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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

BYD COMPANY LTD and GLOBAL
HEALTHCARE PRODUCT
SOLUTIONS, LLC,

Plaintiffs,

v.

ALEXANDER KHAZAI, AARON
ARREDONDO, JAMES VAUGHN,
DRIPSTONE LLC, ROBERTO
BANKE, and DOES 1-10,

Defendants.

Case No.: 2:20-cv-5530

COMPLAINT FOR:

- 1. UNFAIR COMPETITION,
FALSE ENDORSEMENT,
FALSE ASSOCIATION, AND
FALSE DESIGNATION OF
ORIGIN (LANHAM ACT)**
- 2. TRADEMARK DILUTION
(LANHAM ACT)**
- 3. FALSE ADVERTISING
(LANHAM ACT)**
- 4. TRADEMARK DILUTION,
(CAL. BUS. PROF. CODE §§
14247)**
- 5. UNFAIR COMPETITION,
(CAL. BUS. PROF. CODE §§
17200)**
- 6. FALSE ADVERTISING,
(CAL. BUS. PROF. CODE §§
17500)**
- 7. UNFAIR COMPETITION
AND TRADEMARK
INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiffs BYD Company Ltd and Global Healthcare Product Solutions, LLC
2 (“BYD Global” and, collectively with BYD Company Ltd, “BYD”) allege as follows
3 against Defendants as well as any presently unknown pseudonyms, affiliated entities, or
4 persons acting in concert with Defendants (“Does 1 – 10”):

5 **SUMMARY OF THE ACTION**

6 1. This lawsuit is brought by BYD to combat the exploitation of consumers
7 during the COVID-19 global pandemic. Defendants are operating an illegal scheme to
8 advertise and sell counterfeit BYD N95 respirator masks to unwitting buyers, who
9 believe that they are receiving authentic BYD masks that are safe, effective, and
10 certified by U.S. and international regulators. These buyers are often state and local
11 governments, hospitals, and nonprofit organizations. Tragically, these counterfeit and
12 often defective masks are then distributed to doctors, nurses, first responders, and others
13 on the front line of the COVID-19 battle, exposing these heroes to increased risk of
14 infection.

15 2. Although BYD—which stands for “Build Your Dreams”—has become a
16 household name based on its cutting-edge work in the renewable energy and electric car
17 space, in early 2020 following the pandemic outbreak, the company devoted its
18 resources to manufacturing respirator masks and other healthcare and medical devices to
19 address severe worldwide shortages. BYD formed BYD Global to sell these products in
20 North America, and quickly began working with state and local governments, including
21 the state of California, to supply their hospitals and first responders with high quality
22 BYD N95 respirator masks. BYD is now the single largest manufacturer of respirator
23 masks in the world, manufacturing 50 million masks per day. BYD sells these products
24 under their well-known “BYD” and “BYD Care” trademarks.

25 3. The unprecedented demand and insufficient supply of safe and certified
26 respirator masks has led some bad actors to exploit the desperation of the public for
27 their own monetary gain by selling counterfeit masks that are falsely marked and
28 designated as BYD-produced and certified. Not only do Defendants represent to the

1 customers that these are authentic BYD N95 respirator masks, but the masks are
2 contained in packaging affixed with BYD's logos and trademarks. By design, these
3 measures trick consumers and the public into believing that they are purchasing safe,
4 effective, and certified respirator masks, when in reality they are counterfeits.
5 Defendants know the dire need for respirator masks and other healthcare products to
6 safeguard the health of the American public and exploit it for their own financial gain.

7 4. While anti-counterfeiting laws are often applied in the context of luxury
8 goods, the consequences here are far more serious. BYD's concern is not monetary in
9 nature. Rather, BYD's concern is that these counterfeit masks have not gone through
10 the rigorous quality-control and regulatory approval process associated with masks
11 manufactured by BYD. When Defendants falsely advertise the N95 respirator masks as
12 being manufactured by BYD, they are deceiving the customers into believing that the
13 masks will function to the specifications required by the government to protect the
14 person ultimately wearing the mask from contracting COVID-19. When these masks
15 are counterfeit, the consequences can literally be deadly.

16 5. BYD will not condone bad actors using BYD's brand recognition and
17 trademarks to deceive and harm the public. This lawsuit is merely the most recent in a
18 series of efforts that BYD has taken to fight back against the scourge of counterfeiting
19 that is unfortunately all too common. In addition to warning customers of the threat of
20 counterfeiting and how to avoid it, BYD is working with law enforcement to investigate
21 and hold responsible parties criminally liable.

22 6. BYD has filed this suit to shut down this unlawful activity, protect
23 consumers from serious harm, and protect its name and brands from being associated
24 with Defendants' unlawful and unethical efforts to profiteer from the pandemic at the
25 expense of our healthcare workers and the general public. Any damages awarded in this
26 case will be donated by BYD to charitable COVID-19 relief efforts.

THE PARTIES

1
2 7. Plaintiff BYD Company Ltd is a publicly-traded company based in
3 Shenzhen, China. BYD provides renewable energy, clean transportation, and design
4 and manufacturing services

5 8. Plaintiff Global Healthcare Product Solutions, LLC (“BYD Global”) is a
6 Delaware Limited Liability Company based in Los Angeles, California. BYD Global is
7 a wholly owned subsidiary of BYD Company Ltd. Formed in 2020 in response to the
8 global COVID-19 pandemic, Global Healthcare is the exclusive seller of BYD’s
9 healthcare products in North America.

10 9. On information and belief, Defendant Alexander Khazai is a natural person
11 who resides, is domiciled, and conducts business in Los Angeles, California or San
12 Diego, California.

13 10. On information and belief, Defendant Aaron Arredondo is a natural person
14 who resides, is domiciled, and conducts business in Los Angeles, California or Orange
15 County, California.

16 11. On information and belief, Defendant James Vaughn is a natural person
17 who resides and is domiciled in the state of New York, and who conducts business in
18 Los Angeles, California. Vaughn’s conduct which forms the basis for this complaint
19 was transacted in Los Angeles, California.

20 12. On information and belief, Dripstone LLC is a California limited liability
21 company with its principal place of business in Los Angeles, California.

22 13. On information and belief, Roberto Banke is a natural person who resides,
23 is domiciled, and conducts business in Orange County, California.

24 14. Plaintiffs are ignorant of the true names of the Defendants sued as Does 1-
25 10, and such names are fictitious. Plaintiffs will amend the complaint to sue the Doe
26 Defendants in their true names as soon as Plaintiffs obtains sufficient information to do
27 so.
28

JURISDICTION AND VENUE

1
2 15. This Court has jurisdiction over the subject matter of this complaint under
3 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331, 1367, and 1338(a). The claims for
4 trademark infringement, unfair competition, false association, false endorsement, false
5 designation of origin, trademark dilution, and false advertising, respectively, asserted in
6 Counts I – III arise under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.* Accordingly, this
7 Court has original and subject matter jurisdiction over Counts I – III pursuant to 28
8 U.S.C. §§ 1331, 1338(a), and 15 U.S.C § 1121(a).

9 16. The claims for unlawful, unfair, and fraudulent business acts or practices
10 and false advertising in violation of California Business and Professions Code §§ 17200
11 *et seq.* and 17500 *et seq.*, trademark dilution, unfair competition, and trademark
12 infringement, asserted in Counts IV – VII, arise under California statutory and common
13 law, and are substantial and so related to the federal claims asserted in Counts I – III that
14 they form part of the same case or controversy. Accordingly, this Court has
15 supplemental jurisdiction over Counts IV – VII pursuant to 28 U.S.C. §§ 1338(b) and
16 1367(a).

17 17. The conduct alleged in this Complaint occurred in interstate commerce,
18 and has substantially affected and will continue to substantially and directly affect
19 interstate commerce.

20 18. The Court has personal jurisdiction over Defendants because Defendants
21 either reside and are domiciled in the state of California, or else have purposefully
22 availed themselves of the benefits of transacting business in the state of California, and
23 have committed and intentionally directed tortious conduct towards residents of the state
24 of California.

25 19. Venue is proper in this district because a substantial part of the events
26 giving rise to the claims asserted occurred in this district and because Defendants are
27 subject to personal jurisdiction in this district. Venue is thus proper pursuant to 28
28 U.S.C. §§ 1391(b)(2) and (b)(3).

1 **GENERAL ALLEGATIONS**

2 **A. BYD and Global Healthcare**

3 **BYD**

4 20. BYD—which stands for “Build Your Dreams”—was founded in 1995 in a
5 small office in Shenzhen, China. Since its humble beginnings, the company has quickly
6 grown into an international organization, with over 200,000 employees globally in over
7 200 offices and campuses on every continent except Antarctica.

8 21. BYD has traditionally focused on renewable energies and clean
9 transportation, and is the world’s leading electric vehicle company. BYD has been
10 recognized by international publications and organizations as a pioneer in renewable
11 and clean energy, including (i) Fortune Magazine’s list of companies that are changing
12 the world; (ii) the Sustainia Award for Top 10 Global Innovator in Clean Tech; (iii) the
13 United Nation’s Award of Special Recognition for Powering the Future We Want; (iv)
14 the Zayed Future Energy Prize for Sustainability; and, (v) one of Fast Company’s 2018
15 Most Innovative Companies.

16 **BYD’s Response to the COVID-19 Pandemic and Creation of Global**
17 **Healthcare**

18 22. In early 2020, in response to the outbreak of the COVID-19 global
19 pandemic, BYD made the decision to leverage its unparalleled infrastructure and
20 production capabilities in order to manufacture healthcare products to support the battle
21 against the pandemic. The company immediately deployed its team of 3,000 engineers
22 to quickly develop and mass produce virus-combatting healthcare products and personal
23 protective equipment (“PPE”), including high quality protective face masks, surgical
24 masks, respirators, hand sanitizers, and contactless infrared thermometers.

25 23. Although they are sometimes referred to generally as “masks,” there are
26 varying categories of protective medical face coverings that BYD produces and which
27 can be worn to slow the transmittal of COVID-19. The most protective and highly-
28 regulated coverings are referred to as “respirators” or “respirator masks.” These masks

1 are designed to form a tight seal over the mouth and nose and to keep out almost all air
2 particles. One class of respirator masks are N95 masks, which are highly regulated and
3 are required to filter at least 95% of airborne particles. The next level down in terms of
4 protection are “surgical masks,” which are required to be certified as ASTM Level 2.
5 Finally, masks that do not meet the ASTM Level 2 requirements to be surgical masks
6 are simply referred to as “masks.”

7 24. BYD’s production of respirator masks and surgical masks, including N95
8 respirator masks, addressed a vital public need. The unprecedented influx of public
9 demand for these masks quickly outpaced the supply from traditional producers of N95
10 masks such as 3M, and governments, hospitals, and other bulk-buyers of masks and
11 respirators were left with nowhere to turn for these life-saving PPE products.

12 25. By quickly pivoting to the production of high-quality, safe, and effective
13 masks, BYD filled this production gap and began selling directly to states to meet this
14 demand. Currently, BYD is the world’s largest producer of high quality and certified
15 protective respirator masks, with the industry-leading ability to make 50 million masks
16 per day. In March 2020, BYD formed a wholly owned subsidiary BYD Global. BYD
17 Global is the exclusive authorized licensee of BYD’s trademarks in North America, and
18 is tasked with selling BYD’s masks, respirators, and other healthcare products.

19 26. In April 2020, BYD reached a deal with the state of California to provide it
20 with 150 million respirator and surgical masks per month—mostly N95 respirator
21 masks—which would be used by healthcare providers and first responders. BYD
22 reached similar deals with governments in other states.

23 27. Because these respirator masks are often used by people interacting closely
24 with those infected by the virus, the efficacy of these products is paramount. Over the
25 past several months, BYD has worked around the clock to seek approval and
26 certification from domestic and international regulatory agencies, including the U.S.
27 Federal Drug Administration (“FDA”), the U.S. National Institute for Occupational
28 Safety and Health (“NIOSH”), CE in the European Union, the Australian Register of

1 Therapeutic Goods, and others. In addition to achieving these approvals and
2 certifications, BYD also imposes rigorous internal testing processes on its masks to
3 ensure that the masks are safe and effective.

4 BYD's Trademarks

5 28. Over the past quarter century, BYD has invested millions not only in
6 developing its products and technology, but in promoting its brand to customers
7 globally. It has done so in part through its "BYD" marks and "BYD" logo registered in
8 the United States Patent and Trademark Office.

9 29. Since pivoting to the production of respirator masks and other healthcare
10 and PPE products in early 2020 to respond to the COVID-19 pandemic, BYD has made
11 efforts to protect its trademarks with respect to its masks and other protective healthcare
12 equipment. In selling these devices, BYD has used its BYD mark and logo, along with
13 its "BYD Care" mark and logo, as seen below.



21 30. BYD uses these trademarks in commerce to distinguish its N95 respirator
22 masks and surgical masks and PPE from others sold, and to indicate and signal the
23 source of these masks and PPE.

24 31. BYD has applied for additional registrations for its BYD and BYD Care
25 marks for respirator and surgical masks and other PPE on an intent-to-use ("ITU") basis
26 as reflected in (i) U.S. ITU Trademark Application Serial No. 88/840,575, which covers
27 the BYD mark in standard characters for protective gear for medical use, namely,
28 masks, gloves, clothing items, hand sanitizers and medical thermometers; (ii) U.S. ITU

1 Trademark Application Serial No. 88/840,620, which covers the BYD Care mark in
 2 standard characters for the same products; and (iii) U.S. ITU Trademark Application
 3 Serial No. 88/840,648, which covers the BYD Care mark in standard characters for the
 4 same products. These applications were all made on March 19, 2020 and are currently
 5 pending.

6 32. Since BYD made news through its decision to begin supplying respirator
 7 and surgical masks, media outlets have routinely used BYD's various marks in articles
 8 and news coverage, as seen in the below example. This news coverage further leads
 9 consumers to associate the BYD marks with BYD, and to recognize the marks as
 10 identifying BYD as the exclusive source of the respirator masks and other healthcare
 11 products offered under those marks. BYD's "BYD" and "BYD Care" marks signify to
 12 consumers that the BYD-brand products offered under the BYD marks are of the
 13 highest quality and adhere to the strictest quality-control standards.

14 **U.S. approves N95 mask made by China's BYD;
 15 Washington, California can complete huge orders in
 16 coronavirus response**

June 8, 2020 at 12:48 pm | Updated June 8, 2020 at 5:45 pm



21 33. Moreover, BYD's efforts to obtain NIOSH certification for its N95
 22 respirator masks have been well-publicized. NIOSH certification was a condition of
 23 BYD's contract with the state of California, and BYD's securing of the certification on
 24 June 7 made headlines in numerous publications, including the Los Angeles Times and
 25 Wall Street Journal.

26 34. Because of these widespread publications, consumers associate BYD
 27 respirator masks with the stringent specifications required of NIOSH. Consumers are
 28 also aware that BYD subjects its surgical and respirator masks to industry-leading

1 internal testing and quality control, and associates BYD’s marks with that rigorous
2 testing. At a time where healthcare providers and first responders are exposing
3 themselves to significant risk as the front lines in the battle against COVID-19,
4 consumers now more than ever rely on the BYD marks as a signal of quality, safety, and
5 efficacy.

6 **B. The Palming Off of Cheap Knock-Offs as N95 Respirator Masks**

7 35. Although the COVID-19 pandemic has revealed the generosity and heroics
8 of many in our society—from doctors and nurses to grocery store workers—a disturbing
9 number of criminals have seized on the pandemic as an opportunity to make a quick
10 buck at the expense of the public health. Exploiting the dearth of N95 respirator masks
11 and surging demand, companies and individuals almost immediately began to exploit
12 this market imbalance by creating what appear to be N95 respirator masks, but in many
13 cases do not in fact have the filtering and protective effect of an authentic N95 mask.

14 36. Even worse, these scammers soon realized their “N95 masks” would sell
15 better if they were branded with the marks and logos of reputable respirator mask
16 producers, including BYD. These companies and individuals hope to deceive
17 purchasers—many of whom are governments and organizations purchasing masks on
18 behalf of hospitals, law enforcement, and firefighters—into believing that the masks are
19 of the high quality denoted by the BYD marks. Governments rely on the apparent
20 marks and logos on these counterfeit goods and believe that the purchased respirator
21 masks have been certified by NIOSH and will keep their users safe. When it turns out
22 that the masks are in reality cheap knock-offs, it is often too late, as these masks are in
23 circulation and are failing to protect those on the front line of the COVID-19 battle.

24 37. As early as February 2020, reports began coming out of China of hundreds
25 of instances of fake respirator mask production, leading to over 1,500 hundred arrests.
26 In early April, CNN reported that a hospital in New Jersey—which was treating and
27 testing hundreds of patients—purchased 1,000 N95 masks that turned out to be
28 counterfeit. CNN likewise reported that product sourcing firms (who procure masks on

1 behalf of hospitals and other medical providers) had reported suspicious calls from
2 “brokers” purporting to have millions of masks from a reputable manufacturer.

3 38. In May, Fortune reported that *millions* of counterfeit respirator masks had
4 made their ways into hospitals from a manufacturer in China. Although these masks
5 were labeled and stamped as if they were NIOSH certified, an examination revealed that
6 they did not meet the certification of a NIOSH-approved N95 mask, and are considered
7 by experts to be medically inadequate. The report noted that the state of West Virginia
8 had distributed these counterfeit masks to thousands of paramedics and firefighters,
9 prison guards and hospital workers.

10 39. There is no question that the sale and use of counterfeit N95 respirator
11 masks has increased contraction rates among healthcare providers and first responders,
12 and has almost certainly increased the number of deaths from the virus.

13 40. BYD has been on the forefront of the effort to raise public awareness of the
14 problem of counterfeiting and the public health risk it poses. In May, BYD issued a
15 press release in which it “warn[ed] its customers to be wary of counterfeit products
16 posing as Personal Protective Equipment manufactured by BYD Precision Electronics.”
17 The press release educated its customers that BYD products are “sold exclusively” by
18 BYD Global “and no one else.” The press release provided customers with contact
19 information in the event they had any questions or concerns about the authenticity of
20 their BYD masks. BYD has likewise been working closely with law enforcement to
21 investigate and prosecute producers and distributors of counterfeit masks.

22 41. As explained in more detail below, despite the vigilance of law
23 enforcement, customs control, and companies like BYD, consumers have continued to
24 be victimized by increasingly-savvy counterfeiters who are able to produce knock-offs
25 that are nearly indistinguishable in packaged form from authentic and certified N95
26 respirator masks.

1 **C. Defendants’ Unlawful Conduct**

2 42. BYD’s N95 respirator masks in particular have been the target of a flurry
3 of counterfeiting activity. As explained in more detail below, BYD’s customers have
4 reported suspicious activity from individuals professing to have hundreds of thousands
5 or even millions of “BYD masks.” These individuals send the customers pictures and
6 videos of thousands of boxes of masks, all bearing BYD’s trademarks and logos. In
7 reality, however, these masks are fakes.

8 43. Not only were they not manufactured by, or purchased from, BYD, but
9 BYD has no way to confirm that these masks are safe for use, or that they conform to
10 the rigorous specifications of NIOSH or other regulatory bodies. As described above,
11 N95 respirator masks have certain specifications they must meet in order to be marketed
12 and sold as N95 respirator masks. When individuals manufacture counterfeit BYD
13 “N95 masks,” there is no assurance these masks meet these rigorous specifications. To
14 the contrary, these counterfeit respirator masks are likely medically inadequate and will
15 not effectively mitigate the transmission of COVID-19.

16 44. By branding these counterfeit masks with the BYD trademarks and logos,
17 the counterfeiters confuse and exploit consumers and the public by suggesting to them
18 that the masks are of the quality, safety, and efficacy that the public associates with
19 goods and services trafficked under the BYD mark, and that the masks are genuine
20 respirator masks that are certified and approved by public agencies, including NIOSH.
21 Customers and the general public are likely to be confused by these counterfeiters’ use
22 of the BYD and BYD Care trademarks. The counterfeiters specifically target BYD’s
23 customers and BYD’s trade channels to increase this confusion. The respirator masks
24 that the counterfeiters are selling visually appear identical to the masks that BYD sells,
25 and they are affixed with identical trademarks.

26 45. The counterfeiters also play off the public’s panic and fear in the face of a
27 global pandemic, as consumers are desperate for masks and more susceptible to being
28 scammed. Through their deception, the counterfeiters profit off of the public’s frantic

1 need for masks by selling uncertified and likely ineffective masks into the stream of
2 commerce.

3 46. Although of secondary concern to BYD, the conduct of these counterfeiters
4 also risks damaging the brand of BYD. Consumers who purchase or otherwise obtain
5 counterfeit BYD masks may not realize the masks are counterfeit, and may conclude
6 that BYD's masks are of poor quality or efficacy, and that they do not meet the NIOSH
7 certifications with which BYD is required to comply. Not only does this risk degrading
8 and diluting BYD's brand and marks, but it exposes BYD to potential legal liability.

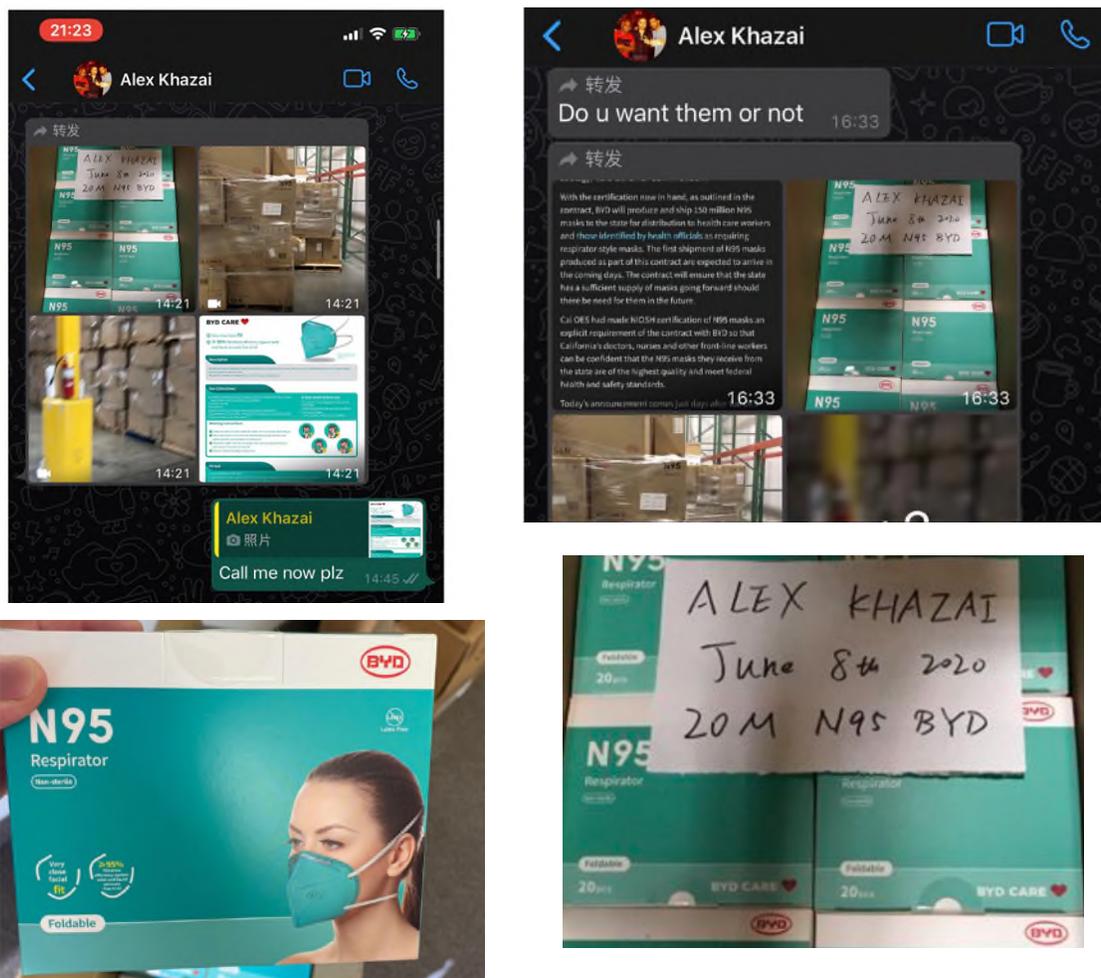
9 47. BYD is informed and believes, and on that basis alleges, that the
10 counterfeit BYD N95 respirator masks that Defendants sell and attempt to sell are
11 manufactured and distributed by a single Doe Defendant located in China, or by several
12 Doe Defendants in China acting in concert. The sheer number of counterfeit masks of
13 which BYD is aware (which is likely far less than the actual number of counterfeit
14 masks), along with the sophistication of the copying technique, belie any notion that
15 these masks are being manufactured by small, independent, outfits. Rather, the
16 circumstances suggest one or a small number of large Chinese manufacturers producing
17 these counterfeit N95 respirator masks and using distributors in the United States to sell
18 the masks to unwitting consumers. Moreover, the fact that these counterfeit sellers are
19 specifically targeting BYD's customers suggests coordination with a common source
20 that has knowledge of BYD's customers and distribution channels.

21 Alexander Khazai

22 48. In June 2020, a BYD manager in Mexico was contacted by a concerned
23 potential BYD customer, who reported that he was receiving messages from Defendant
24 Alexander Khazai on the software application WhatsApp. In these messages, Khazai
25 was offering to sell customers what appeared to be boxes of BYD-branded N95
26 respirator masks.

27 49. In addition to the messages, Khazai sent the customers photographs and
28 videos of the merchandise he was attempting to sell. Based on the messages,

1 photographs, and videos, it appears that Khazai was in possession of thousands of boxes
 2 of N95 respirator masks affixed with the BYD and BYD Care trademarks. A
 3 representative sample of those messages is reproduced below:



15
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 20
 21 50. In addition to including photographs and videos of boxes branded with the
 22 BYD and BYD Care trademarks and logos, Khazai made other statements and
 23 representations in these messages to suggest to BYD’s potential customer that he was in
 24 possession of, and was offering to sell, authentic BYD N95 respirator masks. Khazai
 25 included links to news articles describing California’s contract with BYD to purchase
 26 hundreds of millions of N95 respirator masks, along with documents purporting to be
 27 from BYD’s manufacturing plant in China representing that the masks are NIOSH
 28 certified. Khazai also included a screenshot of a document purporting to be from the

1 International Chamber of Commerce purporting to identify Khazai as an “intermediary
2 seller” on behalf of a company MK Global LLC.

3 51. The customer receiving these messages, photographs, and videos was
4 confused by the use of the BYD and BYD Care trademarks, and believed that Khazai
5 might be an authorized BYD N95 respirator mask broker and that the masks in the
6 photographs and videos might be authentic BYD products.

7 52. In reality, Khazai is not an authorized broker or seller of BYD products,
8 and the boxes in the photographs and videos do not contain authentic BYD N95
9 respirator masks. Rather, they are compelling counterfeits. The boxes are designed to
10 look like authentic BYD N95 mask boxes, and to the untrained eye they are
11 indistinguishable.

12 53. BYD is the sole manufacturer and seller of authentic BYD N95 respirator
13 masks in North America. BYD has not sold masks to Khazai, nor would Khazai have
14 conceivably been able to purchase the amount of masks shown in the photographs and
15 videos on the secondary market. It is thus apparent that these masks are counterfeit.

16 54. Khazai’s WhatsApp messages to BYD’s potential customer and his use of
17 the BYD and BYD Care trademarks are intended to defraud, mislead and/or deceive a
18 reasonable consumer into believing that he is an authorized broker, seller, or distributor
19 of BYD’s products and/or that he is associated or affiliated with BYD, which is not the
20 case. Khazai does not, and never has, represented BYD, and BYD has never authorized
21 Khazai or any of his affiliates, agents, or employees to manufacture, distribute,
22 advertise, market, offer for sale, receive payments on BYD’s behalf, escrow funds on
23 BYD’s behalf, and/or sell BYD-branded N95 respirator masks.

24 55. Khazai’s WhatsApp messages to BYD’s potential customer and his use of
25 the BYD and BYD Care trademarks are also intended to defraud, mislead and/or
26 deceive a reasonable consumer into believing that the masks he is offering to sell are
27 authentic BYD N95 respirator masks that were manufactured by BYD.

28

Aaron Arredondo and James Vaughn

56. On or around May 21, 2020, a representative of California’s Office of Emergency Services (“Cal OES”) received an email from an individual identifying himself as James Vaughn. Cal OES is a state agency in charge of coordinating California’s governmental response to disasters, which has played a major role in California’s response to the COVID-19 pandemic. Among other things, the agency is involved in the procurement of N95 respirator masks on behalf of the state, which are then distributed to front-line workers such as healthcare providers and first responders.

57. The email from the individual identifying himself as James Vaughn read: “We have 10 Million NIOSH N95 Masks in the US now available for a spot buy or shipping worldwide. Spec sheets included. Price is \$4.25 per mask. MOQ [minimum order quantity] is 1,000,000. Please let me know your interest.” The referenced “spec sheets” was an attached PDF which included images of BYD’s “BYD” and “BYD Care” trademarks and logos, as shown below:



58. The representative from Cal OES who received the email and attached specifications with the BYD and BYD Care marks was confused by the message and by the use of the BYD and BYD Care trademarks, and believed that Vaughn might be an authorized BYD N95 respirator mask broker and that the masks he was offering for purchase might be authentic BYD respirator masks. The representative from Cal OES

1 contacted BYD to inform BYD of the email and to ask whether Vaughn was a legitimate
2 broker. BYD had no record of Vaughn and determined that he was likely selling
3 counterfeit masks.

4 59. A representative from BYD elected to call the number that Vaughn had
5 provided to Cal OES in his email to determine more information about Vaughn and
6 counterfeit masks he was selling. Upon reaching Vaughn, the BYD representative
7 identified himself as a colleague of the Cal OES representative who had received the
8 solicitation email from Vaughn. The BYD representative requested confirmation that
9 Vaughn “ha[d] 10 million NIOSH N95 masks from BYD that you can sell us,” and
10 Vaughn responded in the affirmative.

11 60. Vaughn then merged the call with another individual whom Vaughn
12 described as his “supplier.” That supplier identified himself as Aaron Arredondo, and
13 stated that he was based out of Los Angeles and Orange County. Arredondo represented
14 that he did not work for anyone, and that the masks were being offered through his
15 company Lotus 8 Holdings, which he later stated was a C corporation. A public records
16 search has indicated no company with a real or fictitious business name of Lotus 8
17 Holdings registered in the state of California.

18 61. The BYD representative then requested more information about the “BYD
19 masks” and asked where they were located and how soon they could deliver the masks.
20 Arredondo represented that there were 5 million BYD masks that were available for
21 purchase currently located in Los Angeles and that “there will be more behind them.”
22 Arredondo also specifically represented that the masks he was offering for sale were the
23 ones that had been produced by BYD in fulfillment of BYD’s contract with the state of
24 California. The representative from BYD then told Arredondo that he would be in
25 contact with more information about any potential order.

26 62. The representations made by Vaughn and Arredondo via email and over the
27 phone were false. Vaughn and Arredondo are not authorized brokers or sellers of BYD
28

1 products, and therefore do not have authentic BYD N95 respirator masks in their
2 possession.

3 63. To the contrary, it is apparent that the masks that Vaughn and Arredondo
4 were offering to sell to Cal OES and the representative from BYD were counterfeits. As
5 explained above, BYD is the sole manufacturer and seller of authentic BYD N95
6 respirator masks in North America. BYD has not sold masks to Vaughn or Arredondo,
7 nor would Vaughn or Arredondo have conceivably been able to purchase from BYD the
8 amount of masks they were offering for sale.

9 64. Vaughn's and Arredondo's communications to BYD's customers, including
10 Cal OES, and their use of the BYD and BYD Care trademarks, are intended to defraud,
11 mislead and/or deceive a reasonable consumer into believing that they are an authorized
12 broker, seller, or distributor of BYD's products and/or that they are associated or
13 affiliated with BYD, which is not the case. Vaughn and Arredondo do not, and never
14 have, represented BYD, and BYD has never authorized Vaughn or Arredondo or any of
15 their affiliates, agents, or employees to manufacture, distribute, advertise, market, offer
16 for sale, receive payments on BYD's behalf, escrow funds on BYD's behalf, and/or sell
17 BYD-branded N95 respirator masks

18 65. Vaughn's and Arredondo's email and oral communications to BYD's
19 customers, including Cal OES, and their use of the BYD and BYD Care trademarks, are
20 also intended to defraud, mislead and/or deceive a reasonable consumer into believing
21 that the masks they are offering to sell are authentic BYD N95 respirator masks that
22 were manufactured by BYD.

23 66. After BYD became aware that Vaughn and Arredondo were attempting to
24 sell these counterfeit masks, it reported the incident to the FBI's Internet Crime
25 Complaint Center and to the United States Department of Justice.

26 *Dripstone LLC*

27 67. On May 28, 2020, BYD was informed by a BYD customer Progressive
28 Animal Wellness, a veterinary clinic, that it had ordered and received a shipment of

1 BYD-branded KN95 respirator masks that it suspected were counterfeit. The customer
2 attached photographs of the masks, including the images represented below, which
3 demonstrate that the masks were affixed with the BYD trademark and logo.



10 68. Although the masks that Progressive Animal Wellness received were
11 affixed with the BYD mark, the masks in the photograph appear to be an early version
12 of the KN95 masks that BYD never sold in the United States. These early KN95 masks
13 were never approved for sale in the United States and do not meet the requisite
14 specifications for sales in the United States.

15 69. The representative from Progressive Animal Wellness informed BYD that
16 she had purchased these masks from the website DripstoneLLC.com, which is the
17 website for Dripstone, LLC (“Dripstone”). Dripstone is a California limited liability
18 company that is owned and/or managed by SDS Creative Technologies LLC (“SDS
19 Creative”), which in turn is owned and/or managed by Quasar Capital Ventures. Quasar
20 Capital Ventures holds itself out as a real estate, venture capital, and financial consulting
21 firm that is led by principal and Chief Investment Officer Steve Shuly Michaels.
22 Michaels holds himself out as a manager and Chief Financial Officer of SDS Creative
23 and Dripstone.

1 70. BYD-branded KN95 masks are still offered for sale on Dripstone’s website
2 as of the date of this filing, as shown below:



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8 71. The representations made by Dripstone on its website pertaining to the
9 nature, quality, and source of the KN95 masks it offers for sale are false. Dripstone
10 advertises its masks for sale as “BYD KN95 Disposable Particulate Respirator Face
11 Masks.” The masks it offers for sale, and sells, are affixed with the BYD trademark.
12 Yet Dripstone is not neither affiliated with BYD nor a BYD-approved broker of
13 respirator masks, and the respirator masks it offers for sale, and sells, are not certified or
14 approved for sale in the United States.

15 72. Dripstone is not an authorized broker or seller of BYD products. BYD has
16 never sold KN95 masks to Dripstone or any affiliate entity of Dripstone, nor would
17 Dripstone conceivably been able to purchase the amount of masks they have offered for
18 sale.

19 73. Dripstone’s marketing and communications to its customers on its website,
20 and its use of the BYD trademarks on the masks it sells, are intended to defraud, mislead
21 and/or deceive a reasonable consumer into believing that Dripstone is an authorized
22 broker, seller, or distributor of BYD’s products and/or that it is associated or affiliated
23 with BYD, which is not the case. Dripstone does not, and never has, represented BYD,
24 and BYD has never authorized Dripstone or any of its affiliates, agents, or employees to
25 manufacture, distribute, advertise, market, offer for sale, receive payments on BYD’s
26 behalf, escrow funds on BYD’s behalf, and/or sell BYD-branded N95 respirator masks

27 74. Dripstone’s marketing and communications to its customers on its website,
28 and its use of the BYD trademarks on the masks it sells, are also intended to defraud,

1 mislead and/or deceive a reasonable consumer into believing that the masks it is
2 offering to sell are certified and approved by the appropriate regulatory bodies for sale
3 in the United States.

4 Roberto Banke

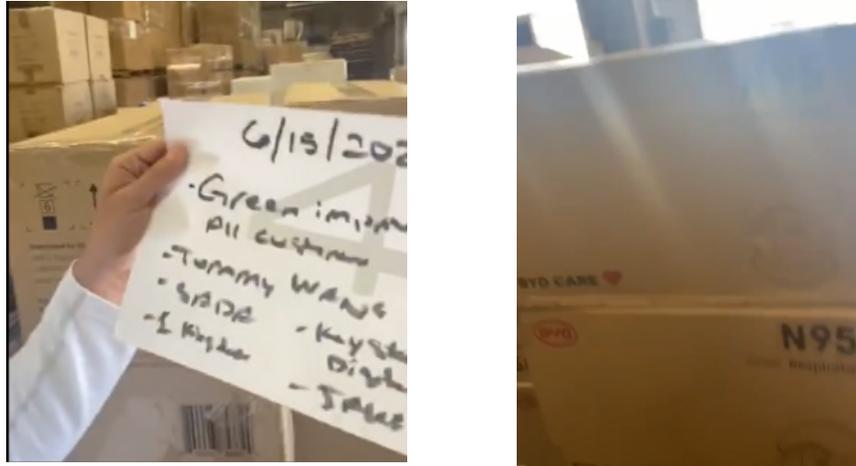
5 75. On or around June 16, 2020 a BYD customer forwarded to BYD a video he
6 had received from an individual Roberto Banke. Banke is the owner and chief
7 executive officer of Banke Global Distribution (“Banke Global”). Banke Global holds
8 itself out as a foodservice distributor in Fountain Valley, California.

9 76. In the video that was sent to certain BYD customers, Banke appears and
10 describes the video as a “proof of life” video.¹ He continues by noting that this
11 particular proof of life video is directed at specific customers or potential customers,
12 including Green Improvement, Tommy Wang, SADA, 1 Kingdom, Keystone Digital
13 Health, and “Jake.”

14 77. In the video, Banke continues: “Here we have our products of the N95
15 BYD,” and the camera then pans to reveal hundreds of boxes containing masks, which
16 are labeled as “N95” and affixed with both the BYD and BYD Care trademark and
17 logos, as shown in the below screenshots from the video. Banke then states on camera
18 that he “ha[s] plenty of inventory left” and “we look forward to doing business with
19 you.”

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¹ A “proof of life” is a common tactic of kidnappers and hostage-takers to prove that their victims are still alive at a given point in time.



78. The customer who received this video was confused by the use of the BYD and BYD Care trademarks in the video, and believed that Banke might be an authorized BYD N95 respirator mask broker and that the masks were authentic.

79. In reality, neither Banke nor Banke Global is an authorized broker or seller of BYD products, and the boxes shown in the video do not contain authentic BYD N95 respirator masks. Rather, they are compelling counterfeits. The boxes are affixed with the BYD and BYD Care trademarks, and are therefore designed to look like the boxes which hold authentic BYD N95 respirator masks.

80. As noted above, BYD is the sole manufacturer and seller of authentic BYD N95 respirator masks in North America. BYD has not sold N95 respirator masks to Banke or Banke Global, nor would Banke Global have conceivably been able to purchase the amount of masks shown in the video on the secondary market. It is thus apparent that these masks are counterfeit.

81. Banke's video, the statements he makes in that video (including describing the boxes as containing "N95 BYD"), and his reference to boxes which are affixed with the BYD and BYD Care trademarks are intended to defraud, mislead and/or deceive a reasonable consumer into believing that he is an authorized broker, seller, or distributor of BYD's products and/or that he is associated or affiliated with BYD, which is not the case. Banke and Banke Global do not, and never have, represented BYD, and BYD has never authorized Banke, Banke Global, or any of their affiliates, agents, or employees to

1 manufacture, distribute, advertise, market, offer for sale, receive payments on BYD's
2 behalf, escrow funds on BYD's behalf, and/or sell BYD-branded N95 respirator masks.

3 82. Banke's video, the statements he makes in that video (including describing
4 the boxes as containing "N95 BYD"), and his reference to boxes which are affixed with
5 the BYD and BYD Care trademarks are also intended to defraud, mislead and/or
6 deceive a reasonable consumer into believing that the masks he is offering to sell are
7 authentic BYD N95 respirator masks that were manufactured by BYD.

8 **FIRST CLAIM FOR RELIEF**

9 *(Unfair Competition, False Endorsement, False Association, and False Designation of*
10 *Origin Under Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A))*

11 *(Use of the BYD and BYD Care Marks)*

12 83. BYD repeats and incorporates by reference the statements and allegations
13 in paragraphs 1 – 82 of the Complaint as if set forth fully herein.

14 84. Count I is a claim for federal unfair competition, false endorsement, false
15 association, and false designation of origin under 15 U.S.C. § 1125(a)(1)(A).

16 85. Defendants' acts and conduct complained of herein constitute unfair
17 competition, false endorsement, false association, and/or false designation of origin in
18 violation of 15 U.S.C. § 1125(a)(1)(A).

19 86. Defendants' use of Plaintiffs' famous BYD and BYD Care marks to
20 advertise, market, offer for sale, and/or sell purported BYD brand N95 respirator masks
21 to consumers during a global pandemic such as COVID-19 also constitutes unfair
22 competition in violation of 15 U.S.C. § 1125(a)(1)(A). These counterfeit respirator
23 masks are of dubious quality and efficacy, and expose their users to heightened risk of
24 contraction of COVID-19 than if the masks were actually authentic BYD N95 respirator
25 masks.

26 87. Defendants have also falsely held themselves out to be agents of and/or
27 authorized by BYD to sell and/or distribute BYD-branded products, when this is not the
28 case. Defendants' actions are likely to cause confusion among purchasers and other

1 members of the relevant public as to the source or sponsorship of the products, and/or as
2 to the nature and quality of such products.

3 88. BYD has suffered, and will continue to suffer, irreparable harm from
4 Defendants' acts and conduct complained of herein, unless restrained by law. BYD has
5 no adequate remedy at law.

6 **SECOND CLAIM FOR RELIEF**

7 *(Trademark Dilution Under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c))*

8 *(Dilution of the Famous BYD and BYD Care Marks)*

9 89. BYD repeats and incorporates by reference the statements and allegations
10 in paragraphs 1 – 88 of the Complaint as if set forth fully herein.

11 90. Count II is a claim for federal trademark dilution under 15 U.S.C. §
12 1125(c). The BYD and BYD Care marks were famous before and at the time
13 Defendants began using the BYD and BYD Care marks in commerce on, for, and/or in
14 connection with the advertising, promotion, offering for sale, and/or sale of products.

15 91. The BYD and BYD Care marks are famous because they are widely
16 recognized by the general consuming public of the United States as a designation of
17 source of the goods or services of the mark's owner. BYD is now the largest
18 manufacturer of respirator masks in the world. Media outlets have published news
19 stories describing BYD's production of N95 respirator masks and described BYD as a
20 producer and distributor of N95 respirator masks.

21 92. Defendants' use of BYD's famous BYD and BYD Care marks in
22 commerce on, for, and/or in connection with the advertising, promotion, offering for
23 sale, and/or sale of products is likely to dilute the distinctive quality of the famous BYD
24 and BYD Care marks, such that the famous BYD and BYD Care marks' established
25 selling power and value will be whittled away. This is especially true when Defendants
26 are offering to sell and selling BYD-labeled masks that are not authentic and are not
27 certified to provide the protection of BYD N95 respirator masks.

1 93. Defendants' acts and conduct complained of herein constitute trademark
2 dilution in violation of 15 U.S.C. § 1125(c).

3 94. BYD has suffered, and will continue to suffer, irreparable harm from
4 Defendants' acts and conduct complained of herein, unless restrained by law. The
5 damage suffered by BYD is exacerbated by the fact that Defendants are advertising and
6 offering for sale BYD-branded N95 respirator masks that are counterfeit and of dubious
7 quality, which endangers public health and tarnishes BYD's reputation. Such conduct
8 has inspired intense public criticism of the manner in which BYD's respirator masks are
9 being distributed and sold during the COVID-19 pandemic and significant confusion
10 about BYD's role in the marketplace for masks that are essential to safeguarding public
11 health.

12 95. BYD has no adequate remedy at law.

13 **THIRD CLAIM FOR RELIEF**

14 *(False Advertising Under Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. §*
15 *1125(a)(1)(B))*

16 *(Defendants' Emails, Text Messages, Websites, and Phone Communications)*

17 96. BYD repeats and incorporates by reference the statements and allegations
18 in paragraphs 1 – 95 of the Complaint as though set forth fully herein.

19 97. Count III is a claim for false and deceptive advertising under 15 U.S.C. §
20 1125(a)(1)(B).

21 98. Defendants' various statements described above which were transmitted in
22 emails, WhatsApp messages, websites, and via phone calls to various of BYD's
23 customers constitute commercial advertising and/or commercial promotion.

24 99. These statements contained false, misleading, and/or deceptive statements
25 about the nature, characteristics, qualities, and/or geographic origin of the products that
26 Defendants allegedly had available for sale. These deceptive statements included
27 statements that described the masks that Defendants allegedly had available for sale as
28 "BYD masks," "N95 masks," or as affiliated with BYD. These deceptive statements

1 also included statements that described the masks as certified by NIOSH. These
2 statements were all false, misleading, and deceptive.

3 100. The false, misleading, and/or deceptive statements made by Defendants
4 were material to the purchasing decisions of the customers who received them.

5 101. Defendants placed these statements into interstate commerce by, *inter alia*,
6 sending them to customers located in different states or countries.

7 102. Defendants' statements have directly and/or proximately caused and/or are
8 likely to cause BYD to suffer harm in the form of lost sales, as well as irreparable
9 diminution to the BYD brand and BYD's marks' reputation, fame, and goodwill.

10 103. Defendants' acts and conduct complained of herein constitute false
11 advertising in violation of 15 U.S.C. § 1125(a)(1)(B).

12 104. BYD has suffered, and will continue to suffer, irreparable harm from
13 Defendants' acts and conduct complained of herein, unless restrained by law. The
14 damage suffered by BYD is exacerbated by the fact that Defendants are advertising and
15 offering for sale BYD-branded N95 masks that are counterfeit and of dubious quality,
16 which endangers public health. Such conduct has inspired intense public criticism of
17 the manner in which BYD's respirator masks are being distributed and sold during the
18 COVID-19 pandemic and significant confusion about BYD's role in the marketplace for
19 masks that are essential to safeguarding public health.

20 105. BYD has no adequate remedy at law.

21 **FOURTH CLAIM FOR RELIEF**

22 *(Trademark Dilution, Cal. Bus. Prof. Code §§ 14247)*

23 *(Dilution of the Famous BYD and BYD Care Marks)*

24 106. BYD repeats and incorporates by reference the statements and allegations
25 in paragraphs 1 – 105 of the Complaint as if set forth fully herein.

26 107. Count IV is for trademark dilution under California Business and
27 Professions Code § 14247.

28

1 108. Defendants' acts and conduct complained of herein constitute trademark
2 dilution under California Business and Professions Code § 14247, for the reasons
3 described with respect to the Second Claim for Relief above.

4 109. BYD has suffered, and will continue to suffer, irreparable harm from
5 Defendants' acts and conduct complained of herein, unless restrained by law. BYD has
6 no adequate remedy at law.

7 **FIFTH CLAIM FOR RELIEF**

8 *(Unfair Competition, Cal. Bus. Prof. Code §§ 17200 et seq.)*

9 110. BYD repeats and incorporates by reference the statements and allegations
10 in paragraphs 1 – 109 of the Complaint as though set forth fully herein.

11 111. Count V is for unfair competition in violation of California Business and
12 Professions Code § 17200 *et seq.*

13 112. Defendants' unauthorized use in commerce of the BYD and BYD Care
14 marks is likely to cause consumer confusion or mistake or to deceive consumers into
15 believing that Defendants' products and/or services are sponsored by, endorsed by, or
16 originate from BYD or are otherwise connected or affiliated with or approved by BYD,
17 thereby causing loss, damage, and injury to BYD and to the purchasing public,
18 constituting unlawful, unfair, and fraudulent business practices in violation of California
19 Business & Professions Code § 17200 *et seq.*

20 113. Defendants' marketing and advertisement of products with the BYD and
21 BYD Care marks was intended to and did mislead customers and consumers to believe
22 that such products were manufactured or distributed by, or authorized for manufacture
23 or distribution by, BYD, in violation of California Business & Professions Code §
24 17500.

25 114. Not only is this conduct deceptive, but it exposes the public to severe risk
26 of harm, as counterfeit and defective masks are inserted into the market, and the public
27 is exposed to increased risk of infection.

28

1 121. Had Defendants truthfully advertised that they were not authorized to sell
2 BYD-branded products and/or that the products it was selling were not authentic BYD
3 N95 respirator masks, consumers would not have purchased the products or would have
4 purchased a different product from another manufacturer or distributor.

5 122. This false and misleading advertising of BYD-branded products by
6 Defendants presents a continuing threat to consumers, as such conduct is ongoing to this
7 day.

8 123. As a direct and proximate result of the aforementioned acts and omissions
9 by Defendants, Defendants received and continue to hold monies rightfully belonging to
10 BYD.

11 **SEVENTH CLAIM FOR RELIEF**

12 *(Unfair Competition and Trademark Infringement under California Common Law)*

13 124. BYD repeats and incorporates by reference the statements and allegations
14 in paragraphs 1 – 123 of the Complaint as though set forth fully herein.

15 125. Count VII is for unfair competition and trademark infringement under
16 California common law.

17 126. Defendants' acts and conduct complained of herein constitute unfair
18 competition and trademark infringement in violation of California common law.

19 127. BYD has suffered, and will continue to suffer, irreparable harm from
20 Defendants' acts and conduct complained of herein, unless restrained by law. BYD has
21 no adequate remedy at law

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, based on Defendant's conduct complained of, herein, BYD asks
24 this Court:

25 A. To enter an Order, finding in BYD's favor on each Claim for Relief asserted
26 herein;

1 B. Pursuant to 15 U.S.C. § 1116:

2 1. To preliminarily and permanently enjoin Defendant, its agents, servants,
3 employees, officers and all persons and entities in active concert and participation with
4 them from using the BYD or BYD Care marks (or any other mark(s) confusingly
5 similar thereto) for, on, and/or in connection with the manufacture, distribution,
6 advertising, promoting, offering for sale, and/or sale of any goods or services;

7 2. To preliminarily and permanently enjoin Defendants, their agents,
8 servants, employees, officers and all persons and entities in active concert and
9 participation with them from falsely representing themselves as being distributors,
10 authorized retailers, and/or licensees of BYD and/or any of BYD's products and/or
11 otherwise falsely representing to have an association or affiliation with, sponsorship by,
12 and/or connection with, BYD and/or any of its products; and

13 3. To order Defendants to file with the Court and serve upon Plaintiffs'
14 counsel, within 30 days after service of the order of injunction, a report in writing under
15 oath setting forth in detail the manner and form in which Defendants have complied
16 with the injunction;

17 C. Pursuant to 15 U.S.C. § 1117:

18 1. To order Defendants to provide BYD with a full accounting of all
19 manufacture, distribution and sale of products under the BYD and BYD Care marks, as
20 well as all profits derived therefrom;

21 2. To order Defendants to pay to BYD – so as to be donated charitably – all
22 of Defendants' profits derived from the sale of infringing goods offered under the BYD
23 and BYD Care marks

24 3. To award BYD – so as to be donated charitably – treble damages in
25 connection with Defendants' infringement of the BYD and BYD Care marks;

26 4. To find that Defendants' acts and conduct complained of herein render
27 this case "exceptional"; and to award BYD its costs and reasonable attorneys' fees
28 incurred in this matter;

1 D. Pursuant to 15 U.S.C. § 1118, to order the destruction of all unauthorized
2 goods and materials within the possession, custody, and control of Defendants that bear,
3 feature, and/or contain any copy or colorable imitation of BYD's marks;

4 E. To award restitution as authorized by law;

5 F. To award Plaintiffs pre-judgment and post-judgment interest;

6 G. To award Plaintiffs such other relief that the Court deems just and equitable;

7 H. To order that all monetary payments awarded to Plaintiffs be donated to a
8 COVID-19 charitable organization of Plaintiffs' choosing.

9 **JURY DEMAND**

10 Plaintiffs demand a trial by jury.

11
12 Dated: June 22, 2020

**AKIN GUMP STRAUSS HAUER &
FELD LLP**

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Ali R. Rabbani

Joshua A. Rubin

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14
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16 By: s/ Susan K. Leader
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