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

Proceeding	92061129
Party	Defendant HIMG, Inc. and EBI, Ltd.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HIMG SERAMIK VE MEDIKAL	)
KOMPOZIT SAN TIC LTD STI,	)
A Turkish Corporation,	)
	) Cancellation No.: 92061129
Petitioner,	)
	)
v.	)
	) Registration No.: 4573180
EBI, Ltd., a California Corporation,	)
and HIMG, Inc., a Nevada Corporation,	) Date of Issue: July 22, 2014
	)
	)
Respondents.	)
_____	)

**EBI, LTD.'S RESPONSE TO THE BOARD'S ORDER DATED AUGUST 11, 2015**

Pursuant to the Board's order dated August 11, 2015, EBI, Ltd. hereby informs the Board of the status of the lawsuit entitled *EBI Ltd., et al. v. Yusuf Bugra Sahin*, Case No. 3:14-cv-02274-JAH-RBB (the "District Court Case"), which is currently pending before the United States Federal Court, Southern District of California. The next event in the District Court Case is an Early Neutral Case Conference with the magistrate judge, set for August 18, 2015.

EBI, Ltd. also attaches the pleadings of the District Court Case to this response, per the Board's order. The pleadings show that on September 25, 2014, EBI, Ltd., Haffner Int'l Marketing Group, Inc. (HIMG), Heinz Haffner and Rentato Bizzaro ("Plaintiffs") brought several claims against Yusuf Bugra Sahin, including claims for infringement of the HIMG trademark, unfair competition, misappropriation of trade secret, and breach of contract. Yusuf Bugra Sahin and Petitioner HIMG Seramik Ve Medikal Kompozit San Tic Ltd Sti answered and counterclaimed against Plaintiffs on May 20, 2015. After Plaintiffs filed a motion to dismiss under Rule 12(b)(6), Yusuf Bugra Sahin and Petitioner HIMG Seramik Ve Medikal Kompozit San Tic Ltd Sti amended their answer and counterclaims on June 30, 2015. Plaintiffs answered the amended counterclaims, and filed their own counterclaims against Petitioner HIMG

Seramik Ve Medikal Kompozit San Tic Ltd Sti on July 14, 2015. Petitioner HIMG Seramik Ve Medikal Kompozit San Tic Ltd Sti answered Plaintiffs' counterclaims on July 31, 2015.

Respectfully submitted this 12<sup>th</sup> day of August, 2015

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/s/Kayla Jimenez

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

EBI LTD., a California corporation; HAFFNER INT’L MARKETING GROUP, INC., a Nevada corporation; HEINZ HAFFNER, a California resident; and RENTATO BIZZARRO, a resident of Brazil,

Plaintiff,

vs.

YUSUF BUGRA SAHIN, an individual,

Defendant.

Case No.: **'14CV2274 JAH RBB**

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF**

Plaintiffs EBI LTD. (“EBI”), HAFFNER INT’L MARKETING GROUP, INC. (“HIMG”) HEINZ HAFFNER (“Mr. Haffner”); and RENTATO BIZZARRO (“Mr. Bizzarro”), sometimes referred collectively as “Plaintiffs,” allege as follows:

**NATURE OF THE CASE**

This is an action for Trademark Infringement, Unfair Competition, Trademark Counterfeiting, Breach of Contract, Breach of Fiduciary Duty, Fraud, Deceit, Unjust Enrichment, Conversion, Misappropriation of Trade Secret, State Trademark Infringement, State Unfair Competition, Intentional Interference with Economic Advantage, False Advertising and Deceptive Trade Practices. Plaintiffs seek actual damages, Defendant’s profits, and/or statutory damages, punitive damages, an award of attorneys’ fees and costs, and preliminary and

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1 permanent injunctive relief.

2 **PARTIES**

3 1. Plaintiff EBI is a corporation, organized and existing under the laws of the State of  
4 California, and operating from its headquarters in Vista, California. EBI was formed in 1990 as  
5 the operating entity for Plaintiff Mr. Haffner’s business in the field of porcelain repair kits.

6 2. Plaintiff HIMG is a corporation, organized and existing under the laws of the State of  
7 Nevada, and also has an office Vista, California. HIMG markets its products through a global  
8 distribution network, which includes this district, and produces and prints product labels,  
9 develops art work and advertisements for its products, creates and produces website videos for  
10 its products, processes and packs its products, engages in product color matching projects for  
11 clients, and updates Plaintiffs’ website.

12 3. Plaintiff Mr. Haffner resides in Vista California. He is the founder of HIMG and EBI, and  
13 is a leader in the field of porcelain repair, granite repair, and horse hoof repair products.

14 4. Plaintiff Mr. Bizzarro is a resident and citizen of Brazil. He has been a principal of  
15 businesses owned jointly with Mr. Haffner. Mr. Bizzarro manages the business activities in Latin  
16 America, and is involved in the worldwide distribution of sanitary porcelain repair products and  
17 horse hoof repair products.

18 5. Defendant Yusuf Bugra Sahin, an individual (“Sahin”) is believed to be a resident of  
19 Turkey. He does business at PROF. DR.ALI NIHAT TARLAN CAD. NO:56/3 BOSTANCI  
20 KADIKOY ISTANBUL TURKEY 34744, and distributes products worldwide through his  
21 websites [www.nnrepair.com](http://www.nnrepair.com) and [www.nnrepair-online.com](http://www.nnrepair-online.com).

22 **JURISDICTION AND VENUE**

23 6. This is an action for Trademark Infringement under the Lanham Act 15 U.S.C. § 1114 et  
24 seq., Unfair Competition arising under the Lanham Act 15 U.S.C. § 1125(a) et seq., Trademark  
25 Counterfeiting under 18 U.S.C. § 2320, Breach of Contract, Fraud, Deceit, Unjust Enrichment,  
26 Conversion, Misappropriation of Trade Secret under Cal. Civ. Code § 3426 et seq., State  
27 Trademark Infringement under Cal. Bus. & Prof. Code § 14320 et seq., State Unfair Competition  
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1 under Cal. Bus. & Prof. Code § 17200 et seq., Intentional Interference with Economic  
2 Advantage, False Advertising and Deceptive Trade Practices under Cal. Bus. & Prof. Code §  
3 17500. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331,  
4 1332 and 1338(a), (b) & (c).

5 7. This Court has personal jurisdiction over Defendant based upon: (a) transaction of  
6 business by Defendant by promoting and selling products in this judicial district; (b) commission  
7 by Defendant of the infringing and other tortious conduct underlying Plaintiffs' claims, directed  
8 into this judicial district; and (c) entering into a contractual relationship with Plaintiffs and  
9 signing a non-disclosure agreement with Plaintiff EBI containing a choice of law provision  
10 designating California law.

11 8. This Court has subject matter jurisdiction pursuant to the trademark laws of the United  
12 States, 35 U.S.C. § 1 et seq., and pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a), (b) & (c), and  
13 2201-2202 because this is an "actual controversy" between Plaintiffs and Sahin. The Court has  
14 supplemental jurisdiction over the related state law claims pursuant to 28 U.S.C. § 1367, and  
15 over the unfair competition claims pursuant to § 1338(b). This Court has subject matter  
16 jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1332, 1338, and 1367. Further,  
17 this case primarily involves a federal question, complete diversity of citizenship exists, and the  
18 amount in controversy exceeds \$75,000.

19 9. Venue is proper in the United States District Court for the Southern District of California  
20 under 28 U.S.C. §§ 1391(b) & (c) and 1400.

21 **BACKGROUND FACTS**

22 **Plaintiffs and Plaintiffs' Products**

23 10. HIMG and EBI were founded by Heinz Haffner ("Haffner"), who developed and created  
24 porcelain repair systems, products and kits used by manufacturers of sinks, bathtubs, toilets and  
25 other fixtures, now known as CeramiCure ("CeramiCure").

26 11. CeramiCure's unique formulas expand on dental technology that is applied to ceramic  
27 repair materials to correct surface and body defects on bathtubs, sinks, toilets and other sanitary  
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1 ceramic and porcelain fixtures.

2 12. The Plaintiffs have and own secret formulas required to manufacture CeramiCure, and  
3 have maintained the formulas for making CeramiCure as a trade secret.

4 13. Plaintiffs also own and market other surface repair kits for granite using formulas that  
5 are Plaintiffs' trade secrets.

6 14. Plaintiffs expanded their porcelain repair business into the horse hoof repair business,  
7 again using formulas that are Plaintiffs' trade secrets. Plaintiffs own and market horse hoof  
8 repair kits using these trade secret formulas.

9 15. Together, Mr. Haffner's companies EBI and HIMG are the global leaders in porcelain  
10 and hoof care repair. EBI and HIMG jointly own the United States trademark registration for  
11 CERAMICURE (Registration No. 4391860), and the CeramiCure and hoof repair trade secret  
12 formulas.

13 16. HIMG and EBI jointly own the United States trademark registration for HIMG  
14 (Registration No. 4573180).

15 17. Plaintiff EBI, located in California, is the brand owner and manufacturer of  
16 CERAMICURE® Light Cure Acrylic ("LCA") and Self Cure Acrylic ("SCA") Repair products.

17 18. Plaintiff HIMG, a Nevada Corporation that does business in California, is the brand  
18 owner and manufacturer for HOOF-IT® Bovine and Equine hoof care related products.

19 19. In 2002, Mr. Haffner partnered with Mr. Bizzarro to expand the porcelain repair product  
20 business into Latin America.

21 20. In or about 2004, Mr. Haffner and Mr. Bizzarro decided to further expand EBI and  
22 HIMG's business into other countries. Mr. Haffner and Mr. Bizzarro began to look into  
23 developing EBI and HIMG's business in Turkey.

24 21. Turkey has a large sanitary ceramic and porcelain manufacturing industry, with about 40  
25 small to large porcelain manufacturers focusing on fixtures such as bathtubs, toilets and sinks.

26 **Plaintiffs' Relationship with Sahin and the NDA**

27 22. In 2005, Mr. Bizzarro, at the request of Mr. Haffner, visited Turkey to develop business  
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1 there.

2 23. While in Turkey in 2005 to develop Plaintiffs' business, Mr. Bizzarro met Defendant  
3 Yusuf Bugra Sahin, then a sanitary engineer for Vitra Turkey, HIMG's first Turkish customer.

4 24. Mr. Haffner and Mr. Bizzarro approached Sahin to represent HIMG and EBI's business  
5 in Turkey. On or about March 1, 2006, Plaintiffs sent Sahin a confidentiality non-disclosure  
6 agreement (the "NDA"), which Sahin executed. A true and correct copy of the NDA is attached  
7 as Exhibit A to this Complaint.

8 25. Page 3, Paragraph 9 of the NDA requires that the NDA shall be governed by and  
9 construed in accordance with the laws of the State of California.

10 **The Formation and Development of HIMG Turkey**

11 26. On or about March 2006, Mr. Haffner, Mr. Bizzarro and Sahin entered negotiations to  
12 form a Turkish entity that would be owned jointly by Mr. Haffner, Mr. Bizzarro and Sahin.

13 27. To continue the goodwill of both the HIMG brand and its affiliation with Mr. Haffner,  
14 HIMG, and EBI, Plaintiffs and Defendant agreed that the new Turkish entity would carry the  
15 HIMG (i.e. "Haffner International Marketing Group") house name. Thus the new Turkish entity  
16 was named HIMG International CeramiCure Turkey ("HIMG Turkey"), although the entity is  
17 commonly referred to as HIMG Seramik<sup>1</sup> or HIMG Turkey.

18 28. HIMG Turkey began operations in June 2006. On July 1, 2006, Mr. Haffner sent a letter  
19 to EBI's Turkish customers, announcing the launch of the new company, HIMG Turkey.

20 29. Sahin managed HIMG Turkey on behalf of Mr. Haffner and Mr. Bizzarro, acting as the  
21 local officer of the company.

22 30. Plaintiffs immediately began financing HIMG Turkey's operation, including a salary and  
23 commission for Sahin, and expenses to attend trade shows, conferences, and to travel for  
24 business development.

25 31. Plaintiffs also provided Sahin with a computer and multifunction

26 \_\_\_\_\_  
27 <sup>1</sup> Seramik is the Turkish word for ceramic.

1 printer/copier/scanner/fax machine.

2 32. Beginning in 2006, Sahin provided monthly financial reports to Mr. Haffner and Mr.  
3 Bizzarro, showing the activities of HIMG Turkey. During this time, he received capital  
4 infusions from HIMG, EBI, and Plaintiffs' other related entities to finance HIMG Turkey's  
5 growth.

6 33. Mr. Haffner and Mr. Bizzarro believed that they were all equal partners in HIMG  
7 Turkey.

8 34. Mr. Haffner and Mr. Bizzarro developed a strong relationship with Sahin. Based on his  
9 perceived integrity, they trusted him implicitly and explicitly with confidential information.

10 35. Sahin was given direct access to all of Plaintiffs' customers in Turkey, India, the Middle  
11 East and Asia.

12 36. Sahin was given the formulas for the CeramiCure product line, and received training  
13 from Mr. Bizzarro on how to manufacture the CeramiCure products. Thereafter, to avoid the  
14 costs associated with shipping a product manufactured in the United States, HIMG Turkey  
15 began small-scale manufacturing of the CeramiCure product.

16 37. CeramiCure is distributed in "syringes" and cartridges that contain the repair  
17 compound(s).

18 38. Sahin purchased the products and raw materials to manufacture CeramiCure from  
19 Plaintiffs and their affiliated entities at cost. He then manufactured the syringes and sold them to  
20 customers in Turkey, India, the Middle East and Asia. All profits were distributed among Mr.  
21 Haffner, Mr. Bizzarro, and Sahin.

22 39. During 2011, HIMG Turkey, through Sahin, purchased over \$81,000 in materials from  
23 Plaintiffs, about \$16,000 of which were never paid for.

24 40. During that time, Plaintiffs invested approximately \$45,000 in HIMG Turkey's ongoing  
25 operation.

26 41. Additionally, EBI advanced approximately \$30,000 to HIMG Turkey to develop  
27 business related to hoof repair products, generally known as the HOOF-it® line.

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1 42. In 2011, Plaintiffs paid for Sahin to attend a trade show in Las Vegas, Nevada (the “Las  
2 Vegas Trade Show”). From on or about January 23<sup>rd</sup> to January 29<sup>th</sup>, 2011, Sahin attended the  
3 Las Vegas Trade Show and met with Plaintiffs, Plaintiffs’ customers, and Plaintiffs’ potential  
4 customers.

5 43. At the Las Vegas Trade show, Sahin met with Plaintiffs and discussed Plaintiffs’  
6 business plans and trade secret information.

7 44. For over five (5) years, Sahin operated HIMG Turkey as Plaintiffs’ partner in HIMG  
8 Turkey, and properly reported income and activities to Plaintiffs.

9 **The Demise of Plaintiffs’ Relationship with Sahin**

10 45. In or about September 2011, Sahin failed to report monthly revenues to Plaintiffs.

11 46. In or about October 2011, Mr. Haffner and Mr. Bizzarro attempted communicate with  
12 Sahin regarding the reports, but Sahin became evasive.

13 47. On October 26, 2011, Sahin, as General Manger of HIMG Turkey, signed a contract  
14 with GATTCA Communications, to rent a show booth at a trade show called Indian Ceramics  
15 2012, in Ahamedabad, India, to display and promote CeramiCure products to potential new  
16 clients in India and ASIA. Plaintiffs paid for all related expenses for the Indian Ceramics 2012  
17 show, including travel.

18 48. On or about December 2, 2011, Mr. Bizzarro travelled to Turkey to meet with Sahin.  
19 Sahin was evasive and would not meet at the business office, meeting Bizzarro at a restaurant  
20 instead.

21 49. On or about December 7, 2011, Plaintiffs terminated Sahin. Plaintiffs demanded  
22 compliance with the NDA, return of all documents, and cessation of activities related to  
23 Plaintiffs’ products. Plaintiffs communicated to their customers that Sahin was no longer  
24 representing HIMG.

25 50. Sahin did not comply with the NDA, and did not respond to Plaintiffs’ requests that he  
26 cease all activities related to Plaintiffs’ products. Instead, Sahin began operating, and continues  
27 to operate, HIMG Turkey for his own benefit, without any accounting to Mr. Haffner or Mr.  
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1 Bizzarro, without any repayment of funds invested by Plaintiffs, and without paying the balance  
2 for materials purchased from Plaintiffs.

3 **Sahin Continues to Violate of the NDA and Misappropriate Plaintiffs' Trade Secrets**

4 51. Armed with the secret formulas and methods of manufacture for CeramiCure as well as  
5 Plaintiffs' customer lists and a robust inventory paid for by Plaintiffs, Sahin continues to hold  
6 himself out as HIMG Turkey, accepting orders and competing directly with Plaintiffs.

7 52. Sahin continues to sell and market ceramic and surface repair products using Plaintiffs'  
8 trade secret formulas.

9 53. Sahin also continues to sell and market hoof repair products using the Plaintiffs' trade  
10 secrets.

11 54. Using Plaintiffs' trade secrets, Sahin has taken Plaintiffs' formulas for surface repair and  
12 horse hoof repair products to market, advertising and selling these products under pseudonyms,  
13 including but not limited to NNRepair.

14 55. On or about February 6, 2012, Sahin began using a new email address  
15 (info@himgseramik.com) to contact Plaintiffs customers. By way of example, he contacted  
16 SANIFIX in Holland, announcing that he no was longer working with Plaintiffs and offering his  
17 own "Light curing repair material," which appears to be Plaintiffs' re-labeled CeramiCure  
18 products.

19 56. Sahin continues to ship products containing Plaintiffs' trade secret formula to the United  
20 States. For example, on or about January 2013, Sahin shipped products containing Plaintiffs'  
21 trade secret formulas, in violation of the NDA, to Nevada. Upon information and belief, on or  
22 about June 2014, Sahin shipped products containing Plaintiffs trade secret formulas, in violation  
23 of the NDA, to California—specifically, to a customer this judicial district.

24 **Sahin Misleads the Public and Makes False Statements**

25 57. In February 2012, Plaintiffs became aware that Sahin had established new websites at  
26 [www.nnrepair.com](http://www.nnrepair.com) and [www.nnrepair-online.com](http://www.nnrepair-online.com), calling his product "NNREPAIR." Much of  
27 the content appears to have been copied from Plaintiff's website [www.ceramicure.com](http://www.ceramicure.com), with  
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1 minor modifications to the site and the product names.

2 58. The NNREPAIR website claimed that Sahin's "NNRepair" company "is the only  
3 company in the world that is specialized in producing advanced light-curing and chemical-cure  
4 materials only for the repair purposes." He claimed to have developed these products in his own  
5 facilities in Turkey, and that HIMG SERAMIK has been *his* company since 2007.

6 59. Sahin also registered the domain name [www.ceramicureturkey.com](http://www.ceramicureturkey.com) without  
7 authorization or permission from Plaintiffs, and used the domain name to divert customers to the  
8 websites he uses to sell his products, [www.nnrepair.com](http://www.nnrepair.com) and [www.nnrepair-online.com](http://www.nnrepair-online.com).

9 60. In March 2012, Sahin participated in the Indian Ceramics 2012 trade show as  
10 NNREPAIR at a booth paid for and contracted for by Plaintiffs. Sahin marketed and sold  
11 Plaintiffs' products, including CeramiCure LCA and SCA, representing himself as a part of the  
12 HIMG business umbrella. However, he placed his own NNREPAIR banners, marketing  
13 information and labels on the products, purposely misleading customers that the products were  
14 genuine HIMG products. Although the products may have been made using the Plaintiffs' trade  
15 secrets, they did not emanate from HIMG.

16 61. While participating at the trade show, Sahin gave an interview to Ceramic Asia  
17 Magazine, in which he asserted sole responsibility for the development of NNREPAIR.  
18 Originally, Sahin was scheduled to interview as a representative of HIMG.

19 62. In the same magazine, Sahin advertised the participation of NNREPAIR at the  
20 CERAMITEC fair in Munich, Germany on May 22-25, 2012. Sahin knew HIMG had registered  
21 for the trade show, and that it had participated there in prior years.

22 63. The Plaintiffs then retained German counsel and filed a legal action in Germany to  
23 prevent Sahin from exhibiting at the CERAMITEC fair in Munich. Plaintiffs prevailed in this  
24 German action, and the German court ordered Sahin to remove all materials from the trade show  
25 floor, including his advertisements, and to not make false claims of being the "only company" to  
26 offer such products. Plaintiffs obtained an injunction and damages for false advertising. If  
27 Sahin violates the court's order, it includes a provision for an additional €250,000 in damages.

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64. Sahin has violated the German court’s order by offering the Plaintiffs’ products through the NNREPAIR website. In particular, the NNREPAIR website features the very article that the German court found to contain false advertising.

65. In Sahin’s advertisement and editorials, he represented that the business was founded in 2007, that it had its own production and marketing departments, and that it used “advanced” Nano Technologies developed solely by its own R & D department.

66. The NNREPAIR website states the following:

*Our company founded in 2007 and providing manufacturers in 5 continents around the globe with its own product solutions. All the light cure (LC) and chemical cure (CC) repair materials are formulated and manufactured by our own R&D team. As a result of this, our customers enjoy price and service advantage.*

A true and correct copy of this webpage page is attached Exhibit B to this Complaint.

67. In 2014, the public prosecutor for Republic of Turkey also filed a criminal indictment against Sahin for the crime of unfair competition arising from Sahin’s unauthorized use of “Ceramicure” trademark as a domain name to divert Plaintiffs’ customers to his own websites.

**Sahin Uses the HIMG Trademark in Commerce without Plaintiffs’ Authorization and Continues to Engage in Unfair Competition**

68. NNREPAIR did not develop these products. Sahin pilfered the methods and trade secrets of Plaintiffs, and simply changed the name of the company. However, he continues to use business cards with HIMG’s trademark, a copy of which is reflected below:



69. Sahin’s nnrepair-online.com website shows that Sahin is still using the HIMG trademark

1 on product packaging without Plaintiffs' authorization or approval. A true and correct copy of  
2 Sahin's website page displaying this information is attached as Exhibit C.

3 70. Customers throughout the United States and in this judicial district are able to view and  
4 order Sahin's products directly from Sahin on [www.nnrepair-online.com](http://www.nnrepair-online.com). Sahin even promises  
5 free shipping to anywhere, including the United States and this judicial district.

6 71. Sahin continues to contact Plaintiffs' current and former customers, undercutting  
7 Plaintiffs' pricing by as much as 50%.

8 72. Sahin continues to use Plaintiffs' trade secrets to manufacture syringes and cartridges of  
9 ceramic repair compounds, distributing them through his websites to both large manufacturers  
10 and casual consumers.

11 73. Sahin continues to manufacture and sell hoof repair kits using the Plaintiffs' trade  
12 secrets.

13 74. Sahin continues to do business under the HIMG company name, using HIMG Turkey  
14 bank accounts and corporate entities without accounting to Mr. Haffner and Mr. Bizzarro for  
15 their respective interests. He has failed to account for the funds to which he was entrusted.

16 75. Sahin continues to sell products containing Plaintiffs' trade secret formulas featuring the  
17 HIMG trademark without Plaintiffs' authorization from his website [www.nnrepair-online.com](http://www.nnrepair-online.com).

18 76. Sahin continues to sell and ship products that display the HIMG trademark without  
19 Plaintiffs' authorization. Upon information and belief, Sahin sells and ships products displaying  
20 the HIMG trademark to buyers this Judicial District, including a customer in Hollywood,  
21 California on June 2014.

22 77. On March 19, 2014, Plaintiffs brought a similar civil action in the United States District  
23 Court for District of Nevada against Sahin on March 13, 2013, claiming Breach of Contract,  
24 Fraud, Deceptive Advertising, Unjust Enrichment, Conversion, Deceit, Trade Secret Violation,  
25 Unfair Competition, State Unfair Competition, Trademark Infringement, Deceptive Trade  
26 Practices, Trademark Counterfeiting, Breach of Fiduciary Duty, False Advertising, and  
27 Intentional Interference with Economic Advantage (the "Nevada Case"). Sahin argued in the  
28

1 Nevada Case that jurisdiction in California was more appropriate. The judge agreed that  
2 California jurisdiction was more appropriate. The judge then dismissed the case on the grounds  
3 that Nevada lacked personal jurisdiction, but stated that California was a “much better place to  
4 hear this dispute.” As such, Plaintiffs now bring this action in California.

5 78. If Sahin continues to sell products using Plaintiffs’ trade secrets and trademarks,  
6 Plaintiffs will be irreparably harmed.

7 **COUNT I**

8 (Trademark Infringement – Lanham Act, 15 U.S.C. § 1114 et seq.)

9 79. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

10 80. Plaintiffs HIMG and EBI own the federal trademark registration for HIMG (Registration  
11 No. 4573180).

12 81. Plaintiffs’ longstanding use of the HIMG mark grants them the exclusive right to use the  
13 mark in commerce in connection with the goods and services specified in the application.

14 82. Defendant had both actual and constructive knowledge of Plaintiffs ownership and rights  
15 in its federally registered trademark prior to Defendant’s infringing use of the trademark.

16 83. Defendant offered his goods under the infringing trademark in the same channel of trade  
17 as Plaintiff.

18 84. Defendant’s use of Plaintiffs’ trademark is likely to cause and has caused confusion,  
19 mistake or deception as to the affiliation, connection or association of Plaintiffs in violation of  
20 15 USC § 1114.

21 85. Defendant’s unauthorized use, in commerce, of HIMG’s trademark constitutes  
22 trademark infringement under the Lanham Act.

23 86. Defendant’s unauthorized use of Plaintiffs’ trademark caused, and continues to cause,  
24 irreparable harm to the HIMG brand. Therefore, because monetary damages alone cannot fully  
25 compensate Plaintiffs, they are entitled to preliminary and permanent injunction from further  
26 unauthorized use of HIMG marks by Defendant, pursuant to § 1116, as well as the seizure and  
27 destruction of any HIMG products or counterfeit HIMG products in Defendant’s possession.

1 87. Defendant's trademark infringement, under § 1117, entitles Plaintiffs up to \$100,000 per  
2 counterfeit mark sold, offered for sale or distributed; and up to \$1,000,000 per counterfeit mark  
3 if the unauthorized use of the mark was willful.

4 88. The foregoing acts of infringement have been and continue to be deliberate, willful and  
5 wanton, making this an exceptional case within the meaning of 15 U.S.C. § 1117.

6 89. Plaintiffs are entitled to a permanent injunction against Defendant, as well as all other  
7 remedies available under the Lanham Act, including, but not limited to, compensatory damages;  
8 treble damages; disgorgement of profits; and costs and attorneys' fees.

9  
10 **COUNT II**

11 (Unfair Competition – Lanham Act, 15 U.S.C. § 1125(a) et seq.)

12 90. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

13 91. Defendant's use in commerce of Plaintiffs trademark, as used on goods that do not  
14 emanate from Plaintiffs, constitutes a false designation of origin by representing that  
15 Defendant's goods are those of Plaintiff, when in fact they are not.

16 92. Defendant's use in commerce of Plaintiffs' trademark with knowledge that Plaintiffs  
17 own, have used, and continue to use, the trademark constitutes intentional conduct by Defendant  
18 to make false designations of origin and false descriptions about the goods.

19 93. Defendant has deliberately and willfully attempted to trade on Plaintiffs' longstanding  
20 goodwill in Plaintiffs' name, trademarks and reputation that Plaintiffs have established in  
21 connection with their products, and has done so to confuse consumers as to the origin,  
22 association and sponsorship of Defendant's goods.

23 94. Defendant's conduct has confused or is likely to confuse consumers as to the origin,  
24 association, connection or sponsorship of Defendant's products in violation of 15 USC §  
25 1125(a).

26 95. As the direct and proximate result of such unfair competition, Plaintiffs have suffered,  
27 and will continue to suffer, monetary loss and irreparable injury to its business, reputation, and  
28

1 goodwill.

2 **COUNT III**

3 (Trademark Counterfeiting - Trademark Counterfeiting Act 18 U.S.C. 2320)

4 96. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

5 97. Defendant intentionally and willfully trafficked goods containing a mark that is owned  
6 by Plaintiffs.

7 98. The mark was used in a way to deceive consumers and cause confusion between the  
8 products sold by Defendant, and the authentic ceramic repair kits sold by Plaintiffs.

9 99. Defendant profited from the aforementioned acts.

10 100. As the direct and proximate result of the counterfeiting, Plaintiffs have suffered, and will  
11 continue to suffer, monetary loss and irreparable injury to its business, reputation, and goodwill.

12 **COUNT IV**

13 (Breach of Contract)

14 101. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

15 102. A valid agreement between Plaintiffs and Defendant existed.

16 103. The Defendant breached the agreement.

17 104. The breach by Defendant was not excused by any conduct of Plaintiffs or any third  
18 party.

19 105. The breach by Defendant was not a result of Plaintiffs' failure to perform a condition  
20 precedent.

21 106. The Plaintiffs were damaged by Defendant's breach of the agreement.

22 107. The damages sustained by Plaintiffs are reasonably ascertainable.

23 108. The damages were a foreseeable consequence of the Defendant's breach.

24 **COUNT V**

25 (Breach of Fiduciary Duty)

26 109. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

27 110. Defendant owed a fiduciary duty to Plaintiffs and their principals to maintain their trade  
28

1 secrets, to manage HIMG Turkey as a co-partner in the venture with Plaintiffs, to account to  
2 Plaintiffs for the activities of HIMG Turkey, and to conduct business in the name of HIMG  
3 Turkey for the benefit of the Plaintiffs.

4 111. By virtue of the above stated acts, Defendant has, in bad faith, breached his fiduciary  
5 duty to HIMG and its principals.

6 112. As the direct and proximate result of Defendant's bad faith breach of his duties, HIMG  
7 has been damaged in an amount to be determined at trial.

8 **COUNT VI**

9 (Fraud)

10 113. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

11 114. Defendant has defrauded Plaintiffs by using money, bank accounts, a corporate entity,  
12 inventory, property and valuable business information as his own.

13 115. Defendant's fraudulent activities have damaged Plaintiffs in an amount to be determined  
14 at trial.

15 **COUNT VII**

16 (Deceit)

17 116. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

18 117. Defendant has deceived Plaintiffs and Plaintiffs' customers to the detriment of everyone  
19 involved.

20 118. Defendant's deceitful activities have damaged Plaintiffs in an amount to be determined  
21 at trial.

22 **COUNT VIII**

23 (Unjust Enrichment)

24 119. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

25 120. Plaintiffs are the owners of certain valuable information, bank accounts, moneys, and  
26 customer and vendor relationships, which have actual and potential economic value.

27 121. Defendant has misappropriated said information, bank accounts, moneys, and customer  
28

1 and vendor relationships to himself.

2 122. By reason of the above stated acts, Defendant used Plaintiffs' valuable information, bank  
3 accounts, moneys, and customer and vendor relationships for his own benefit and to the  
4 detriment of the Plaintiffs.

5 123. Defendant's actions have damaged Plaintiffs in an amount to be determined at trial.

6 **COUNT IX**

7 (Conversion)

8 124. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

9 125. Defendant has taken property that is rightfully owned by Plaintiffs and exercised control  
10 over the same as if owned by Defendant.

11 126. Defendant's conversion of property, including money, machines, equipment and  
12 computers belonging to Plaintiffs has damaged Plaintiffs in an amount to be determined at trial.

13 **COUNT X**

14 (Misappropriation of Trade Secret — Cal. Civ. Code § 3426 et seq.)

15 127. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

16 128. Plaintiffs own valuable trade secret information as defined in Cal. Civ. Code 3426.1, and  
17 have at all times maintained that information as confidential.

18 129. Defendant was provided Plaintiffs' valuable trade secrets after executing an agreement  
19 not to disclose the information or use it for his own benefit.

20 130. Defendant has used and/or disclosed Plaintiffs' trade secrets for his own benefit.

21 131. Defendant's trade secret violation has damaged Plaintiffs in an amount to be determined  
22 at trial.

23 **COUNT XI**

24 (State Trademark Infringement under Cal. Bus. & Prof. Code § 14320 et seq.)

25 132. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

26 133. By virtue of having used and continuing to use the HIMG trademark, the Plaintiffs have  
27 acquired common law rights in the trademark.

28

1 134. Defendant's infringing use of the HIMG trademark is likely to cause confusion, mistake,  
2 or deception among consumers, who will believe that Defendant's services and/or goods  
3 originate from, or are affiliated with or endorsed by Plaintiffs, when, in fact, they are not.

4 135. As the direct and proximate result of Defendant's infringement of Plaintiffs' common  
5 law trademark rights, Plaintiffs have suffered, and will continue to suffer, monetary damages  
6 and irreparable injury to its business, reputation, and goodwill.

7 **COUNT XII**

8 (State Unfair Competition –Cal. Civ. Code § 17200 et seq.)

9 136. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

10 137. Upon information and belief, Defendant engaged in the sale of products that use  
11 Plaintiffs trade secrets directly to customers and through his websites at [www.nnrepair.com](http://www.nnrepair.com) and  
12 [www.nnrepair-online.com](http://www.nnrepair-online.com).

13 138. Defendant has copied content from Plaintiffs' website content to divert sales from  
14 Plaintiffs and HIMG Turkey to Defendant's websites, [www.nnrepair.com](http://www.nnrepair.com) and [www.nnrepair-online.com](http://www.nnrepair-online.com).

15 139. Defendant has used Plaintiffs' customer list to market products that are branded as  
16 NNRepair products, but are manufactured using Plaintiffs' trade secrets.

17 140. Defendant's advertising and sale of these products has caused irreparable harm to  
18 Plaintiffs, and will continue to do so unless enjoined by this Court.

19 **COUNT XIII**

20 (Intentional Interference with Prospective Economic Advantage)

21 141. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

22 142. Defendant knows that Plaintiffs are in the business of selling repair products to the  
23 sanitary ceramic industry, as well as surface repair and hoof repair products, and that it  
24 promotes its business through the Internet, tradeshow and in industry publications.

25 143. Defendant committed acts intended or designed to disrupt Plaintiffs' prospective  
26 economic advantage by advertising and selling its counterfeit goods over the Internet, through  
27

28

1 tradeshows and in industry publications.

2 144. Defendant used Plaintiffs' customer lists and pricing information to promote itself as an  
3 alternative to Plaintiffs own customer base.

4 145. Defendant's actions have disrupted or are intended to disrupt Plaintiffs business by  
5 diverting Plaintiffs' potential and actual customers away from Plaintiffs' goods.

6 146. Defendant has no legal right, privilege or justification for its conduct.

7 147. As the direct and proximate cause of Defendant's actions, Plaintiffs have suffered  
8 damages in an amount to be determined at trial.

9 148. Based on the intentional, willful and malicious nature of Defendant's actions, Plaintiffs  
10 are entitled to recover exemplary damages and reasonable attorneys' fees and costs incurred in  
11 connection with this action.

12 **COUNT XIV**

13 (False Advertising and Deceptive Trade Practices – Cal. Bus. & Prof. Code § 17500)

14 149. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

15 150. Defendant has made false statements about Defendant's goods and services on  
16 Defendant's websites.

17 151. Defendant has made false statements about Defendant's goods and services to third  
18 parties.

19 152. In the course of conducting its business, Defendant knowingly made false  
20 representations as to affiliation, connection and/or association with Plaintiffs by using Plaintiffs'  
21 trademark.

22 153. Upon information and belief, Defendant has profited from these false statements and  
23 misrepresentations.

24 154. As a direct and proximate result of Defendant's false statements, Plaintiffs have suffered  
25 and will continue to suffer monetary damages and irreparable injury to its business, reputation,  
26 and goodwill.

27 **PRAYER FOR RELIEF**

28

1 WHEREFORE, HIMG respectfully prays that the Court grant the following relief:

2 A. Injunctive relief to prevent ongoing infringement and unfair competition  
3 consisting of:

4 1. An order prohibiting Sahin from using the mark HIMG or any similar mark or  
5 company name;

6 2. An order instructing Sahin to deliver to Plaintiffs any and all goods bearing the  
7 HIMG name;

8 3. An order requiring Sahin to cease all conduct which implies that Sahin or his  
9 entities are affiliated with, endorsed by or sponsored by HIMG, its principals and/or affiliates;

10 4. An order prohibiting Sahin from practicing or disclosing the Plaintiffs' trade  
11 secrets, including the formulas to manufacture repair products for porcelain, granite and other  
12 materials, and formulas for hoof repair products;

13 5. An order prohibiting Sahin from falsely advertising his company's products or  
14 services;

15 B. An accounting by Sahin to Plaintiffs and their principals for all conduct to the  
16 date of the entry of the order;

17 C. Compensatory damages for past trademark infringement;

18 D. Compensatory damages for past unfair competition;

19 E. Compensatory damages for conversion;

20 F. Compensatory damages for breach of contract;

21 G. Compensatory damages for intentional interference with economic advantage;

22 H. Compensatory damages for fraud;

23 I. Compensatory damages for deceit;

24 J. Compensatory damages for unjust enrichment;

25 P. Pursuant to 15 U.S.C. § 1117(c), statutory damages of up to \$100,000 for each  
26 trademark infringement, and up to \$1,000,000 for each willful trademark infringement;

27 Q. Pursuant to 17 U.S.C. §§ 505 and 1203(b)(4) and (5), and 15 U.S.C. §§ 1114 and  
28



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8  
9 *Attorney for Defendant*

10 *Yusuf Bugra Sahin*

11  
12 **IN THE UNITED STATES DISTRICT COURT**

13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14  
15 EBI LTD., a California corporation; HAFFNER  
16 INT’L MARKETING GROUP, INC., a Nevada  
17 corporation; HEINZ HAFFNER, a California  
18 resident; and RENTATO BIZZARRO, a resident  
19 of Brazil,

20  
21 Plaintiff,

22 V.

23 YUSUF BUGRA SAHIN, an individual,

24 Defendant.

CASE NO. 14-cv-2274-JAH-RBB

DEFENDANT YUSUF BUGRA  
SAHIN’S ANSWER TO  
COMPLAINT FOR DAMAGES  
AND INJUNCTIVE RELIEF

25  
26  
27  
28 Defendant Yusuf Bugra Sahin (“Sahin”) respectfully submits its  
29 Answer to the Complaint for Damages and Injunctive Relief (“Complaint”)  
30 filed by Plaintiff EBI LTD., HAFFNER INT’L MARKETING GROUP,  
31 INC.; HEINZ HAFFNER; and RENTATO BIZZARRO, (“Plaintiffs”)  
32 on September 25, 2014, and states as follows:  
33

ANSWER TO ALLEGATIONS IN COMPLAINT

**Response to Allegations Contained in “Parties”**

1. Sahin lacks information sufficient to form a belief regarding the truth of the allegations contained in Paragraph 1 of the Complaint and therefore denies such allegations.

2. Sahin lacks information sufficient to form a belief regarding the truth of the allegations contained in Paragraph 2 of the Complaint and therefore denies such allegations.

3. Sahin lacks information sufficient to form a belief regarding the truth of the allegations contained in Paragraph 3 of the Complaint and therefore denies such allegations.

4. Sahin lacks information sufficient to form a belief regarding the truth of the allegations contained in Paragraph 4 of the Complaint and therefore denies such allegations.

5. In response to the first sentence of Paragraph 5 of the Complaint, Sahin admits that Sahin is a resident of Turkey. Sahin denies allegations stated in the rest of paragraph 5.

**Response to “Jurisdiction and Venue”**

6. Sahin denies allegations stated in Paragraph 6.

7. Sahin denies allegations stated in paragraph 7.

8. Sahin is without knowledge or information sufficient to form a

1 belief as to the truth of the allegations contained in Paragraph 8 and on  
2 that basis denies those allegations.

3 9. Sahin denies allegations stated in paragraph 9.  
4

## 5 **BACKGROUND FACTS**

### 6 **Plaintiff's and Plaintiff's Products**

7 10. Sahin lacks information sufficient to form a belief regarding the  
8 truth of the allegations contained in Paragraph 10 of the Complaint  
9 and therefore denies such allegations.

10 11. Sahin lacks information sufficient to form a belief regarding the  
11 truth of the allegations contained in Paragraph 11 of the Complaint  
12 and therefore denies such allegations.

13 12. Sahin lacks information sufficient to form a belief regarding the  
14 truth of the allegations contained in Paragraph 12 of the Complaint  
15 and therefore denies such allegations.

16 13. Sahin lacks information sufficient to form a belief regarding the  
17 truth of the allegations contained in Paragraph 13 of the Complaint  
18 and therefore denies such allegations.

19 14. Sahin lacks information sufficient to form a belief regarding the  
20 truth of the allegations contained in Paragraph 14 of the Complaint  
21 and therefore denies such allegations.

1 15. Sahin lacks information sufficient to form a belief regarding the  
2 truth of the allegations contained in Paragraph 15 of the Complaint  
3 and therefore denies such allegations.

4 16. Sahin admits that the mark HIMG is registered at the United  
5 States Patent and Trademark Office (Registration No. 4573180).  
6 However others have used the mark before it was registered. There is  
7 a current cancellation procedure initiated at the United States Patent  
8 and Trademark Office against the mark HIMG (Registration No.  
9 4573180).

10 17. Sahin lacks information sufficient to form a belief regarding the  
11 truth of the allegations contained in Paragraph 17 of the Complaint  
12 and therefore denies such allegations.

13 18. Sahin lacks information sufficient to form a belief regarding the  
14 truth of the allegations contained in Paragraph 18 of the Complaint  
15 and therefore denies such allegations.

16 19. Sahin lacks information sufficient to form a belief regarding the  
17 truth of the allegations contained in Paragraph 19 of the Complaint  
18 and therefore denies such allegations.

19 20. Sahin lacks information sufficient to form a belief regarding the  
20 truth of the allegations contained in Paragraph 20 of the Complaint  
21 and therefore denies such allegations.

1 21. Sahin lacks information sufficient to form a belief regarding the  
2 truth of the allegations contained in Paragraph 21 of the Complaint  
3 and therefore denies such allegations.

4 **Plaintiffs' Relationship with Sahin and the NDA**

5 22. Sahin lacks information sufficient to form a belief regarding the  
6 truth of the allegations contained in Paragraph 22 of the Complaint  
7 and therefore denies such allegations.

8 23. Sahin admits meeting with Mr. Bizarro. Sahin is without  
9 knowledge or information sufficient to form a belief as to the truth of  
10 the remaining allegations contained in Paragraph 23 and on that basis  
11 denies those allegations.

12 24. Sahin admits signing an NDA with EBI LTD. Sahin is without  
13 knowledge or information sufficient to form a belief as to the truth of  
14 the remaining allegations contained in Paragraph 24 and on that basis  
15 denies those allegations.

16 25. Sahin denies allegations of Paragraph 25.

17 **The Formation and Development of HIMG Turkey**

18 26. Sahin denies allegations of Paragraph 26.

19 27. Sahin denies allegations of Paragraph 27.

20 28. Sahin lacks information sufficient to form a belief regarding the  
21 truth of the allegations contained in Paragraph 28 of the Complaint and

1 therefore denies such allegations.

2 29. Sahin denies allegations of Paragraph 29.

3 30. Sahin denies allegations of Paragraph 30.

4 31. Sahin denies allegations of Paragraph 31.

5 32. Sahin lacks information sufficient to form a belief regarding the  
6 truth of the allegations contained in Paragraph 32 of the Complaint and  
7 therefore denies such allegations.

8 33. Sahin lacks information sufficient to form a belief regarding the  
9 truth of the allegations contained in Paragraph 33 of the Complaint and  
10 therefore denies such allegations.

11 34. Sahin lacks information sufficient to form a belief regarding the  
12 truth of the allegations contained in Paragraph 34 of the Complaint and  
13 therefore denies such allegations.

14 35. Sahin denies allegations of Paragraph 35.

15 36. Sahin denies allegations of Paragraph 36.

16 37. Sahin lacks information sufficient to form a belief regarding the  
17 truth of the allegations contained in Paragraph 37 of the Complaint and  
18 therefore denies such allegations.

19 38. Sahin denies allegations of Paragraph 38.

20 39. Sahin denies allegations of Paragraph 39.

21 40. Sahin denies allegations of Paragraph 40.

1 41. Sahin denies allegations of Paragraph 41.

2 42. Sahin admits visiting a trade show in Las Vegas Nevada. Sahin  
3 denies the remaining allegations contained in Paragraph 42.

4 43. Sahin admits meeting with Plaintiffs in Las Vegas. Sahin denies  
5 the remaining allegations contained in Paragraph 43.

6 44. Sahin denies allegations of Paragraph 44.

7 **The Demise of Plaintiffs' Relationship with Sahin**

8 45. Sahin denies allegations of Paragraph 45.

9 46. Sahin denies allegations of Paragraph 46.

10 47. Sahin admits attending to a trade show in India. Sahin denies the  
11 remaining allegations contained in Paragraph 47.

12 48. Sahin admits meeting with Mr. Bizarro at a restaurant. Sahin  
13 denies the remaining allegations contained in Paragraph 48.

14 49. Sahin lacks information sufficient to form a belief regarding the  
15 truth of the allegations contained in Paragraph 49 of the Complaint and  
16 therefore denies such allegations.

17 50. Sahin denies allegations of Paragraph 50.

18 51. Sahin denies allegations of Paragraph 51.

19 52. Sahin denies allegations of Paragraph 52.

20 53. Sahin denies allegations of Paragraph 53.

21 54. Sahin denies allegations of Paragraph 54.

1 55. Sahin lacks information sufficient to form a belief regarding the  
2 truth of the allegations contained in Paragraph 55 of the Complaint and  
3 therefore denies such allegations.

4 56. Sahin denies allegations of Paragraph 56.

5 57. Sahin denies allegations of Paragraph 57.

6 58. Sahin lacks information sufficient to form a belief regarding the  
7 truth of the allegations contained in Paragraph 58 of the Complaint and  
8 therefore denies such allegations.

9 59. Sahin admits registering the domain name. Sahin denies the  
10 remaining allegations contained in Paragraph 59.

11 60. Sahin admits participating an Indian Ceramics trade show in 2012.  
12 Sahin denies the remaining allegations contained in Paragraph 60.

13 61. Sahin admits having an interview with Ceramic Asia Magazine.  
14 Sahin denies the remaining allegations contained in Paragraph 61.

15 62. Sahin denies allegations of Paragraph 62.

16 63. Sahin denies allegations of Paragraph 63.

17 64. Sahin denies allegations of Paragraph 64.

18 65. Sahin admits that business was founded in 2007 and it had its  
19 own marketing and production departments.

20 66. Sahin admits that NNREPAIR site owned by a company and the  
21 site provides solutions to customers.

1 67. Sahin denies allegations of Paragraph 67.

2 68. Sahin denies allegations of Paragraph 68.

3 69. Sahin denies allegations of Paragraph 69.

4 70. Sahin denies allegations of Paragraph 70.

5 71. Sahin lacks information sufficient to form a belief regarding the  
6 truth of the allegations contained in Paragraph 71 of the Complaint and  
7 therefore denies such allegations.

8 72. Sahin denies allegations of Paragraph 72.

9 73. Sahin denies allegations of Paragraph 73.

10 74. Sahin admits working for HIMG in Turkey. Sahin denies the  
11 remaining allegations contained in Paragraph 74.

12 75. Sahin denies allegations of Paragraph 75.

13 76. Sahin denies allegations of Paragraph 76.

14 77. Sahin denies allegations of Paragraph 77.

15 78. Sahin denies allegations of Paragraph 78.

16 **Response to “Count 1 – Trademark Infringement”**

17 79. Sahin restates and incorporates by references his above responses  
18 to Paragraphs 1-78 of the Complaint, as though fully set forth herein.

19 80. Sahin lacks information sufficient to form a belief regarding the  
20 truth of the allegations contained in Paragraph 80 of the Complaint and  
21 therefore denies such allegations.

1 81. Sahin lacks information sufficient to form a belief regarding the  
2 truth of the allegations contained in Paragraph 81 of the Complaint and  
3 therefore denies such allegations.

4 82. Sahin lacks information sufficient to form a belief regarding the  
5 truth of the allegations contained in Paragraph 82 of the Complaint and  
6 therefore denies such allegations.

7 83. Sahin denies the allegations contained in Paragraph 83.

8 84. Sahin denies the allegations contained in Paragraph 84.

9 85. Sahin denies the allegations contained in Paragraph 85.

10 86. Sahin denies the allegations contained in Paragraph 86.

11 87. Sahin denies the allegations contained in Paragraph 87.

12 88. Sahin denies the allegations contained in Paragraph 88.

13 89. Sahin denies the allegations contained in Paragraph 89.

14 **Response to “Count II – Unfair Competition”**

15 90. Sahin restates and incorporates by references his above responses  
16 to Paragraphs 1-78 of the Complaint, as though fully set forth herein.

17 91. Sahin denies the allegations contained in Paragraph 91.

18 92. Sahin denies the allegations contained in Paragraph 92.

19 93. Sahin denies the allegations contained in Paragraph 93.

20 94. Sahin lacks information sufficient to form a belief regarding the  
21 truth of the allegations contained in Paragraph 94 of the Complaint and

1 therefore denies such allegations.

2 95. Sahin lacks information sufficient to form a belief regarding the  
3 truth of the allegations contained in Paragraph 95 of the Complaint and  
4 therefore denies such allegations.

5 **Response to “Count III – Trademark Counterfeiting”**

6 96. Sahin restates and incorporates by references his above responses  
7 to Paragraphs 1-78 of the Complaint, as though fully set forth herein.

8 97. Sahin denies the allegations contained in Paragraph 97.

9 98. Sahin denies the allegations contained in Paragraph 98.

10 99. Sahin denies the allegations contained in Paragraph 99.

11 100. Sahin lacks information sufficient to form a belief regarding  
12 the truth of the allegations contained in Paragraph 100 of the  
13 Complaint and therefore denies such allegations.

14 **Response to “Count IV – Breach of Contract”**

15 101. Sahin restates and incorporates by references his above  
16 responses to Paragraphs 1-78 of the Complaint, as though fully set  
17 forth herein.

18 102. Sahin admits that a non-disclosure agreement was signed.  
19 between Sahin and EBI Ltd. only.

20 103. Sahin denies the allegations contained in Paragraph 103.

21 104. Sahin denies the allegations contained in Paragraph 104.

1 105. Sahin denies the allegations contained in Paragraph 105.

2 106. Sahin lacks information sufficient to form a belief regarding  
3 the truth of the allegations contained in Paragraph 106 of the  
4 Complaint and therefore denies such allegations.

5 107. Sahin lacks information sufficient to form a belief regarding  
6 the truth of the allegations contained in Paragraph 107 of the  
7 Complaint and therefore denies such allegations.

8 108. Sahin lacks information sufficient to form a belief regarding  
9 the truth of the allegations contained in Paragraph 108 of the  
10 Complaint and therefore denies such allegations.

11 **Response to “Count V – Breach of Fiduciary Duty”**

12 109. Sahin restates and incorporates by references his above  
13 responses to Paragraphs 1-78 of the Complaint, as though fully set  
14 forth herein.

15 110. Sahin denies the allegations contained in Paragraph 110.

16 111. Sahin denies the allegations contained in Paragraph 111.

17 112. Sahin denies the allegations contained in Paragraph 112.

18 **Response to “Count VI – Fraud”**

19 113. Sahin restates and incorporates by references his above  
20 responses to Paragraphs 1-78 of the Complaint, as though fully set  
21 forth herein.

1 114. Sahin denies the allegations contained in Paragraph 114.

2 115. Sahin denies the allegations contained in Paragraph 115.

3 **Response to “Count VII – Deceit”**

4 116. Sahin restates and incorporates by references his above  
5 responses to Paragraphs 1-78 of the Complaint, as though fully set  
6 forth herein.

7 117. Sahin denies the allegations contained in Paragraph 117.

8 118. Sahin denies the allegations contained in Paragraph 118.

9 **Response to “Count VIII – Unjust Enrichment”**

10 119. Sahin restates and incorporates by references his above  
11 responses to Paragraphs 1-78 of the Complaint, as though fully set  
12 forth herein.

13 120. Sahin lacks information sufficient to form a belief regarding  
14 the truth of the allegations contained in Paragraph 120 of the  
15 Complaint and therefore denies such allegations.

16 121. Sahin denies the allegations contained in Paragraph 121.

17 122. Sahin denies the allegations contained in Paragraph 122.

18 123. Sahin denies the allegations contained in Paragraph 123.

19 **Response to “Count IX – Conversion”**

20 124. Sahin restates and incorporates by references his above  
21 responses to Paragraphs 1-78 of the Complaint, as though fully set

1       forth herein.

2       125.     Sahin denies the allegations contained in Paragraph 125.

3       126.     Sahin denies the allegations contained in Paragraph 126.

4                   **Response to “Count X – Misappropriation of Trade Secret”**

5       127.     Sahin restates and incorporates by references his above  
6       responses to Paragraphs 1-78 of the Complaint, as though fully set  
7       forth herein.

8       128.     Sahin lacks information sufficient to form a belief regarding  
9       the truth of the allegations contained in Paragraph 128 of the  
10      Complaint and therefore denies such allegations.

11      129.     Sahin denies the allegations contained in Paragraph 129.

12      130.     Sahin denies the allegations contained in Paragraph 130.

13      131.     Sahin denies the allegations contained in Paragraph 131.

14                   **Response to “Count XI – State Trademark Infringement”**

15      132.     Sahin restates and incorporates by references his above  
16      responses to Paragraphs 1-78 of the Complaint, as though fully set  
17      forth herein.

18      133.     Sahin lacks information sufficient to form a belief regarding  
19      the truth of the allegations contained in Paragraph 133 of the  
20      Complaint and therefore denies such allegations.

21      134.     Sahin lacks information sufficient to form a belief regarding

1 the truth of the allegations contained in Paragraph 134 of the  
2 Complaint and therefore denies such allegations.

3 135. Sahin lacks information sufficient to form a belief regarding  
4 the truth of the allegations contained in Paragraph 135 of the  
5 Complaint and therefore denies such allegations.

6 **Response to “Count XII – State Unfair Competition”**

7 136. Sahin restates and incorporates by references his above  
8 responses to Paragraphs 1-78 of the Complaint, as though fully set  
9 forth herein.

10 137. Sahin denies the allegations contained in Paragraph 137.

11 138. Sahin denies the allegations contained in Paragraph 138.

12 139. Sahin denies the allegations contained in Paragraph 139.

13 140. Sahin lacks information sufficient to form a belief regarding  
14 the truth of the allegations contained in Paragraph 140 of the  
15 Complaint and therefore denies such allegations.

16

17 **Response to “Count XIII – Intentional Interference with**  
18 **Prospective Economic Advantage”**

19 141. Sahin restates and incorporates by references his above  
20 responses to Paragraphs 1-78 of the Complaint, as though fully set  
21 forth herein.

1 142. Sahin lacks information sufficient to form a belief regarding  
2 the truth of the allegations contained in Paragraph 142 of the  
3 Complaint and therefore denies such allegations.

4 143. Sahin denies the allegations contained in Paragraph 143.

5 144. Sahin denies the allegations contained in Paragraph 144.

6 145. Sahin lacks information sufficient to form a belief regarding  
7 the truth of the allegations contained in Paragraph 145 of the  
8 Complaint and therefore denies such allegations.

9 146. Sahin lacks information sufficient to form a belief regarding  
10 the truth of the allegations contained in Paragraph 146 of the  
11 Complaint and therefore denies such allegations.

12 147. Sahin lacks information sufficient to form a belief regarding  
13 the truth of the allegations contained in Paragraph 147 of the  
14 Complaint and therefore denies such allegations.

15 148. Sahin denies the allegations contained in Paragraph 148.

16 **Response to “Count XIV – False Advertising and Deceptive Trade**  
17 **Practices”**

18 149. Sahin restates and incorporates by references his above  
19 responses to Paragraphs 1-78 of the Complaint, as though fully set  
20 forth herein.

21 150. Sahin denies the allegations contained in Paragraph 150.

1 151. Sahin denies the allegations contained in Paragraph 151.

2 152. Sahin denies the allegations contained in Paragraph 152.

3 153. Sahin denies the allegations contained in Paragraph 153.

4 154. Sahin denies the allegations contained in Paragraph 154.

5 **Response to Plaintiffs' "Prayer for Relief"**

6 Sahin denies that Plaintiffs are entitled to any relief in this action and  
7 asks the Court deny any and all of the relief requested by Plaintiffs in their  
8 complaint with respect to Sahin.

9  
10 **ADDITIONAL DEFENSES**

11 Sahin hereby asserts the following separate additional defenses to the  
12 claims and allegations contained in Plaintiffs' Complaint, without  
13 admitting or acknowledging that Sahin bears the burden of proof as to any  
14 of them. Sahin reserves the right to seek leave to amend his Answer to  
15 plead additional defenses and counterclaims and/or to supplement his  
16 existing defenses if information developed through discovery, trial, or  
17 otherwise merits such additional defenses, counterclaims, or  
18 supplementation.

19  
20 **First Additional Defense**

21 **(Failure to State a Claim)**

- 1 1. Plaintiffs’ claim for alleged infringement of the “HIMG” mark fails  
2 to state a claim upon which relief can be granted.
- 3 2. Plaintiffs’ claim for alleged unfair competition fails to state a claim  
4 upon which relief can be granted.
- 5 3. Plaintiffs’ claim for alleged trademark counterfeiting fails to state a  
6 claim upon which relief can be granted.
- 7 4. Plaintiffs’ claim for alleged breach of contract fails to state a claim  
8 upon which relief can be granted.
- 9 5. Plaintiffs’ claim for alleged breach of fiduciary duty fails to state a  
10 claim upon which relief can be granted.
- 11 6. Plaintiffs’ claim for alleged fraud fails to state a claim upon which  
12 relief can be granted.
- 13 7. Plaintiffs’ claim for alleged deceit fails to state a claim upon which  
14 relief can be granted.
- 15 8. Plaintiffs’ claim for alleged unjust enrichment fails to state a claim  
16 upon which relief can be granted.
- 17 9. Plaintiffs’ claim for alleged conversion fails to state a claim upon  
18 which relief can be granted.
- 19 10. Plaintiffs’ claim for alleged misappropriation of trade secret fails to  
20 state a claim upon which relief can be granted.
- 21 11. Plaintiffs’ claim for alleged state trademark infringement fails to

1 state a claim upon which relief can be granted.

2 12.Plaintiffs’ claim for alleged state unfair competition fails to state a  
3 claim upon which relief can be granted.

4 13.Plaintiffs’ claim for alleged intentional interference with  
5 prospective economic advantage fails to state a claim upon which  
6 relief can be granted.

7 14.Plaintiffs’ claims for alleged false advertising and deceptive trade  
8 practices fails to state a claim upon which relief can be granted.

9  
10 **Second Additional Defense**

11 **(Noninfringement)**

12 15. Sahin does not manufacture or sell any products that infringe upon  
13 Plaintiff’s trademark and has not infringed any valid and enforceable mark  
14 “HIMG”. Sahin does not willfully infringe and has not willfully infringed  
15 any valid and enforceable mark “HIMG.”

16  
17 **Third Additional Defense**

18 **(Invalidity)**

19 16. The mark “HIMG” is invalid for one or more reasons under Section  
20 14(3) of the Lanham Trademark Act of 1946, 15 U.S.C. § 1064(3).

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**Fourth Additional Defense**

**(Limitation on Damages)**

17. On information and belief, to the extent that Plaintiffs seek damages for any alleged infringement that occurred prior to the provision of actual notice of the mark “HIMG”, Plaintiffs’ claims for relief and prayer for damages are limited.

**Fifth Additional Defense**

**(Adequate Remedy at Law)**

18. Plaintiffs are not entitled to injunctive relief as it has, at a minimum, no irreparable injury and an adequate remedy at law for Sahin’s alleged infringement.

**Sixth Additional Defense**

**(Statute of Limitations)**

19. Plaintiffs have claimed, Breach of Contract, Breach of Fiduciary Duties, Fraud, Deceit, Unjust Enrichment, Conversion, Misappropriation of Trade Secret, State Trademark Infringement, State Unfair Competition, and Intentional Interference with Prospective Economic Advantage.

1 20. Plaintiffs waited until September 25, 2014 to bring these actions  
2 against Sahin.

3 21. The statutes of limitations in California for the Breach of  
4 Contract, Breach of Fiduciary Duties, Fraud, Deceit, Unjust  
5 Enrichment, Conversion, Misappropriation of Trade Secret, State  
6 Trademark Infringement, State Unfair Competition, and Intentional  
7 Interference with Prospective Economic Advantage have already run.

8 22. Plaintiffs are barred from bringing action against Sahin.

9

10

11

## COUNTER CLAIMS

12

### Count I – Breach of Contract

13

1. A valid non-disclosure agreement between Sahin and EBI LTD  
14 existed.

15

2. Sahin agreed to help EBI LTD by providing consulting services.

16

3. The EBI LTD breached the non-disclosure agreement.

17

4. The breach by EBI LTD was not a result of Sahin's failure to  
18 perform a condition precedent.

19

5. Sahin was damaged by EBI LTD's breach of the non-disclosure  
20 agreement.

21

6. The damages sustained by Sahin are reasonably ascertainable.

1 7. The damages were a foreseeable consequence of the Plaintiffs'  
2 breach.

3 Count II – Fraud

4 8. Plaintiff's fraudulent activities have damaged Sahin in an amount  
5 to be determined at trial.

6  
7 COUNT III

8 (False Advertising and Deceptive Trade Practices – Cal. Bus. & Prof.  
9 Code § 17500)

10

11 9. Plaintiffs have made false statements about Sahin and the  
12 company Sahin works for.

13 10. Upon information and belief, Plaintiffs have profited from these  
14 false statements and misrepresentations.

15 11. As a direct and proximate result of Plaintiffs' false statements,  
16 Sahin has suffered and will continue to suffer monetary damages  
17 and irreparable injury to its business, reputation, and goodwill.

18

19 COUNT IV

20 (Defamation)

21 12. Plaintiffs have made false statements about Sahin's character to

1 third parties.

2 13. Upon information and belief, Plaintiffs did this to divert business  
3 to them and Plaintiffs have profited from these false statements and  
4 misrepresentations while tarnishing Sahin's reputation.

5 14. As a direct and proximate result of Plaintiffs' false statements,  
6 Sahin has suffered and will continue to suffer monetary damages  
7 and irreparable injury to its business, reputation, and goodwill.

8  
9 **PRAYER FOR RELIEF**

10  
11 WHEREFORE, Sahin respectfully prays that the Court grant the following  
12 relief:

13  
14 A. Compensatory damages for breach of contract;

15 B. Compensatory damages for fraud;

16 C. Compensatory damages for false advertising;

17 D. Compensatory damages for defamation;

18 E. Pursuant to 17 U.S.C. §§ 505 and 1203(b)(4) and (5), and full costs in  
19 litigating this matter, including reasonable attorneys' fees;

20 F. Punitive damages for Plaintiffs' willful and malicious conduct; and

21 G. All other relief to which Sahin is entitled.

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Dated: 5/20/2015

Respectfully submitted,

**BAYRAMOGLU LAW OFFICES LLC**

By:       /s/ Gokalp Bayramoglu  
Gokalp Bayramoglu

*Attorney for Defendant*

**CERTIFICATE OF FILING**

I hereby certify that on 5/20/2015 I electronically filed the foregoing document with the clerk of the Court using the CM/ECF system.

/s/ Gokalp Bayramoglu

Gokalp Bayramoglu

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**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served this 20th day of May, 2015 with a copy of this document via the Court’s CM/ECF system per Local Rule CV-5.4c.

Executed on May 20th, 2015, at Las Vegas, Nevada, U.S.A.

*/s/ Gokalp Bayramoglu*

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Gokalp Bayramoglu

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5 Las Vegas, Nevada 89123  
Telephone: 702.724.2628  
6 Attorneys for Plaintiff,  
Digital Empire Limited.  
7

8  
9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 EBI LTD., a California corporation;  
12 HAFFNER INT'L MARKETING  
GROUP, INC., a Nevada corporation;  
13 HEINZ HAFFNER, a California resident;  
and RENTATO BIZZARRO, a resident of  
14 Brazil,

15 Plaintiffs,

16 v.

17 YUSUF BUGRA SAHIN, an individual,.

18 Defendant.

19 YUSUF BUGRA SAHIN, an individual,  
20 HIMG SERAMIK VE MEDIKAL  
KOMPOZIT SAN. TIC. LTD. STI., A  
Turkish Limited Company

21 Counter-Claimant,

22 v.

23 EBI LTD., a California corporation;  
24 HAFFNER INT'L MARKETING  
GROUP, INC., a Nevada corporation;  
25 HEINZ HAFFNER, a California resident;  
and RENTATO BIZZARRO, a resident of  
26 Brazil,

27 Counter-Defendants.  
28

Case No. 14-cv-2274-JAH-RBB

**DEFENDANT YUSUF BUGRA  
SAHIN'S AMENDED ANSWER  
TO COMPLAINT FOR  
DAMAGE AND INJUNCTIVE  
RELIEF**

Date: June 30, 2015

The Honorable John A. Houston

Demand for Jury Trial

Case No. 14-cv-2274-JAH-RBB

**DEFENDANT YUSUF BUGRA  
SAHIN'S AMENDED ANSWER  
TO COMPLAINT FOR  
DAMAGE AND INJUNCTIVE  
RELIEF**

Date: June 30, 2015

The Honorable John A. Houston

Demand for Jury Trial

1 Defendant Yusuf Bugra Sahin (“Sahin”) respectfully submits his Amended  
2 Answer to the Complaint for Damages and Injunctive Relief (“Complaint”) filed by  
3 Plaintiff EBI LTD., HAFFNER INT’L MARKETING GROUP, INC.; HEINZ  
4 HAFFNER; and RENTATO BIZZARRO, (Collectively referred herein as  
5 “Plaintiffs”) on September 25, 2014, and Counter-Claimants, Yusuf Bugra Sahin  
6 and HIMG SERAMIK VE MEDIKAL KOMPOZIT SAN TIC LTD STI (“HIMG  
7 SERAMIK”) (Collectively referred herein as “Claimants”) Counts, and states as  
8 follows:

9  
10 ANSWER TO ALLEGATIONS IN COMPLAINT

11 **Response to Allegations Contained in “Parties”**

- 12 1. Sahin lacks information sufficient to form a belief regarding the truth of  
13 the allegations contained in Paragraph 1 of the Complaint and therefore denies  
14 such allegations.
- 15 2. Sahin lacks information sufficient to form a belief regarding the truth of  
16 the allegations contained in Paragraph 2 of the Complaint and therefore denies  
17 such allegations.
- 18 3. Sahin lacks information sufficient to form a belief regarding the truth of  
19 the allegations contained in Paragraph 3 of the Complaint and therefore denies  
20 such allegations.
- 21 4. Sahin lacks information sufficient to form a belief regarding the truth of  
22 the allegations contained in Paragraph 4 of the Complaint and therefore denies  
23 such allegations.
- 24 5. In response to the first sentence of Paragraph 5 of the Complaint,  
25 Sahin admits that Sahin is a resident of Turkey. Sahin denies allegations stated  
26 in the rest of paragraph 5.
- 27  
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**Response to “Jurisdiction and Venue”**

- 6. Sahin denies allegations stated in Paragraph 6.
- 7. Sahin denies allegations stated in paragraph 7.
- 8. Sahin is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 and on that basis denies those allegations.
- 9. Sahin denies allegations stated in paragraph 9.

**BACKGROUND FACTS**

**Plaintiff’s and Plaintiff’s Products**

- 10. Sahin lacks information sufficient to form a belief regarding the truth of the allegations contained in Paragraph 10 of the Complaint and therefore denies such allegations.
- 11. Sahin lacks information sufficient to form a belief regarding the truth of the allegations contained in Paragraph 11 of the Complaint and therefore denies such allegations.
- 12. Sahin lacks information sufficient to form a belief regarding the truth of the allegations contained in Paragraph 12 of the Complaint and therefore denies such allegations.
- 13. Sahin lacks information sufficient to form a belief regarding the truth of the allegations contained in Paragraph 13 of the Complaint and therefore denies such allegations.
- 14. Sahin lacks information sufficient to form a belief regarding the truth of the allegations contained in Paragraph 14 of the Complaint and therefore denies such allegations.
- 15. Sahin lacks information sufficient to form a belief regarding the truth of the allegations contained in Paragraph 15 of the Complaint and therefore denies such allegations.

1 16. Sahin admits that the mark HIMG is registered at the United States Patent  
2 and Trademark Office (Registration No. 4573180). However others have used  
3 the mark before it was registered. There is a current cancellation procedure  
4 initiated at the United States Patent and Trademark Office against the mark  
5 HIMG (Registration No. 4573180).

6 17. Sahin lacks information sufficient to form a belief regarding the truth of  
7 the allegations contained in Paragraph 17 of the Complaint and therefore denies  
8 such allegations.

9 18. Sahin lacks information sufficient to form a belief regarding the truth of  
10 the allegations contained in Paragraph 18 of the Complaint and therefore denies  
11 such allegations.

12 19. Sahin lacks information sufficient to form a belief regarding the truth of  
13 the allegations contained in Paragraph 19 of the Complaint and therefore denies  
14 such allegations.

15 20. Sahin lacks information sufficient to form a belief regarding the truth of  
16 the allegations contained in Paragraph 20 of the Complaint and therefore denies  
17 such allegations.

18 21. Sahin lacks information sufficient to form a belief regarding the truth of  
19 the allegations contained in Paragraph 21 of the Complaint and therefore denies  
20 such allegations.

21  
22 **Plaintiffs' Relationship with Sahin and the NDA**

23 22. Sahin lacks information sufficient to form a belief regarding the truth of  
24 the allegations contained in Paragraph 22 of the Complaint and therefore denies  
25 such allegations.

26 23. Sahin admits meeting with Mr. Bizarro. Sahin is without knowledge or  
27 information sufficient to form a belief as to the truth of the remaining allegations  
28 contained in Paragraph 23 and on that basis denies those allegations.

1 24. Sahin admits signing an NDA with EBI LTD. Sahin is without knowledge  
2 or information sufficient to form a belief as to the truth of the remaining  
3 allegations contained in Paragraph 24 and on that basis denies those allegations.

4 25. Sahin denies allegations of Paragraph 25.

5  
6 **The Formation and Development of HIMG Turkey**

7 26. Sahin denies allegations of Paragraph 26.

8 27. Sahin denies allegations of Paragraph 27.

9 28. Sahin lacks information sufficient to form a belief regarding the truth of  
10 the allegations contained in Paragraph 28 of the Complaint and therefore denies  
11 such allegations.

12 29. Sahin denies allegations of Paragraph 29.

13 30. Sahin denies allegations of Paragraph 30.

14 31. Sahin denies allegations of Paragraph 31.

15 32. Sahin lacks information sufficient to form a belief regarding the truth of  
16 the allegations contained in Paragraph 32 of the Complaint and therefore denies  
17 such allegations.

18 33. Sahin lacks information sufficient to form a belief regarding the truth of  
19 the allegations contained in Paragraph 33 of the Complaint and therefore denies  
20 such allegations.

21 34. Sahin lacks information sufficient to form a belief regarding the truth of  
22 the allegations contained in Paragraph 34 of the Complaint and therefore denies  
23 such allegations.

24 35. Sahin denies allegations of Paragraph 35.

25 36. Sahin denies allegations of Paragraph 36.

26 37. Sahin lacks information sufficient to form a belief regarding the truth of  
27 the allegations contained in Paragraph 37 of the Complaint and therefore denies  
28 such allegations.

1 38. Sahin denies allegations of Paragraph 38.

2 39. Sahin denies allegations of Paragraph 39.

3 40. Sahin denies allegations of Paragraph 40.

4 41. Sahin denies allegations of Paragraph 41.

5 42. Sahin admits visiting a trade show in Las Vegas Nevada. Sahin denies the  
6 remaining allegations contained in Paragraph 42.

7 43. Sahin admits meeting with Haffner in Las Vegas. Sahin denies the  
8 remaining allegations contained in Paragraph 43.

9 44. Sahin denies allegations of Paragraph 44.

10

11 **The Demise of Plaintiffs' Relationship with Sahin**

12 45. Sahin denies allegations of Paragraph 45.

13 46. Sahin denies allegations of Paragraph 46.

14 47. Sahin admits attending to a trade show in India. Sahin denies the  
15 remaining allegations contained in Paragraph 47.

16 48. Sahin admits meeting with Mr. Bizarro at a restaurant. Sahin denies the  
17 remaining allegations contained in Paragraph 48.

18 49. Sahin lacks information sufficient to form a belief regarding the truth of  
19 the allegations contained in Paragraph 49 of the Complaint and therefore denies  
20 such allegations.

21 50. Sahin denies allegations of Paragraph 50.

22 51. Sahin denies allegations of Paragraph 51.

23 52. Sahin denies allegations of Paragraph 52.

24 53. Sahin denies allegations of Paragraph 53.

25 54. Sahin denies allegations of Paragraph 54.

26 55. Sahin lacks information sufficient to form a belief regarding the truth of  
27 the allegations contained in Paragraph 55 of the Complaint and therefore denies  
28 such allegations.

1 56. Sahin denies allegations of Paragraph 56.

2 57. Sahin denies allegations of Paragraph 57.

3 58. Sahin lacks information sufficient to form a belief regarding the truth of  
4 the allegations contained in Paragraph 58 of the Complaint and therefore denies  
5 such allegations.

6 59. Sahin admits registering the domain name. Sahin denies the remaining  
7 allegations contained in Paragraph 59.

8 60. Sahin admits participating an Indian Ceramics trade show in 2012. Sahin  
9 denies the remaining allegations contained in Paragraph 60.

10 61. Sahin admits having an interview with Ceramic Asia Magazine. Sahin  
11 denies the remaining allegations contained in Paragraph 61.

12 62. Sahin denies allegations of Paragraph 62.

13 63. Sahin denies allegations of Paragraph 63.

14 64. Sahin denies allegations of Paragraph 64.

15 65. Sahin admits that business was founded in 2007 and it had its own  
16 marketing and production departments.

17 66. Sahin admits that NNREPAIR site is owned by a company and the site  
18 provides solutions to customers.

19 67. Sahin denies allegations of Paragraph 67.

20 68. Sahin denies allegations of Paragraph 68.

21 69. Sahin denies allegations of Paragraph 69.

22 70. Sahin denies allegations of Paragraph 70.

23 71. Sahin lacks information sufficient to form a belief regarding the truth of  
24 the allegations contained in Paragraph 71 of the Complaint and therefore denies  
25 such allegations.

26 72. Sahin denies allegations of Paragraph 72.

27 73. Sahin denies allegations of Paragraph 73.

28 74. Sahin admits working for HIMG SERAMIK in Turkey. Sahin denies the

1 remaining allegations contained in Paragraph 74.

2 75. Sahin denies allegations of Paragraph 75.

3 76. Sahin denies allegations of Paragraph 76.

4 77. Sahin denies allegations of Paragraph 77.

5 78. Sahin denies allegations of Paragraph 78.

6  
7 **Response to “Count 1 – Trademark Infringement”**

8 79. Sahin restates and incorporates by references his above responses to  
9 Paragraphs 1-78 of the Complaint, as though fully set forth herein.

10 80. Sahin lacks information sufficient to form a belief regarding the truth of  
11 the allegations contained in Paragraph 80 of the Complaint and therefore denies  
12 such allegations.

13 81. Sahin lacks information sufficient to form a belief regarding the truth of  
14 the allegations contained in Paragraph 81 of the Complaint and therefore denies  
15 such allegations.

16 82. Sahin lacks information sufficient to form a belief regarding the truth of  
17 the allegations contained in Paragraph 82 of the Complaint and therefore denies  
18 such allegations.

19 83. Sahin denies the allegations contained in Paragraph 83.

20 84. Sahin denies the allegations contained in Paragraph 84.

21 85. Sahin denies the allegations contained in Paragraph 85.

22 86. Sahin denies the allegations contained in Paragraph 86.

23 87. Sahin denies the allegations contained in Paragraph 87.

24 88. Sahin denies the allegations contained in Paragraph 88.

25 89. Sahin denies the allegations contained in Paragraph 89.

26  
27 **Response to “Count II – Unfair Competition”**

28 90. Sahin restates and incorporates by references his above responses to

1 Paragraphs 1-78 of the Complaint, as though fully set forth herein.

2 91. Sahin denies the allegations contained in Paragraph 91.

3 92. Sahin denies the allegations contained in Paragraph 92.

4 93. Sahin denies the allegations contained in Paragraph 93.

5 94. Sahin lacks information sufficient to form a belief regarding the truth of  
6 the allegations contained in Paragraph 94 of the Complaint and therefore denies  
7 such allegations.

8 95. Sahin lacks information sufficient to form a belief regarding the truth of  
9 the allegations contained in Paragraph 95 of the Complaint and therefore denies  
10 such allegations.

11  
12 **Response to “Count III – Trademark Counterfeiting”**

13 96. Sahin restates and incorporates by references his above responses to  
14 Paragraphs 1-78 of the Complaint, as though fully set forth herein.

15 97. Sahin denies the allegations contained in Paragraph 97.

16 98. Sahin denies the allegations contained in Paragraph 98.

17 99. Sahin denies the allegations contained in Paragraph 99.

18 100. Sahin lacks information sufficient to form a belief regarding the truth of  
19 the allegations contained in Paragraph 100 of the Complaint and therefore  
20 denies such allegations.

21  
22 **Response to “Count IV – Breach of Contract”**

23 101. Sahin restates and incorporates by references his above responses to  
24 Paragraphs 1-78 of the Complaint, as though fully set forth herein.

25 102. Sahin admits that a non-disclosure agreement was signed. between Sahin  
26 and EBI Ltd. only.

27 103. Sahin denies the allegations contained in Paragraph 103.

28 104. Sahin denies the allegations contained in Paragraph 104.

1 105. Sahin denies the allegations contained in Paragraph 105.

2 106. Sahin lacks information sufficient to form a belief regarding the truth of  
3 the allegations contained in Paragraph 106 of the Complaint and therefore  
4 denies such allegations.

5 107. Sahin lacks information sufficient to form a belief regarding the truth of  
6 the allegations contained in Paragraph 107 of the Complaint and therefore  
7 denies such allegations.

8 108. Sahin lacks information sufficient to form a belief regarding the truth of  
9 the allegations contained in Paragraph 108 of the Complaint and therefore  
10 denies such allegations.

11

12 **Response to “Count V – Breach of Fiduciary Duty”**

13 109. Sahin restates and incorporates by references his above responses to  
14 Paragraphs 1-78 of the Complaint, as though fully set forth herein.

15 110. Sahin denies the allegations contained in Paragraph 110.

16 111. Sahin denies the allegations contained in Paragraph 111.

17 112. Sahin denies the allegations contained in Paragraph 112.

18

19 **Response to “Count VI – Fraud”**

20 113. Sahin restates and incorporates by references his above responses to  
21 Paragraphs 1-78 of the Complaint, as though fully set forth herein.

22 114. Sahin denies the allegations contained in Paragraph 114.

23 115. Sahin denies the allegations contained in Paragraph 115.

24

25 **Response to “Count VII – Deceit”**

26 116. Sahin restates and incorporates by references his above responses to  
27 Paragraphs 1-78 of the Complaint, as though fully set forth herein.

28 117. Sahin denies the allegations contained in Paragraph 117.

1 118. Sahin denies the allegations contained in Paragraph 118.

2

3 **Response to “Count VIII – Unjust Enrichment”**

4 119. Sahin restates and incorporates by references his above responses to  
5 Paragraphs 1-78 of the Complaint, as though fully set forth herein.

6 120. Sahin lacks information sufficient to form a belief regarding the truth of  
7 the allegations contained in Paragraph 120 of the Complaint and therefore  
8 denies such allegations.

9 121. Sahin denies the allegations contained in Paragraph 121.

10 122. Sahin denies the allegations contained in Paragraph 122.

11 123. Sahin denies the allegations contained in Paragraph 123.

12

13 **Response to “Count IX – Conversion”**

14 124. Sahin restates and incorporates by references his above responses to  
15 Paragraphs 1-78 of the Complaint, as though fully set forth herein.

16 125. Sahin denies the allegations contained in Paragraph 125.

17 126. Sahin denies the allegations contained in Paragraph 126.

18 **Response to “Count X – Misappropriation of Trade Secret”**

19 127. Sahin restates and incorporates by references his above responses to  
20 Paragraphs 1-78 of the Complaint, as though fully set forth herein.

21 128. Sahin lacks information sufficient to form a belief regarding the truth of  
22 the allegations contained in Paragraph 128 of the Complaint and therefore  
23 denies such allegations.

24 129. Sahin denies the allegations contained in Paragraph 129.

25 130. Sahin denies the allegations contained in Paragraph 130.

26 131. Sahin denies the allegations contained in Paragraph 131.

27

28

1                   **Response to “Count XI – State Trademark Infringement”**

2           132. Sahin restates and incorporates by references his above responses to  
3           Paragraphs 1-78 of the Complaint, as though fully set forth herein.

4           133. Sahin lacks information sufficient to form a belief regarding the truth of  
5           the allegations contained in Paragraph 133 of the Complaint and therefore  
6           denies such allegations.

7           134. Sahin lacks information sufficient to form a belief regarding the truth of  
8           the allegations contained in Paragraph 134 of the Complaint and therefore  
9           denies such allegations.

10          135. Sahin lacks information sufficient to form a belief regarding the truth of  
11          the allegations contained in Paragraph 135 of the Complaint and therefore  
12          denies such allegations.

13                   **Response to “Count XII – State Unfair Competition”**

14          136. Sahin restates and incorporates by references his above responses to  
15          Paragraphs 1-78 of the Complaint, as though fully set forth herein.

16          137. Sahin denies the allegations contained in Paragraph 137.

17          138. Sahin denies the allegations contained in Paragraph 138.

18          139. Sahin denies the allegations contained in Paragraph 139.

19          140. Sahin lacks information sufficient to form a belief regarding the truth of  
20          the allegations contained in Paragraph 140 of the Complaint and therefore  
21          denies such allegations.

22  
23                   **Response to “Count XIII – Intentional Interference with Prospective**  
24                                   **Economic Advantage”**

25          141. Sahin restates and incorporates by references his above responses to  
26          Paragraphs 1-78 of the Complaint, as though fully set forth herein.

27          142. Sahin lacks information sufficient to form a belief regarding the truth of  
28          the allegations contained in Paragraph 142 of the Complaint and therefore

1 denies such allegations.

2 143. Sahin denies the allegations contained in Paragraph 143.

3 144. Sahin denies the allegations contained in Paragraph 144.

4 145. Sahin lacks information sufficient to form a belief regarding the truth of  
5 the allegations contained in Paragraph 145 of the Complaint and therefore  
6 denies such allegations.

7 146. Sahin lacks information sufficient to form a belief regarding the truth of  
8 the allegations contained in Paragraph 146 of the Complaint and therefore  
9 denies such allegations.

10 147. Sahin lacks information sufficient to form a belief regarding the truth of  
11 the allegations contained in Paragraph 147 of the Complaint and therefore  
12 denies such allegations.

13 148. Sahin denies the allegations contained in Paragraph 148.

14

15 **Response to “Count XIV – False Advertising and Deceptive Trade Practices”**

16 149. Sahin restates and incorporates by references his above responses to  
17 Paragraphs 1-78 of the Complaint, as though fully set forth herein.

18 150. Sahin denies the allegations contained in Paragraph 150.

19 151. Sahin denies the allegations contained in Paragraph 151.

20 152. Sahin denies the allegations contained in Paragraph 152.

21 153. Sahin denies the allegations contained in Paragraph 153.

22 154. Sahin denies the allegations contained in Paragraph 154.

23

24 **Response to Plaintiffs’ “Prayer for Relief”**

25 155. Sahin denies that Plaintiffs are entitled to any relief in this action and asks  
26 the Court deny any and all of the relief requested by Plaintiffs in their complaint  
27 with respect to Sahin.

28



1 informed and believes started on April 22, 2014; thereby Defendant has acquired  
2 a common law rights to the exclusive use of the mark.

3 160. Plaintiffs' claim for alleged trademark counterfeiting fails to state a claim  
4 upon which relief can be granted. Defendant's continuous commercial use of the  
5 business name "HIMG Keramik" to globally distribute porcelain repair products  
6 since 2007 and the continuous commercial use of the "HIMG" mark on products  
7 sold globally from December 2012 predates Plaintiffs' registration (Reg. No.  
8 4573180) of the mark on July 22, 2014 and Plaintiffs' use, Defendant is  
9 informed and believes started on April 22, 2014; thereby Defendant has acquired  
10 a common law rights to the exclusive use of the mark.

11 161. Plaintiffs' claim for alleged breach of contract fails to state a claim upon  
12 which relief can be granted. Defendant's continuous commercial use of the  
13 business name "HIMG Keramik" to globally distribute porcelain repair products  
14 since 2007 and the continuous commercial use of the "HIMG" mark on products  
15 sold globally from December 2012 predates Plaintiffs' registration (Reg. No.  
16 4573180) of the mark on July 22, 2014 and Plaintiffs' use, Defendant is  
17 informed and believes started on April 22, 2014; thereby Defendant has acquired  
18 a common law rights to the exclusive use of the mark.

19 162. Plaintiffs' claim for alleged breach of fiduciary duty fails to state a claim  
20 upon which relief can be granted. Defendant. Defendant's continuous  
21 commercial use of the business name "HIMG Keramik" to globally distribute  
22 porcelain repair products since 2007 and the continuous commercial use of the  
23 "HIMG" mark on products sold globally from December 2012 predates  
24 Plaintiffs' registration (Reg. No. 4573180) of the mark on July 22, 2014 and  
25 Plaintiffs' use, Defendant is informed and believes started on April 22, 2014;  
26 thereby Defendant has acquired a common law rights to the exclusive use of the  
27 mark.

28 163. Plaintiffs' claim for alleged fraud fails to state a claim upon which relief

1 can be granted. Defendant's continuous commercial use of the business name  
2 "HIMG Keramik" to globally distribute porcelain repair products since 2007 and  
3 the continuous commercial use of the "HIMG" mark on products sold globally  
4 from December 2012 predates Plaintiffs' registration (Reg. No. 4573180) of the  
5 mark on July 22, 2014 and Plaintiffs' use, Defendant is informed and believes  
6 started on April 22, 2014; thereby Defendant has acquired a common law rights  
7 to the exclusive use of the mark.

8 164. Plaintiffs' claim for alleged deceit fails to state a claim upon which relief  
9 can be granted. Defendant's continuous commercial use of the business name  
10 "HIMG Keramik" to globally distribute porcelain repair products since 2007 and  
11 the continuous commercial use of the "HIMG" mark on products sold globally  
12 from December 2012 predates Plaintiffs' registration (Reg. No. 4573180) of the  
13 mark on July 22, 2014 and Plaintiffs' use, Defendant is informed and believes  
14 started on April 22, 2014; thereby Defendant has acquired a common law rights  
15 to the exclusive use of the mark.

16 165. Plaintiffs' claim for alleged unjust enrichment fails to state a claim upon  
17 which relief can be granted. Defendant's continuous commercial use of the  
18 business name "HIMG Keramik" to globally distribute porcelain repair products  
19 since 2007 and the continuous commercial use of the "HIMG" mark on products  
20 sold globally from December 2012 predates Plaintiffs' registration (Reg. No.  
21 4573180) of the mark on July 22, 2014 and Plaintiffs' use, Defendant is  
22 informed and believes started on April 22, 2014; thereby Defendant has acquired  
23 a common law rights to the exclusive use of the mark.

24 166. Plaintiffs' claim for alleged conversion fails to state a claim upon which  
25 relief can be granted.

26 167. Plaintiffs' claim for alleged misappropriation of trade secret fails to state a  
27 claim upon which relief can be granted. Defendant's continuous commercial use  
28 of the business name "HIMG Keramik" to globally distribute porcelain repair

1 products since 2007 and the continuous commercial use of the “HIMG” mark on  
2 products sold globally from December 2012 predates Plaintiffs’ registration  
3 (Reg. No. 4573180) of the mark on July 22, 2014 and Plaintiffs’ use, Defendant  
4 is informed and believes started on April 22, 2014; thereby Defendant has  
5 acquired a common law rights to the exclusive use of the mark. Defendant did  
6 not receive any “trade secrete” information.

7 168. Plaintiffs’ claim for alleged state trademark infringement fails to state a  
8 claim upon which relief can be granted. Defendant’s continuous commercial use  
9 of the business name “HIMG Keramik” to globally distribute porcelain repair  
10 products since 2007 and the continuous commercial use of the “HIMG” mark on  
11 products sold globally from December 2012 predates Plaintiffs’ registration  
12 (Reg. No. 4573180) of the mark on July 22, 2014 and Plaintiffs’ use, Defendant  
13 is informed and believes started on April 22, 2014; thereby Defendant has  
14 acquired a common law rights to the exclusive use of the mark.

15 169. Plaintiffs’ claim for alleged state unfair competition fails to state a claim  
16 upon which relief can be granted. Defendant solely owns the Corporate entity  
17 “HIMG Keramik” since 2007 and the registered trademark “NNRepair” and is  
18 using his own developed repair material not based on Plaintiff’s formula.

19 170. Plaintiffs’ claim for alleged intentional interference with prospective  
20 economic advantage fails to state a claim upon which relief can be granted.  
21 Defendant’s continuous commercial use of the “HIMG” mark predates both the  
22 Plaintiffs’ use and registration of the mark; thereby Defendant has acquired a  
23 common law rights to the exclusive use of the mark. Defendant solely owns the  
24 Corporate entity “HIMG Keramik” since 2007 and the registered trademark  
25 “NNRepair” and is using his own developed repair material not based on  
26 Plaintiff’s formula.

27 171. Plaintiffs’ claims for alleged false advertising and deceptive trade practices  
28 fails to state a claim upon which relief can be granted. Defendant’s continuous

1 commercial use of the business name “HIMG Keramik” to globally distribute  
2 porcelain repair products since 2007 and the continuous commercial use of the  
3 “HIMG” mark on products sold globally from December 2012 predates  
4 Plaintiffs’ registration (Reg. No. 4573180) of the mark on July 22, 2014 and  
5 Plaintiffs’ use, Defendant is informed and believes started on April 22, 2014;  
6 thereby Defendant has acquired a common law rights to the exclusive use of the  
7 mark. Defendant solely owns the Corporate entity “HIMG Keramik” since 2007  
8 and the registered trademark “NNRepair” and is using his own developed repair  
9 material not based on Plaintiff’s formula.

## 10 11 **Second Additional Defense**

### 12 **(Noninfringement)**

13 172. Defendant incorporates the preceding allegations as if fully set forth  
14 herein.

15 173. Sahin did not manufacture or sell any products that infringe upon  
16 Plaintiff’s trademark and has not infringed any valid and enforceable mark  
17 “HIMG”. Sahin did not willfully infringe and has not willfully infringed any  
18 valid and enforceable mark “HIMG.” Defendant’s continuous commercial use of  
19 the business name “HIMG Keramik” to globally distribute porcelain repair  
20 products since 2007 and the continuous commercial use of the “HIMG” mark on  
21 products sold globally from December 2012 predates Plaintiffs’ registration  
22 (Reg. No. 4573180) of the mark on July 22, 2014 and Plaintiffs’ use, Defendant  
23 is informed and believes started on April 22, 2014; thereby Defendant has  
24 acquired a common law rights to the exclusive use of the mark. Defendant solely  
25 owns the Corporate entity “HIMG Keramik” since 2007 and the registered  
26 trademark “NNRepair” and is using his own developed repair material not based  
27 on Plaintiff’s formula.

28

1 **Third Additional Defense**

2 **(Invalidity)**

3 174. Defendant incorporates the preceding allegations as if fully set forth  
4 herein.

5 175. The mark “HIMG” is invalid for one or more reasons under Section 14(3)  
6 of the Lanham Trademark Act of 1946, 15 U.S.C. § 1064(3). Defendant’s  
7 continuous commercial use of the business name “HIMG Keramik” to globally  
8 distribute porcelain repair products since 2007 and the continuous commercial  
9 use of the “HIMG” mark on products sold globally from December 2012  
10 predates Plaintiffs’ registration (Reg. No. 4573180) of the mark on July 22,  
11 2014 and Plaintiffs’ use, Defendant is informed and believes started on April 22,  
12 2014; thereby Defendant has acquired a common law rights to the exclusive use  
13 of the mark.

14  
15 **Fourth Additional Defense**

16 **(Laches)**

17 176. Defendant incorporates the preceding allegations as if fully set forth  
18 herein.

19 177. On information and belief, Defendant is informed and believes and thereon  
20 alleges that Plaintiff waited an unreasonable period of time to complain of the  
21 alleged trademark infringement, marketing products under the name “HIMG”,  
22 distributing products through an entity “HIMG Sermik” and “NNRepair” to the  
23 prejudice of this Defendant.

24 178. Specifically, Defendant’s continuous commercial use of the business name  
25 “HIMG Keramik” to globally distribute porcelain repair products since 2007 and  
26 the continuous commercial use of the “HIMG” mark on products sold globally  
27 from December 2012 predates Plaintiffs’ registration (Reg. No. 4573180) of the  
28

1 mark on July 22, 2014 and Plaintiffs' use, Defendant is informed and believes  
2 started on April 22, 2014, created a common law trademark right.

3 179. Defendant solely owns the corporate entity "HIMG Keramik" since 2007  
4 which owned the registered trademark and domain name "NNRepair", and is  
5 using his own developed repair material not based on Plaintiff's formula, which  
6 is sold and distributed through "HIMG SERAMIK" and web sites using  
7 "NNRepair". Upon information and belief, Plaintiffs had actual notice and  
8 knowledge that Defendant was distributing porcelain repair products globally  
9 through "HIMG Keramik" since 2007 and expended money and efforts to  
10 advertise and promote sale of the products, without the objection of Plaintiffs.

11 180. Upon information and belief, Plaintiffs had actual notice and knowledge  
12 that Defendant was distributing porcelain repair products globally utilizing the  
13 "HIMG" since December 2012 and expended money and efforts to advertise and  
14 promote sale of the products, without the objection of Plaintiffs.

15 181. Upon information and belief, Plaintiffs failed to obtain a trademark from  
16 the USPTO until July 22, 2014 and failed and refused to use the mark until April  
17 22, 2014.

18 182. Defendant has expended money and efforts to promote the products  
19 branded "HIMG", distributing products globally by "HIMG Keramik" since  
20 2007, and distributed products through and marketed the products through  
21 websites "www.nnrepair.com" and "www.nnrepair-online.com". Plaintiffs'  
22 unreasonable delay in objecting or taking legal action has cost Defendant  
23 considerable money in marketing costs. Plaintiff is therefore guilty of laches.  
24

### 25 **Fifth Additional Defense**

#### 26 **(Unclean Hands)**

27 183. Defendant incorporates the preceding allegations as if fully set forth  
28 herein.

1 184. Plaintiffs intentionally and willfully trafficked goods containing a mark  
2 “HIMG” that is owned by “HIMG Keramik through common law commercial  
3 usage rights.

4 185. Upon information and belief, Plaintiffs had actual notice and knowledge  
5 that Defendant distributed porcelain repair products globally through a company  
6 “HIMG Keramik” since 2007 and that Defendant had been distributing  
7 commercial products branded with the “HIMG” mark since December 2012.

8 186. Plaintiffs have knowingly misused the “HIMG” Mark, which was acquired  
9 through common law use, in a fraudulent manner and in a way to deceive  
10 consumers and cause confusion between the products sold by Plaintiffs’ and the  
11 authentic ceramic repair kits sold by Defendant.

12 187. Plaintiffs profited from the aforementioned acts in an attempt to gain  
13 commercial advantage over Defendant in various international markets where  
14 the enforcement of intellectual property law is difficult.

15 188. As the direct and proximate result of the counterfeiting, Defendant has  
16 suffered, and will continue to suffer, monetary loss and irreparable injury to its  
17 business, reputation, and goodwill.

18  
19 **COUNTER CLAIMS**

20 **COUNT I**

21 (Breach of Contract) (SAHIN As Against Cross-Defendants, EBI, LTD. and  
22 HAFFNER INT’L MARKETING GROUP, INC.)

23 189. On or about March 1, 2006, CROSS-DEFENDANTS, HEINZ HAFFNER  
24 (hereinafter “HAFFNER”) and RENTATO BIZZARRO (hereinafter  
25 “BIZZARRO”) represented and promised to pay to CROSS-COMPLAINANT,  
26 YUSUF BUGARA SAHIN (hereinafter “SAHIN”) \$1,000 per month as a  
27 “consulting fee”. CROSS-DEFENDANTS, EBI, LTD. and HAFFNER INT’L  
28 MARKETING GROUP, INC and SHARIN executed a written “Mutual

1 Confidentiality Agreement” setting forth the terms and conditions and the  
2 \$1,000 per month as a “consulting fee”, a true and correct copy of said  
3 “Promissory Note” is attached hereto and marked as Exhibit “A”.

4 190. EBI, LTD. and HAFFNER INT’L MARKETING GROUP, INC breached  
5 the agreement, in that, notwithstanding the written agreement and oral and  
6 implied promises, commencing in January 2008 and continuing thereafter EBI,  
7 LTD. and HAFFNER INT’L MARKETING GROUP, INC refused to pay the  
8 consulting fees. As a result there is now due and owing: \$40,000 or an amount  
9 proven at trial.

10 191. The breach by EBI, LTD. and HAFFNER INT’L MARKETING GROUP,  
11 INC was not excused by SAHIN or any third party. The breach by EBI, LTD.  
12 and HAFFNER INT’L MARKETING GROUP, INC was not a result of  
13 SAHIN’S failure to perform.

14 192. SAHIN has been damaged by the breach, which was a foreseeable  
15 consequence of EBI, LTD., and HAFFNER INT’L MARKETING GROUP,  
16 INC breach.

17 193. In doing these acts, defendants acted with the intent to, and did injure the  
18 SAHIN persons in an offensive and outrageous manner.

19 194. The damages sustained by SAHIN are reasonably foreseeable.

20  
21 COUNT II

22 (State trademark Infringement under Cal. Bus. & Prof. section 14320 et seq.)  
23 (CLAIMANTS As Against Cross-Defendants, EBI, LTD., HAFFNER INT’L  
24 MARKETING GROUP, INC., HEINZ HAFFNER, and RENTATO  
25 BIZZARRO)

26  
27 195. CLAIMANTS incorporate the preceding allegations as if fully set forth  
28 herein.

1 196. On or about 2007 SAHIN formed a corporate entity in Turkey HIMG  
2 SERAMIK, LLC. SAHIN personally owns 100% of the shares of stock.  
3 CROSS-DEFENDANTS had knowledge that SAHIN had 100% ownership  
4 interest in HIMG SERAMIK, LLC and SAHIN was using the company to  
5 distribute commercial porcelain repair products and CROSS-DEFENDANTS  
6 did not object to the use of the company name with the “HIMG” acronym.

7 197. On or about December 2012 and continuing to date CLAIMANTS started  
8 using “HIMG” trademark on their own products distributed globally.  
9 CLAIMANTS are informed and believe that the use of the “HIMG” trademark  
10 preceded both the commercial use and trademark registration by EBI, LTD.,  
11 HAFFNER INT’L MARKETING GROUP, INC., HEINZ HAFFNER, and  
12 RENTATO BIZZARRO.

13 198. CLAIMANTS are informed and believe the CROSS-DEFENDANTS in  
14 2014 registered the “HIMG” trademark. HIMG SERAMIK has filed a Petition  
15 To Cancel Trademark on March 23, 2015, which is still pending.

16 199. By virtue of having the first commercial use and continuing to use the  
17 “HIMG” trademark, CLAIMANTS have acquired common law rights in  
18 trademark.

19 200. EBI, LTD., HAFFNER INT’L MARKETING GROUP, INC., HEINZ  
20 HAFFNER, and RENTATO BIZZARRO infringing use of the “HIMG”  
21 trademark is likely to cause confusion, mistake, or deception among consumers,  
22 who will believe that CROSS-DEFENDANTS services and/or goods originate  
23 from, or are affiliated with or endorsed by CLAIMANTS when in fact, they are  
24 not.

25 201. As a direct and proximate result of EBI, LTD., HAFFNER INT’L  
26 MARKETING GROUP, INC., HEINZ HAFFNER, and RENTATO  
27 BIZZARRO infringement of CLAIMANTS’ common law trademark rights,  
28 CLAIMANTS have suffered monetary damages will continue to suffer

1 monetary damages and irreparable injury to his business, reputation, and  
2 goodwill, the amount to be proven at trial.

3  
4 COUNT III

5 (State Unfair Competition (Cal. Civ. Code section 17200 et seq.))

6 (CLAIMANTS As Against Cross-Defendants, EBI, LTD., HAFFNER INT’L  
7 MARKETING GROUP, INC., HEINZ HAFFNER, and RENTATO BIZZARRO)

8  
9 202. CLAIMANTS incorporate the preceding allegations as if fully set forth  
10 herein.

11 203. On or about December 2012 and continuing to date CLAIMANTS started  
12 using “HIMG” trademark on their own products distributed globally.  
13 CLAIMANTS are informed and believe that the use of the “HIMG” trademark  
14 preceded both the commercial use and trademark registration by EBI, LTD.,  
15 HAFFNER INT’L MARKETING GROUP, INC., HEINZ HAFFNER, and  
16 RENTATO BIZZARRO.

17 204. CLAIMANTS upon information and belief, that subsequent to  
18 CLAIMANTS’ commercial use of the “HIMG” trademark, CROSS-  
19 DEFENDANTS with knowledge of CLAIMANTS’ prior commercial use  
20 copied the “HIMG” trademark and branded their own products with same.

21 205. Upon information and belief, CROSS-DEFENDANTS have used the  
22 “HIMG” trademark on websites, in trade journals, and other media to advertise  
23 its own products to the detriment of CLAIMANTS.

24 206. EBI, LTD., HAFFNER INT’L MARKETING GROUP, INC., HEINZ  
25 HAFFNER, and RENTATO BIZZARRO infringing use of the “HIMG”  
26 trademark is likely to cause confusion, mistake, or deception among consumers,  
27 who will believe that CROSS-DEFENDANTS services and/or goods originate  
28

1 from, or are affiliated with or endorsed by CLAIMANTS, when in fact, they are  
2 not.

3 207. As a direct and proximate result of EBI, LTD., HAFFNER INT’L  
4 MARKETING GROUP, INC., HEINZ HAFFNER, and RENTATO  
5 BIZZARRO infringement of CLAIMANTS’ common law trademark rights,  
6 CLAIMANTS have been damaged, and have suffered and will continue to suffer  
7 monetary damages and irreparable injury to their business, reputation, and  
8 goodwill in an amount to be proven at trial, and will continue to do so unless  
9 enjoined by this court.

10  
11 COUNT IV

12 (State Unfair Competition (Cal. Civ. Code section 17200 et seq.)

13 (CLAIMANTS As Against Cross-Defendants, EBI, LTD., HAFFNER INT’L  
14 MARKETING GROUP, INC., HEINZ HAFFNER, and RENTATO BIZZARRO)

15 208. CLAIMANTS incorporate the preceding allegations as if fully set forth  
16 herein.

17 209. On or about December 2011, CLAIMANTS commenced selling products  
18 under the name of “NNRepair” and was marketing the products through  
19 websites “www.nnrepair.com” and “www.nnrepair-online.com”.

20 CLAIMANTS registered the “NNRepair” trademark in Turkey in 2012.

21 Upon information and belief, commencing on or about 2012 and continuing to  
22 date CROSS-DEFENDANTS began registering domain names composed of the  
23 registered trademark “NNRepair” all of which redirects CLAIMANTS’  
24 customers and potential customers to CROSS-DEFENDANTS website  
25 “www’ceramicure.com”.

26 210. Upon information and belief, the CROSS-DEFENDANTS used their  
27 reverse domain name-hijacking scheme by registering the following domain  
28 names and other domain names: “nnrepair.nl”, “nnrepair.us”, “nnrepair.co.in”,

1 “nnrepair.eu”, “nnrepair.de”, “nnrepair.info”, “nnrepair.es”, “nnrepair.in”,  
2 “nnrepair.net”, and “nnrepair.org”.

3 211. CLAIMANTS upon information and belief, that subsequent to  
4 CLAIMANTS’ commercial use of the registered domain of “NNRepair”,  
5 CROSS-DEFENDANTS with knowledge of CLAIMANTS’ prior commercial  
6 use and registration of “NNRepair” intentionally and willfully registered domain  
7 names with identical “NNRepair” characters with the intent to confuse and  
8 mislead SAHIN’S customers and potential customers.

9 212. As a direct and proximate result of EBI, LTD., HAFFNER INT’L  
10 MARKETING GROUP, INC., HEINZ HAFFNER, and RENTATO  
11 BIZZARRO reverse domain name hijacking, CLAIMANTS have been damaged  
12 in an amount to be proven at trial, will continue to suffer monetary damages and  
13 irreparable injury to his business, reputation, and goodwill, and will continue to  
14 do so unless enjoined by this court.

15  
16 COUNT V

17 (False Advertising & Deceptive Trade Practices (Cal. Bus. & Prof. 17500)  
18 (CLAIMANTS As Against Cross-Defendants, EBI, LTD., HAFFNER INT’L  
19 MARKETING GROUP, INC., HEINZ HAFFNER, and RENTATO BIZZARRO)

20 213. CLAIMANTS incorporate the preceding allegations as if fully set forth  
21 herein.

22 214. Upon information and belief, prior to March 2013 and continuing  
23 thereafter, CROSS-DEFENDANTS in an effort to divert CLAIMANTS’  
24 customers and potential customers and disparage SAHIN’S products, instructed  
25 their agent and representative in Turkey, Karopak, to orally and in writing to  
26 disseminate false and misleading information that CROSS-DEFENDANTS  
27 were the “only supplier of the repair material”.  
28

1 215. Upon information and belief, in March 2013, CROSS-DEFENDANTS  
2 through their representatives and agents attended a tradeshow in Istanbul and  
3 orally and in writing to disseminate false information that CROSS-  
4 DEFENDANTS were the “only supplier of the repair material”.

5 216. Upon information and belief, on or about 2013 and continuing thereafter,  
6 CROSS-DEFENDANTS through their representatives mailed catalogues to  
7 CLAIMANTS’ customers and potential customers disseminating false  
8 information that CROSS-DEFENDANTS were the “only supplier of the repair  
9 material”.

10 217. In the course of conducting business, CROSS-DEFENDANTS knowingly  
11 made these false representations as to affiliation, connection and/or association  
12 with CLAIMANTS.

13 218. As a direct and proximate result of EBI, LTD., HAFFNER INT’L  
14 MARKETING GROUP, INC., HEINZ HAFFNER, and RENTATO  
15 BIZZARRO false and misleading advertising, CLAIMANTS have been  
16 damaged in an amount to be proven at trial, will continue to suffer monetary  
17 damages and irreparable injury to his business, reputation, and goodwill, and  
18 will continue to do so unless enjoined by this court.

19  
20 COUNT VI

21 (Intentional Interference with Prospective Economic Advantage)

22 (CLAIMANTS As Against Cross-Defendants, EBI, LTD., HAFFNER INT’L  
23 MARKETING GROUP, INC., HEINZ HAFFNER, and RENTATO BIZZARRO)

24 219. CLAIMANTS incorporate the preceding allegations as if fully set forth  
25 herein.

26 220. CROSS-DEFENDANTS were aware that CLAIMANTS are in the  
27 business of selling porcelain repair products, and they promote the business and  
28

1 distribute the product through the Internet, trade shows, and in industry  
2 publications.

3 221. CROSS-DEFENDANTS committed acts intended and designed to disrupt  
4 CLAIMANTS' economic advantage by using the "HIMG" trademark on  
5 products, websites, in trade journals, and other media to advertise its own  
6 products after actual knowledge that CLAIMANTS have used that mark in his  
7 business and on commercial products resulting in a common law trademark  
8 rights.

9 222. CROSS-DEFENDANTS committed acts intended and designed to disrupt  
10 CLAIMANTS' economic advantage by registering the following confusing  
11 domain names and other domain names: "nnrepair.nl", "nnrepair.us",  
12 "nnrepair.co.in", "nnrepair.eu", "nnrepair.de", "nnrepair.info", "nnrepair.es",  
13 "nnrepair.in", "nnrepair.net", and "nnrepair.org" with knowledge of  
14 CLAIMANTS' use and registration of "NNRepair".

15 223. Upon information and belief, CROSS-DEFENDANTS committed acts  
16 intended and designed to disrupt CLAIMANTS' economic advantage by using  
17 confusingly similar registering domain names composed of the registered  
18 trademark "NNRepair" all of which redirects CLAIMANTS' customers and  
19 potential customers to CROSS-DEFENDANTS' website  
20 "www.ceramicure.com".

21 224. CROSS-DEFENDANTS through their representatives committed acts  
22 intended and designed to disrupt CLAIMANTS' economic advantage by  
23 mailing catalogues to CLAIMANTS' customers and potential customers  
24 disseminating false information that CROSS-DEFENDANTS were the "only  
25 supplier of the repair material".

26 225. CROSS-DEFENDANTS through their representatives committed acts  
27 intended and designed to disrupt CLAIMANTS' economic advantage by  
28 attending a tradeshow in Istanbul on March 2013 and orally and in writing

1 disseminating false information that CROSS-DEFENDANTS were the “only  
2 supplier of the repair material”.

3 226. CROSS-DEFENDANTS through their representatives committed acts  
4 intended and designed to disrupt CLAIMANTS’ economic advantage by  
5 mailing catalogues to CLAIMANTS’ customers and potential customers  
6 disseminating false information that CROSS-DEFENDANTS were the “only  
7 supplier of the repair material”.

8 227. CROSS-DEFENDANTS actions have disrupted and are intended to  
9 disrupt SAHIN’S business by diverting CLAIMANTS’ potential and actual  
10 customers away from CLAIMANTS’ products.

11 228. CROSS-DEFENDANTS have no legal right, privilege, or legal  
12 justification for their conduct.

13 229. As a direct and proximate result of EBI, LTD., HAFFNER INT’L  
14 MARKETING GROUP, INC., HEINZ HAFFNER, and RENTATO  
15 BIZZARRO reverse domain name hijacking scheme, unlawful use of the  
16 “HIMG” trademark, and falsely representing that they were the “only supplier of  
17 the repair material”, CLAIMANTS have been damaged, will continue to suffer  
18 monetary damages and irreparable injury to his business, reputation, and  
19 goodwill in an amount to be proven at trial.

20 230. Based upon the intentional, willful, and malicious misconduct of CROSS-  
21 DEFENDANTS’ actions, CLAIMANTS are entitled to recover exemplary  
22 damages and reasonable attorney’s fees and costs incurred in connection with  
23 this action.

24 COUNT VII

25 (Breach of Fiduciary Duties)

26 (CLAIMANTS As Against Cross-Defendants, EBI, LTD., HAFFNER INT’L  
27 MARKETING GROUP, INC., HEINZ HAFFNER, and RENTATO  
28 BIZZARRO)

1 231. CLAIMANTS incorporate the preceding allegations as if fully set forth  
2 herein.

3 232. Commencing 1n 2007 CLAIMANTS and EBI, LTD., HAFFNER INT’L  
4 MARKETING GROUP, INC., HEINZ HAFFNER, and RENTATO  
5 BIZZARRO entered into a commercial business relationship where  
6 CLAIMANTS provided consultant services to expand sales into Turkey and the  
7 Middle East and to purchase and distribute CROSS-DEFENDANTS products.  
8 By virtue of the longstanding business relationship a fiduciary relationship of  
9 trust and confidence existed.

10 233. As a fiduciary, CROSS-DEFENDANTS had an affirmative duty to act in  
11 CLAIMANTS’ best interests and to refrain from any conduct, which has the  
12 foreseeability or unreasonable risk of causing SAHIN any business financial  
13 injury, injury to CLAIMANTS’ business reputation and goodwill, or divert  
14 CLAIMANTS’ customers or potential customers to themselves.

15 234. As a fiduciary, CROSS-DEFENDANTS had a further duty not to  
16 wrongfully breach or exploit CLAIMANTS’ trust and confidences placed in  
17 them during their fiduciary relationship and not mistreat or take any unfair  
18 advantage of CLAIMANTS.

19 235. EBI, LTD., HAFFNER INT’L MARKETING GROUP, INC., HEINZ  
20 HAFFNER, and RENTATO BIZZARRO breached their fiduciary duty by  
21 placing the “HIMG” trademark on their products after having actual notice and  
22 knowledge that CLAIMANTS had distributed their product through a corporate  
23 entity “HIMG SERMIK” and upon information and belief CROSS-  
24 DEFENDANTS had actual notice that CLAIMANTS had a prior commercial  
25 use of the “HIMG” trademark and had common law trademark rights to the  
26 “HIMG” trademark.

27 236. EBI, LTD., HAFFNER INT’L MARKETING GROUP, INC., HEINZ  
28 HAFFNER, and RENTATO BIZZARRO further breached their fiduciary duty

1 by submitting trademark applications to the Turkish Patent Institute for the mark  
2 HIMG (on January 31, 2013, application no. 2013/09343) and to the USPTO for  
3 the marks HIMG (serial no. 85832785) and HIMG SERAMIK (serial no.  
4 85832862) (on January, 25, 2013) after having actual notice and knowledge that  
5 CLAIMANTS had distributed their product through a corporate entity “HIMG  
6 SERMIK” and upon information and belief CROSS-DEFENDANTS had actual  
7 notice and knowledge that CLAIMANTS had a prior commercial use of the  
8 “HIMG” trademark and had common law trademark rights to the “HIMG”  
9 trademark.

10 237. EBI, LTD., HAFFNER INT’L MARKETING GROUP, INC., HEINZ  
11 HAFFNER, and RENTATO BIZZARRO further breached their fiduciary duty  
12 by committed acts intended and designed to disrupt CLAIMANTS’ economic  
13 advantage by registering the following confusing domain names and other  
14 domain names: “nnrepair.nl”, “nnrepair.us”, “nnrepair.co.in”, “nnrepair.eu”,  
15 “nnrepair.de”, “nnrepair.info”, “nnrepair.es”, “nnrepair.in”, “nnrepair.net”, and  
16 “nnrepair.org” with knowledge of CLAIMANTS use and registration of  
17 “NNRepair”.

18 238. Upon information and belief, EBI, LTD., HAFFNER INT’L  
19 MARKETING GROUP, INC., HEINZ HAFFNER, and RENTATO  
20 BIZZARRO further breached their fiduciary duty by committed acts intended  
21 and designed to disrupt CLAIMANTS’ economic advantage by using  
22 confusingly similar registering domain names composed of the registered  
23 trademark “NNRepair” all of which redirects CLAIMANTS’ customers and  
24 potential customers to CROSS-DEFENDANTS website  
25 “www’ceramicure.com”.

26 239. EBI, LTD., HAFFNER INT’L MARKETING GROUP, INC., HEINZ  
27 HAFFNER, and RENTATO BIZZARRO further breached their fiduciary duty  
28 by upon information and belief, prior to March 2013, CROSS-DEFENDANTS

1 in an effort to divert CLAIMANTS' customers and potential customers and  
2 disparage CLAIMANTS' products, instructed their agent and representative in  
3 Turkey, Karopak, to orally and in writing to disseminate false information that  
4 CROSS-DEFENDANTS were the "only supplier of the repair material".

5 240. EBI, LTD., HAFFNER INT'L MARKETING GROUP, INC., HEINZ  
6 HAFFNER, and RENTATO BIZZARRO further breached their fiduciary duty  
7 by upon information and belief, in March 2013, CROSS-DEFENDANTS  
8 through their representatives and agents by attending a tradeshow in Istanbul  
9 and orally and in writing to disseminate false information that CROSS-  
10 DEFENDANTS were the "only supplier of the repair material".

11 241. EBI, LTD., HAFFNER INT'L MARKETING GROUP, INC., HEINZ  
12 HAFFNER, and RENTATO BIZZARRO further breached their fiduciary duty  
13 by upon information and belief, on or about 2013, CROSS-DEFENDANTS  
14 through their representatives mailed catalogues to CLAIMANTS' customers and  
15 potential customers disseminate false information that CROSS-DEFENDANTS  
16 were the "only supplier of the repair material".

17 242. CROSS-DEFENDANTS have acted in bad faith and breached their  
18 fiduciary duties owed to CLAIMANTS.

19 243. As a proximate result of the acts of CROSS-DEFENDANTS described  
20 herein, the CLAIMANTS were damaged in an amount to be determined at the  
21 time of trial.

22 244. Based on the intentional, willful and malicious nature of CROSS-  
23 DEFENDANTS actions, CLAIMANTS are entitled to recovery of exemplary  
24 damages and reasonable attorneys' fees and costs incurred in connection with  
25 this action.  
26  
27  
28

COUNT VIII

(Civil Conspiracy)

(CLAIMANTS As Against Cross-Defendants, EBI, LTD., HAFFNER INT'L  
MARKETING GROUP, INC., HEINZ HAFFNER, and RENTATO  
BIZZARRO)

245. CLAIMANTS incorporate the preceding allegations as if fully set forth herein.

246. Upon information and belief, within 4 years last past and continuing thereafter, CROSS-DEFENDANTS illegally and unlawfully and intentionally and knowingly and willfully conspired and agreed among themselves to interfere with CLAIMANTS' business and divert CLAIMANTS' customers and potential customers to their own business.

247. In furtherance of the conspiracy, CROSS-DEFENDANTS placed the "HIMG" trademark on their products after having actual notice and knowledge that CLAIMANTS had distributed product through a corporate entity "HIMG SERMIK" and upon information and belief CROSS-DEFENDANTS had actual notice and knowledge that CLAIMANTS had a prior commercial use of the "HIMG" trademark and had common law trademark rights to the "HIMG" trademark.

248. In furtherance of the conspiracy, CROSS-DEFENDANTS submitted trademark applications to the Turkish Patent Institute for the mark HIMG (on January 31, 2013, application no. 2013/09343) and to the USPTO for the marks HIMG (serial no. 85832785) and HIMG SERAMIK (serial no. 85832862) (on January, 25, 2013) after having actual notice and knowledge that CLAIMANTS had distributed products through a corporate entity "HIMG SERMIK" and upon information and belief CROSS-DEFENDANTS had actual notice that CLAIMANTS had a prior commercial use of the "HIMG" trademark and had common law trademark rights to the "HIMG" trademark.

1 249. In furtherance of the conspiracy, CROSS-DEFENDANTS devised a  
2 reverse domain name-hijacking scheme through which they committed acts  
3 intended and designed to disrupt CLAIMANTS' economic advantage by  
4 registering the following confusing domain names and other domain names:  
5 "nnrepair.nl", "nnrepair.us", "nnrepair.co.in", "nnrepair.eu", "nnrepair.de",  
6 "nnrepair.info", "nnrepair.es", "nnrepair.in", "nnrepair.net", and "nnrepair.org"  
7 with knowledge of CLAIMANTS' use and registration of "NNRepair".

8 250. Upon information and belief, in furtherance of the conspiracy, and reverse  
9 domain name-hijacking scheme CROSS-DEFENDANTS committed acts  
10 intended and designed to disrupt CLAIMANTS' economic advantage by using  
11 confusingly similar registering domain names composed of the registered  
12 trademark "NNRepair" all of which redirects CLAIMANTS' customers and  
13 potential customers to CROSS-DEFENDANTS website  
14 "www'ceramicure.com".

15 251. In furtherance of the conspiracy, CROSS-DEFENDANTS upon  
16 information and belief, prior to March 2013, CROSS-DEFENDANTS in an  
17 effort to divert CLAIMANTS' customers and potential customers and disparage  
18 CLAIMANTS' products, instructed their agent and representative in Turkey,  
19 Karopak, to orally and in writing to disseminate false information that CROSS-  
20 DEFENDANTS were the "only supplier of the repair material".

21 252. In furtherance of the conspiracy, CROSS-DEFENDANTS upon  
22 information and belief, in March 2013, CROSS-DEFENDANTS through their  
23 representatives and agents attending a tradeshow in Istanbul and orally and in  
24 writing to disseminate false information that CROSS-DEFENDANTS were the  
25 "only supplier of the repair material".

26 253. In furtherance of the conspiracy, CROSS-DEFENDANTS upon  
27 information and belief, on or about 2013, CROSS-DEFENDANTS through their  
28 representatives mailed catalogues to CLAIMANTS' customers and potential

1 customers disseminate false information that CROSS-DEFENDANTS were the  
2 “only supplier of the repair material”.

3 254. As a proximate result of the acts of CROSS-DEFENDANTS described  
4 herein, the CLAIMANTS were damaged in an amount to be determined at the  
5 time of trial.

6 255. Based on the intentional, willful and malicious nature of CROSS-  
7 DEFENDANTS actions, CLAIMANTS are entitled to recovery of exemplary  
8 damages and reasonable attorneys’ fees and costs incurred in connection with  
9 this action.

10  
11 PRAYER FO RELIEF

12 WHEREFORE, CLAIMANTS respectfully pray that the Court grant the following  
13 relief:

14 A. Injunctive Relief to prevent “HIMG” trademark infringement, unfair  
15 competition, and false and deceptive practices, specifically including:

- 16 1. An order prohibiting CROSS-DEFENDANTS from using the  
17 “HIMG” trademark or any similar trademark or company name;
- 18 2. An order prohibiting CROSS-DEFENDANTS from using the  
19 “NNRepair” trademark or any similar trademark or company name;
- 20 3. An order prohibiting CROSS-DEFENDANTS from using or  
21 registering a domain name containing “NNRepair”
- 22 4. An order prohibiting CROSS-DEFENDANTS from falsely  
23 advertising that CROSS-DEFENDANTS’ companies were the “only  
24 supplier of the repair material”;

25 B. Compensatory damages for Breach of Contract;

26 C. Compensatory damages for State Trademark Infringement;

27 D. Compensatory damages for State Trademark Infringement;

28 E. Compensatory damages for False Advertising and Deceptive Practices;

1 F. Compensatory damages for Intentional Interference with Prospective  
2 Economic Advantage;

3 G. Compensatory damages for Breach of Fiduciary Duties:

4 H. Compensatory damages for Civil Conspiracy;

5 I. Punitive and exemplary damages for willful and malicious conduct arising  
6 from Intentional Interference with Prospective Economic Advantage;

7 J. Punitive and exemplary damages for willful and malicious conduct arising  
8 from Breach of Fiduciary Duties;

9 K. Punitive and exemplary damages for willful and malicious conduct arising  
10 from Civil Conspiracy;

11 L. All other relief to which CLAIMANTS are entitled.  
12  
13  
14

15 Dated: 6/30/2015

Respectfully submitted,

16 **BAYRAMOGLU LAW OFFICES LLC**  
17

18 By:  /s/ Gokalp Bayramoglu  
19

20 Attorney for Defendant and Counter-Claimants,  
21 Yusuf Bugra Sahin and HIMG Seramik ve  
22 Medical Kompozit San. Tic. Ltd. Sti  
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**CERTIFICATE OF FILING**

I hereby certify that on 6/30/2015 I electronically filed the foregoing document with the clerk of the Court using the CM/ECF system.

/s/ Gokalp Bayramoglu

Gokalp Bayramoglu

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**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served this 30th day of June, 2015 with a copy of this document via the Court’s CM/ECF system per Local Rule CV-5.4c.

Executed on June 30, 2015, at Las Vegas, Nevada, U.S.A.

*/s/ Gokalp Bayramoglu*

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Gokalp Bayramoglu

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**JURY DEMAND**

Counter-Claimants Yusuf Bugra Sahin and HIMG Seramik ve Medical Kompozit San. Tic. Ltd. Sti. request a jury trial on all issues triable to a jury in this matter.

Dated: 6/30/2015

Respectfully submitted,

**BAYRAMOGLU LAW OFFICES LLC**

By:     /s/Gokalp Bayramoglu      
Gokalp Bayramoglu

Attorney for Defendant and Counter-Claimants,  
Yusuf Bugra Sahin and HIMG Seramik ve  
Medical Kompozit San. Tic. Ltd. Sti

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

EBI LTD., a California corporation;  
HAFFNER INT’L MARKETING GROUP,  
INC., a Nevada corporation; HEINZ  
HAFFNER, a California resident; and  
RENTATO BIZZARRO, a resident of Brazil,

Plaintiffs,

vs.

YUSUF BUGRA SAHIN, an individual,

Defendant.

YUSUF BUGRA SAHIN, an individual,  
HIMG SERAMIK VE MEDIKAL  
KOMPOZIT SAN. TIC. LTD. STI., a Turkish  
Limited Company,

Counter-Claimants,

vs.

EBI LTD., a California corporation;  
HAFFNER INT’L MARKETING GROUP,  
INC., a Nevada corporation; HEINZ  
HAFFNER, a California resident; and  
RENTATO BIZZARRO, a resident of Brazil,

Counter-Defendants.

Case No. 3:14-cv-02274-JAH-RBB

**PLAINTIFFS’ ANSWER AND  
AFFIRMATIVE DEFENSES  
TO COUNTER-CLAIMANTS’  
FIRST AMENDED COUNTER-  
CLAIMS;**

**PLAINTIFFS’ COUNTER-  
CLAIMS AGAINST  
HIMG SERAMIK VE  
MEDIKAL KOMPOZIT SAN.  
TIC. LTD. STI.**

Judge: Hon. John A. Houston  
Courtroom: 13B

1 EBI LTD., a California corporation;  
2 HAFFNER INT’L MARKETING GROUP,  
3 INC., a Nevada corporation; HEINZ  
4 HAFFNER, a California resident; and  
5 RENTATO BIZZARRO, a resident of Brazil,

6 Counter-Claimants,

7 vs.

8 HIMG SERAMIK VE MEDIKAL  
9 KOMPOZIT SAN. TIC. LTD. STI., a Turkish  
10 Limited Company,

11 Counter-Defendant.

12 **PLAINTIFFS’ ANSWER TO COUNTER-CLAIMANTS’ FIRST**  
13 **AMENDED COUNTER-CLAIMS**

14 EBI Ltd. (“EBI”), Haffner Int’l Marketing Group, Inc. (“HIMG”), Heinz  
15 Haffner (“Mr. Haffner”) and Rentato Bizzarro (“Mr. Bizzaro”), collectively referred  
16 to as “Plaintiffs,” answer the counterclaims set forth in Yusuf Bugra Sahin and  
17 HIMG Seramik ve Medikal Kompozit San. Tic. Ltd. Sti.’s (collectively,  
18 “Counterclaimants”) First Amended Answer filed June 30, 2015 (the “Amended  
19 Answer”) as follows:

20 **COUNT I**

21 **(Breach of Contract)**

22 1. Plaintiffs deny the allegations set forth in paragraph 189 of the Amended  
23 Answer.

24 2. Plaintiffs deny the allegations set forth in paragraph 190 of the Amended  
25 Answer.

26 3. Plaintiffs deny the allegations set forth in paragraph 191 of the Amended  
27 Answer.

1 4. Plaintiffs deny the allegations set forth in paragraph 192 of the Amended  
2 Answer.

3 5. Plaintiffs deny the allegations set forth in paragraph 193 of the Amended  
4 Answer.

5 6. Plaintiffs deny the allegations set forth in paragraph 194 of the Amended  
6 Answer.

7 **COUNT II**

8 **(State Trademark Infringement under Cal. Bus. & Prof. section 14320 et seq.)**

9 7. Plaintiffs' response to paragraph 195 of the Amended Answer incorporates  
10 by reference Plaintiffs' answers to Paragraphs 189-194 of the Amended Answer as  
11 if stated here in full.

12 8. Plaintiffs deny that "CROSS-DEFENDANTS had knowledge that SAHIN  
13 had 100% ownership interest in HIMG SERAMIK, LLC and SAHIN was using the  
14 company to distribute commercial porcelain repair products and CROSS-  
15 DEFENDANTS did not object to the use of the company name with the 'HIMG'  
16 acronym." Plaintiffs are without knowledge or information sufficient to form a  
17 belief as to the remaining allegations in paragraph 196, and therefore deny the  
18 allegations.

19 9. Plaintiffs deny the allegations set forth in paragraph 197 of the Amended  
20 Answer.

21 10. Admitted to the extent that EBI and HIMG filed a trademark application  
22 with the USPTO for their HIMG trademark on January 25, 2013, which was  
23 registered in 2014. Plaintiffs admit HIMG SERAMIK VE MEDIKAL KOMPOZIT  
24 SAN TIC LTD STI filed a petition for cancellation of the HIMG trademark on  
25 March 23, 2015, which is still pending. Plaintiffs deny the remaining allegations set  
26 forth in paragraph 198.

1 11. Plaintiffs deny the allegations set forth in paragraph 199 of the Amended  
2 Answer.

3 12. Plaintiffs deny the allegations set forth in paragraph 200 of the Amended  
4 Answer.

5 13. Plaintiffs deny the allegations set forth in paragraph 201 of the Amended  
6 Answer.

7 **COUNT III**

8 **(State Unfair Competition, Cal. Civ. Code section 17200 et seq.)**

9 14. Plaintiffs' response to paragraph 202 of the Amended Answer incorporates  
10 by reference Plaintiffs' answers to Paragraphs 189-201 of the Amended Answer as  
11 if stated here in full.

12 15. Plaintiffs deny the allegations set forth in paragraph 203 of the Amended  
13 Answer.

14 16. Plaintiffs deny the allegations set forth in paragraph 204 of the Amended  
15 Answer.

16 17. Plaintiffs deny the allegations set forth in paragraph 205 of the Amended  
17 Answer.

18 18. Plaintiffs deny the allegations set forth in paragraph 206 of the Amended  
19 Answer.

20 19. Plaintiffs deny the allegations set forth in paragraph 207 of the Amended  
21 Answer.

22 **COUNT IV**

23 **(State Unfair Competition, Cal. Civ. Code section 17200 et seq.)**

24 20. Plaintiffs' response to paragraph 208 of the Amended Answer incorporates  
25 by reference Plaintiffs' answers to Paragraphs 189-207 of the Amended Answer as  
26 if stated here in full.

1 21. Plaintiffs deny that “commencing on or about 2012 and continuing to date  
2 CROSS-DEFENDANTS began registering domain names composed of the  
3 registered trademark ‘NNRepair’ all of which redirects CLAIMANTS’ customers  
4 and potential customers to CROSS-DEFENDANTS website  
5 ‘www’ceramicure.com.” Plaintiffs are without knowledge or information sufficient  
6 to form a belief as to the truth of the remaining allegations set forth in paragraph  
7 209, and therefore deny the allegations.

8 22. Plaintiffs deny the allegations set forth in paragraph 210 of the Amended  
9 Answer.

10 23. Plaintiffs deny the allegations set forth in paragraph 211 of the Amended  
11 Answer.

12 24. Plaintiffs deny the allegations set forth in paragraph 212 of the Amended  
13 Answer.

14 **COUNT V**

15 **(False Advertising & Deceptive Trade Practices, Cal. Bus. & Prof. 17500)**

16 25. Plaintiffs’ response to paragraph 213 of the Amended Answer incorporates  
17 by reference Plaintiffs’ answers to Paragraphs 189-212 of the Amended Answer as  
18 if stated here in full.

19 26. Plaintiffs deny the allegations set forth in paragraph 214 of the Amended  
20 Answer.

21 27. Plaintiffs deny the allegations set forth in paragraph 215 of the Amended  
22 Answer.

23 28. Plaintiffs deny the allegations set forth in paragraph 216 of the Amended  
24 Answer.

25 29. Plaintiffs deny the allegations set forth in paragraph 217 of the Amended  
26 Answer.

1 30. Plaintiffs deny the allegations set forth in paragraph 218 of the Amended  
2 Answer.

3 **COUNT VI**

4 **(Intentional Interference with Prospective Economic Advantage)**

5 31. Plaintiffs' response to paragraph 219 of the Amended Answer incorporates  
6 by reference Plaintiffs' answers to Paragraphs 189-218 of the Amended Answer as  
7 if stated here in full.

8 32. Plaintiffs deny the allegations set forth in paragraph 220 of the Amended  
9 Answer.

10 33. Plaintiffs deny the allegations set forth in paragraph 221 of the Amended  
11 Answer.

12 34. Plaintiffs deny the allegations set forth in paragraph 222 of the Amended  
13 Answer.

14 35. Plaintiffs deny the allegations set forth in paragraph 223 of the Amended  
15 Answer.

16 36. Plaintiffs deny the allegations set forth in paragraph 224 of the Amended  
17 Answer.

18 37. Plaintiffs deny the allegations set forth in paragraph 225 of the Amended  
19 Answer.

20 38. Plaintiffs deny the allegations set forth in paragraph 226 of the Amended  
21 Answer.

22 39. Plaintiffs deny the allegations set forth in paragraph 227 of the Amended  
23 Answer.

24 40. Plaintiffs deny the allegations set forth in paragraph 228 of the Amended  
25 Answer.

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1 41. Plaintiffs deny the allegations set forth in paragraph 229 of the Amended  
2 Answer.

3 42. Plaintiffs deny the allegations set forth in paragraph 230 of the Amended  
4 Answer.

5 **COUNT VII**

6 **(Breach of Fiduciary Duties)**

7 43. Plaintiffs' response to paragraph 231 of the Amended Answer incorporates  
8 by reference Plaintiffs' answers to Paragraphs 189-230 of the Amended Answer as  
9 if stated here in full.

10 44. Plaintiffs deny the allegations set forth in paragraph 232 of the Amended  
11 Answer.

12 45. Plaintiffs deny the allegations set forth in paragraph 233 of the Amended  
13 Answer.

14 46. Plaintiffs deny the allegations set forth in paragraph 234 of the Amended  
15 Answer.

16 47. Plaintiffs deny the allegations set forth in paragraph 235 of the Amended  
17 Answer.

18 48. Plaintiffs deny the allegations set forth in paragraph 236 of the Amended  
19 Answer.

20 49. Plaintiffs deny the allegations set forth in paragraph 237 of the Amended  
21 Answer.

22 50. Plaintiffs deny the allegations set forth in paragraph 238 of the Amended  
23 Answer.

24 51. Plaintiffs deny the allegations set forth in paragraph 239 of the Amended  
25 Answer.

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1 52. Plaintiffs deny the allegations set forth in paragraph 240 of the Amended  
2 Answer.

3 53. Plaintiffs deny the allegations set forth in paragraph 241 of the Amended  
4 Answer.

5 54. Plaintiffs deny the allegations set forth in paragraph 242 of the Amended  
6 Answer.

7 55. Plaintiffs deny the allegations set forth in paragraph 243 of the Amended  
8 Answer.

9 56. Plaintiffs deny the allegations set forth in paragraph 244 of the Amended  
10 Answer.

11 **COUNT VIII**

12 **(Civil Conspiracy)**

13 57. Plaintiffs' response to paragraph 245 of the Amended Answer incorporates  
14 by reference Plaintiffs' answers to Paragraphs 189-244 of the Amended Answer as  
15 if stated here in full.

16 58. Plaintiffs deny the allegations set forth in paragraph 246 of the Amended  
17 Answer.

18 59. Plaintiffs deny the allegations set forth in paragraph 247 of the Amended  
19 Answer.

20 60. Plaintiffs deny the allegations set forth in paragraph 248 of the Amended  
21 Answer.

22 61. Plaintiffs deny the allegations set forth in paragraph 249 of the Amended  
23 Answer.

24 62. Plaintiffs deny the allegations set forth in paragraph 250 of the Amended  
25 Answer.

1 63. Plaintiffs deny the allegations set forth in paragraph 251 of the Amended  
2 Answer.

3 64. Plaintiffs deny the allegations set forth in paragraph 252 of the Amended  
4 Answer.

5 65. Plaintiffs deny the allegations set forth in paragraph 253 of the Amended  
6 Answer.

7 66. Plaintiffs deny the allegations set forth in paragraph 254 of the Amended  
8 Answer.

9 67. Plaintiffs deny the allegations set forth in paragraph 255 of the Amended  
10 Answer.

11  
12 **PLAINTIFFS' AFFIRMATIVE DEFENSES**

13 Without admitting any facts alleged by Counterclaimants or conceding that  
14 Plaintiffs carry the burden of proof on any issue raised through this pleading or as  
15 to any of the issues listed below, Plaintiffs allege the following separate and  
16 independent affirmative defenses to Counterclaimants' claims.

17 **FIRST AFFIRMATIVE DEFENSE**

18 **(Failure to State a Claim)**

19 Counterclaimants' Counterclaims fail to state any claim upon which relief  
20 may be granted against Plaintiffs. Counterclaimants have failed to meet each  
21 element for the following claims: Counterclaimants' first cause of action for Breach  
22 of Contract; Counterclaimants' second cause of action for Trademark Infringement  
23 under Cal. Bus. & Prof. § 14320 et seq.; Counterclaimants' third cause of action for  
24 Unfair Competition under Cal. Civ. Code § 17200 et seq.; Counterclaimants' fourth  
25 cause of action for Unfair Competition under Cal Civ. Code § 17200 et seq.;  
26 Counterclaimants' fifth cause of action for False Advertising & Deceptive Trade  
27

1 Practices under Cal. Bus. & Prof. § 17500; Counterclaimants' sixth cause of action  
2 for Intentional Interference with Prospective Economic Advantage;  
3 Counterclaimants' seventh cause of action for Breach of Fiduciary Duties; and  
4 Counterclaimants' eighth cause of action for Civil Conspiracy.

5 **SECOND AFFIRMATIVE DEFENSE**

6 **(Breach by Counterclaimants)**

7 Counterclaimants' contract-related claims are barred by Counterclaimants'  
8 own breaches of the same or similar agreements.

9 **THIRD AFFIRMATIVE DEFENSE**

10 **(Causation)**

11 Counterclaimants' claims are barred in whole or in part for failure to  
12 demonstrate Plaintiffs attributed to their cause in any way.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 **(Consent)**

15 Counterclaimants' claims are barred in whole or in part because of their  
16 express or implied consent to the actions, omissions, representations and/or conduct  
17 of the facts as alleged in their claims.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 **(Fair Use)**

20 Counterclaimants' claims are barred in whole or in part by the doctrine of fair  
21 use.

22 **SIXTH AFFIRMATIVE DEFENSE**

23 **(Trademark Ownership)**

24 Counterclaimants' claims are barred in whole or in part because the  
25 Counterclaimants do not own trademark rights for some or all of the marks at issue  
26  
27

1 in this action. Specifically, Counterclaimants do not own any registered trademarks  
2 for the marks at issue and have not otherwise acquired common law rights in good  
3 faith under the law of the State of California or under applicable United States  
4 federal law.

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 **(Trademark Usage)**

7 Counterclaimants' claims are barred for failure to be the first to use the marks  
8 at issue in this action in commerce before Plaintiffs' use of the same mark.

9 **EIGHTH AFFIRMATIVE DEFENSE**

10 **(Trademark Misuse)**

11 Counterclaimants' claims are barred for the deceptive and willful misuse of  
12 the trademarks at issue in this action.

13 **NINTH AFFIRMATIVE DEFENSE**

14 **(Waiver and Estoppel)**

15 Counterclaimants' claims are barred in whole or in part by the doctrines of  
16 waiver and/or estoppel. Counterclaimants have waived their right to claim relief  
17 and/or are estopped from claiming relief to the following claims: Counterclaimants'  
18 first cause of action for Breach of Contract; Counterclaimants' second cause of  
19 action for Trademark Infringement under Cal. Bus. & Prof. § 14320 et seq.;  
20 Counterclaimants' third cause of action for Unfair Competition under Cal. Civ.  
21 Code § 17200 et seq.; Counterclaimants' fourth cause of action for Unfair  
22 Competition under Cal. Civ. Code § 17200 et seq.; Counterclaimants' fifth cause of  
23 action for False Advertising & Deceptive Trade Practices under Cal. Bus. & Prof. §  
24 17500; Counterclaimants' sixth cause of action for Intentional Interference with  
25 Prospective Economic Advantage; Counterclaimants' seventh cause of action for  
26  
27

1 Breach of Fiduciary Duties; and Counterclaimants' eighth cause of action for Civil  
2 Conspiracy.

3 **TENTH AFFIRMATIVE DEFENSE**

4 **(Unclean Hands)**

5 Counterclaimants' claims are barred in whole or in part by the doctrine of  
6 unclean hands. Counterclaimants' own wrongful conduct, including but not limited  
7 to Counterclaimants' breaches of contract, infringement of Plaintiffs' intellectual  
8 property, and fraudulent misrepresentations that materially interfered with  
9 Plaintiffs' ability to operate their businesses, was intentional, wrongful and illicit.  
10 This prior wrongful conduct also arose from the contractual relations between the  
11 parties at issue in this action. Counterclaimants' wrongful conduct continues to this  
12 date.

13 **ELEVENTH AFFIRMATIVE DEFENSE**

14 **(Trademark Preemption)**

15 Counterclaimants' claims of unfair competition and false advertising are  
16 preempted by state and federal trademark law, and merely restate Counterclaimants'  
17 state trademark claim, and are thus cumulative, duplicative, and meant to harass  
18 Plaintiffs.

19 **TWELFTH AFFIRMATIVE DEFENSE**

20 **(Good Faith Junior User/Innocent Infringer)**

21 Plaintiffs deny Counterclaimants have acquired any trademark rights to the  
22 marks at issue in this action, but to the extent Counterclaimants have any trademark  
23 rights, Plaintiffs have used the marks at issue in this action in good faith prior to  
24 any knowledge of Counterclaimants' trademark rights, and that any use of these  
25 marks by Plaintiffs was not intended to cause confusion, mistake, or to deceive.  
26

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 **(Laches)**

3 Counterclaimants' claims are barred in whole or in part by laches, delay  
 4 and/or acquiescence. Counterclaimants have unreasonably delayed in bringing their  
 5 claims or otherwise accepted and acquiesced to Plaintiffs' actions and/or omissions  
 6 without protest, barring the following: Counterclaimants' first cause of action for  
 7 Breach of Contract; Counterclaimants' second cause of action for Trademark  
 8 Infringement under Cal. Bus. & Prof. § 14320 et seq.; Counterclaimants' third cause  
 9 of action for Unfair Competition under Cal. Civ. Code § 17200 et seq.;  
 10 Counterclaimants' fourth cause of action for Unfair Competition under Cal Civ.  
 11 Code § 17200 et seq.; Counterclaimants' fifth cause of action for False Advertising  
 12 & Deceptive Trade Practices under Cal. Bus. & Prof. § 17500; Counterclaimants'  
 13 sixth cause of action for Intentional Interference with Prospective Economic  
 14 Advantage; Counterclaimants' seventh cause of action for Breach of Fiduciary  
 15 Duties; and Counterclaimants' eighth cause of action for Civil Conspiracy.

16 **FOURTEENTH AFFIRMATIVE DEFENSE**

17 **(Statute of Limitations)**

18 Counterclaimants' claims are barred in whole or in part by the applicable  
 19 statute of limitations for the following: Counterclaimants' first cause of action for  
 20 Breach of Contract; Counterclaimants' second cause of action for Trademark  
 21 Infringement under Cal. Bus. & Prof. § 14320 et seq.; Counterclaimants' third cause  
 22 of action for Unfair Competition under Cal. Civ. Code § 17200 et seq.;  
 23 Counterclaimants' fourth cause of action for Unfair Competition under Cal. Civ.  
 24 Code § 17200 et seq.; Counterclaimants' fifth cause of action for False Advertising  
 25 & Deceptive Trade Practices under Cal. Bus. & Prof. § 17500; Counterclaimants'  
 26

1 sixth cause of action for Intentional Interference with Prospective Economic  
2 Advantage; Counterclaimants' seventh cause of action for Breach of Fiduciary  
3 Duties; and Counterclaimants' eighth cause of action for Civil Conspiracy.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 **(Set Off)**

6 To the extent the Counterclaimants are awarded any damages, liability for  
7 which Plaintiffs wholly deny, Plaintiffs are entitled to claim a set-off for the  
8 amounts owed to Plaintiffs by Counterclaimants.

9 **SIXTEENTH AFFIRMATIVE DEFENSE**

10 **(Failure to Mitigate Damages)**

11 Counterclaimants' claims are barred in whole or in part because the  
12 Counterclaimants failed to mitigate their damages.

13 **SEVENTEENTH AFFIRMATIVE DEFENSE**

14 **(Attorney's Fees)**

15 Counterclaimants are not entitled to an award of attorneys' fees and costs  
16 because there is no basis for a determination that this is an exceptional case.

17 **EIGHTEENTH AFFIRMATIVE DEFENSE**

18 **(Non-Infringement)**

19 Plaintiffs have not infringed any of Counterclaimants' alleged intellectual  
20 property rights pursuant to 15 U.S.C. § 1125 et seq., California state law, or the  
21 common law.  
22

23 **NINETEENTH AFFIRMATIVE DEFENSE**

24 **(Adequate Remedy at Law)**

25 To the extent Counterclaimants are entitled to any relief, Counterclaimants  
26 are not entitled to injunctive relief because they have an adequate remedy at law.  
27

1 **TWENTIETH AFFIRMATIVE DEFENSE**

2 **(Passive Acts)**

3 If any showing exists of liability of negligence on the part of Plaintiffs, such  
4 negligence or liability was passive and secondary while the negligence or liability  
5 of the Counterclaimants and/or others was active, primary and superseding, and  
6 such active and primary negligence and liability bars, in whole or in part, the  
7 recovery requested, or any recovery, against Plaintiffs.

8 **TWENTY- FIRST AFFIRMATIVE DEFENSE**

9 **(No Showing of Willful Conduct)**

10 Counterclaimants are not entitled to punitive damages because there is no  
11 basis for a determination that Plaintiffs' conduct was knowing, willful, malicious,  
12 oppressive or fraudulent.

13 **TWENTY- SECOND AFFIRMATIVE DEFENSE**

14 **(Contributory or Comparative Negligence)**

15 Counterclaimants are completely barred from recovery, or in the alternative,  
16 Counterclaimants' own negligence or unreasonable conduct reduces their right to  
17 relief to the same degree that their own negligence contributed to the incident  
18 complained of, should it be shown Counterclaimants suffered any loss, damage, or  
19 detriment directly and proximately caused and contributed to by the negligence or  
20 unreasonable conduct of Plaintiffs for failing to exercise the degree of care and  
21 caution which ordinarily prudent persons would exercise, and by virtue of  
22 Counterclaimants' own negligence or unreasonable conduct.

23 **TWENTY- THIRD AFFIRMATIVE DEFENSE**

24 **(Unjust Enrichment)**

25 Plaintiffs assert that to the extent the Counterclaimants are awarded any  
26  
27

1 damages, Counterclaimants would be unjustly enriched if awarded the relief sought,  
2 and such relief is therefore barred.

3 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

4 Plaintiffs reserve the right to raise additional affirmative defenses during the  
5 course of these proceedings, and as their investigation of the facts of this case  
6 continue.

7  
8 **PLAINTIFFS' COUNTER-CLAIMS AGAINST HIMG SERAMIK VE**  
9 **MEDIKAL KOMPOZIT SAN. TIC. LTD. STI.**

10 EBI Ltd. ("EBI"), Haffner Int'l Marketing Group, Inc. ("HIMG"), Heinz  
11 Haffner ("Mr. Haffner") and Rentato Bizzarro ("Mr. Bizzarro"), collectively referred  
12 to as "Plaintiffs," assert the following allegations and counterclaims against HIMG  
13 Seramik ve Medikal Kompozit San. Tic. Ltd. Sti. ("Seramik"). Plaintiffs reserve the  
14 right to assert additional counterclaims, as warranted by facts revealed through  
15 investigation and discovery.

16 **NATURE OF THE CASE**

17 This is an action for Trademark Infringement, Unfair Competition,  
18 Trademark Counterfeiting, Fraud, Deceit, Unjust Enrichment, Conversion,  
19 Misappropriation of Trade Secret, State Trademark Infringement, State Unfair  
20 Competition, Intentional Interference with Economic Advantage, False Advertising  
21 and Deceptive Trade Practices, and Civil Conspiracy. Plaintiffs seek actual  
22 damages, Seramik's profits, and/or statutory damages, punitive damages, an award  
23 of attorneys' fees and costs, and preliminary and permanent injunctive relief.

24 **PARTIES**

25 1. Plaintiff EBI is a corporation, organized and existing under the laws of the  
26 State of California, and operating from its headquarters in Vista, California. EBI  
27

1 was formed in 1990 as the operating entity for Plaintiff Mr. Haffner’s business in  
2 the field of porcelain repair kits.

3 2. Plaintiff HIMG is a corporation, organized and existing under the laws of the  
4 State of Nevada, and also has an office Vista, California. HIMG markets its surface  
5 and hoof repair products through a global distribution network, which includes this  
6 district, and produces and prints product labels, develops art work and  
7 advertisements for its products, creates and produces website videos for its  
8 products, processes and packs its products, engages in product color matching  
9 projects for clients, and updates Plaintiffs’ website.

10 3. Plaintiff Mr. Haffner resides in Vista California. He is the founder of HIMG  
11 and EBI, and is a leader in the field of porcelain repair, granite repair, and horse  
12 hoof repair products.

13 4. Plaintiff Mr. Bizzarro is a resident and citizen of Brazil. He has been a  
14 principal of businesses owned jointly with Mr. Haffner. Mr. Bizzarro manages the  
15 business activities in Latin America, and is involved in the worldwide distribution  
16 of sanitary porcelain repair products and horse hoof repair products.

17 5. Seramik is a Turkish Limited Company that, upon information and belief, is  
18 100% owned and controlled by Defendant Yusuf Bugra Sahin (“Sahin”).

19 **JURISDICTION AND VENUE**

20 6. This is an action for Trademark Infringement under the Lanham Act 15  
21 U.S.C. § 1114 et seq., Unfair Competition arising under the Lanham Act 15 U.S.C.  
22 § 1125(a) et seq., Trademark Counterfeiting under 18 U.S.C. § 2320, Fraud, Deceit,  
23 Unjust Enrichment, Conversion, Misappropriation of Trade Secret under Cal. Civ.  
24 Code § 3426 et seq., State Common Law Trademark Infringement, State Unfair  
25 Competition under Cal. Bus. & Prof. Code § 17200 et seq., Intentional Interference  
26 with Economic Advantage, False Advertising and Deceptive Trade Practices under  
27

1 Cal. Bus. & Prof. Code § 17500, and Civil Conspiracy. This Court has subject  
2 matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1332 and 1338(a),  
3 (b) & (c).

4 7. This Court has personal jurisdiction over Seramik based upon: (a) transaction  
5 of business by Seramik by promoting and selling products in this judicial district;  
6 (b) commission by Seramik of the infringing and other tortious conduct underlying  
7 Plaintiffs' claims, directed into this judicial district; and (c) Seramik appeared in  
8 this lawsuit and filed counterclaims in this Judicial District.

9 8. This Court has subject matter jurisdiction pursuant to the trademark laws of  
10 the United States, 35 U.S.C. § 1 et seq., and pursuant to 28 U.S.C. §§ 1331, 1332,  
11 1338(a), (b) & (c), and 2201-2202 because this is an "actual controversy" between  
12 Plaintiffs and Seramik. The Court has supplemental jurisdiction over the related  
13 state law claims pursuant to 28 U.S.C. § 1367, and over the unfair competition  
14 claims pursuant to § 1338(b). This Court has subject matter jurisdiction pursuant to  
15 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1332, 1338, and 1367. Further, this case  
16 primarily involves a federal question, complete diversity of citizenship exists, and  
17 the amount in controversy exceeds \$75,000.

18 9. Venue is proper in the United States District Court for the Southern District  
19 of California under 28 U.S.C. §§ 1391(b) & (c) and 1400.

## 20 **BACKGROUND FACTS**

### 21 **Plaintiffs and Plaintiffs' Products**

22 10. HIMG and EBI were founded in the early 1990s by Heinz Haffner  
23 ("Haffner"), who developed and created porcelain repair systems, products and kits  
24 used by manufacturers of sinks, bathtubs, toilets and other fixtures, now known as  
25 CeramiCure ("CeramiCure").

26 11. HIMG is an acronym which stands for Haffner Int'l Marketing Group,  
27

1 Plaintiff HIMG in this action.

2 12. CeramiCure’s unique formulas expand on dental technology that is applied  
3 to ceramic repair materials to correct surface and body defects on bathtubs, sinks,  
4 toilets and other sanitary ceramic and porcelain fixtures.

5 13. The Plaintiffs have and own secret formulas required to manufacture  
6 CeramiCure, and have maintained the formulas for making CeramiCure as a trade  
7 secret.

8 14. Plaintiffs also own and market other surface repair kits for granite and other  
9 surfaces using formulas that are Plaintiffs’ trade secrets.

10 15. Plaintiffs expanded their porcelain repair business into the horse hoof repair  
11 business, again using formulas that are Plaintiffs’ trade secrets. Plaintiffs own and  
12 market horse hoof repair kits using these trade secret formulas.

13 16. Together, Mr. Haffner’s companies EBI and HIMG are the global leaders in  
14 porcelain and hoof care repair. EBI and HIMG jointly own the United States  
15 trademark registration for CERAMICURE (Registration No. 4391860), and the  
16 CeramiCure and hoof repair trade secret formulas.

17 17. HIMG and EBI jointly own the United States trademark registration for  
18 HIMG (Registration No. 4573180).

19 18. Plaintiff EBI, located in California, is the brand owner and manufacturer of  
20 CERAMICURE® Light Cure Acrylic (“LCA”) and Self Cure Acrylic (“SCA”)  
21 Repair products.

22 19. Plaintiff HIMG, a Nevada Corporation that does business in California, is  
23 the brand owner and manufacturer for HOOF-IT® Bovine and Equine hoof care  
24 related products.

25 20. In 2002, Mr. Haffner partnered with Mr. Bizzarro to expand the porcelain  
26 repair product business into Latin America.

27

28

1 21. In or about 2004, Mr. Haffner and Mr. Bizzarro decided to further expand  
2 EBI and HIMG's business into other countries. Mr. Haffner and Mr. Bizzarro  
3 began to look into developing EBI and HIMG's business in Turkey.

4 22. Turkey has a large sanitary ceramic and porcelain manufacturing industry,  
5 with about 40 small to large porcelain manufacturers focusing on fixtures such as  
6 bathtubs, toilets and sinks.

7 **Plaintiffs' Relationship with Sahin and the NDA**

8 23. In 2005, Mr. Bizzarro, at the request of Mr. Haffner, visited Turkey to  
9 develop business there.

10 24. While in Turkey in 2005 to develop Plaintiffs' business, Mr. Bizzarro met  
11 Sahin, then a sanitary engineer for Vitra Turkey, HIMG's first Turkish customer.

12 25. Mr. Haffner and Mr. Bizzarro approached Sahin to represent HIMG and  
13 EBI's business in Turkey. On or about March 1, 2006, Plaintiffs sent Sahin a  
14 confidentiality non-disclosure agreement (the "NDA"), which Sahin executed. A  
15 true and correct copy of the NDA is attached as Exhibit A to Plaintiffs' Complaint  
16 on file in this action.

17 26. Page 3, Paragraph 9 of the NDA requires that the NDA shall be governed by  
18 and construed in accordance with the laws of the State of California.

19 **The Formation and Development of HIMG Turkey**

20 27. On or about March 2006, Mr. Haffner, Mr. Bizzarro and Sahin entered  
21 negotiations to form a Turkish entity that would be owned jointly by Mr. Haffner,  
22 Mr. Bizzarro and Sahin.

23 28. To continue the goodwill of both the HIMG brand and its affiliation with Mr.  
24 Haffner, HIMG, and EBI, Plaintiffs and Sahin agreed that the new Turkish entity  
25 would carry the HIMG (i.e. "Haffner International Marketing Group") house name.  
26 Thus the new Turkish entity was named HIMG International CeramiCure Turkey  
27

1 (“HIMG Turkey”).

2 29. HIMG Turkey began operations in June 2006. On July 1, 2006, Mr. Haffner  
3 sent a letter to EBI’s Turkish customers, announcing the launch of the new  
4 company, HIMG Turkey.

5 30. Sahin managed HIMG Turkey on behalf of Mr. Haffner and Mr. Bizzarro,  
6 acting as the local officer of the company.

7 31. Plaintiffs immediately began financing HIMG Turkey’s operation, including  
8 a salary and commission for Sahin, and expenses to attend trade shows,  
9 conferences, and to travel for business development.

10 32. Plaintiffs also provided Sahin with a computer and multifunction  
11 printer/copier/scanner/fax machine.

12 33. Beginning in 2006, Sahin provided monthly financial reports to Mr. Haffner  
13 and Mr. Bizzarro, showing the activities of HIMG Turkey. During this time, he  
14 received capital infusions from HIMG, EBI, and Plaintiffs’ other related entities to  
15 finance HIMG Turkey’s growth.

16 34. Mr. Haffner and Mr. Bizzarro believed that they were all equal partners in  
17 HIMG Turkey with Sahin.

18 35. Mr. Haffner and Mr. Bizzarro developed a strong relationship with Sahin.  
19 Based on his perceived integrity, they trusted him implicitly and explicitly with  
20 confidential information.

21 36. Sahin was given direct access to all of Plaintiffs’ customers in Turkey, India,  
22 the Middle East and Asia.

23 37. Sahin was given the formulas for the CeramiCure product line, and received  
24 training from Mr. Bizzarro on how to manufacture the CeramiCure products.  
25 Thereafter, to avoid the costs associated with shipping a product manufactured in  
26 the United States, HIMG Turkey began small-scale manufacturing of the  
27

1 CeramiCure product.

2 38. CeramiCure is distributed in “syringes” and cartridges that contain the repair  
3 compound(s).

4 39. Sahin purchased the products and raw materials to manufacture CeramiCure  
5 from Plaintiffs and their affiliated entities at cost. He then manufactured the  
6 syringes and sold them to customers in Turkey, India, the Middle East and Asia. All  
7 profits were distributed among Mr. Haffner, Mr. Bizzarro, and Sahin.

8 40. During 2011, HIMG Turkey, through Sahin, purchased over \$81,000 in  
9 materials from Plaintiffs, about \$16,000 of which were never paid for. Upon  
10 information and belief, Seramik used and profited from these materials.

11 41. During that time, Plaintiffs invested approximately \$45,000 in HIMG  
12 Turkey’s ongoing operation. Upon information and belief, Seramik benefitted from  
13 this money, which Plaintiffs intended to be for the benefit of their partnership.

14 42. Additionally, EBI advanced approximately \$30,000 to HIMG Turkey to  
15 develop business related to hoof repair products, generally known as the HOOOF-  
16 it® line.

17 43. In 2011, Plaintiffs paid for Sahin to attend a trade show in Las Vegas,  
18 Nevada (the “Las Vegas Trade Show”). From on or about January 23<sup>rd</sup> to January  
19 29<sup>th</sup>, 2011, Sahin attended the Las Vegas Trade Show and met with Plaintiffs,  
20 Plaintiffs’ customers, and Plaintiffs’ potential customers.

21 44. At the Las Vegas Trade show, Sahin met with Plaintiffs and discussed  
22 Plaintiffs’ business plans and trade secret information.

23 45. For over five (5) years, Sahin operated HIMG Turkey as Plaintiffs’ partner in  
24 HIMG Turkey, and properly reported income and activities to Plaintiffs.

25 **The Demise of Plaintiffs’ Relationship with Sahin**

26 46. In or about September 2011, Sahin failed to report monthly revenues to  
27

1 Plaintiffs.

2 47. In or about October 2011, Mr. Haffner and Mr. Bizzarro attempted  
3 communicate with Sahin regarding the reports, but Sahin became evasive.

4 48. On October 26, 2011, Sahin, as General Manger of HIMG Turkey, signed a  
5 contract with GATTCA Communications, to rent a show booth at a trade show  
6 called Indian Ceramics 2012, in Ahamedabad, India, to display and promote  
7 CeramiCure products to potential new clients in India and ASIA. Plaintiffs paid for  
8 all related expenses for the Indian Ceramics 2012 show, including travel.

9 49. On or about December 2, 2011, Mr. Bizzarro travelled to Turkey to meet  
10 with Sahin. Sahin was evasive and would not meet at the business office, meeting  
11 Bizzarro at a restaurant instead.

12 50. On or about December 7, 2011, Plaintiffs terminated Sahin. Plaintiffs  
13 demanded compliance with the NDA, return of all documents, and cessation of  
14 activities related to Plaintiffs' products. Plaintiffs communicated to their customers  
15 that Sahin was no longer representing HIMG.

16 51. Sahin did not comply with the NDA, and did not respond to Plaintiffs'  
17 requests that he cease all activities related to Plaintiffs' products. Instead, upon  
18 information and belief, Sahin began operating, and continues to operate, Seramik  
19 to unfairly compete with Plaintiffs by using Plaintiffs' trade secrets, investments,  
20 trademarks, and business goodwill.

21 **Violation of the NDA and Misappropriate Plaintiffs' Trade Secrets**

22 52. Armed with the secret formulas and methods of manufacture for CeramiCure  
23 as well as Plaintiffs' customer lists and a robust inventory paid for by Plaintiffs,  
24 Sahin and Seramik continue to hold themselves out as HIMG Turkey, accepting  
25 orders and competing directly with Plaintiffs.

26 53. Upon information and belief, Sahin founded Seramik and used and continues  
27

1 to use this company to compete with Plaintiffs and distribute products in violation  
2 of the NDA, trade secret, trademark and unfair competition laws.

3 54. Seramik sold and continues to sell and market ceramic and surface repair  
4 products using Plaintiffs' trade secret formulas.

5 55. Seramik also sold and continues to sell and market hoof repair products  
6 using the Plaintiffs' trade secrets.

7 56. Using Plaintiffs' trade secrets obtained by Sahin, Seramik has taken  
8 Plaintiffs' formulas for surface repair and horse hoof repair products to market,  
9 advertising and selling these products under pseudonyms, including but not limited  
10 to NNRepair.

11 57. On or about February 6, 2012, Seramik and Sahin began using a new email  
12 address (info@himgseramik.com) to contact Plaintiffs customers. By way of  
13 example, Sahin contacted SANIFIX in Holland, announcing that he no was longer  
14 working with Plaintiffs and offering his own "Light curing repair material," which  
15 appears to be Plaintiffs' re-labeled CeramiCure products.

16 58. Sahin and Seramik continue to ship products containing Plaintiffs' trade  
17 secret formula to the United States. For example, on or about January 2013, Sahin  
18 and Seramik shipped products containing Plaintiffs' trade secret formulas, in  
19 violation of the NDA, to Nevada. Upon information and belief, on or about June  
20 2014, Sahin and Seramik shipped products containing Plaintiffs trade secret  
21 formulas, in violation of the NDA, to California—specifically, to a customer this  
22 judicial district.

### 23 **Sahin and Seramik Mislead the Public and Make False Statements**

24 59. In February 2012, Plaintiffs became aware that Sahin and Seramik had  
25 established new websites at www.nnrepair.com and www.nnrepair-online.com,  
26 calling their product "NNREPAIR." Much of the content appears to have been  
27

1 copied from Plaintiff's website [www.ceramicure.com](http://www.ceramicure.com), with minor modifications to  
2 the site and the product names.

3 60. The [www.nnrepair.com](http://www.nnrepair.com) and [www.nnrepair-online.com](http://www.nnrepair-online.com) websites feature EBI  
4 and HIMG's HIMG trademark.

5 61. The NNREPAIR website claimed that Sahin's "NNRepair" company "is the  
6 only company in the world that is specialized in producing advanced light-curing  
7 and chemical-cure materials only for the repair purposes."

8 62. Sahin also registered the domain name [www.ceramicureturkey.com](http://www.ceramicureturkey.com) without  
9 authorization or permission from Plaintiffs, and used the domain name to divert  
10 customers to the websites he and Seramik use to sell his products, including  
11 [www.nnrepair.com](http://www.nnrepair.com) and [www.nnrepair-online.com](http://www.nnrepair-online.com).

12 63. In March 2012, Sahin and Seramik, participated in the Indian Ceramics 2012  
13 trade show as NNREPAIR at a booth paid for and contracted for by Plaintiffs.  
14 Sahin and Seramik, marketed and sold Plaintiffs' products, including CeramiCure  
15 LCA and SCA, representing that they were a part of the HIMG business umbrella.  
16 However, Sahin placed his own NNREPAIR banners, marketing information and  
17 labels on the products, purposely misleading customers that the products were  
18 genuine HIMG products. Although the products may have been made using the  
19 Plaintiffs' trade secrets, they did not emanate from HIMG.

20 64. While participating at the trade show, Sahin gave an interview to Ceramic  
21 Asia Magazine, in which he asserted sole responsibility for the development of  
22 NNREPAIR. Originally, Sahin was scheduled to interview as a representative of  
23 HIMG.

24 65. In the same magazine, Sahin advertised the participation of NNREPAIR at  
25 the CERAMITEC fair in Munich, Germany on May 22-25, 2012. Sahin knew  
26 HIMG had registered for the trade show, and that it had participated there in prior  
27

1 years.

2 66. The Plaintiffs then retained German counsel and filed a legal action in  
3 Germany to prevent Sahin from exhibiting at the CERAMITEC fair in Munich.  
4 Plaintiffs prevailed in this German action, and the German court ordered Sahin to  
5 remove all materials from the trade show floor, including his advertisements, and  
6 to not make false claims of being the "only company" to offer such products.  
7 Plaintiffs obtained an injunction and damages for false advertising. If Sahin  
8 violates the court's order, it includes a provision for an additional €250,000 in  
9 damages.

10 67. Sahin has violated the German court's order by offering the Plaintiffs'  
11 products through the NNREPAIR website. In particular, the NNREPAIR website  
12 features the very article that the German court found to contain false advertising.

13 68. In Sahin's advertisement and editorials, he represented that his business was  
14 founded in 2007, that it had its own production and marketing departments, and  
15 that it used "advanced" Nano Technologies developed solely by its own R & D  
16 department.

17 69. The NNREPAIR website states the following:

18 *Our company founded in 2007 and providing manufacturers in 5*  
19 *continents around the globe with its own product solutions. All the*  
20 *light cure (LC) and chemical cure (CC) repair materials are*  
21 *formulated and manufactured by our own R&D team. As a result of*  
22 *this, our customers enjoy price and service advantage.*

23 A true and correct copy of this webpage page is attached Exhibit B to Plaintiffs'  
24 Complaint on file in this action.

25 70. In 2014, the public prosecutor for Republic of Turkey also filed a  
26 criminal indictment against Sahin for the crime of unfair competition arising from  
27

1 Sahin's unauthorized use of "Ceramicure" trademark as a domain name to divert  
2 Plaintiffs' customers to his own websites.

3 **Sahin and Seramik Use the HIMG Trademark in Commerce without**  
4 **Plaintiffs' Authorization and Continues to Engage in Unfair Competition**

5 71. Sahin and Seramik pilfered the methods and trade secrets of Plaintiffs. Sahin  
6 and Seramik continue to use business cards with HIMG's trademark:



12 72. Upon information and belief, customers throughout the United States and in  
13 this judicial district are able to view and order Sahin and Seramik's products  
14 directly from Sahin and Seramik on www.nnrepair-online.com. There is even free  
15 shipping to anywhere, including the United States and this judicial district.

16 73. Seramik continues to contact Plaintiffs' current and former customers,  
17 undercutting Plaintiffs' pricing by as much as 50%.

18 74. Seramik continues to use Plaintiffs' trade secrets to manufacture syringes  
19 and cartridges of ceramic repair compounds, distributing them through his websites  
20 to both large manufacturers and casual consumers.

21 75. Seramik continues to manufacture and sell hoof repair kits using the  
22 Plaintiffs' trade secrets.

23 76. Seramik continues to do business under the HIMG company name.

24 77. Seramik continues to sell products bearing the HIMG trademark.

25 78. Upon information and belief, Seramik uses HIMG Turkey bank accounts as  
26 well as the computer, customer lists, and other supplies that Plaintiffs gave to  
27

1 Sahin.

2 79. Seramik continues to sell products containing Plaintiffs' trade secret  
3 formulas featuring the HIMG trademark without Plaintiffs' authorization from the  
4 website www.nnrepair-online.com.

5 80. Seramik continues to sell and ship products that display the HIMG  
6 trademark without Plaintiffs' authorization. Upon information and belief, Sahin and  
7 Seramik sell and ship products displaying the HIMG trademark to buyers in this  
8 Judicial District, including a customer in Hollywood, California on June 2014.

9 81. If Seramik continues to sell products using Plaintiffs' trade secrets and  
10 trademarks, Plaintiffs will be irreparably harmed.

11 **COUNT I**

12 (Trademark Infringement – Lanham Act, 15 U.S.C. § 1114 et seq.)

13 82. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

14 83. Plaintiffs HIMG and EBI own the federal trademark registration for HIMG  
15 (Registration No. 4573180).

16 84. Plaintiffs' longstanding use of the HIMG mark grants them the exclusive  
17 right to use the mark in commerce in connection with the goods and services  
18 specified in the application.

19 85. Seramik had both actual and constructive knowledge of Plaintiffs' ownership  
20 and rights in their federally registered HIMG trademark prior to Seramik's  
21 infringing use of the trademark.

22 86. Seramik offers its goods under the infringing trademark in the same channel  
23 of trade as Plaintiffs.

24 87. Seramik's use of Plaintiffs' HIMG trademark is likely to cause and has  
25 caused confusion, mistake or deception as to the affiliation, connection or  
26 association of Plaintiffs in violation of 15 USC § 1114.

27

28

1 88. Seramik's unauthorized use, in commerce, of HIMG's trademark constitutes  
2 trademark infringement under the Lanham Act.

3 89. Seramik's unauthorized use of Plaintiffs' HIMG trademark caused, and  
4 continues to cause, irreparable harm to the HIMG brand. Therefore, because  
5 monetary damages alone cannot fully compensate Plaintiffs, they are entitled to  
6 preliminary and permanent injunction from further unauthorized use of HIMG  
7 mark by Seramik, pursuant to § 1116, as well as the seizure and destruction of any  
8 HIMG products or counterfeit HIMG products in Seramik's possession.

9 90. Seramik's trademark infringement, under § 1117, entitles Plaintiffs up to  
10 \$100,000 per counterfeit mark sold, offered for sale or distributed; and up to  
11 \$1,000,000 per counterfeit mark if the unauthorized use of the mark was willful.

12 91. The foregoing acts of infringement have been and continue to be deliberate,  
13 willful and wanton, making this an exceptional case within the meaning of 15  
14 U.S.C. § 1117.

15 92. Plaintiffs are entitled to a permanent injunction against Seramik, as well as  
16 all other remedies available under the Lanham Act, including, but not limited to,  
17 compensatory damages; treble damages; disgorgement of profits; and costs and  
18 attorneys' fees.

19 **COUNT II**

20 (Unfair Competition – Lanham Act, 15 U.S.C. § 1125(a) et seq.)

21 93. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

22 94. Seramik's use in commerce of Plaintiffs' trademark, as used on goods that do  
23 not emanate from Plaintiffs, constitutes a false designation of origin by  
24 representing that Seramik's goods are those of Plaintiffs, when in fact they are not.

25 95. Seramik's use in commerce of Plaintiffs' trademark with knowledge that  
26 Plaintiffs own, have used, and continue to use, the trademark constitutes intentional  
27

1 conduct by Seramik to make false designations of origin and false descriptions  
2 about the goods.

3 96. Seramik has deliberately and willfully attempted to trade on Plaintiffs'  
4 longstanding goodwill in Plaintiffs' name, trademarks and reputation that Plaintiffs  
5 have established in connection with their products, and has done so to confuse  
6 consumers as to the origin, association and sponsorship of Seramik's goods.

7 97. Seramik's conduct has confused or is likely to confuse consumers as to the  
8 origin, association, connection or sponsorship of Seramik's products in violation of  
9 15 USC § 1125(a).

10 98. As the direct and proximate result of such unfair competition, Plaintiffs have  
11 suffered, and will continue to suffer, monetary loss and irreparable injury to its  
12 business, reputation, and goodwill.

13 **COUNT III**

14 (Trademark Counterfeiting - Trademark Counterfeiting Act 18 U.S.C. 2320)

15 99. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

16 100. Seramik intentionally and willfully trafficked goods containing a mark that  
17 is owned by Plaintiffs.

18 101. The mark was used in a way to deceive consumers and cause confusion  
19 between the products sold by Seramik, and the authentic ceramic repair kits sold by  
20 Plaintiffs.

21 102. Seramik profited from the aforementioned acts.

22 103. As the direct and proximate result of the counterfeiting, Plaintiffs have  
23 suffered, and will continue to suffer, monetary loss and irreparable injury to its  
24 business, reputation, and goodwill.

**COUNT IV**

(Fraud)

104. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

105. Seramik has defrauded Plaintiffs by using Plaintiffs' money, bank accounts, inventory, property and valuable business information, which was given to Seramik's principal, Sahin, by Plaintiffs because Plaintiffs trusted Sahin as their business partner.

106. Seramik knowingly and willfully used Plaintiffs' money, bank accounts, inventory, property and valuable business information as its own, to profit and unfairly compete with Plaintiffs.

107. Seramik's fraudulent activities have damaged Plaintiffs in an amount to be determined at trial.

**COUNT V**

(Deceit)

108. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

109. Seramik has deceived Plaintiffs and Plaintiffs' customers to the detriment of everyone involved.

110. Seramik's deceitful activities have damaged Plaintiffs in an amount to be determined at trial.

**COUNT VI**

(Unjust Enrichment)

111. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

112. Plaintiffs are the owners of certain valuable information, bank accounts, moneys, and customer and vendor relationships, which have actual and potential economic value.

113. Seramik has misappropriated said information, bank accounts, moneys, and

1 customer and vendor relationships for itself.

2 114. By reason of the above stated acts, Seramik used Plaintiffs' valuable  
3 information, bank accounts, moneys, and customer and vendor relationships for its  
4 own benefit and to the detriment of the Plaintiffs.

5 115. Seramik's actions have damaged Plaintiffs in an amount to be determined at  
6 trial.

7 **COUNT VII**

8 (Conversion)

9 116. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

10 117. Seramik has taken property that is rightfully owned by Plaintiffs and  
11 exercised control over the same as if owned by Seramik.

12 118. Seramik's conversion of property, including money, machines, equipment  
13 and computers belonging to Plaintiffs, has damaged Plaintiffs in an amount to be  
14 determined at trial.

15 **COUNT VIII**

16 (Misappropriation of Trade Secret — Cal. Civ. Code § 3426 et seq.)

17 119. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

18 120. Plaintiffs own valuable trade secret information as defined in Cal. Civ. Code  
19 3426.1, and have at all times maintained that information as confidential.

20 121. Seramik's principal, Sahin, was provided Plaintiffs' valuable trade secrets  
21 after executing an agreement not to disclose the information or use it for his own  
22 benefit.

23 122. Sahin shared Plaintiffs' trade secrets with HIMG Sermik and together,  
24 Seramik and Sahin used and/or disclosed Plaintiffs' trade secrets for their own  
25 benefit.

26 123. Seramik's trade secret violation has damaged Plaintiffs in an amount to be  
27

1 determined at trial.

2 **COUNT IX**

3 (California State Trademark Infringement)

4 124. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

5 125. By virtue of having used and continuing to use the HIMG trademark, the  
6 Plaintiffs have acquired common law rights in the trademark.

7 126. Seramik's infringing use of the HIMG trademark is likely to cause  
8 confusion, mistake, or deception among consumers, who will believe that  
9 Seramik's services and/or goods originate from, or are affiliated with or endorsed  
10 by Plaintiffs, when, in fact, they are not.

11 127. As the direct and proximate result of Seramik's infringement of Plaintiffs'  
12 common law trademark rights, Plaintiffs have suffered, and will continue to suffer,  
13 monetary damages and irreparable injury to its business, reputation, and goodwill.

14 **COUNT X**

15 (State Unfair Competition –Cal. Civ. Code § 17200 et seq.)

16 128. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

17 129. Upon information and belief, Seramik engaged in the sale of products that  
18 use Plaintiffs trade secrets directly to customers and through its websites.

19 130. Seramik has copied content from Plaintiffs' website content to divert sales  
20 from Plaintiffs to Seramik's websites, including [www.nnrepair.com](http://www.nnrepair.com) and  
21 [www.nnrepair-online.com](http://www.nnrepair-online.com).

22 131. Seramik has used Plaintiffs' customer list to market products that are  
23 branded as its, but are manufactured using Plaintiffs' trade secrets.

24 132. Seramik's advertising and sale of these products has caused irreparable harm  
25 to Plaintiffs, and will continue to do so unless enjoined by this Court.

**COUNT XI**

(Intentional Interference with Prospective Economic Advantage)

133. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

134. Seramik knows that Plaintiffs are in the business of selling repair products to the sanitary ceramic industry, as well as surface repair and hoof repair products, and that it promotes its business through the Internet, tradeshow and in industry publications.

135. Seramik committed acts intended or designed to disrupt Plaintiffs' prospective economic advantage by advertising and selling its counterfeit goods over the Internet, through tradeshow and in industry publications.

136. Seramik used Plaintiffs' customer lists and pricing information to promote itself as an alternative to Plaintiffs own customer base.

137. Seramik's actions have disrupted or are intended to disrupt Plaintiffs business by diverting Plaintiffs' potential and actual customers away from Plaintiffs' goods.

138. Seramik has no legal right, privilege or justification for its conduct.

139. As the direct and proximate cause of Seramik's actions, Plaintiffs have suffered damages in an amount to be determined at trial.

140. Based on the intentional, willful and malicious nature of Seramik's actions, Plaintiffs are entitled to recover exemplary damages and reasonable attorneys' fees and costs incurred in connection with this action.

**COUNT XII**

(False Advertising and Deceptive Trade Practices – Cal. Bus. & Prof. Code § 17500)

141. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

142. Seramik knowingly made false statements about Seramik's goods and

1 services in writing on Seramik's websites.

2 143. Seramik knowingly made false statements in writing and orally about  
3 Seramik's goods and services to third parties.

4 144. In the course of conducting its business, Seramik knowingly made false  
5 representations in writing and orally as to affiliation, connection and/or association  
6 with Plaintiffs by using Plaintiffs' trademark.

7 145. Upon information and belief, Seramik has profited from these false  
8 statements and misrepresentations.

9 146. As a direct and proximate result of Seramik's false statements, Plaintiffs  
10 have suffered and will continue to suffer monetary damages and irreparable injury  
11 to its business, reputation, and goodwill.

12 **COUNT XIII**

13 (Civil Conspiracy)

14 147. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

15 148. Seramik illegally and unlawfully, intentionally and knowingly and willfully  
16 conspired and agreed with Sahin to commit the wrongful and tortious acts against  
17 Plaintiffs described in these counterclaims, including intentional interference with  
18 economic advantage, fraud, deceit, conversion, trademark infringement, trademark  
19 counterfeiting, unfair competition and misappropriation of trade secrets.

20 149. Sahin was aware that Seramik planned to commit the aforementioned  
21 tortious and wrongful acts.

22 150. Seramik intended to commit the aforementioned tortious and wrongful acts  
23 with Sahin, and Sahin intended to commit the aforementioned tortious and  
24 wrongful acts with Seramik.

25 151. As a direct and proximate result of the acts described herein, Plaintiffs have  
26 been damaged in an amount to be determined at trial.

1 152. Based on the intentional, willful and malicious nature of Seramik's actions,  
2 Plaintiffs are entitled to recover exemplary damages and reasonable attorneys' fees  
3 and costs incurred in connection with this action.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs respectfully pray that the Court grant the following  
6 relief:

7 A. Injunctive relief to prevent ongoing infringement and unfair  
8 competition consisting of:

9 1. An order prohibiting Seramik from using the mark HIMG or any  
10 similar mark or company name;

11 2. An order instructing Seramik to deliver to Plaintiffs any and all goods  
12 bearing the HIMG name;

13 3. An order requiring Seramik to cease all conduct which implies that  
14 Seramik or his entities are affiliated with, endorsed by or sponsored by HIMG, its  
15 principals and/or affiliates;

16 4. An order prohibiting Seramik from practicing or disclosing the  
17 Plaintiffs' trade secrets, including the formulas to manufacture repair products for  
18 porcelain, granite and other materials, and formulas for hoof repair products;

19 5. An order prohibiting Seramik from falsely advertising his company's  
20 products or services;

21 B. An accounting by Seramik to Plaintiffs and their principals for all  
22 conduct to the date of the entry of the order;

23 C. Compensatory damages for past trademark infringement;

24 D. Compensatory damages for past unfair competition;

25 E. Compensatory damages for conversion;

26 F. Compensatory damages for breach of contract;

1 G. Compensatory damages for intentional interference with economic  
2 advantage;

3 H. Compensatory damages for fraud;

4 I. Compensatory damages for deceit;

5 J. Compensatory damages for unjust enrichment;

6 K. Compensatory damages for civil conspiracy;

7 L. Pursuant to 15 U.S.C. § 1117(c), statutory damages of up to \$100,000  
8 for each trademark infringement, and up to \$1,000,000 for each willful trademark  
9 infringement;

10 M. Pursuant to 17 U.S.C. §§ 505 and 1203(b)(4) and (5), and 15 U.S.C. §§  
11 1114 and 1125(a), full costs in litigating this matter, including reasonable attorneys'  
12 fees;

13 N. Punitive damages for Seramik's willful and malicious conduct; and

14 O. All other relief to which Plaintiffs are entitled.

15  
16  
17  
18 Dated: July 14, 2015

Respectfully Submitted,

19 By     /s/ Kayla Jimenez    

20 Kayla Jimenez (Bar No. 292365)

21 TechLaw LLP

858-488-2545

22 P.O. Box 1416, La Jolla, CA 92038

23 [kayla@techlawllp.com](mailto:kayla@techlawllp.com)

24 One of the Attorneys for Plaintiffs

**PROOF OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. My business address is 6265 Greenwich Ste. 201, San Diego, CA 92122

On July 14, 2015, I served the following document described as:

**PLAINTIFFS' ANSWER AND AFFIRMATIVE DEFENSES TO  
COUNTER-CLAIMANTS' FIRST AMENDED COUNTER-CLAIMS;  
PLAINTIFFS COUNTER-CLAIMS AGAINST HIMG SERAMIK VE  
MEDIKAL KOMPOZIT SAN. TIC. LTD. STI.**

by serving a true copy of the above-described document to be filed with the Clerk of court through the CM/ECF system, which will effectuate service of said document upon the following counsel:

**GOKALP BAYRAMOGLU  
BAYRAMOGLU LAW OFFICES LLC  
8275 South Eastern Ave Suite 200-611  
Las Vegas Nevada 89123**

DATED this 14th day of July, 2015.

/s/ Kayla Jimenez

KAYLA JIMENEZ

1 GOKALP BAYRAMOGLU, ESQ.

2 (Cal. Bar No. 268222)

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7 **BAYRAMOGLU LAW OFFICES LLC**

8 8275 South Eastern Ave Suite 200-611

9 Las Vegas Nevada 89123

10 Telephone: 702.724.2628

11 Facsimile: 702.446.9401

12 *Attorney for Defendant/Counterclaimants*

13 **IN THE UNITED STATES DISTRICT COURT**

14 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

15 EBI LTD., A CALIFORNIA CORPORATION;  
16 HAFFNER INT’L MARKETING GROUP,  
17 INC., A NEVADA CORPORATION

18 Plaintiffs,

19 vs.

20 YUSUF BUGRA SAHIN, AN INDIVIDUAL,

21 Defendant.

Case No: 14-cv-2274-JAH-RBB

**HIMG SERAMIK VE MEDIKAL  
KOMPOZIT SAN TIC LTD STI  
ANSWER TO COUNTER-  
CLAIMANTS COUNTERCLAIMS**

22 YUSUF BUGRA SAHIN, an individual, HIMG  
23 SERAMIK VE MEDIKAL KOMPOZIT SAN  
24 TIC LTD STI

25 Counter-Claimants,

26 vs.

27 EBI LTD., a California corporation; HAFFNER  
28 INT’L MARKETING GROUP, INC., a Nevada  
corporation; HEINZ HAFFNER, a California  
resident; and RENTATO BIZZARRO, a  
resident of Brazil.

Counter-Defendants.

Judge: Hon. John A. Houston

Courtroom 13B

1 EBI, LTD., a California corporation;  
2 HAFFNER INT’S MARKETING GROUP,  
3 INC., a Nevada Corporation; HEINZ  
4 HAFFNER, a California Resident; and  
5 RENATO BIZZARO, a Resident of Brazil,

6 Counter-Claimants,

7 vs.

8 HIMG SERAMIK VE MEDICAL KOMPOZIT  
9 SAN. TIC. LTD. STI., a Turkish Limited  
10 Liability Company.

11 Counter-Defendant.

12 Counter-Defendant, HIMG SERAMIK VE MEDIKAL KOMPOZIT SAN  
13 TIC LTD STI (“HIMG SERAMIK”) respectfully submits its Answer to the  
14 Counter-Claims for Damages and Injunctive Relief (“Counter-Claims”) filed by  
15 Counter-Claimants EBI LTD., HAFFNER INT’L MARKETING GROUP, INC.;  
16 HEINZ HAFFNER; and RENTATO BIZZARRO, (“Counter-Claimants”) on July  
17 14, 2015, and states as follows:

18 **HIMG SERAMIK ANSWER TO COUNTER-CLAIMANTS’ COUNTER-**  
19 **CLAIMS**

20 **Response to Allegation in “Parties”**

21 **1.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
22 truth of the allegations contained in Paragraph 1 of the Counter-Claims and  
23 therefore denies such allegations.

24 **2.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
25 truth of the allegations contained in Paragraph 2 of the Counter-Claims and  
26 therefore denies such allegations.

27 . . .  
28

1 **3.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
2 truth of the allegations contained in Paragraph 3 of the Counter-Claims and  
3 therefore denies such allegations.

4 **4.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
5 truth of the allegations contained in Paragraph 4 of the Counter-Claims and  
6 therefore denies such allegations.

7 **5.** In response to the first sentence of Paragraph 5 of the Counter-Claims,  
8 HIMG SERAMIK admits that HIMG SERAMIK is a Turkish Limited Liability  
9 Company and currently 100% owned and controlled by Counter-Defendant, Yusuf  
10 Bugra Sahin (“Sahin”).  
11

12 **Response to “Jurisdiction and Venue”**

13 **6.** HIMG SERAMIK denies allegations stated in Paragraph 6.

14 **7.** HIMG SERAMIK denies allegations stated in paragraph 7.

15 **8.** HIMG SERAMIK is without knowledge or information sufficient to form a  
16 belief as to the truth of the allegations contained in Paragraph 8 and on that basis  
17 denies those allegations.

18 **9.** HIMG SERAMIK denies allegations stated in paragraph 9.

19 **BACKGROUND FACTS**

20 **Plaintiff’s and Plaintiff’s Products**

21 **10.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
22 the truth of the allegations contained in Paragraph 10 of the Counter-Claims and  
23 therefore denies such allegations.

24 **11.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
25 truth of the allegations contained in Paragraph 11 of the Counter-Claims and  
26 therefore denies such allegations.

27 . . .

28 . . .

1 **12.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
2 the truth of the allegations contained in Paragraph 12 of the Counter-Claims and  
3 therefore denies such allegations.

4 **13.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
5 the truth of the allegations contained in Paragraph 13 of the Counter-Claims and  
6 therefore denies such allegations.

7 **14.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
8 the truth of the allegations contained in Paragraph 14 of the Counter-Claims and  
9 therefore denies such allegations.

10 **15.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
11 the truth of the allegations contained in Paragraph 15 of the Counter-Claims and  
12 therefore denies such allegations.

13 **16.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
14 the truth of the allegations contained in Paragraph 16 of the Counter-Claims and  
15 therefore denies such allegations.

16 **17.** HIMG SERAMIK admits that the mark HIMG is registered at the United  
17 States Patent and Trademark Office (Registration No. 4573180). However others  
18 have used the mark before it was registered. There is a current cancellation  
19 procedure initiated at the United States Patent and Trademark Office against the  
20 mark HIMG (Registration No. 4573180).

21 **18.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
22 the truth of the allegations contained in Paragraph 18 of the Counter-Claims and  
23 therefore denies such allegations.

24 **19.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
25 the truth of the allegations contained in Paragraph 19 of the Counter-Claims and  
26 therefore denies such allegations.

27 . . .  
28

1 **20.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
2 the truth of the allegations contained in Paragraph 20 of the Counter-Claims and  
3 therefore denies such allegations.

4 **21.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
5 the truth of the allegations contained in Paragraph 21 of the Counter-Claims and  
6 therefore denies such allegations.

7 **22.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
8 the truth of the allegations contained in Paragraph 22 of the Counter-Claims and  
9 therefore denies such allegations.  
10

11 **Counter-Claimants' Relationship with Sahin and the NDA**

12 **23.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
13 the truth of the allegations contained in Paragraph 23 of the Counter-Claims and  
14 therefore denies such allegations.

15 **24.** HIMG SERAMIK admits that in 2005 there was a meeting between  
16 Plaintiff Mr. Bizarro and Sahin, a Sanitary Engineer for Vitra Turkey. HIMG  
17 SERAMIK lacks information sufficient to form a belief regarding the truth of the  
18 remaining allegations contained in paragraph 24 of the counter claims and  
19 therefore denies such allegations.  
20

21 **25.** HIMG SERAMIK admits Mr. Haffner and Mr. Bizzarro met with Sahin and on  
22 or about March 1, 2006, Plaintiffs sent Sahin a confidentiality non-disclosure  
23 agreement (the "NDA"), which Sahin executed a true and correct copy of the NDA  
24 is attached as Exhibit A to Plaintiffs' Complaint. HIMG Seramik lacks information  
25 sufficient to form a belief regarding the truth of the remaining allegations  
26 contained in paragraph 25 of the counter claims and therefore denies such  
27 allegations.

28 . . .

1 **26.** HIMG SERAMIK denies allegations of Paragraph 26.  
2

3 **The Formation and Development of HIMG Turkey**

4 **27.** HIMG SERAMIK denies allegations of Paragraph 27.

5 **28.** HIMG SERAMIK denies allegations of Paragraph 28.

6 **29.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
7 truth of the allegations contained in Paragraph 29 of the Counter-Claims and  
8 therefore denies such allegations.

9 **30.** HIMG SERAMIK denies allegations of Paragraph 30.

10 **31.** HIMG SERAMIK denies allegations of Paragraph 31.

11 **32.** HIMG SERAMIK denies allegations of Paragraph 32.

12 **33.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
13 the truth of the allegations contained in Paragraph 33 of the Counter-Claims and  
14 therefore denies such allegations.

15 **34.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
16 the truth of the allegations contained in Paragraph 34 of the Counter-Claims and  
17 therefore denies such allegations.

18 **35.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
19 truth of the allegations contained in Paragraph 35 of the Counter-Claims and  
20 therefore denies such allegations.

21 **36.** HIMG SERAMIK denies allegations of Paragraph 36.

22 **37.** HIMG SERAMIK denies allegations of Paragraph 37.

23 **38.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
24 the truth of the allegations contained in Paragraph 38 of the Counter-Claims and  
25 therefore denies such allegations.

26 **39.** HIMG SERAMIK denies allegations of Paragraph 39.

27 **40.** HIMG SERAMIK denies allegations of Paragraph 40.  
28

1 **41.** HIMG SERAMIK denies allegations of Paragraph 41.

2 **42.** HIMG SERAMIK denies allegations of Paragraph 42.

3 **43.** HIMG SERAMIK admits visiting a trade show in Las Vegas Nevada.

4 HIMG SERAMIK denies the remaining allegations contained in Paragraph 43.

5 **44.** HIMG SERAMIK admits Sahin as an individual, not as a representative of  
6 HIMG Seramik, met with Mr. Haffner in Las Vegas. HIMG SERAMIK denies the  
7 remaining allegations contained in Paragraph 44.

8 **45.** HIMG SERAMIK denies allegations of Paragraph 45.

9  
10 **The Demise of Counter-Claimants' Relationship with HIMG SERAMIK**

11 **46.** HIMG SERAMIK denies allegations of Paragraph 46.

12 **47.** HIMG SERAMIK denies allegations of Paragraph 47.

13 **48.** HIMG SERAMIK admits attending to a trade show in India. HIMG  
14 SERAMIK denies the remaining allegations contained in Paragraph 48.

15 **49.** HIMG SERAMIK admits that Sahin as an individual, not as a representative  
16 of HIMG SERAMIK, met with Mr. Bizzarro at a restaurant. HIMG SERAMIK  
17 denies the remaining allegations contained in Paragraph 49.

18 **50.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
19 the truth of the allegations contained in Paragraph 50 of the Counter-Claims and  
20 therefore denies such allegations.

21 **51.** HIMG SERAMIK denies allegations of Paragraph 51.

22 **Violation of the NDA and Misappropriate Counter-Claimants' Trade Secretes**

23 **52.** HIMG SERAMIK denies allegations of Paragraph 52.

24 **53.** HIMG SERAMIK admits that Sahin founded HIMG SERAMIK and the  
25 company competes with Counter-Claimants and denies all the remaining  
26 allegations of Paragraph 53.

27 **54.** HIMG SERAMIK admits that it sells its' own ceramic repair products and  
28 denies all the remaining allegations of Paragraph 54.

1 **55.** HIMG SERAMIK denies allegations of Paragraph 55.

2 **56.** HIMG SERAMIK denies allegations of Paragraph 56.

3 **57.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
4 the truth of the allegations contained in Paragraph 57 of the Counter-Claims and  
5 therefore denies such allegations.

6 **58.** HIMG SERAMIK denies the allegations contained in Paragraph 58.

7 **Sahin and Seramik Mislead the Public and make False Statements**

8 **59.** HIMG SERAMIK denies allegations of Paragraph 59.

9 **60.** HIMG SERAMIK admits that it displayed its own trademark “HIMG  
10 SERAMIK” obtained by common law use prior to Plaintiffs’ use or registration of  
11 the “HIMG” mark and denies the remaining allegations of Paragraph 60.

12 **61.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
13 truth of the allegations contained in Paragraph 61 of the Counter-Claims and  
14 therefore denies such allegations.

15 **62.** HIMG SERAMIK admits registering the domain name. HIMG SERAMIK  
16 denies the remaining allegations contained in Paragraph 62.

17 **63.** HIMG SERAMIK admits participating an Indian Ceramics trade show in  
18 2012. HIMG SERAMIK denies the remaining allegations contained in Paragraph  
19

20 **64.** HIMG SERAMIK admits having an interview with Ceramic Asia Magazine.  
21 HIMG SERAMIK denies the remaining allegations contained in Paragraph 64.

22 **65.** HIMG SERAMIK denies allegations of Paragraph 65.

23 **66.** HIMG SERAMIK denies allegations of Paragraph 66.

24 **67.** HIMG SERAMIK denies allegations of Paragraph 67.

25 **68.** HIMG SERAMIK admits that business was founded in 2007 and it had its  
26 own marketing and production departments.

27 **69.** HIMG SERAMIK admits that NNREPAIR site owned by a company and  
28 the site provides solutions to customers.

1 **70.** HIMG SERAMIK denies allegations of Paragraph 70.

2 **71.** HIMG SERAMIK denies allegations of Paragraph 71.

3 **72.** HIMG SERAMIK denies allegations of Paragraph 72.

4 **73.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
5 the truth of the allegations contained in Paragraph 73 of the Counter-Claims and  
6 therefore denies such allegations.

7 **74.** HIMG SERAMIK denies allegations of Paragraph 74.

8 **75.** HIMG SERAMIK denies allegations of Paragraph 75.

9 **76.** HIMG SERAMIK admits that it is still in the business and is owned by  
10 Sahin.

11 **77.** HIMG SERAMIK admits selling products under the HIMG SERAMIK  
12 trademark it acquired through common law commercial use prior to Counter-  
13 Claimants' use and registration.

14 **78.** HIMG SERAMIK denies allegations of Paragraph 78.

15 **79.** HIMG SERAMIK denies allegations of Paragraph 79.

16 **80.** HIMG SERAMIK denies allegations of Paragraph 80.

17 **81.** HIMG SERAMIK denies allegations of Paragraph 81.

18 **Response to "Count 1 – Trademark Infringement"**

19 **82.** HIMG SERAMIK restates and incorporates by references to its above  
20 responses to Paragraphs 1-81 of the Counter-Claims, as though fully set forth  
21 herein.

22 **83.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
23 the truth of the allegations contained in Paragraph 83 of the Counter-Claims and  
24 therefore denies such allegations.

25 **84.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
26 the truth of the allegations contained in Paragraph 84 of the Counter-Claims and  
27 therefore denies such allegations.  
28

1 **85.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
2 truth of the allegations contained in Paragraph 85 of the Counter-Claims and  
3 therefore denies such allegations.

4 **86.** HIMG SERAMIK denies the allegations contained in Paragraph 86.

5 **87.** HIMG SERAMIK denies the allegations contained in Paragraph 87.

6 **88.** HIMG SERAMIK denies the allegations contained in Paragraph 88.

7 **89.** HIMG SERAMIK denies the allegations contained in Paragraph 89.

8 **90.** HIMG SERAMIK denies the allegations contained in Paragraph 90.

9 **91.** HIMG SERAMIK denies the allegations contained in Paragraph 91.

10 **92.** HIMG SERAMIK denies the allegations contained in Paragraph 92.

11  
12 **Response to “Count II – Unfair Competition”**

13 **93.** HIMG SERAMIK restates and incorporates by references to its above  
14 responses to Paragraphs 1-92 of the Counter-Claims, as though fully set forth  
15 herein.

16 **94.** HIMG SERAMIK denies the allegations contained in Paragraph 94.

17 **95.** HIMG SERAMIK denies the allegations contained in Paragraph 95.

18 **96.** HIMG SERAMIK denies the allegations contained in Paragraph 96.

19 **97.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
20 the truth of the allegations contained in Paragraph 97 of the Counter-Claims and  
21 therefore denies such allegations.

22 **98.** HIMG SERAMIK lacks information sufficient to form a belief regarding  
23 the truth of the allegations contained in Paragraph 98 of the Counter-Claims and  
24 therefore denies such allegations.

25 **Response to “Count III – Trademark Counterfeiting”**

26 **99.** HIMG SERAMIK restates and incorporates by references to its above  
27 responses to Paragraphs 1-98 of the Counter-Claims, as though fully set forth  
28 herein.

1 **100.** HIMG SERAMIK denies the allegations contained in Paragraph 100.

2 **101.** HIMG SERAMIK denies the allegations contained in Paragraph 101.

3 **102.** HIMG SERAMIK denies the allegations contained in Paragraph 102.

4 **103.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
5 truth of the allegations contained in Paragraph 103 of the Counter-Claims and  
6 therefore denies such allegations.  
7

8 **Response to “Count IV – Fraud”**

9 **104.** HIMG SERAMIK restates and incorporates by references to its above  
10 responses to Paragraphs 1-103 of the Counter-Claims, as though fully set forth  
11 herein.

12 **105.** HIMG SERAMIK denies the allegations contained in Paragraph 105.

13 **106.** HIMG SERAMIK denies the allegations contained in Paragraph 106.

14 **107.** HIMG SERAMIK denies the allegations contained in Paragraph 107.

15 **Response to “Count V – Deceit”**

16 **108.** HIMG SERAMIK restates and incorporates by references to its above  
17 responses to Paragraphs 1-107 of the Counter-Claims, as though fully set forth  
18 herein.

19 **109.** HIMG SERAMIK denies the allegations contained in Paragraph 109.

20 **110.** HIMG SERAMIK denies the allegations contained in Paragraph 110.

21 **Response to “Count VI – Unjust Enrichment”**

22 **111.** HIMG SERAMIK restates and incorporates by references to its above  
23 responses to Paragraphs 1-110 of the Counter-Claims, as though fully set forth  
24 herein.

25 **112.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
26 truth of the allegations contained in Paragraph 112 of the Counter-Claims and  
27 therefore denies such allegations.

28 **113.** HIMG SERAMIK denies the allegations contained in Paragraph 113.

1 **114.** HIMG SERAMIK denies the allegations contained in Paragraph 114.

2 **115.** HIMG SERAMIK denies the allegations contained in Paragraph 115.

3 **Response to “Count VII – Conversion”**

4 **116.** HIMG SERAMIK restates and incorporates by references to its above  
5 responses to Paragraphs 1-115 of the Counter-Claims, as though fully set forth  
6 herein.

7 **117.** HIMG SERAMIK denies the allegations contained in Paragraph 117.

8 **118.** HIMG SERAMIK denies the allegations contained in Paragraph 118.

9 **Response to “Count VIII – Misappropriation of Trade Secret”**

10 **119.** HIMG SERAMIK restates and incorporates by references to its above  
11 responses to Paragraphs 1-118 of the Counter-Claims, as though fully set forth  
12 herein.

13 **120.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
14 truth of the allegations contained in Paragraph 120 of the Counter-Claims and  
15 therefore denies such allegations.

16 **121.** HIMG SERAMIK denies the allegations contained in Paragraph 121.

17 **122.** HIMG SERAMIK denies the allegations contained in Paragraph 122.

18 **123.** HIMG SERAMIK denies the allegations contained in Paragraph 123.

19 **Response to “Count IX – State Trademark Infringement”**

20 **124.** HIMG SERAMIK restates and incorporates by references to its above  
21 responses to Paragraphs 1-123 of the Counter-Claims, as though fully set forth  
22 herein.

23 **125.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
24 truth of the allegations contained in Paragraph 125 of the Counter-Claims and  
25 therefore denies such allegations.

26 ...

27 ...

1 **126.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
2 truth of the allegations contained in Paragraph 126 of the Counter-Claims and  
3 therefore denies such allegations.

4 **127.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
5 truth of the allegations contained in Paragraph 127 of the Counter-Claims and  
6 therefore denies such allegations.

7  
8 **Response to “Count X – State Unfair Competition”**

9 **128.** HIMG SERAMIK restates and incorporates by references to its above  
10 responses to Paragraphs 1-127 of the Counter-Claims, as though fully set forth  
11 herein.

12 **129.** HIMG SERAMIK denies the allegations contained in Paragraph 129.

13 **130.** HIMG SERAMIK denies the allegations contained in Paragraph 130.

14 **131.** HIMG SERAMIK denies the allegations contained in Paragraph 131.

15 **132.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
16 truth of the allegations contained in Paragraph 132 of the Counter-Claims and  
17 therefore denies such allegations.

18 **Response to “Count XI – Intentional Interference with Prospective Economic**  
19 **Advantage”**

20 **133.** HIMG SERAMIK restates and incorporates by references to its above  
21 responses to Paragraphs 1-132 of the Counter-Claims, as though fully set forth  
22 herein.

23 **134.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
24 truth of the allegations contained in Paragraph 134 of the Counter-Claims and  
25 therefore denies such allegations.

26 **135.** HIMG SERAMIK denies the allegations contained in Paragraph 135.

27 **136.** HIMG SERAMIK denies the allegations contained in Paragraph 136.

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1 **137.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
2 truth of the allegations contained in Paragraph 137 of the Counter-Claims and  
3 therefore denies such allegations.

4 **138.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
5 truth of the allegations contained in Paragraph 138 of the Counter-Claims and  
6 therefore denies such allegations.

7 **139.** HIMG SERAMIK lacks information sufficient to form a belief regarding the  
8 truth of the allegations contained in Paragraph 139 of the Counter-Claims and  
9 therefore denies such allegations.

10 **140.** HIMG SERAMIK denies the allegations contained in Paragraph 140.

11 **Response to “Count XI1 – False Advertising and Deceptive Trade Practices”**

12 **141.** HIMG SERAMIK restates and incorporates by references to its above  
13 responses to Paragraphs 1-140 of the Counter-Claims, as though fully set forth  
14 herein.

15 **142.** HIMG SERAMIK denies the allegations contained in Paragraph 142.

16 **143.** HIMG SERAMIK denies the allegations contained in Paragraph 143.

17 **144.** HIMG SERAMIK denies the allegations contained in Paragraph 144.

18 **145.** HIMG SERAMIK denies the allegations contained in Paragraph 145.

19 **146.** HIMG SERAMIK denies the allegations contained in Paragraph 146.

20 **Response to “Count XIII – Civil Conspiracy”**

21 **147.** HIMG SERAMIK restates and incorporates by references his above  
22 responses to Paragraphs 1-146 of the Counter-Claims, as though fully set forth  
23 herein.

24 **148.** HIMG SERAMIK denies the allegations contained in Paragraph 148.

25 **149.** HIMG SERAMIK denies the allegations contained in Paragraph 149.

26 **150.** HIMG SERAMIK denies the allegations contained in Paragraph 150.

27 **151.** HIMG SERAMIK denies the allegations contained in Paragraph 151.

1 **152.** HIMG SERAMIK denies the allegations contained in Paragraph 152.

2 **Response to Counter-Claimants’ “Prayer for Relief”**

3 HIMG SERAMIK denies that Counter-Claimants are entitled to any relief in  
4 this action and asks the Court deny any and all of the relief requested by Counter-  
5 Claimants in their Counter-Claims with respect to HIMG SERAMIK.

6 **ADDITIONAL AFFIRMATIVE DEFENSES**

7 HIMG SERAMIK hereby asserts the following separate additional  
8 affirmative defenses to the claims and allegations contained in Counter-Claimants’  
9 Counter-Claims, without admitting or acknowledging that HIMG SERAMIK bears  
10 the burden of proof as to any of them. HIMG SERAMIK reserves the right to seek  
11 leave to amend its Answer to plead additional affirmative defenses and  
12 counterclaims and/or to supplement the existing defenses if information developed  
13 through discovery, trial, or otherwise merits such additional affirmative defenses,  
14 counterclaims, or supplementation.

15 **First Additional Defense**

16 **(Failure to State a Claim)**

17 Counter-Defendant incorporates the preceding allegations as if fully set forth  
18 herein.

19 **1.** Counter-Claimants’ claim in COUNT I for alleged infringement of the  
20 “HIMG” mark fails to state a claim upon which relief can be granted. Counter-  
21 Defendant’s continuous commercial use of the business name “HIMG Seramik” to  
22 globally distribute porcelain repair products since 2007 and the continuous  
23 commercial use of the “HIMG” mark on products sold globally from December  
24 2012 predates Counter-Claimants’ registration (Reg. No. 4573180) of the mark on  
25 July 22, 2014 and Counter-Claimants’ use, Counter-Defendant is informed and  
26 believes started on April 22, 2014; thereby Counter-Defendant has acquired a  
27 common law rights to the exclusive use of the mark.  
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2 **2.** Counter-Claimants’ claim in COUNT II for alleged unfair competition fails  
3 to state a claim upon which relief can be granted. Counter-Defendant’s continuous  
4 commercial use of the business name “HIMG Keramik” to globally distribute  
5 porcelain repair products since 2007 and the continuous commercial use of the  
6 “HIMG” mark on products sold globally from December 2012 predates Counter-  
7 Claimants’ registration (Reg. No. 4573180) of the mark on July 22, 2014 and  
8 Counter-Claimants’ use, Counter-Defendant is informed and believes started on  
9 April 22, 2014; thereby Counter-Defendant has acquired a common law rights to  
10 the exclusive use of the mark.  
11

12 **3.** Counter-Claimants’ claim in COUNT III for alleged trademark  
13 counterfeiting fails to state a claim upon which relief can be granted. Counter-  
14 Defendant’s continuous commercial use of the business name “HIMG Keramik” to  
15 globally distribute porcelain repair products since 2007 and the continuous  
16 commercial use of the “HIMG” mark on products sold globally from December  
17 2012 predates Counter-Claimants’ registration (Reg. No. 4573180) of the mark on  
18 July 22, 2014 and Counter-Claimants’ use, Counter-Defendant is informed and  
19 believes started on April 22, 2014; thereby Counter-Defendant has acquired a  
20 common law rights to the exclusive use of the mark.  
21

22 **4.** Counter-Claimants’ claim in COUNT IV for alleged breach of contract fails  
23 to state a claim upon which relief can be granted. Counter-Defendant’s continuous  
24 commercial use of the business name “HIMG Keramik” to globally distribute  
25 porcelain repair products since 2007 and the continuous commercial use of the  
26 “HIMG” mark on products sold globally from December 2012 predates Counter-  
27 Claimants’ registration (Reg. No. 4573180) of the mark on July 22, 2014 and  
28 Counter-Claimants’ use, Counter-Defendant is informed and believes started on  
April 22, 2014; thereby Counter-Defendant has acquired a common law rights to

1 the exclusive use of the mark.

2 **5.** Counter-Claimants' claim in COUNT V for alleged Deceit fails to state a  
3 claim upon which relief can be granted. Counter-Defendant. Counter-Defendant's  
4 continuous commercial use of the business name "HIMG Keramik" to globally  
5 distribute porcelain repair products since 2007 and the continuous commercial use  
6 of the "HIMG" mark on products sold globally from December 2012 predates  
7 Counter-Claimants' registration (Reg. No. 4573180) of the mark on July 22, 2014  
8 and Counter-Claimants' use, Counter-Defendant is informed and believes started  
9 on April 22, 2014; thereby Counter-Defendant has acquired a common law rights  
10 to the exclusive use of the mark.  
11

12 **6.** Counter-Claimants' claim in COUNT VI for alleged unjust enrichment fails  
13 to state a claim upon which relief can be granted. Counter-Defendant's continuous  
14 commercial use of the business name "HIMG Keramik" to globally distribute  
15 porcelain repair products since 2007 and the continuous commercial use of the  
16 "HIMG" mark on products sold globally from December 2012 predates Counter-  
17 Claimants' registration (Reg. No. 4573180) of the mark on July 22, 2014 and  
18 Counter-Claimants' use, Counter-Defendant is informed and believes started on  
19 April 22, 2014; thereby Counter-Defendant has acquired a common law rights to  
20 the exclusive use of the mark.

21 **7.** Counter-Claimants' claim in COUNT VII for alleged conversion fails to  
22 state a claim upon which relief can be granted. Counter-Defendant's continuous  
23 commercial use of the business name "HIMG Keramik" to globally distribute  
24 porcelain repair products since 2007 and the continuous commercial use of the  
25 "HIMG" mark on products sold globally from December 2012 predates Counter-  
26 Claimants' registration (Reg. No. 4573180) of the mark on July 22, 2014 and  
27 Counter-Claimants' use, Counter-Defendant is informed and believes started on  
28 April 22, 2014; thereby Counter-Defendant has acquired a common law rights to

1 the exclusive use of the mark.

2 **8.** Counter-Claimants' claims in COUNT VIII for alleged misappropriation of  
3 trade secrete fails to state a claim upon which relief can be granted. Counter-  
4 Defendant's continuous commercial use of the business name "HIMG Keramik" to  
5 globally distribute porcelain repair products since 2007 and the continuous  
6 commercial use of the "HIMG" mark on products sold globally from December  
7 2012 predates Counter-Claimants' registration (Reg. No. 4573180) of the mark on  
8 July 22, 2014 and Counter-Claimants' use, Counter-Defendant is informed and  
9 believes started on April 22, 2014; thereby Counter-Defendant has acquired a  
10 common law rights to the exclusive use of the mark.

11 **9.** Counter-Claimants' claim in COUNT IX for alleged State trademark  
12 infringement fails to state a claim upon which relief can be granted. Counter-  
13 Defendant's continuous commercial use of the business name "HIMG Keramik" to  
14 globally distribute porcelain repair products since 2007 and the continuous  
15 commercial use of the "HIMG" mark on products sold globally from December  
16 2012 predates Counter-Claimants' registration (Reg. No. 4573180) of the mark on  
17 July 22, 2014 and Counter-Claimants' use, Counter-Defendant is informed and  
18 believes started on April 22, 2014; thereby Counter-Defendant has acquired a  
19 common law rights to the exclusive use of the mark.

20 **10.** Counter-Claimants' claim in COUNT X for alleged State unfair competition  
21 fails to state a claim upon which relief can be granted. Counter-Defendant's  
22 continuous commercial use of the business name "HIMG Keramik" to globally  
23 distribute porcelain repair products since 2007 and the continuous commercial use  
24 of the "HIMG" mark on products sold globally from December 2012 predates  
25 Counter-Claimants' registration (Reg. No. 4573180) of the mark on July 22, 2014  
26 and Counter-Claimants' use, Counter-Defendant is informed and believes started  
27 on April 22, 2014; thereby Counter-Defendant has acquired a common law rights  
28

1 to the exclusive use of the mark. Counter-Defendant did not receive any “trade  
2 secrete” information.

3 **11.** Counter-Claimants’ claim in COUNT XI for alleged intentional interference  
4 with prospective economic advantage fails to state a claim upon which relief can  
5 be granted. Counter-Defendant’s continuous commercial use of the business name  
6 “HIMG Keramik” to globally distribute porcelain repair products since 2007 and  
7 the continuous commercial use of the “HIMG” mark on products sold globally  
8 from December 2012 predates Counter-Claimants’ registration (Reg. No. 4573180)  
9 of the mark on July 22, 2014 and Counter-Claimants’ use, Counter-Defendant is  
10 informed and believes started on April 22, 2014; thereby Counter-Defendant has  
11 acquired a common law rights to the exclusive use of the mark.  
12

13 **12.** Counter-Claimants’ claim in COUNT XII for alleged false advertising and  
14 deceptive trade practices fails to state a claim upon which relief can be granted.  
15 Counter-Defendant solely owns the Corporate entity “HIMG Keramik” since 2007  
16 and the registered trademark “NNRepair” and is using his own developed repair  
17 material not based on Plaintiff’s formula. Counter-Defendant’s continuous  
18 commercial use of the business name “HIMG Keramik” to globally distribute  
19 porcelain repair products since 2007 and the continuous commercial use of the  
20 “HIMG” mark on products sold globally from December 2012 predates Counter-  
21 Claimants’ registration (Reg. No. 4573180) of the mark on July 22, 2014 and  
22 Counter-Claimants’ use, Counter-Defendant is informed and believes started on  
23 April 22, 2014; thereby Counter-Defendant has acquired a common law rights to  
24 the exclusive use of the mark.

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2 **13.** Counter-Claimants’ claim in COUNT XIII for alleged civil conspiracy fails  
3 to state a claim upon which relief can be granted. Counter-Defendant’s continuous  
4 commercial use of the “HIMG” mark predates both the Counter-Claimants’ use  
5 and registration of the mark; thereby Counter-Defendant has acquired a common  
6 law rights to the exclusive use of the mark. Counter-Defendant solely owns the  
7 Corporate entity “HIMG Keramik” since 2007 and the registered trademark  
8 “NNRepair” and is using his own developed repair material not based on  
9 Plaintiff’s formula.  
10

11 **Second Additional Defense**  
12 **(Noninfringement)**

13 **14.** Counter-Defendant incorporates the preceding allegations as if fully set forth  
14 herein.

15 15. HIMG SERAMIK did not manufacture or sell any products that infringe upon  
16 Plaintiff’s trademark and has not infringed any valid and enforceable mark  
17 “HIMG”. HIMG SERAMIK did not willfully infringe and has not willfully  
18 infringed any valid and enforceable mark “HIMG.” Counter-Defendant’s  
19 continuous commercial use of the business name “HIMG Keramik” to globally  
20 distribute porcelain repair products since 2007 and the continuous commercial use  
21 of the “HIMG” mark on products sold globally from December 2012 predates  
22 Counter-Claimants’ registration (Reg. No. 4573180) of the mark on July 22, 2014  
23 and Counter-Claimants’ use, Counter-Defendant is informed and believes started  
24 on April 22, 2014; thereby Counter-Defendant has acquired a common law rights  
25 to the exclusive use of the mark. Counter-Defendant solely owns the Corporate  
26 entity “HIMG Keramik” since 2007 and the registered trademark “NNRepair” and  
27 is using his own developed repair material not based on Plaintiff’s formula.  
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**Third Additional Defense**

**(Invalidity)**

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**17.** Counter-Defendant incorporates the preceding allegations as if fully set forth herein.

**18.** The mark “HIMG” is invalid for one or more reasons under Section 14(3) of the Lanham Trademark Act of 1946, 15 U.S.C. § 1064(3). Counter-Defendant’s continuous commercial use of the business name “HIMG Keramik” to globally distribute porcelain repair products since 2007 and the continuous commercial use of the “HIMG” mark on products sold globally from December 2012 predates Counter-Claimants’ registration (Reg. No. 4573180) of the mark on July 22, 2014 and Counter-Claimants’ use, Counter-Defendant is informed and believes started on April 22, 2014; thereby Counter-Defendant has acquired a common law rights to the exclusive use of the mark.

**Fourth Additional Defense**

**(Laches)**

**19.** Counter-Defendant incorporates the preceding allegations as if fully set forth herein.

**20.** On information and belief, Counter-Defendant is informed and believes and thereon alleges that Plaintiff waited an unreasonable period of time to complain of the alleged trademark infringement, marketing products under the name “HIMG”, and distributing products through an entity “HIMG Keramik” and “NNRepair” to the prejudice of this Counter-Defendant.

**21.** Specifically, Counter-Defendant’s continuous commercial use of the business name “HIMG Keramik” to globally distribute porcelain repair products since 2007 and the continuous commercial use of the “HIMG” mark on products sold globally from December 2012 predates Counter-Claimants’ registration (Reg. No. 4573180)

1 of the mark on July 22, 2014 and Counter-Claimants' use, Counter-Defendant is  
2 informed and believes started on April 22, 2014, created a common law trademark  
3 right.

4 **22.** Counter-Defendant solely owns the corporate entity "HIMG Keramik" since  
5 2007, which owned the registered trademark and domain, name "NNRepair", and  
6 is using its own developed repair material not based on Plaintiff's formula, which  
7 is sold and distributed through "HIMG SERAMIK" and web sites using  
8 "NNRepair". Upon information and belief, Counter-Claimants had actual notice  
9 and knowledge that Counter-Defendant was distributing porcelain repair products  
10 globally through "HIMG Keramik" since 2007 and expended money and efforts to  
11 advertise and promote sale of the products, without the objection of Counter-  
12 Claimants.  
13

14 **23.** Upon information and belief, Counter-Claimants had actual notice and  
15 knowledge that Counter-Defendant was distributing porcelain repair products  
16 globally utilizing the "HIMG" since December 2012 and expended money and  
17 efforts to advertise and promote sale of the products, without the objection of  
18 Counter-Claimants.

19 **24.** Upon information and belief, Counter-Claimants failed to obtain a trademark  
20 from the USPTO until July 22, 2014 and failed and refused to use the mark until  
21 April 22, 2014.

22 **25.** Counter-Defendant has expended money and efforts to promote the products  
23 branded "HIMG", distributing products globally by "HIMG Keramik" since 2007,  
24 and distributed products through and marketed the products through websites  
25 "[www.nnrepair.com](http://www.nnrepair.com)" and "[www.nnrepair-online.com](http://www.nnrepair-online.com)". Counter-Claimants'  
26 unreasonable delay in objecting or taking legal action has cost Counter-Defendant  
27 considerable money in marketing costs. Plaintiff is therefore guilty of laches.  
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3 **Fifth Additional Defense**  
4 **(Unclean Hands)**

5 **26.** Counter-Defendant incorporates the preceding allegations as if fully set forth  
6 herein.

7 **27.** Counter-Claimants intentionally and willfully trafficked goods containing a  
8 mark “HIMG” that is owned by “HIMG Keramik through common law commercial  
9 usage rights. Specifically, Counter-Defendant’s continuous commercial use of the  
10 business name “HIMG Keramik” to globally distribute porcelain repair products  
11 since 2007 and the continuous commercial use of the “HIMG” mark on products  
12 sold globally from December 2012 predates Counter-Claimants’ registration (Reg.  
13 No. 4573180) of the mark on July 22, 2014 and Counter-Claimants’ use, Counter-  
14 Defendant is informed and believes started on April 22, 2014; thereby Counter-  
15 Defendant has acquired a common law rights to the exclusive use of the mark.

16 **28.** Upon information and belief, Counter-Claimants had actual notice and  
17 knowledge that Counter-Defendant distributed porcelain repair products globally  
18 through a company “HIMG Keramik” since 2007 and that Counter-Defendant had  
19 been distributing commercial products branded with the “HIMG” mark since  
20 December 2012.

21 **29.** Counter-Claimants have knowingly misused the “HIMG” Mark, which was  
22 acquired through common law use, in a fraudulent manner and in a way to deceive  
23 consumers and cause confusion between the products sold by Counter-Claimants’  
24 and the authentic ceramic repair kits sold by Counter-Defendant.

25 **30.** Counter-Claimants profited from the aforementioned acts in an attempt to gain  
26 commercial advantage over Counter-Defendant in various international markets  
27 where the enforcement of intellectual property law is difficult.  
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2 **31.** As the direct and proximate result of the counterfeiting, Counter-Defendant  
3 has suffered, and will continue to suffer, monetary loss and irreparable injury to its  
4 business, reputation, and goodwill.

5 **Sixth Additional Defense**  
6 **(Waiver and Estoppel)**  
7

8 **32.** Counter-Defendant incorporates the preceding allegations as if fully set forth  
9 herein.

10 **33.** Counter-Claimants claims are barred in whole or in part by the doctrine of  
11 waiver and/or estoppel.

12 **34.** Counter-Claimants intentionally and willfully trafficked goods containing a  
13 mark “HIMG” that is owned by “HIMG Keramik through common law commercial  
14 usage rights. Specifically, Counter-Defendant’s continuous commercial use of the  
15 business name “HIMG Keramik” to globally distribute porcelain repair products  
16 since 2007 and the continuous commercial use of the “HIMG” mark on products  
17 sold globally from December 2012 predates Counter-Claimants’ registration (Reg.  
18 No. 4573180) of the mark on July 22, 2014 and Counter-Claimants’ use, Counter-  
19 Defendant is informed and believes started on April 22, 2014; thereby Counter-  
20 Defendant has acquired a common law rights to the exclusive use of the mark.

21 **35.** Upon information and belief, Counter-Claimants had actual notice and  
22 knowledge that Counter-Defendant distributed porcelain repair products globally  
23 through a company “HIMG Keramik” since 2007 and that Counter-Defendant had  
24 been distributing commercial products branded with the “HIMG” mark since  
25 December 2012.

26 **36.** Counter-Claimants have knowingly misused the “HIMG” Mark, which was  
27 acquired through common law use, in a fraudulent manner and in a way to deceive  
28 consumers and cause confusion between the products sold by Counter-Claimants’

1 and the authentic ceramic repair kits sold by Counter-Defendant.

2 **37.** Counter-Claimants profited from the aforementioned acts in an attempt to gain  
3 commercial advantage over Counter-Defendant in various international markets  
4 where the enforcement of intellectual property law is difficult.

5 **38.** As the direct and proximate result of the counterfeiting, Counter-Defendant  
6 has suffered, and will continue to suffer, monetary loss and irreparable injury to its  
7 business, reputation, and goodwill.

8  
9 **Seventh Additional Defense**  
10 **(Trademark Usage)**

11 **39.** Counter-Defendant incorporates the preceding allegations as if fully set forth  
12 herein.

13 **40.** Counter-Claimants claims are for failure to be the first to use the marks in  
14 commerce which, are at issue in this action before Counter-Claimants use of mark.

15 **41.** Counter-Claimants intentionally and willfully trafficked goods containing a  
16 mark “HIMG” that is owned by “HIMG Keramik through common law commercial  
17 usage rights. Specifically, Counter-Defendant’s continuous commercial use of the  
18 business name “HIMG Keramik” to globally distribute porcelain repair products  
19 since 2007 and the continuous commercial use of the “HIMG” mark on products  
20 sold globally from December 2012 predates Counter-Claimants’ registration (Reg.  
21 No. 4573180) of the mark on July 22, 2014 and Counter-Claimants’ use, Counter-  
22 Defendant is informed and believes started on April 22, 2014; thereby Counter-  
23 Defendant has acquired a common law rights to the exclusive use of the mark.

24 **42.** Upon information and belief, Counter-Claimants had actual notice and  
25 knowledge that Counter-Defendant distributed porcelain repair products globally  
26 through a company “HIMG Keramik” since 2007 and that Counter-Defendant had  
27 been distributing commercial products branded with the “HIMG” mark since  
28 December 2012.

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2 **Eighth Additional Defense**  
3 **(Trademark Preemption)**

4 **43.** Counter-Defendant incorporates the preceding allegations as if fully set forth  
5 herein.

6 **44.** Counter-Claimants claims are for failure to be the first to use the marks in  
7 commerce which, are at issue in this action before Counter-Claimants use of mark.

8 **45.** Counter-Claimants intentionally and willfully trafficked goods containing a  
9 mark “HIMG” that is owned by “HIMG Seramik through common law commercial  
10 usage rights. Specifically, Counter-Defendant’s continuous commercial use of the  
11 business name “HIMG Seramik” to globally distribute porcelain repair products  
12 since 2007 and the continuous commercial use of the “HIMG” mark on products  
13 sold globally from December 2012 predates Counter-Claimants’ registration (Reg.  
14 No. 4573180) of the mark on July 22, 2014 and Counter-Claimants’ use, Counter-  
15 Defendant is informed and believes started on April 22, 2014; thereby Counter-  
16 Defendant has acquired a common law rights to the exclusive use of the mark.

17 **46.** Upon information and belief, Counter-Claimants had actual notice and  
18 knowledge that Counter-Defendant distributed porcelain repair products globally  
19 through a company “HIMG Seramik” since 2007 and that Counter-Defendant had  
20 been distributing commercial products branded with the “HIMG” mark since  
21 December 2012.  
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3 Dated this 31<sup>st</sup> day of July, 2015.

4 **BAYRAMOGLU LAW OFFICES LLC.**

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6  
7 By: */s/ Gokalp Bayromaoglu*  
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**PROOF OF SERVICE**

CASE NAME: EBI LTD. at el vs. YUSUF BUGA SAHIN  
Court: United States District Court, Southern District of California  
Case No.: 3:14-cv-02274-JAH-RBB

I, Gokalp Bayramoglu, am over the age of eighteen years and not a party to the within action my business address is 8275 S, Eastern Ave, Suite 200-611, Las Vegas, Nevada 89123. On the date last written below, I served the following document(s):

**HIMG SERAMIK ANSWER TO COUNTER-CLAIMENTS' COUNTER-CLAIMS**

\_\_\_\_\_ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States Mail, Las Vegas, Nevada and \_\_\_\_\_ addressed to:

\_\_\_\_\_ by using the Court's CM/ECF Electronic Notification System

\_\_\_\_\_ by email: dana@techlawllp.com

DATED the 31<sup>st</sup> day of July, 2015.

/s/ Gokalp Bayramaoglu  
Gokalp Bayramoglu, an employee of  
BAYRAMOGLU LAW OFFICES, LLC.