

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MEECO MANUFACTURING CO., INC., a  
Washington corporation,

Plaintiff,

v.

TRUE VALUE COMPANY, a Delaware  
corporation,

Defendant and Third-Party Plaintiff,

v.

IMPERIAL SHEET METAL, LTD and  
IMPERIAL MANUFACTURING GROUP,

Third-Party Defendants.

No.: CV6 1582

**TRUE VALUE COMPANY'S  
AMENDED ANSWER AND  
THIRD PARTY COMPLAINT**

**JURY DEMAND**

Defendant True Value Company ("True Value"), by and through its attorneys,  
answers Plaintiff's Complaint as follows:

**I. NATURE OF THE ACTION**

1. True Value denies the allegations in paragraph 1.

**II. THE PARTIES**

2. True Value lacks sufficient information or knowledge to admit or deny the

1 allegations in paragraph 2 and therefore denies the same.

2 3. True Value admits it is a Delaware corporation with its principal place of  
3 business in Chicago, Illinois.

4 **III. JURISDICTION AND VENUE**

5 4. True Value admits this Court has subject matter jurisdiction over Plaintiff's  
6 trademark claims pursuant to 28 U.S.C. §§ 1331, 1332, 1338 and 15 U.S.C § 1121. True  
7 Value denies this Court has subject matter jurisdiction over Plaintiff's copyright claims.  
8 True Value further denies this Court has supplemental jurisdiction over any state law claims  
9 pursuant to 28 U.S.C. § 1367.

10 5. True Value admits it conducts business in the State of Washington and that  
11 venue is proper pursuant to 28 U.S.C. § 1391(b).

12 **IV. FACTUAL ALLEGATIONS**

13 6. True Value lacks sufficient information or knowledge to admit or deny the  
14 allegations in paragraph 6 and therefore denies the same.

15 7. True Value admits that Plaintiff's Complaint incorporates Exhibit A, the  
16 content of which speaks for itself and is subject to proof at trial. True Value denies that U.S.  
17 Registration Nos. 1,546,926 and 1,589,616 are valid and subsisting registrations for  
18 trademarks allegedly owned by Plaintiff. True Value lacks sufficient information or  
19 knowledge to admit or deny the remaining allegations of paragraph 7 and therefore denies  
20 the same.

21 8. True Value admits that Plaintiff's Complaint incorporates Exhibit B and  
22 Exhibit C, the contents of which speak for themselves and which are subject to proof at trial.  
23 True Value denies that U.S. Copyright Registration Nos. VA 1-208-318 and VA 1-208-319  
24 register the copyright to any particular product label allegedly owned by Plaintiff. True  
25 Value lacks sufficient information or knowledge to admit or deny the remaining allegations  
26 of paragraph 8 and therefore denies the same.

1 9. True Value lacks sufficient information or knowledge to admit or deny the  
2 allegations in paragraph 9 and therefore denies the same.

3 10. True Value denies the allegation in paragraph 10.

4 11. True Value admits that, at certain times, it had a contractual relationship with  
5 Imperial for the distribution of certain products. True Value lacks sufficient information or  
6 knowledge regarding the distribution and contents of Plaintiff's Exhibit D, both of which are  
7 subject to proof at trial. True Value lacks sufficient information or knowledge to admit or  
8 deny the remaining allegations in paragraph 11 and therefore denies the same.

9 12. True Value lacks sufficient information or knowledge to admit or deny the  
10 allegations in paragraph 12 and therefore denies the same.

11 13. True Value admits it was not a party to the prior action between MEECO and  
12 Imperial. True Value denies it had actual or constructive knowledge or notice from Imperial  
13 of any prior rulings relating to MEECO's trademark infringement claims against Imperial.  
14 True Value lacks sufficient information or knowledge as to the remaining allegations in  
15 paragraph 13 and therefore denies the same.

16 14. True Value denies it is engaging in false advertising and in unfair and  
17 deceptive acts and practices that allegedly injure MEECO and the public. True Value lacks  
18 sufficient information or knowledge to admit or deny the remaining allegations in paragraph  
19 14 and therefore denies the same.

20 **V. FIRST CLAIM**

21 15. True Value incorporates by reference its answers to paragraphs 1 through 14 in  
22 response to the allegations in paragraph 15.

23 16. True Value denies the allegations in paragraph 16.

24 17. True Value denies the allegations in paragraph 17.

25 18. True Value denies the allegations in paragraph 18.

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**VI. SECOND CLAIM**

19. True Value incorporates by reference its answers to paragraphs 1 through 18 in response to the allegations in paragraph 19.

20. True Value denies the allegations in paragraph 20.

21. True Value denies the allegations in paragraph 21.

22. True Value denies the allegations in paragraph 22.

**VII. THIRD CLAIM**

23. True Value incorporates by reference its answers to paragraphs 1 through 22 in response to the allegations in paragraph 23.

24. True Value denies that MEECO holds valid and exclusive registered copyrights for the MEECO product images that are the subject of this action, and, accordingly, True Value denies the allegations in paragraph 24.

25. True Value denies the allegations in paragraph 25.

26. True Value denies the allegations in paragraph 26.

27. True Value denies the allegations in paragraph 27.

28. True Value denies the allegations in paragraph 28.

**VIII. FOURTH CLAIM**

29. True Value incorporates by reference its answers to paragraphs 1 through 28 in response to the allegations in paragraph 29.

30. True Value denies it has knowledge of any contracts between any MEECO customer and MEECO. True Value denies it intentionally interfered with any such contract between any MEECO customer and MEECO. True Value lacks sufficient information or knowledge to admit or deny that MEECO has a business expectancy with any customer or potential customer and therefore denies the same. True Value denies it intentionally interfered with any MEECO business expectancy. True Value lacks sufficient information or knowledge to admit or deny the remaining allegations in paragraph 30 and therefore denies

1 the same.

2 31. True Value denies the allegations in paragraph 31.

3 **IX. FIFTH CLAIM**

4 32. True Value incorporates by reference its answers to paragraphs 1 through 31 in  
5 response to the allegations in paragraph 32. MEECO's Fifth Claim has been dismissed by  
6 the Court.

7 33. True Value denies the allegations in paragraph 33.

8 34. True Value denies the allegations in paragraph 34.

9 35. True Value denies the allegations in paragraph 35.

10 **X. SIXTH CLAIM**

11 36. True Value incorporates by reference its answers to paragraphs 1 through 35 in  
12 response to the allegations in paragraph 36. MEECO's Sixth Claim has been dismissed by  
13 the Court.

14 37. True Value denies the allegations in paragraph 37.

15 38. True Value denies the allegations in paragraph 38.

16 **XI. JURY DEMAND**

17 39. Paragraph 39 does not call for a response from True Value, but nevertheless,  
18 True Value stipulates to MEECO's jury demand.

19 40. Except as expressly admitted, True Value denies every allegation herein.

20 **XII. AFFIRMATIVE DEFENSES**

21 First Affirmative Defense

22 Plaintiff fails to state any claim upon which relief can be granted.

23 Second Affirmative Defense

24 All of Plaintiff's claims are barred by the applicable statutes of limitation.

25 Third Affirmative Defense

26 All of Plaintiff's claims are barred by estoppel, laches, and unclean hands.

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Fourth Affirmative Defense

All of Plaintiff's claims are barred for failure to join Imperial Manufacturing Group, a necessary and indispensable party to this action.

Fifth Affirmative Defense

All of Plaintiff's claims are barred by res judicata and estoppel resulting from Plaintiff's prior litigation and judgment against Imperial Manufacturing Group.

Sixth Affirmative Defense

All of Plaintiff's claims are barred by the trademark and copyright first sale doctrines.

Seventh Affirmative Defense

All of Plaintiff's claims are barred because True Value's alleged conduct constitutes common law and statutory fair use under both trademark and copyright law.

Eighth Affirmative Defense

Plaintiff's First and Second Claims are barred because True Value has not infringed, either directly, contributorily, or vicariously any trademark right owned by Plaintiff or induced the infringement thereof.

Ninth Affirmative Defense

Plaintiff's First and Second Claims are barred because it failed to exercise control over, failed to enforce, and consented to the use and modification of its trademarks thereby forfeiting, abandoning, and giving license to others for the use thereof and waiving any rights it may otherwise have possessed in those trademarks.

Tenth Affirmative Defense

To the extent True Value did infringe any trademark right owned by Plaintiff, such infringement was innocent.

Eleventh Affirmative Defense

To the extent True Value did infringe any trademark right owned by Plaintiff, Plaintiff's First and Second Claims are moot because Plaintiff would be entitled, at most, to

1 injunctive relief under 15 U.S.C. § 1114(2)(B) and such relief is no longer required.

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3 Twelfth Affirmative Defense

4 Plaintiff's First Claim is barred, in whole or in part, because Plaintiff does not own a  
5 valid and subsisting trademark registration for its allegedly infringed trademarks. Plaintiff's  
6 alleged trademark registrations have been abandoned and, in any event, provide no basis for  
7 any claim because they were procured through inequitable conduct at the United States  
8 Patent and Trademark Office. Plaintiff's trademark registrations are, therefore, subject to  
9 cancellation.

10 Thirteenth Affirmative Defense

11 Plaintiff's Third Claim is barred because True Value has not infringed, either directly,  
12 contributorily, or vicariously any copyright owned by Plaintiff; nor has True Value induced  
13 the alleged infringement.

14 Fourteenth Affirmative Defense

15 Plaintiff's Third Claim is barred because Plaintiff does not own a valid and subsisting  
16 copyright registration for any particular product label allegedly infringed by True Value.  
17 The Court does not, therefore, have subject matter jurisdiction over Plaintiff's copyright  
18 claims and Plaintiff does not have standing to bring any such claims. The two copyright  
19 registrations identified by Plaintiff register the copyright to a book that contains various  
20 product labels. Plaintiff has not registered its alleged copyright to any particular product  
21 label. The two copyright registrations identified by Plaintiff cannot form the basis for any  
22 action against True Value because, among other reasons, product labels are not a category of  
23 work that may be registered as a group.

24 Fifteenth Affirmative Defense

25 To the extent True Value did infringe any trademark right or copyright owned by  
26 Plaintiff, such infringement was de minimus and not actionable.

1 Sixteenth Affirmative Defense

2 Plaintiff failed to mitigate its damages, if any.

3 Seventeenth Affirmative Defense

4 True Value is entitled to an offset for all of MEECO’s alleged damages that are  
5 attributable to third parties, including, but not limited to, Imperial Manufacturing Group.

6 Eighteenth Affirmative Defense

7 Plaintiff’s claims and alleged damages, if any, have been fully compensated in a prior  
8 action involving Imperial Manufacturing Group. Any additional award of damages would  
9 constitute a windfall to Plaintiff, which would be unjustly enriched.

10  
11 **XIII. THIRD-PARTY COMPLAINT**

12 True Value alleges against Imperial Sheet Metal, Ltd. and Imperial Manufacturing  
13 Group (collectively “Imperial”) as follows:

14 **A. THE PARTIES**

15 1. True Value is a Delaware corporation with its principal place of business in  
16 Chicago, Illinois. True Value formerly engaged in business under the trade name TruServ  
17 (referred to hereinafter only as "True Value"). True Value conducts business in the State of  
18 Washington.

19 2. Imperial Sheet Metal, Ltd. is a Canadian corporation having its head office at  
20 40 Industrial Park Street in Richibucto, New Brunswick, Canada. Imperial Sheet Metal, Ltd.  
21 maintains a manufacturing and distribution facility in the United States at 6464 Staunton  
22 Road in Hamel, Illinois.

23 3. Imperial Manufacturing Group is a Canadian company of unknown form. On  
24 information and belief, the head office for Imperial Manufacturing Group is located at 40  
25 Industrial Park Street in Richibucto, New Brunswick, Canada. Imperial Sheet Metal, Ltd.  
26 does business as "Imperial Manufacturing Group" but, at present, it is unclear whether



1 Imperial Manufacturing Group is comprised solely of, is the alter ego of, or is the fictitious  
2 business name for Imperial Sheet Metal, Ltd., or if other business entities are members,  
3 owners, or partners of Imperial Manufacturing Group.

4 **B. JURISDICTION AND VENUE**

5 4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1332 as the  
6 amount in controversy, exclusive of interest and costs, exceeds \$75,000 and there is complete  
7 diversity of citizenship between all parties. The Court has personal jurisdiction over Imperial  
8 because Imperial conducts business in the State of Washington. The Court also has  
9 jurisdiction over Imperial under 28 U.S.C. § 1367 and Federal Rules of Procedure 14 and 20.

10 5. Venue is proper under 28 U.S.C. §§ 1391(a), (b), and (d) because a substantial  
11 part of the events, including but not limited to Imperial's distribution and sale of alleged  
12 infringing products, occurred in and affected the citizens of this venue, and further because  
13 Imperial is an alien entity subject to suit in any district.

14 **C. FACTS**

15 6. True Value maintains an electronic catalog of these products in a "Vendor  
16 Managed Database" which can be accessed by many of True Value's member stores.

17 7. True Value spends a considerable amount of time, money, and other resources  
18 in evaluating which products to offer for sale to its member stores. In the normal course of  
19 its business, True Value enters into contracts with the suppliers of the products selected.  
20 These suppliers are called "vendors" and, at any given time, True Value has relationships  
21 with many hundreds of vendors.

22 8. True Value's vendors are provided access to its Vendor Managed Database for  
23 the purposes of inserting into that database photographs and descriptions of the supplier's  
24 products. It is the vendors' obligation and responsibility to provide the photographs and  
25 descriptions and to ensure ownership of all the rights necessary to lawfully display the  
26 photographs, and the content within, and to offer for sale and sell the products to True Value.

1 9. True Value's vendors electronically send their photographs and product  
2 descriptions to True Value through the Vendor Managed Database.

3 10. At all relevant times and currently, Imperial is a True Value vendor that sells  
4 fireplace, hearth, stove, and related products to True Value. On information and belief, the  
5 products Imperial initially sold to True Value were manufactured by MEECO. On  
6 information and belief, these products were properly and lawfully labeled pursuant to an  
7 agreement between MEECO and Imperial giving Imperial the right to use MEECO's product  
8 labels and its RED DEVIL trademark. True Value was neither a party to, nor privy to, this  
9 agreement or any other labeling or other agreement between MEECO and Imperial.

10 11. Like other True Value vendors, Imperial is provided access to the Vendor  
11 Managed Database.

12 12. On information and belief, Imperial inserted into the Vendor Managed  
13 Database photographs of products bearing product labels that contained MEECO's RED  
14 DEVIL trademark.

15 13. On information and belief, Imperial received a letter from MEECO in May  
16 2003 that purported to terminate Imperial's right to distribute or sell any product using a  
17 MEECO product label or a MEECO trademark.

18 14. On information and belief, a dispute later arose between MEECO and Imperial  
19 when Imperial "over-labeled" some MEECO products with Imperial labels. On information  
20 and belief, Imperial sold some of those over-labeled products to True Value.

21 15. MEECO filed suit against Imperial in a case entitled *MEECO Manufacturing*  
22 *Co., Inc. v. Imperial Manufacturing Group, et al.*, Case No. C03-3061JLR. True Value was  
23 not a party in that action. The District Court for the Western District of Washington, sitting  
24 as the trier of fact, held on July 7, 2005 that Imperial infringed MEECO's trademark by over-  
25 labeling certain MEECO products and passing them off as Imperial products. The Court  
26 further held that Imperial infringed the copyrights MEECO owned in its product labels. The

1 Court made the following relevant Findings of Fact and Conclusions of Law:

- 2 a. In early 2001, Lowe's Hardware Stores ("Lowe's), which had sold MEECO  
3 products and Imperial products in the past, sought to reduce the number of  
4 fireplace product brands sold in its stores. It requested that Imperial label all  
5 products that it provided to Lowe's as Imperial products. Imperial informed  
6 MEECO of this request and MEECO agreed to permit Imperial to relabel its  
7 products sold to Lowe's. (p 3, ¶11).
- 8 b. MEECO assisted Imperial in developing 'private labels' to meet Lowe's  
9 demands. The private labels were for 16 products sold at Lowe's and were  
10 based on MEECO's existing Red Devil or Heatsafe labels for those products. .  
11 .. (pp 3-4, ¶ 12).
- 12 c. At some point, MEECO agreed to permit Imperial to sell certain products to  
13 Tractor Supply, a regional chain of stores in the Midwest, under the Imperial  
14 private label. After this Agreement, there is no evidence that the parties agreed  
15 to permit Imperial to sell private label goods (whether they originated with  
16 MEECO or with another manufacturer) to any other customer. (pp 4-5, ¶ 18).
- 17 d. On May 1, 2003, [MEECO] sent a letter to Imperial demanding that Imperial  
18 cease and desist the sale of any merchandise that bears the MEECO's RED  
19 DEVIL logo. . . . (p 5, ¶ 19).
- 20 e. Imperial did not contact MEECO to discuss the cease and desist letter. Instead,  
21 it relabeled all or substantially all of its MEECO-branded inventory with  
22 Imperial private labels. It accomplished the relabeling by directing  
23 "Challenge," a printer near Imperial's Hamel, Illinois warehouse, to print  
24 Imperial private labels. It sold most of the relabeled inventory to True Value  
25 Hardware Stores ("True Value"). (p. 5, ¶ 20).
- 26 f. Imperial did not have MEECO's permission to relabel its existing inventory for  
sale to True Value. (p 5, ¶ 21).
- g. After it had exhausted its inventory of MEECO products, Imperial began  
meeting customers' needs by selling product manufactured at Kel-Kem.  
Imperial labeled those products with Imperial private labels or with "next-  
generation" labels. The next-generation labels were almost identical to the  
Imperial private labels, except Imperial changed the styling of the "Imperial"  
name and in most cases removed the stylized Imperial crown logo. (p 6, ¶25).
- h. Imperial continues to use the next-generation labels, although it will introduce  
a new generation labels on all of its products in September 2005. The new  
labels bear little resemblance to Imperial's private labels or next-generation  
labels. (p 6 ¶ 26).
- i. Both the Imperial private labels and the Imperial next-generation labels copied  
their texts verbatim or nearly verbatim from the corresponding MEECO  
product label. Imperial used the next-generation labels on its Kel-Kem  
manufactured products. (p 10, ¶ 48).

1 j. When Imperial overlabeled its remaining MEECO inventory with Imperial  
2 private labels, it engaged in “reverse passing off,” a form of trademark  
infringement. . . . (p 13, ¶ 18).

3 k. The court concludes that Imperial had no license, express or implied, to engage  
4 in this reverse passing off. . . . (p 13, ¶ 19).

5 l. Imperial infringed MEECO’s copyrighted label texts beginning in 2003, when  
6 it sold MEECO product overlabeled with the Imperial private label to True  
7 Value. The infringement continued when Imperial incorporated the same text  
8 into its next-generation labels. Imperial apparently intends to continue  
9 infringing MEECO’s copyrighted texts until September 2005, when it  
10 introduces redesigned labels. (p 16, ¶ 34).

11 16. Imperial asserted in its proceeding with MEECO that MEECO's claims were  
12 false and were brought for the sole purpose of destroying the business relationship between  
13 True Value and Imperial.

14 17. Although Imperial was found by the Court to have stopped using MEECO'S  
15 RED DEVIL trademark after receipt of MEECO's May 2003 cease and desist letter, on  
16 information and belief, Imperial did not remove from True Value's Vendor Managed  
17 Database photographs showing the Imperial-supplied products with MEECO's product labels  
18 containing its RED DEVIL trademark.

19 18. Imperial failed to inform, or falsely informed, True Value as to what changes  
20 to the Vendor Managed Database, if any, were necessary as a result of the dispute between  
21 MEECO and Imperial.

22 19. Like other True Value vendors, Imperial entered into a contract with True  
23 Value (the parties' "Vendor Agreement"). The Vendor Agreement contains a warranty  
24 provision whereby Imperial warranted that its products and services did not infringe any  
25 trade name, service mark, or copyright. The warranty provision reads as follows:

26  
WARRANTY

The Vendor warrants that all products and services shipped or provided under  
each purchase order will be in strict accordance with all of TrueServ’s  
specifications and descriptions and will be of good material and workmanship,  
and free from any and all defects whatsoever. *The Vendor further warrants,*

1 *represents, covenants, and guarantees that all products and services shipped*  
2 *or provided under each purchase order do not infringe any actual or alleged*  
3 *patent, design, trade name, service mark, copyright or trade secret* and that the  
4 products or services shipped or provided under each purchase order comply  
5 with all applicable federal, state, and local laws, rules and regulations in respect  
6 to the products or services to be furnished and the prices to be charged. This  
7 warranty shall be in addition to any other warranty given to TruServ by the  
Vendor or provided by law. Any attempt by the Vendor to limit liability or to  
negate, restrict, limit, exclude or modify the applications of the warranties  
provided for hereby or by law shall be of no effect.

8 20. MEECO filed a Complaint in this action alleging that True Value is liable for  
9 trademark infringement in violation of 15 U.S.C. § 1114(1) and 15 U.S.C. § 1117.  
10 MEECO's First-Party Complaint alleges that True Value is liable to MEECO under 15  
11 U.S.C. § 1125(a), (b) for false designation of origin, unfair competition, false advertising,  
12 and the reverse passing off of goods distributed by Imperial. True Value specifically denies  
13 each such allegation alleged against in MEECO's Complaint.

14 21. MEECO's First-Party Complaint also alleges that True Value is liable for  
15 copyright infringement for reproducing, distributing, and displaying MEECO's copyrighted  
16 materials without the consent or license of MEECO, all in violation of 17 U.S.C. §§ 106,  
17 501. True Value specifically denies each such allegation.

18 22. MEECO's First-Party Complaint alleges that True Value tortiously interfered  
19 with contractual relationships that existed between MEECO and third parties, including  
20 customers, who were desirous of purchasing MEECO products. True Value specifically  
21 denies each such allegation.

22 23. MEECO's First-Party Complaint alleged Fifth and Sixth Claims against True  
23 Value for unfair competition, violation of the State Consumer Protection Act, and unjust  
24 enrichment. The Court has dismissed each such claim, which True Value also denied.

25 24. To the extent it is contended that True Value may have engaged in any  
26 conduct alleged by MEECO to be unlawful, which True Value specifically denies, such

1 alleged conduct was actually performed by Imperial.

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3 **D. CLAIMS**

4 **FIRST CLAIM**  
5 **(Breach of Contract)**

6 25. True Value incorporates by reference and re-alleges paragraphs one through  
7 twenty-four above.

8 26. The parties' Vendor Agreement was at all times relevant herein and currently  
9 in full force and effect.

10 27. The Vendor Agreement required all products sold by Imperial to comply with  
11 True Value's specifications and the products' descriptions and further required Imperial to  
12 reimburse and refund True Value for all concealed defects.

13 28. On information and belief, Imperial failed to provide products that complied  
14 with True Value's specifications and the products' descriptions. Further, Imperial has failed  
15 to reimburse and refund True Value for the non-conforming goods. Such actions by Imperial  
16 breached the Vendor Agreement.

17 29. The Vendor Agreement required Imperial to provide insurance (\$1,000,000  
18 per occurrence) related to the provision of goods by Imperial to True Value. On information  
19 and belief, Imperial has failed to provide the requisite insurance per the Vendor Agreement  
20 and is, therefore, in breach of contract.

21 30. Imperial breached the Vendor Agreement by selling products to True Value  
22 that Imperial purchased from MEECO but which were unlawfully over-labeled by Imperial  
23 with an Imperial label.

24 31. Imperial further breached the Vendor Agreement by failing to inform, or  
25 falsely informing, True Value as to what changes to the Vendor Managed Database, if any,  
26 were necessary as a result of the dispute between MEECO and Imperial.

32. The parties' Vendor Agreement requires Imperial to defend, indemnify, and

1 hold True Value harmless from all claims, suits, or judgments for actual or alleged  
2 infringement of trademarks and copyrights related to products distributed by Imperial. True  
3 Value notified Imperial in writing on December 13, 2006 and April 17, 2007 of MEECO's  
4 First-Party Complaint and tendered upon Imperial the defense of the action. To date,  
5 Imperial has not acknowledged its duty to defend True Value and has, effectively, denied the  
6 tender.

7 33. Imperial has further breached the Vendor Agreement by failing to defend True  
8 Value from the claims MEECO has brought against True Value in this lawsuit.

9 34. Imperial has also breached its duty of good faith and fair dealing inherent in  
10 the parties' Vendor Agreement by engaging in the conduct described herein.

11 35. True Value has suffered damages as a result of these breaches in the form of  
12 loss of good will and reputation and in a monetary amount as yet to be determined.

13 36. Imperial is liable to True Value for all the actual and consequential damages it  
14 incurred as a result of Imperial's breaches, including attorneys' fees and costs.

15  
16 **SECOND CLAIM**  
**(Unjust Enrichment)**

17 37. True Value incorporates by reference and re-alleges paragraphs one through  
18 thirty-five above.

19 38. True Value reasonably relied on Imperial's representations that it owned the  
20 right to sell to True Value products bearing MEECO's labels and RED DEVIL trademark.  
21 Imperial benefited by using True Value as an outlet to lawfully sell those products.

22 39. Imperial failed to inform True Value that Imperial's relationship with MEECO,  
23 and its rights and obligations with regard to the products Imperial purchased from MEECO,  
24 changed in or around May 2003. Imperial unjustly benefited thereafter by using True Value  
25 as an outlet to sell products manufactured by MEECO but unlawfully labeled with Imperial  
26 labels.

1 40. To the extent any Imperial-supplied products labeled with a MEECO product  
2 label or trademark remained in or was added to the Vendor Managed Database after May  
3 2003, Imperial unjustly benefited by its sales of those products to True Value.

4 41. True Value is entitled to disgorge all profits Imperial made as a result of its  
5 unjust enrichment and to recover all damages True Value sustained due to Imperial's over -  
6 labeling.

7  
8 **THIRD CLAIM**  
9 **(Intentional and Negligent Misrepresentation)**

10 42. True Value incorporates by reference and re-alleges paragraphs one through  
11 nineteen above.

12 43. Imperial represented and warranted to True Value that the goods or services  
13 Imperial supplied to True Value did not infringe any trademark or copyright or were in any  
14 other way unlawful. Specifically, Imperial represented to True Value that Imperial owned  
15 the right to use MEECO's product labels and RED DEVIL trademark. True Value relied on,  
16 and Imperial knew that True Value relied on, Imperial's representation and warranty.

17 44. Imperial knew or should have known after May 2003 that the MEECO-  
18 manufactured products Imperial sold to True Value could not lawfully be over-labeled with  
19 an Imperial label. By selling those products to True Value, Imperial misrepresented to True  
20 Value the real origin of the products. Imperial knowingly, intentionally, and falsely held  
21 MEECO's products out as that of its own by over-labeling MEECO's products.

22 45. Imperial intentionally and deceptively induced True Value to buy products  
23 bearing labels that copied MEECO's labels, thereby intentionally and deceptively causing  
24 True Value to believe that Imperial was selling MEECO products.

25 46. Imperial intentionally and falsely represented to True Value that the goods and  
26 services Imperial sold to True Value were non-infringing.

47. Imperial also made misrepresentations to True Value by over-labeling the



1 MEECO-manufactured products with an Imperial label but not, on information and belief,  
2 replacing the photographs of those products in True Value's Vendor Managed Database with  
3 photographs of the products affixed with the Imperial label. Imperial's misrepresentations  
4 misled and deceived True Value into selling unlawfully, over-labeled products.

5 48. Imperial's misrepresentations have caused damage to True Value's goodwill,  
6 its relations with third parties, and have caused True Value to incur substantial attorney fees,  
7 costs, and the risk of liability as a result of Imperial's conduct.

8  
9 **FOURTH CLAIM**  
10 **(Violations of the Washington Consumer Protection Act)**

11 49. True Value incorporates by reference and re-alleges paragraphs one through  
12 nineteen above.

13 50. True Value was at all relevant times herein and currently is a consumer of  
14 products sold by Imperial. Imperial engaged in unfair and deceptive acts and practices by  
15 falsely representing the origin of MEECO's goods that Imperial sold to True Value and by  
16 representing that the goods were sold and distributed in a non-infringing manner.

17 51. Imperial's conduct as described herein tends to deceive and does deceive  
18 persons of ordinary caution into believing they are dealing with one concern when they are in  
19 fact dealing with another. Such actions misled and deceived the public, True Value, and True  
20 Value's customers.

21 52. Imperial's sale and distribution of its and MEECO's goods to True Value  
22 occurred in the conduct of trade or commerce.

23 53. Imperial's conduct has damaged True Value by adversely affecting its good  
24 will in the marketplace and caused True Value to incur sums to defend this lawsuit for  
25 matters that derive solely from Imperial's conduct. Such sums incurred by True Value  
26 include, but are not limited to, its attorneys' fees and costs.

54. Imperial's actions violated Washington's Consumer Protection act, RCW

1 19.86, *et seq.* as to its sales to True Value and the public.

2  
3 55. Pursuant to Washington's Consumer Protection Act, RCW 19.86.090, True  
4 Value is entitled to recover its actual damages, the costs of suit and its reasonable attorney  
5 fees, and treble damages.

6 **FIFTH CLAIM AGAINST IMPERIAL**  
7 **(Contribution)**

8 56. True Value incorporates by reference and re-alleges paragraphs one through  
9 twenty-four and forty-five through fifty-five above.

10 57. As set forth above, Imperial has intentionally and negligently sold and  
11 distributed infringing goods in violation of Washington's Consumer Protection Act. Such  
12 actions also or in the alternative constitute fraud and/or negligent misrepresentations, in  
13 addition to breach of contract.

14 58. Imperial is liable to True Value for all sums that may be adjudged against True  
15 Value and in favor of MEECO in this action, including attorney fees, costs and treble  
16 damages.

17 **XIV. PRAYER FOR RELIEF**

18 WHEREFORE, having fully answered Plaintiff's Complaint, True Value prays:

- 19 1. That Plaintiff take nothing by its Complaint,  
20 2. For a declaratory ruling that True Value has neither infringed the copyrights  
21 nor trademarks asserted in this action by MEECO or, if infringement occurred, that it  
22 occurred innocently;  
23 3. For a declaratory ruling that MEECO's alleged trademarks and copyrights are  
24 invalid and/or unenforceable;  
25 4. That Plaintiff's Complaint be dismissed with prejudice,  
26 5. That True Value be awarded its attorneys' fees and costs of suit as against

1 Plaintiff;

2 6. For a declaratory ruling that Imperial has a duty to defend, hold harmless, and  
3 indemnify True Value pursuant to the terms of those parties' Vendor Agreement;

4 7. For an award against Imperial for (i) an amount sufficient to remedy True  
5 Value's actual and consequential damages, (ii) disgorgement of Imperial's profits, and (iii)  
6 True Value's attorney fees and costs;

7 8. For an award against Imperial for all sums that may be adjudged against True  
8 Value and in favor of Plaintiff;

9 9. That True Value be awarded treble damages as provide for by law;

10 10. For an award of pre-judgment and post-judgment interest as against Imperial  
11 as permitted by law; and

12 11. That True Value be awarded such other and further relief, as this court shall  
13 deem just and appropriate, whether in equity or law.

14 DATED: May 2, 2007

15 BULLIVANT HOUSER BAILEY PC

16 /s/ Donna M. Chamberlin

17 Renée E. Rothauge, WSBA #20661

18 renee.rothauge@bullivant.com

19 Daniel N. Ballard, CA # 219223 (pro hac vice)

20 dan.ballard@bullivant.com

21 Donna M. Chamberlin, WSBA #20661

22 donna.chamberlain@bullivant.com

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 2, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the persons listed below:

**Counsel for Plaintiff:**

David C. Spellman  
Lane Powell PC  
1420 Fifth Ave, Ste 4100  
Seattle, WA 98101-2338  
[spellmand@lanepowell.com](mailto:spellmand@lanepowell.com)

**Counsel for Plaintiff:**

Paul Douglas Swanson  
Lane Powell Spears Lubersky  
1420 Fifth Ave, Ste 4100  
Seattle, WA 98101-2338  
[Swansonp@lanepowell.com](mailto:Swansonp@lanepowell.com)

**Counsel for Defendant/Third Party Plaintiff:**

Daniel N. Ballard  
Bullivant Houser Bailey  
1415 L Street, Ste 1000  
Sacramento, CA 95814  
[Daniel.ballard@bullivant.com](mailto:Daniel.ballard@bullivant.com)

**Counsel for Defendant/Third Party Plaintiff:**

Renee E. Rothauge  
Bullivant Houser Bailey  
888 SW Fifth Ave, Ste 300  
Portland, OR 97204-2089  
[Renee.rothauge@bullivant.com](mailto:Renee.rothauge@bullivant.com)

I hereby certify that on May 2, 2007, I emailed the foregoing to the persons listed below:

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**Counsel for Third Party Defendants:**

Christian E. Michaud  
Cox & Palmer  
Blue Cross Centre  
644 Main Street, Ste 502  
Moncton, NB E1C 1E2  
[cmichaud@coxandpalmer.com](mailto:cmichaud@coxandpalmer.com)

BULLIVANT HOUSER BAILEY PC

By:           /s/ Donna M. Chamberlin            
Donna M. Chamberlin  
E-Mail: donna.chamberlin@bullivant.com

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