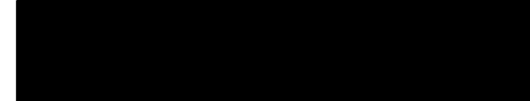


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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES

13
14 BC499771

15
16 THE PEOPLE OF THE STATE OF
17 CALIFORNIA,

18 Plaintiff,

19 v.

20 NINGBO BEYOND HOME TEXTILE CO.,
21 LTD., NINGBO BEYOND IMPORT &
22 EXPORT CO., LTD., NINGBO BEYOND
KIDS GLOBAL BRAND CO., LTD.,
23 NINGBO BEYOND FASHION CO., LTD.,
and DOES 1 through 10,

24 Defendants.

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Los Angeles Superior Court

JAN 24 2013

John A. Clarke, Executive Officer/Clerk
By Amber Hayes, Deputy

Case No.

COMPLAINT FOR INJUNCTION AND
CIVIL PENALTIES BASED ON:

(1) VIOLATIONS OF THE UNFAIR
COMPETITION LAW (Bus. & Prof. Code
§§ 17200, *et seq.*)

COMES NOW, the People of the State of California, by and through Kamala D. Harris,
Attorney General of the State of California, allege on information and belief:

INTRODUCTION

1. California is home to numerous artists, creators, inventors, authors, software designers, engineers, researchers, and other innovators. These pioneers invest billions of dollars every year to create the electronic devices, software, information technology, films, recordings, pharmaceuticals, and fashion that people across California, the United States, and the world use every day. In California, intellectual property industries employ 7.4 million people and produce \$923 billion of economic output.

2. California's economy thrives on the intellectual property of the artists, creators, inventors, authors, software designers, engineers, researchers, and other innovators who live and work in the state. Beyond the companies that create the intellectual property, piracy affects numerous other industries that use this intellectual property such as the apparel industry.

3. California's economy loses \$34 billion annually as a result of counterfeiting and piracy. The theft of intellectual property created by Californians, including the downstream, anti-competitive effects on California companies who comply with the law by paying license fees, cannot be remedied simply by filing lawsuits in those foreign countries where the piracy or counterfeiting occurs.

4. The American apparel manufacturing industry, centered in Los Angeles, has become increasingly reliant upon software in the manufacturing and on-time inventory and shipping of apparel such as clothes and other items. These law-abiding companies spend substantial capital to license the software that enables them to run their businesses in the 21st Century.

5. When overseas companies pirate software used in apparel design such as Adobe Photoshop or other back-office software, such as Microsoft Office, they obtain a critical short-term advantage over their American competitors by not paying licensing fees to software developers. That is, by not paying for software while their license fee-paying competitors do, overseas apparel companies thereby gain a substantial and unfair cost advantage in an industry characterized by very thin margins.

1 6. Moreover, they also obtain a long-term advantage: American companies that are
2 developing the software of tomorrow that will streamline apparel design, manufacturing, and
3 delivery are disincentivized from investing in developing such software if they know that
4 overseas apparel companies will simply pirate that software, refusing to pay licensing fees and
5 thus undermining the return on investment in development of such software. And, insofar as
6 American apparel companies themselves attempt to develop that software, they will suffer from a
7 competitive disadvantage vis-à-vis their overseas counterparts who can take the money saved
8 from paying licensing fees to gain an edge in financing research and development of such
9 software. Thus, by using software without paying for it now, overseas apparel companies can
10 stunt the development of such software by and for American apparel companies while investing
11 in the development of such software for themselves and thereby gain an even further advantage
12 over American apparel companies.

13 7. In fact, over time, apparel companies who are deprived of the competitive advantages
14 of software may simply choose to downsize in the United States and relocate overseas, resulting
15 in the permanent loss of jobs and manufacturing in California and elsewhere. The loss of a
16 competitive advantage, resulting in downsizing and overseas relocation, is most often not
17 reversed as witnessed by such industries as the television industry where televisions are no longer
18 manufactured in the United States.

19 8. Generally, state laws, federal laws, and international treaties do not address the
20 pernicious downstream effects of such piracy in the California apparel industry. The Defendants'
21 use of pirated software to gain a competitive short-term and long-term advantage over domestic
22 apparel companies in California can however be remedied by proscribing such tactics as an unfair
23 method of competition under California law.

24 9. Consequently, Kamala D. Harris, Attorney General, State of California, brings this
25 civil unfair competition action in her official capacity on behalf the People of the State of
26 California against Defendants NINGBO BEYOND HOME TEXTILE CO., LTD., NINGBO
27 BEYOND IMPORT & EXPORT CO., LTD., NINGBO BEYOND KIDS GLOBAL BRAND CO.,
28 LTD., and NINGBO BEYOND FASHION CO., LTD. (the "Ningbo Companies") under section

1 17200 *et. seq.* of the California Business & Professions Code for engaging in unfair competition
2 via the illegal use of copyrighted software programs.

3 10. The Ningbo Companies operate textile and apparel manufacturing companies located
4 in China and make substantial sales of their apparel products into California. For example, since
5 2010, the Ningbo Companies have shipped approximately 713,000 pounds of apparel products
6 into California. In manufacturing these apparel products, the Ningbo Companies use and do not
7 pay for computer software programs, including those owned by Adobe Systems, Inc. ("Adobe")
8 and/or Microsoft, Inc. ("Microsoft") and/or Symantec Corporation ("Symantec").

9 11. Software and information technology are critical to the apparel manufacturing and
10 shipping business, having applications in everything from initial design to programming
11 machines to cutting and assemble fabrics and to quality control. Further, profit margins in the
12 apparel manufacturing industry are very thin. Thus, the Ningbo Companies' piracy of software
13 enables them to save costs for a critical input in the apparel manufacturing industry and thereby
14 gain a substantial and unfair competitive advantage over their competitors in California who pay
15 licensing fees for the software and information they use in their businesses.

16 12. Apparel manufacturers are a significant business presence in California, employing
17 about 58,000 Californians in 2011 and producing over \$5 billion a year in revenue every year
18 since 1990. California apparel manufacturers invest heavily in the software and information
19 technology that is essential to the business. In light of the very thin margins in this industry,
20 avoidance of the cost of such software and information technology through piracy by overseas
21 apparel companies imposes a significant disadvantage and competitive injury on California
22 apparel companies.

23 13. In addition, by not paying for software, the Ningbo Companies enjoy the advantage
24 of being able to use those savings to hire more workers or invest in research to innovate and
25 thereby gain further advantages over their license fee-paying competitors.

26 14. In fact, software produced for the apparel industry helps create efficiencies for
27 manufacturers in the industry through the application of such software. These efficiencies can
28 help keep California apparel manufacturers in California despite cost pressures and other trends

1 that have caused such businesses to move overseas. Theft of software and information
2 technology by apparel manufacturers, however, reduces the incentives for software companies to
3 innovate and create software for the apparel industry. Software firms, including firms in
4 California, will have little incentive to invest in the research and development to innovate
5 software for apparel manufacturers if they are not remunerated and the fruits of such investments
6 are stolen. As a result, fewer and fewer firms and resources will be devoted to creating the
7 efficiency-enhancing software that helps keep apparel manufacturers in California viable.

8 JURISDICTION AND VENUE

9 15. This Court has jurisdiction to hear the claims alleged in this Complaint and is a Court
10 of competent jurisdiction to grant the relief requested.

11 16. This Court has jurisdiction over the Ningbo Companies because the Ningbo
12 Companies have, at all relevant times, produced or manufactured goods sold or transported in or
13 delivered to the State of California.

14 17. Venue is proper in this Court because the Ningbo Companies' violations of Business
15 and Professions Code Section 17200 harmed competition in the County of Los Angeles. Apparel
16 manufacturers are a substantial business presence in the state, employing over 580,000 people last
17 year and generating over \$5 billion in revenue each year since 1990. This industry is, in fact,
18 largely based in Los Angeles County. In 2010, apparel manufacturers in Los Angeles County
19 employed 40,872 workers, 69.5% of the state's total employees in the apparel industry, and
20 10.9% of the county's manufacturing work force. The Ningbo Companies' conduct subjects
21 these California apparel manufacturers to unfair competition in that they have to bear the cost of
22 paying for a key input, licenses for software and information technology, while the Ningbo
23 Companies avoid such costs by illegally pirating this intellectual property.

24 PLAINTIFF

25 18. Plaintiff, the People of the State of California ("Plaintiff"), is represented by Kamala
26 D. Harris, Attorney General, State of California. As the Attorney General for the State of
27 California, Kamala D. Harris is the chief law officer for the State (Cal. Const. Art. 5, § 13) and is
28 authorized to enforce the above-referenced statutes.

DEFENDANTS

19. The Ningbo Companies are companies organized under the laws of the People's Republic of China with their principal place of business in China. Ningbo Home is a large group company in home textiles and the apparel industry with a certain number of holding subsidiaries including but not limited to Ningbo Import, Ningbo Kids, and Ningbo Fashion. The Ningbo Companies manufacture apparel and other products that are delivered to, transported in, and/or sold in the State of California in competition with California-based apparel manufacturers.

20. During the relevant period set out below in this Complaint, by illegally using pirated software programs, the Ningbo Companies gained, or attempted to gain, an unfair competitive advantage over apparel industry competitors doing business in California who used properly licensed software programs.

21. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as DOES 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names. Each of said fictitiously named Defendants is responsible in some manner for the violations of law herein alleged. Plaintiff will amend this complaint to add the true names and capacities of the fictitiously named Defendants once they are discovered.

22. Whenever reference is made in this complaint to any act of Defendants, including the Ningbo Companies, such allegation shall mean that said Defendants and their owners, officers, directors, agents, employees, or representatives did, authorized, directed, and/or ratified such acts while engaged in the management, direction, or control of the affairs of the Defendants while acting within the scope and course of their duties.

23. Whenever reference is made in this complaint to any act of the Defendants, such allegation shall mean that each Defendant acted individually and jointly with the other Defendants.

24. Whenever reference is made in this complaint to any act of any individual Defendant, such allegation shall be deemed to mean that said Defendant is and was acting (a) as a principal, (b) under express or implied agency, and/or (c) with actual or ostensible authority to perform the acts so alleged on behalf of every other Defendant herein.

FACTUAL ALLEGATIONS

A. The Ningbo Companies' Business and Impact in California

25. The Ningbo Companies produce goods in the home textiles and apparel industry.

26. The Ningbo Companies' products are delivered to, transported in, and/or sold in California.

27. Since 2010, the Ningbo Companies have shipped approximately 713,000 pounds of goods to California.

28. The Ningbo Companies ship their products to purchasers and/or consignees in California such as Envelope Group, LLC, located in Gardena, California, Dream USA, Inc., located in Los Angeles, California, and Lorenzino Collection, Inc., located in Los Angeles, California. For example, between July 2010 and February 2011, the Ningbo Companies shipped over 10,500 pounds of their products to the Port of Los Angeles and the Port of Long Beach for Envelope Group. Between January 2010 and May 2012, the Ningbo Companies shipped over 104,000 pounds of their products to the Port of Los Angeles and the Port of Long Beach for Dream USA. Between February 2010 and September 2011, the Ningbo Companies shipped over 63,000 pounds of their products to the Port of Los Angeles and the Port of Long Beach for Lorenzino Collection.

29. The Ningbo Companies' products compete with products that are manufactured and/or sold by California companies.

B. The Ningbo Companies' Software Piracy

30. The Ningbo Companies use computer software programs in their normal business operations. The copyrights of some of these computer software programs are owned by companies in the United States.

31. The Ningbo Companies use computer software programs that are owned by Microsoft, a company organized under the laws of the State of Washington.

32. On or about February 9, 2012, Microsoft filed lawsuits in the Ningbo Intermediate People's Court Zhejiang Province of the People's Republic of China against Ningbo Home,

1 Ningbo Import, Ningbo Kids, and Ningbo Fashion for violations of Chinese copyright laws.
2 [collectively, "MS v. the Ningbo Companies"].

3 33. Microsoft alleged that the copyrights of its software products under United States
4 copyright laws were enforceable under the copyright laws of China through the Berne Convention,
5 to which the United States and China are both signatories. Under the Berne Convention, the
6 copyrights of Microsoft are protected under Chinese copyright law as though its works were first
7 published in China.

8 34. During the course of its lawsuit against the Ningbo Companies, Microsoft discovered
9 through a court-ordered inspection of the Ningbo Companies' computer systems that the Ningbo
10 Companies had installed pirated Microsoft software programs on their computer systems.

11 35. Upon information and belief, the Ningbo Companies have not asserted any valid
12 defenses as to their use of pirated Microsoft's software programs.

13 36. The pirated computer software programs are those for which the Ningbo Companies
14 did not pay the required licensing fee to Microsoft for the use of those programs.

15 37. The pirated Microsoft software discovered on the Ningbo Companies' computer
16 systems include Microsoft Windows XP Professional, Windows Server Enterprise, Microsoft
17 SQL Server Enterprise, and Microsoft Office.

18 38. The estimated license value of the pirated Microsoft software on the Ningbo
19 Companies' computer systems is \$351,326.00.

20 39. On information and belief, the Ningbo Companies are illegally using additional
21 pirated software programs in the normal course of business, including software programs from
22 Adobe, a company based in San Jose, California, Symantec, a company based in Mountain View,
23 California, and Corel Corporation ("Corel"), a company based in Ottawa, Canada.

24 **EFFECT ON COMPETITION IN CALIFORNIA**

25 40. Information technology ("IT") costs such as the licensing fees of computer software
26 programs impact the profit margins and overhead costs of competitors in the apparel industry.

27 41. Computer software is used in all facets of the apparel industry, including back-office
28 support, product design, production, and production management.

1 42. Software piracy occurs when computer software is installed and used on a company's
2 computer system without paying the appropriate licensing fees.

3 43. The apparel industry is a competitive industry that functions on thin margins. The
4 financial costs of maintaining software licenses impacts the operational expenses and profit
5 margins of California apparel firms who properly pay the licensing fees associated with the
6 software programs used in their firms.

7 44. Given the thin margins associated with the apparel industry, the cost savings derived
8 from using illegally pirated software creates an unfair competitive advantage that substantially
9 harms competition in the California apparel industry.

10 45. The cost savings derived from the illegal use of pirated computer software lowers an
11 apparel manufacturer's overhead costs which in turn allows it to charge lower prices for its goods.

12 46. A competitor who illegally uses pirated computer software can gain or attempt to gain
13 an unfair competitive advantage over California competitors who use lawfully licensed software.

14 47. The unfair competitive advantage can be used to artificially lower prices for its goods
15 or to invest in other areas such as hiring additional employees and purchasing machinery.

16 48. The illegal use of pirated software also discourages the production of new software
17 and harms innovation in the development of software programs used in the apparel industry in the
18 design and manufacturing of goods.

19 49. Although the manufacturing component in the apparel industry has increasingly
20 moved to foreign countries, product design and manufacturing specialty software has created
21 efficiencies that help California competitors remain in California.

22 50. Copyright holders of such specialty software lose revenue if their software is illegally
23 pirated.

24 51. If companies such as the Ningbo Companies continue to illegally use copyrighted
25 software in connection with the production or manufacture of goods sold or transported in or
26 delivered to California, competition in the California apparel industry will be substantially
27 harmed. California apparel manufacturers will face a cost disadvantage and jobs in the industry
28 may, as a result, continue the trend in the industry of migrating overseas. Software companies

1 innovating and producing software for the apparel industry, facing piracy of such software and
2 the consequent reduced returns for investing in such software, will reduce their investment and
3 innovation in such software. As a result, apparel manufacturers will have reduced access to
4 efficiency-enhancing software that enables them to continue doing business in California in the
5 face of lesser labor and other costs overseas.

6 **FIRST CAUSE OF ACTION**

7 **(Against Defendants For Violations Of The Unfair Competition Law, Business & 8 Professions Code, Section 17200)**

9 52. Plaintiff realleges and incorporates herein by reference, the allegations in paragraphs
10 1 through 51 inclusive, as though the same were set forth in their entirety herein.

11 53. In committing the acts alleged herein, Defendants, and each one of them, engaged in
12 unfair competition, within the meaning of Business and Professions Code section 17200.

13 **PRAYER**

14 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

15 54. That the Court adjudge and decree the conduct of Defendants to have been in
16 violation of section 17200 *et seq.*, of the California Business & Professions Code;

17 55. That, pursuant to section 17203 of the Business and Professions Code, and the
18 Court's inherent equity powers, Defendants, employees, agents, successors, assignees and
19 representatives and all persons, corporations, or other entities acting under, by, through or on
20 behalf of Defendants, or acting in concert or participation with or for Defendants with actual or
21 constructive notice of this injunction, be permanently enjoined and restrained from engaging in or
22 performing, directly or indirectly, any and all acts and practices in violation of Business and
23 Professions Code Section 17200, *et seq.*, including, but not limited to, those practices set forth in
24 the First Cause of Action;

25 56. That the Defendants, employees, agents, successors, assignees, and representatives
26 and all persons, corporations, or other entities acting under, by, through, or on behalf of
27 Defendants, or acting in concert or participation with or for Defendants with actual or
28 constructive notice of this injunction, be enjoined and restrained from distributing or receiving

1 any of Defendants' products in the State of California until such time as the Defendants certify to
2 the Court that they are in compliance with the licensing requirements of all software programs
3 that are used in connection with the production or manufacture of goods sold or transported in or
4 delivered to California;

5 57. That the Defendants provide to the Office of the California Attorney General,
6 Antitrust Law Section, a certified inventory under penalty of perjury of all software titles used in
7 the operations of their business every six months for a period of five (5) years;

8 58. That the Court appoint a Trustee with the power to verify Defendants' compliance
9 with the Court's orders. The cost associated with such Trustee shall be charged to the Defendants;

10 59. That upon application to the Court by the California Attorney General, a court-
11 approved trustee shall be granted full access to Defendants computer systems in order to verify
12 the Defendants' software licensing certifications;

13 60. Pursuant to Business and Professions Code section 17206, that the Court assess a civil
14 penalty of two thousand five hundred dollars (\$2,500) against each Defendant for each violation
15 of Business and Professions Code section 17200;

16 61. That the People recover their costs of suit;

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2 62. That the Court grant other legal and equitable relief as it may deem just and proper,
3 including such other relief as the Court may deem just and proper to redress, and prevent
4 recurrence of, the alleged violation and to remedy the anti-competitive effects of the Defendants'
5 violations.

6 Dated: January 24, 2013

Respectfully Submitted,

7 KAMALA D. HARRIS
8 Attorney General of California
9 NATALIE S. MANZO
Supervising Deputy Attorney General

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