, secure, fast and inexpensive remittance services, which allow users to transmit monies through the xoom.com web site to more than 30 different countries. The Xoom website and the XOOM® product offerings are available for use through computers and mobile devices, including mobile or tablet computers.

13. As a result of its exclusive use since at least as early as 2003, the XOOM® mark has become exclusively associated by consumers as a designation of source for Xoom's online products, including its provision of online access to XOOM® product offerings.

14. Xoom owns an incontestable United States trademark registration for XOOM®, Federal Registration No. 2,909,931, covering "providing business information, namely, on money transfer services," and "money transfer services; electronic funds transfer services; bill payment remittance services; electronic payment, namely, electronic processing and transmission of bill payment data." The mark registered on December 14, 2004 and became incontestable with the filing (and acceptance) of Xoom's Section 8 and 15 affidavits demonstrating continuous use of the XOOM® mark for five years after registration. A true and correct copy of the registration certificate is attached hereto as Exhibit A and incorporated herein as if fully set forth.

15. In an effort to exploit and improperly trade on Xoom's goodwill, to otherwise diminish the value of the Xoom trade name and the XOOM® mark, and to confuse and mislead consumers, Motorola without authorization deliberately and unlawfully appropriated Xoom's trade name and trademark rights through its adoption and/or use of the XOOM and/or MOTOROLA XOOM designations, and its intent-to-use application to register an identical XOOM designation for mobile computers and related accessories, U.S. Application No. 85161358.

16. Motorola filed its intent-to-use trademark application for the XOOM designation on October 26, 2010, well after Xoom adopted its trade name in 2003, well after Xoom began offering its products under its XOOM® mark and name in 2003, well after the XOOM® mark registered to Xoom, and well after the XOOM® federal trademark registration became incontestable.

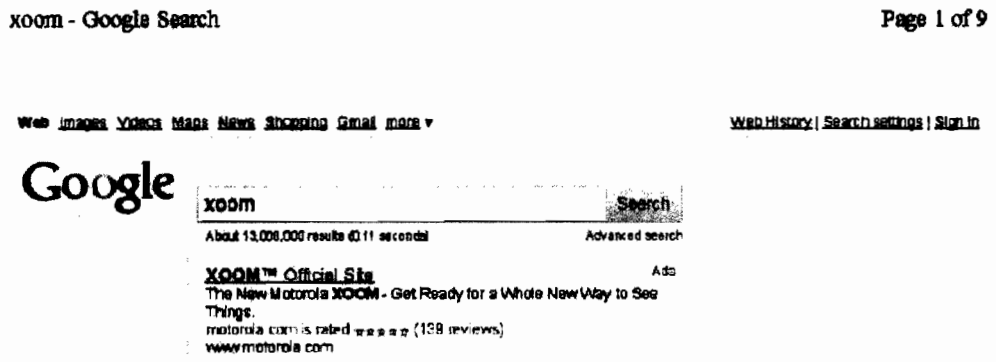
17. Xoom is informed and believes, and on that basis alleges, that Defendants have promoted, advertised and marketed, and offered for sale in interstate commerce a mobile computer and related product offerings using Xoom's XOOM® mark. Defendants display the Xoom trademark alone and in lettering much larger than the Motorola wording on their website and in other advertisements, all of which are the subject of this Complaint.

18. By way of example, Defendants, on their website at motorola.com, allow users to view a commercial for their Xoom product offering, in which Defendants use Xoom's XOOM® mark on the screen of the device screen, very much like the XOOM® mark and name would appear on the screen if the xoom.com site was accessed online through the Defendants' Xoom device:

19. Defendants also have purchased the XOOM keyword on online search engines. Thus, when users conduct an online search for "Xoom" using the Google search engine, Defendants' advertisements for XOOM product offerings are featured, sometimes as the first result, and are listed before any of Xoom's own advertisements or links to Xoom's website. The outcome is similar on other search engines.

20. Resellers of Defendants' Xoom product offerings also have begun to purchase and use Xoom as a keyword and in headlines for the ads that they run on the Internet, all without any apparent objection from the Defendants.

21. Defendants' advertisements on the Internet also represent that they constitute the Xoom "Official Site," when that is not the case. For example, the following advertisement appeared after entering "xoom" as a search term using the Google search engine:


xoom - Google Search Page 1 of 9

Web Images Videos Maps News Shopping Gmail more ▾ Web History | Search settings | Sign in

Google xoom Search

About 13,000,000 results (0.11 seconds) Advanced search

XOOM™ Official Site Ads
The New Motorola XOOM - Get Ready for a Whole New Way to See Things.
motorola.com is rated ★★★★★ (139 reviews)
www.motorola.com

Indeed, Xoom has long used the wording "Official Site" in conjunction with its website at xoom.com and the products and services that it offers on the site, all of which increase the likelihood that consumers will be confused and misled as a result of Defendants' unauthorized use of Xoom's name and mark on the Internet, particularly with the wording "Official."

22. By engaging in this willful and deliberate conduct, Defendants have willfully infringed Xoom's trade name and federally registered trademark, creating a false association between Defendants and Xoom, when there is no association, and otherwise falsely and fraudulently representing the Xoom product offerings of Defendants to the public, and engaging in false advertising that is materially false and misleading to the public.

23. As a result of Defendants' unlawful conduct, the public is misled as to an association with Xoom, when there is none, and thereby Xoom has suffered and will continue to suffer irreparable injury and be otherwise harmed, along with consumers who are confused and misled. Such injury and harm will continue unless Defendants' conduct is enjoined.

FIRST CLAIM FOR RELIEF
(TRADEMARK INFRINGEMENT – 15 U.S.C. § 1114(1))

24. Xoom incorporates by reference and realleges as though fully set forth herein the allegations of paragraphs 1 through 23, inclusive.

25. The above acts of Defendants constitute trademark infringement of Xoom's

XOOM® mark in violation of section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

26. Motorola has applied for and sworn under penalty of perjury that it intends to use the identical XOOM designation for mobile computer product offerings, including on the Internet, without any authorization from Xoom. In furtherance of its Application, Defendants have used, promoted and offered for sale, their product offerings under an identical XOOM designation, without any authorization from Xoom, causing confusion in the marketplace, which is harming consumers and Xoom. Further, Defendants have used, promoted and offered for sale, their product offerings under the confusingly similar MOTOROLA XOOM designation, without any authorization from Xoom, causing confusion in the marketplace, which is harming consumers and Xoom.

27. Defendants' proposed use and use of the identical XOOM designation for its mobile computer and related product offerings has caused confusion and is likely to continue cause confusion, mistake and deception among the general consuming public as to the identity of the XOOM product offerings, whether those of Defendants or Xoom.

28. Defendants' use of XOOM and/or MOTOROLA XOOM is without the permission of Xoom.

29. Xoom is informed and believes, and on that basis alleges, that Defendants' conduct has been knowing, deliberate and willful.

30. As a direct and proximate result of Defendants' unlawful conduct, Xoom has been, and will continue to be, irreparably harmed, injured and/or damaged by Defendants' wrongful acts, and such harm, injury and/or damage will continue unless Defendants' conduct is enjoined by the Court.

31. As a direct and proximate result of Defendants' unlawful conduct, Xoom has suffered and is entitled to monetary damages in an amount not yet determined.

32. Xoom is informed and believes, and on that basis alleges, that Defendants' acts were in conscious and willful disregard of Xoom's federal trademark rights, and the resulting damage to Xoom warrants treble damages and the recovery of attorney's fees and costs.

SECOND CLAIM FOR RELIEF
(FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION — 15 U.S.C. § 1125(a))

33. Xoom incorporates by reference and realleges as though fully set forth herein the allegations of paragraphs 1 through 32, inclusive.

34. The above acts of Defendants constitute unfair competition and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

35. Defendants are unfairly competing with Xoom by virtue of its unauthorized use of Xoom's XOOM® trademark and trade name in interstate commerce to sell, offer for sale, distribute and advertise a mobile computer and related product offerings, which falsely leads consumers to believe that Defendants' products and services are affiliated or associated with, originate from, or are sponsored, or approved by Xoom.

36. Xoom is informed and believes, and on that basis alleges, that Defendants have in effect informed the marketplace that Defendants' XOOM and MOTOROLA XOOM product offerings are the products and services of Xoom or that Xoom's XOOM® product offerings are affiliated or associated with Motorola. These misrepresentations were made in commercial advertising or promotion of Defendants' products, and are false and/or misleading and do not properly represent the nature or characteristics of Defendants' mobile computer or related products.

37. Defendants' false and/or misleading statements, which Defendants have made or caused to be made in interstate commerce, have actually deceived, and/or have the tendency to deceive a substantial segment of the consuming public and the marketplace.

38. Xoom is informed and believes, and on that basis alleges, that Defendants' actions were done with full knowledge, and with the intent to cause confusion and to mislead and deceive the purchasing public and that these statements have actually deceived or have a tendency to deceive a substantial segment of the purchasing public.

39. Xoom has been injured and damaged by Defendants' conduct.

40. Xoom has no adequate remedy at law. Defendants' conduct, as described herein,

has caused and, if not enjoined, will continue to cause irreparable damage to Xoom. As a result of Defendants' conduct, Xoom is entitled to injunctive relief and damages.

41. As a direct and proximate result of Defendants' unlawful conduct, Xoom has suffered and is entitled to monetary damages in an amount not yet determined.

42. Xoom is informed and believes, and on that basis alleges, that Defendants' acts were in conscious and willful disregard of Xoom's trademark and trade name, and the resulting damage to Xoom warrants treble damages and attorneys' fees and costs.

THIRD CLAIM FOR RELIEF
(FALSE ADVERTISING–15 U.S.C. § 1125)

43. Xoom incorporates by reference and realleges as though fully set forth herein the allegations of paragraphs 1 through 42, inclusive.

44. The above acts of Defendants constitute false advertising under Section 43 of the Lanham Act, 15 U.S.C. § 1125.

45. Defendants are falsely advertising XOOM product offerings as emanating from Motorola by such acts as buying the keyword "Xoom" to place ads on Google for the Xoom product offerings of Defendants, and by claiming to be the "Xoom — Official Site." Such acts falsely lead consumers to believe that Defendants' product offerings are affiliated or associated with, originate from, or are sponsored, or approved by Xoom or that Xoom is affiliated or associated with Motorola, when that is not the case.

46. Xoom is informed and believes, and on that basis alleges, that Defendants inform the marketplace that Defendants offer Official Xoom product offerings. These misrepresentations were made in commercial advertising or promotion of Defendants' products, are false and/or misleading and do not properly represent the nature or characteristics of Defendants' product offerings.

47. Defendants' false and/or misleading statements, which Defendants have made or caused to be made in interstate commerce, have actually deceived, and/or have the tendency to deceive a substantial segment of the consuming public and the marketplace.

48. Defendants' deception is material, in that it is likely to influence the purchasing

decisions of the consuming public and the marketplace.

49. Defendants' false and/or misleading statements made in connection with the distribution, advertising and/or sale of its products constitutes false advertising in violation of 15 U.S.C. § 1125.

50. Xoom is informed and believes, and on that basis alleges, that Defendants' actions were done with full knowledge, and with the intent to deceive the purchasing public and that these statements have actually deceived or have a tendency to deceive a substantial segment of the purchasing public.

51. Xoom has been injured and damaged by Defendants' conduct.

52. Xoom has no adequate remedy at law. Defendants' conduct, as described herein, has caused and, if not enjoined, will continue to cause irreparable damage to Xoom. As a result of Defendants' conduct, Xoom is entitled to injunctive relief and damages.

53. As a direct and proximate result of Defendants' unlawful conduct, Xoom has suffered and is entitled to monetary damages in an amount not yet determined and is entitled to Defendants' profits. Xoom is also entitled to its attorneys' fees and costs.

54. Xoom is informed and believes, and on that basis alleges, that Defendants' acts were in conscious and willful disregard of Xoom's trademark and trade name, and the resulting damage to Xoom warrants treble damages.

FOURTH CLAIM FOR RELIEF
(UNFAIR BUSINESS PRACTICES — CAL. BUS. & PROF. CODE §§ 17200 *ET SEQ.*)

55. Xoom incorporates by reference and realleges as though fully set forth herein the allegations of paragraphs 1 through 54, inclusive.

56. The above acts and practices of Defendants are likely to mislead the general public and, thereby, constitute unfair and fraudulent business practices and unfair, deceptive, untrue and misleading advertising in violation of California Business and Professions Code §§ 17200 *et seq.* Defendants' conduct caused injury to Xoom resulting in loss of money or property and caused injury in fact to Xoom resulting in loss of money or property.

57. Xoom is entitled to relief against Defendants, including full restitution and/or

disgorgement of all profits and benefits that may have been obtained by Defendants as a result of such unfair, deceptive and/or fraudulent business practices and unfair, deceptive, untrue and misleading advertising.

58. As a direct and proximate result of Defendants' unlawful conduct, Xoom has been, and will continue to be, harmed, injured and/or damaged by Defendants' wrongful acts, and such harm, injury and/or damage will continue unless Defendants' conduct is enjoined by the Court.

FIFTH CLAIM FOR RELIEF
(TRADEMARK INFRINGEMENT — CAL. BUS. & PROF. CODE §14335)

59. Xoom incorporates by reference and realleges as though fully set forth herein the allegations of paragraphs 1 through 58, inclusive.

60. Xoom is informed and believes, and on that basis alleges that, Defendants have used, and continue to use, the confusingly similar XOOM designation to promote their mobile computer and related products and services for the purpose of enhancing the commercial value of, or selling or soliciting purchases of, Defendants' products and services.

61. As a direct and proximate result of Defendants' unlawful conduct, Xoom has been, and will continue to be, harmed, injured and/or damaged by Defendants' wrongful acts, and such harm, injury and/or damage will continue unless Defendants' conduct is enjoined by the Court.

SIXTH CLAIM FOR RELIEF
(COMMON LAW UNFAIR COMPETITION)

62. Xoom incorporates by reference and realleges as though fully set forth herein the allegations of paragraphs 1 through 61, inclusive.

63. In addition to its rights under the Lanham Act and state statutory law, Xoom also has valid and existing common law rights with respect to its XOOM mark and name.

64. The above acts of Defendants constitute unfair competition under common law.

65. Defendants' use of Xoom's XOOM mark and name in connection with the distribution, advertising, promotion, offering for sale and/or sale of XOOM mobile computer and related product offerings, are likely to cause confusion and, on information and belief, have caused confusion as to the source of Defendants' and Xoom's product offerings in that customers

will be likely to associate or have associated the product offerings of Xoom and Defendants when no such association or affiliation exists, all to the detriment of Xoom.

66. Xoom is informed and believes, and on that basis alleges that, the above acts of Defendants were and continue to be willful and malicious and undertaken with the deliberate intent to mislead the public and injure the business of Xoom. Xoom thereby should be awarded exemplary damages based upon common law unfair competition principles.

67. As a direct and proximate result of Defendants' unlawful conduct, Xoom has been, and will continue to be, harmed, injured and/or damaged by Defendants wrongful acts, and such harm, injury and/or damage will continue unless Defendants conduct is enjoined by the Court.

68. Xoom is entitled to relief against Defendants, including full restitution and/or disgorgement of all profits and benefits that may have been obtained by Defendants as a result of such unfair competition.

69. Xoom is informed and believes, and on that basis alleges, that Defendants' conduct is willful, wanton, malicious, oppressive, and in conscious disregard of Xoom's rights in its XOOM mark and trade name, justifying punitive and exemplary damages under California Civil Code § 3294.

PRAYER FOR RELIEF

WHEREFORE, Xoom respectfully requests:

1. That the Court issue a temporary restraining order and/or preliminary injunction, pending trial of this action, enjoining Defendants, their successors, officers, agents and employees, and anyone acting in concert with or at the behest or direction of Defendants, from using Xoom's XOOM® mark and trade name, or any designation that is confusingly similar to Xoom's XOOM® mark and trade name, or any designation that is likely to cause confusion, mistake, deception or public misunderstanding as to the identity or origin of Xoom's products and services or their connection to or affiliation with Defendants.

2. That following trial of this action, the Court enter final judgment as follows:

a. permanently enjoining Defendants, their successors, officers, agents and

employees, and anyone acting in concert with or at the behest or direction of Defendants, from using a confusingly similar designation to Xoom's XOOM® mark and trade name, or any designation that is likely to cause confusion, mistake, deception or public misunderstanding at the identity or origin of Xoom's product offerings or their connection to or affiliation with Defendants;

b. ordering that all labels, packaging, wrappers, signs, prints, banners, posters, brochures, or other advertising, marketing, or other promotional materials bearing a confusingly similar designation to Xoom's XOOM® mark or name, be disabled, removed and destroyed, along with the means for making the same, and that all Internet websites, online advertising, marketing, promotions or other online materials bearing the XOOM designation in any form or manner by Defendants be disabled, removed and destroyed;

c. permanently enjoining Defendants, their successors, officers, agents and employees, and anyone acting in concert with or at the behest or direction of Defendants, from seeking to register the XOOM designation for Defendants' mobile computer and related products and services or any designation that is likely to cause confusion, mistake, deception or public misunderstanding as to the identity or origin of Xoom, the Xoom product offerings, or their connection to or affiliation with Defendants;

d. ordering Defendants to file with the Court and serve on Xoom's counsel within 30 days after service of the injunction, a written report, sworn under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction;

e. declaring that Defendants' unauthorized use of the XOOM and MOTOROLA XOOM designations used in connection with Defendants' mobile computer and other product offerings infringes Xoom's XOOM® mark and trade name;

f. declaring that Defendants' have engaged in false advertising by buying the keyword "Xoom," claiming that they own the Xoom Official Site, and otherwise by misrepresenting Defendants' and Xoom's product offerings;

g. declaring that Defendants' infringement, unfair competition and false advertising was knowing, intentional, and willful;

h. awarding Xoom compensation for any and all damages, injury or harm incurred as a result of Defendants wrongful conduct;

i. ordering full restitution and/or disgorgement of all profits and benefits that may have been obtained by Defendants as a result of their wrongful conduct;

j. awarding Xoom treble damages resulting from Defendants' willful and intentional conduct;

k. awarding Xoom punitive and exemplary damages;

l. awarding Xoom its costs of this action and reasonable attorneys' fees against Defendants; and,

m. awarding any other such relief the Court deems just and proper or to which Xoom may be entitled.

Dated: February 23, 2011

MORGAN, LEWIS & BOCKIUS LLP
ROCHELLE D. ALPERT
LEIGHA E. WILBUR

By _____
Rochelle D. Alpert

Attorneys for Plaintiff
XOOM CORPORATION