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12 Attorneys for Plaintiffs,
 13 HOMELAND HOUSEWARES, LLC AND
 14 NUTRIBULLET, LLC

15 UNITED STATES DISTRICT COURT
 16 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 17 WESTERN DIVISION

18 HOMELAND HOUSEWARES, LLC,
 19 a California LLC, and
 20 NUTRIBULLET, LLC, a California
 21 LLC

22 Plaintiffs,

23 v.

24 Euro-Pro Operating LLC,
 25 a Massachusetts LLC

26 Defendant.

CASE NO. 14-cv-03954-DDP-MAN

**SECOND AMENDED COMPLAINT
 FOR DAMAGES AND INJUNCTIVE
 RELIEF FOR FEDERAL FALSE
 ADVERTISING, TRADE DRESS
 INFRINGEMENT, STATE FALSE
 ADVERTISING, TRADE LIBEL, and
 UNFAIR COMPETITION**

DEMAND FOR JURY TRIAL

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1 Plaintiffs Homeland Housewares, LLC and Nutribullet, LLC (hereinafter
2 collectively, “Homeland” or “Plaintiff”) hereby complain and allege as follows:

3 **I. GENERAL ALLEGATIONS:**

4 1. Homeland Housewares, LLC is an LLC organized and existing under
5 the laws of the State of California, having its principal place of business at 11755
6 Wilshire Blvd, Suite 1200, Los Angeles, California 90025. Homeland Housewares,
7 LLC owns the NUTRIBULLET trademark and trade dress alleged herein and
8 exclusively licenses such rights to Nutribullet, LLC, which is also a California
9 LLC. Both companies are wholly owned by Capital Brands, LLC.

10 2. Upon information and belief, Defendant Euro-Pro Operating LLC
11 (hereinafter “Defendant” or “Euro-Pro”) is a company organized under the laws of
12 the State of Massachusetts, having its principal place of business at 1210
13 Washington St., West Newton, MA 02465.

14 3. This Court has personal jurisdiction over Euro-Pro because Euro-Pro
15 conducts business in Los Angeles, California and venue is proper within this
16 jurisdiction because the sales of accused products have occurred in Los Angeles,
17 including at Bed, Bath, and Beyond at 11854 West Los Angeles, CA 90064 and
18 because the Plaintiff is located within the Central District of California at 11755
19 Wilshire Blvd, Suite 1200, Los Angeles, CA 90025.

20 4. Homeland has spent several hundred million dollars advertising its
21 BULLET blenders. Infomercials for the MAGIC BULLET and related MAGIC
22 BULLET blenders are being shown somewhere in the world at every minute of
23 every day. The family of BULLET blenders includes *inter alia*, the MAGIC
24 BULLET, the BABY BULLET, the PARTY BULLET, the BULLET EXPRESS,
25 the MAGIC BULLET PLATINUM PRO, the NUTRIBULLET, NUTRIBULLET
26 SPORT, and the NUTRIBULLET PRO. The superior quality of the BULLET
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1 product line in combination with extensive marketing efforts has caused the
2 BULLET blenders to become famous in the minds of relevant consumers.

3 5. Defendant Euro-Pro has a history of making cheap knock-offs of
4 successful consumer products, resulting in Euro-Pro being sued numerous times,
5 most frequently for intellectual property violations. The Better Business Bureau
6 reports that Euro-Pro has the highest number of complaints in its product category,
7 and Euro-Pro has failed to receive a rating from the Better Business Bureau. In
8 contrast, Homeland has an A+ rating and Nutribullet has an A- rating with the
9 Better Business Bureau. While there are other companies who legitimately
10 compete with the BULLET line of blenders, each such competing product has
11 packaging that defines its own distinctive trade dress and color scheme as shown in
12 Exhibit 1. Euro-Pro prefers to copy the industry leader as more fully set out herein.

13 6. Within the last three months, Euro-Pro began importing a blender called
14 the NUTRI NINJA PRO. Recognizing that the BULLET line is the market leader
15 in this blender category, Euro-Pro chose to duplicate the color scheme, fonts,
16 phraseology, and overall look and feel of the Plaintiff's NUTRIBULLET packaging
17 trade dress in order to draw consumers to the NUTRI NINJA PRO as a result of the
18 consumer's sense of familiarity with the NUTRIBULLET packaging trade dress.

19 7. NUTRIBULLET's protected product packaging includes a color
20 scheme where the background is predominantly green.

21 8. NUTRIBULLET's protected product packaging includes a block font
22 in all capital lettering with white or green coloring distinct from background color
23 of the packaging.

24 9. NUTRIBULLET's protected product packaging includes the layout of
25 texts and pictorial elements such as: (a) the trademark logo for the product at the
26 top left hand corner on the front of the packaging; (b) a depiction of a blender with
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1 an inverse container against a cornucopia of fruits and vegetables such as broccoli,
2 (sliced) oranges, strawberries, and kiwis; (c) pictures of blender containers filled
3 with blended contents on the left side of the blender; (d) the wattage of the blender
4 displayed on the right side of the packaging; and (e) a band of text on the bottom
5 edge of the packaging touting the blender’s feature.

6 10. NUTRIBULLET’s protected product packaging includes phraseology
7 such as “Nutri,” “Pro,” “Extractor,” “Watt,” “Power” and “Extractor Blade.”

8 11. Homeland’s trade dress is not functional since it is not essential to the
9 use of the NUTRIBULLET line products. Moreover, Homeland’s trade dress does
10 not affect the cost or quality of the blender and were chosen arbitrarily. Euro-Pro’s
11 trade dress is confusingly similar as shown by Exhibit 2, which are photos of the
12 trade dress of both the NUTRIBULLET and NUTRI NINJA PRO.

13 12. Once drawn to the NUTRI NINJA PRO, Defendant Euro-Pro directly
14 compares the NUTRI NINJA PRO to the NUTRIBULLET. See Exhibit 3. This
15 comparative advertising would be permitted if it were not for the fact that it is
16 blatantly false. Homeland sells three products under its current NUTRIBULLET
17 line: the NUTRIBULLET, the NUTRIBULLET PRO, and the NUTRIBULLET
18 SPORT.

19 13. The false statements on the NUTRI NINJA PRO packaging shown in
20 Exhibit 3 include all of the following false claims:

21 (a) **False Statement:** The NUTRIBULLET does not have a 900 watt motor.

22 **The Truth:** Two out of three of Homeland’s NUTRIBULLET products
23 have 900 watt motors, which is plainly stated on the front of the box. See
24 Exhibit 4.

25 (b) **False Statements:** The NUTRI NINJA PRO performs at 21,000 RPM
26 and the NUTRIBULLET does not exceed 21,000 RPM.

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1 **The Truth:** Both statements are false. In tests under free load conditions
2 with the blade attached to the motor, the NUTRI NINJA PRO did not exceed
3 19,900 RPM, and the NUTRIBULLET PRO and NUTRIBULLET SPORT
4 both produce over 22,000 RPM and are more than 2,100 RPM faster than the
5 NUTRI NINJA PRO.

6 **(c) False Statement:** The NUTRIBULLET does not crush ice.

7 **The Truth:** All NUTRIBULLETs crush ice. Euro-Pro must operate the
8 NUTRIBULLET under fake conditions to avoid crushing ice.

9 **(d) False Statement:** The NUTRIBULLET does not have sip and seal lids.

10 **The Truth:** Two out of three NUTRIBULLET lines have sip and seal lids as
11 displayed on the front of the box. See Exhibit 4.

12 **(e) False Statement:** The NUTRIBULLET does not have pulse technology.

13 **The Truth:** This statement is literally false. To understand why this is false
14 requires a brief explanation of the process for using the NUTRIBULLET. First the
15 cup is filled with the desired food ingredients and some water. The blade assembly
16 is screwed on to the top of the cup sealing in the contents. The cup is placed upside
17 down into the NUTRIBULLET blender. As soon as the user presses down, the
18 blade begins to spin. The user can also twist the cup so it locks in place to eliminate
19 the need for the user to press down during operation. But if the user prefers to pulse
20 the ingredients, then the user simply does not twist the cup into the locking position.
21 Simply press down and release, then repeat as many times as the user wants to pulse
22 the food. Hence, the NUTRIBULLET can be operated in pulse mode. Therefore,
23 the claim that it does not have pulse technology is literally false.

24 **(f) False Statement:** The NUTRIBULLET mugs do not fit in cup holders.

25 **The Truth:** The statement is false because the NUTRIBULLET mugs fits in
26 numerous cup holders sold throughout the country, such as the KAZeKUP Ultimate
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1 Cup Holder, Hopkins Retro-Cha Retro Cupholder, NOVA Cup Holder, Beverage
2 Caddy Converter, and THE MUGGER. These are just a sampling of couple holders
3 that NUTRIBULLET mugs fit in. Therefore, any claim that the NUTRIBULLET
4 does not fit in cup holders is literally false.

5 (g) **False Statement:** Separately from the comparison table, the NUTRI
6 NINJA PRO packaging claims to be “#1 MOST POWERFUL”.

7 **The Truth:** This claim is also literally false because the NUTRIBULLET
8 PRO and/or the NUTRIBULLET SPORT are at least of equal power because both
9 have 900 watt motors and NUTRUBULLET SPORT has been sold at the same
10 price point as the NUTRI NINJA PRO.

11 Based upon these factual misrepresentations, Euro-Pro is able to convince
12 consumers that its inferior product is equal to or superior to the quality of the
13 market leader.

14 14. Euro-Pro’s false claims on its NUTRI NINJA PRO packaging are
15 consistent with its reckless disregard for the truth in other cases. For example, the
16 United States District Court for the Western District of Pennsylvania issued a
17 preliminary injunction on May 15, 2014 for Euro-Pro’s false comparison
18 advertising on Euro-Pro’s packaging for its clothing steamer. See *Groupe SEB*
19 *USA, Inc. v. Euro-Pro Operating LLC* (USDC, WDPenn., Civil Action No. 14-
20 137). This only re-enforces the fact that Euro-Pro’s false advertising in this case is
21 part of an intentional practice when Euro-Pro introduces a new product to gain
22 market share by lying to consumers about competing products.

23 15. On information and belief, Homeland further alleges that Euro-Pro has
24 launched a campaign to plant false reviews on the Internet making false claims of
25 defects in NUTIRBULLET blenders and touting the NUTRI NINJA as a superior
26 alternative. The false reviews appear on websites that engage in interstate
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1 commerce including “[www.asseenontvonsale.com/compare/nutribullet-vs-ninja-](http://www.asseenontvonsale.com/compare/nutribullet-vs-ninja-pulse/)
2 [pulse/](http://www.asseenontvonsale.com/compare/nutribullet-vs-ninja-pulse/)” (“Website”). The false review on the Website is captioned, “NutriBullet Vs
3 Ninja Pulse Review.” The review purports to be “a comparison of **NutriBullet Vs**
4 **Ninja Pulse**” analyzing the “features, specifications, [sic] reviews complaints etc”
5 of the NUTRIBULLET and NUTRI NINJA PRO.

6 16. The Website reviews the “NutriBullet Cons” and states that “[n]o matter
7 how hard you screw the blade into the base, a few seconds into blending or
8 extracting, the juice or smoothie will spill all over the kitchen counter or your
9 table.” This statement is false because the NUTRIBULLET’s contents do not spill
10 if the container is correctly sealed. This false statement is also material since
11 consumers will not purchase a blender with a container that can leak during the
12 blender’s operation and consumers are likely to be deceived by a false review that
13 purports to be an objective and direct comparison of the NUTRIBULLET and the
14 NUTRI NINJA PRO.

15 17. Moreover, false reviews, allegedly from consumers, are clearly contrived
16 because of the extreme detail provided in describing the technical mechanical
17 features of the NUTRIBULLET and in descriptions of alleged technical tests
18 conducted by the consumer that no consumer would actually do. For example, an
19 alleged review by “Chris W” on December 26, 2013 at 1:11am states:

20 I own both the Nutribullet and the Ninja Ultra Kitchen System and do
21 agree that the Nutribullet does leak at times. However, the worst
22 problem with the Nutribullet is the loud noise coming from the blade
23 assembly when the bearing seizes. The shaft size is too small and
24 actually spins within the bearing (bearing to shaft spin) causing the
25 lubricant to burn-up and exit out the rear of the assembly. When the
26 bearing seizes, the assembly will emit a loud noise and actually force

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1 the burnt lubricant back into the contents. This can be verified by
2 running clear water in the container for 20 seconds causing the water
3 to turn foggy gray. The bearing is adequately selected for the
4 application (specified for 35000 rpm), except it is not even operating
5 because of the excessive heat caused by the shaft-to-bearing spin.
6 Although the manufacturer claims that a vegetable lubricant is used in
7 the bearing, the bearing part number does not reflect any changes to
8 the bearing. Non vegetable lubricants can be poisonous!

9 This statement is false as the NUTRIBULLET does not leak nor is lubricant forced
10 “back into the contents.” Furthermore, the NUTRIBULLET is not made with
11 “poisonous” lubricants as stated by “Chris W.” This false statements are also
12 material since consumers would consider a leaky blender that discharges poisonous
13 lubricant as a material fact that would discourage their purchase of
14 NUTRIBULLETS. Furthermore, consumers would likely be deceived by reviews
15 from purported peers who also purchased the product.

16 18. After bashing the NUTRIBULLET, the suspect reviews conclude with
17 claims that the NUTRI NINJA is better. On information and belief, these alleged
18 reviews are not reviews at all, but just more false advertising by Euro-Pro under the
19 deceptive guise of consumer reviews.

20 19. Homeland further alleges that Euro-Pro has launched a campaign to
21 plant false statements in infomercials for its NUTRI NINJA products, including an
22 infomercial for the NUTRI NINJA DUO. The NUTRI NINJA DUO infomercial is
23 introduced through interstate commerce through television broadcasts. At
24 approximately minute 19:10 of the infomercial, the infomercial purportedly shows a
25 performance comparison test of the NUTRI NINJA DUO to the NUTRIBULLET.
26 Both blenders are filled with the same ingredients including, “ice, frozen fruits, and
27

1 the most fibrous, difficult to extract vegetables, nuts, and seeds” before both
2 blenders are activated. The infomercial shows the NUTRI NINJA DUO blending
3 all the contents. In contrast, the infomercial shows the NUTRIBULELT struggling
4 to blend any contents while the caption “IT’S REALLY ON” appears adjacent the
5 NUTRIBULLET. The host exclaims that “the other unit clearly had trouble” but
6 the NUTRI NINJA DUO “clearly broke down” all those ingredients.

7 20. The “comparison test” and the statements by the host that the
8 NUTRIBULLET “clearly had trouble” blending the contents are false statements
9 about the NUTRIBULLET’s ability to blend the ingredients. Those statements are
10 false because the comparison test fails to properly use the NUTRIBULLET by
11 filling the NUTRIBULLET container with a sufficient amount of liquid. Since the
12 NUTRIBULLET that was used in the infomercial had an insufficient amount of
13 liquid, the NUTRIBULLET was operated improperly and produced a false result.

14 21. The infomercial for the NUTRI NINJA DUO makes false claims
15 regarding the lack of performance of the NUTIRBULLET blenders and touts the
16 NUTRI NINJA DUO as a superior alternative. Consumers will consider the
17 demonstration of the NUTRIBULLET’s lack of blending performance as a material
18 fact that would discourage them from purchasing the NUTRIBULLET since they
19 can purchase the NUTRI NINJA DUO, which purportedly outperforms the
20 NUTRIBULLET. Consumers will also likely be deceived by the purported
21 “comparison test” to the NUTRI NINJA DUO since consumers may not be aware
22 that the NUTRIBULLET was improperly operated during the demonstration.

23 **II. FIRST CAUSE OF ACTION:**

24 **FALSE ADVERTISING UNDER 15 U.S.C. § 1125(a)**

25 22. Plaintiff Homeland realleges paragraphs 1 through 21 as though fully
26 set forth herein.

1 23. Homeland's family of BULLET products has become the market
2 leader in the kitchen blender market. The growth of the BULLET line of products
3 has been driven by the reputation for excellence that the BULLET line has
4 acquired. Homeland is constantly updating and improving its technology to make
5 each new generation of BULLET products better than the last. The
6 NUTRIBULLET represents the best that Homeland has ever offered. To compete
7 against the superior technology of the NUTRIBULLET, Euro-Pro has not been able
8 to develop a product that can compete on merit with the superior quality of the
9 NUTRIBULLET. In fact, the NUTRI NINJA PRO is a cheap knock off of the
10 NUTRIBULLET. Rather than make the investment necessary to compete on basis
11 of quality, Euro-Pro has chosen to take an unlawful shortcut by literally lying about
12 the features of the NUTRIBULLET and falsely claiming that the NUTRI NINJA
13 PRO is a superior product.

14 24. The false statements on the NUTRI NINJA PRO packaging shown in
15 Exhibit 4 include all of the following false claims:

16 (a) **False Statement:** The NUTRIBULLET does not have a 900 watt motor.

17 **The Truth:** Two out of three of Homeland's NUTRIBULLET products
18 have 900 watt motors, which is plainly stated on the front of the box. See
19 Exhibit 4.

20 (b) **False Statements:** The NUTRI NINJA PRO performs at 21,000 RPM
21 and the NUTRIBULLET does not exceed 21,000 RPM.

22 **The Truth:** Both statements are false. In tests under free load conditions
23 with the blade attached to the motor, the NUTRI NINJA PRO did not exceed
24 19,900 RPM, and the NUTRIBULLET PRO and NUTRIBULLET SPORT
25 both produce over 22,000 RPM and are more than 2,100 RPM faster than the
26 NUTRI NINJA PRO.

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1 (c) **False Statement:** The NUTRIBULLET does not crush ice.

2 **The Truth:** All NUTRIBULLETs crush ice. Euro-Pro must operate the
3 NUTRIBULLET under fake conditions to avoid crushing ice.

4 (d) **False Statement:** The NUTRIBULLET does not have sip and seal lids.

5 **The Truth:** Two out of three NUTRIBULLET lines have sip and seal lids as
6 displayed on the front of the box. See Exhibit 4.

7 (e) **False Statement:** The NUTRIBULLET does not have pulse technology.

8 **The Truth:** This statement is literally false. To understand why this is false
9 requires a brief explanation of the process for using the NUTRIBULLET. First the
10 cup is filled with the desired food ingredients and some water. The blade assembly
11 is screwed on to the top of the cup sealing in the contents. The cup is placed upside
12 down into the NUTRIBULLET blender. As soon as the user presses down, the
13 blade begins to spin. The user can also twist the cup so it locks in place to eliminate
14 the need for the user to press down during operation. But if the user prefers to pulse
15 the ingredients, then the user simply does not twist the cup into the locking position.
16 Simply press down and release, then repeat as many times as the user wants to pulse
17 the food. Hence, the NUTRIBULLET can be operated in pulse mode. Therefore,
18 the claim that it does not have pulse technology is literally false.

19 (f) **False Statement:** The NUTRIBULLET mugs do not fit in cup holders.

20 **The Truth:** The statement is false because the NUTRIBULLET mugs fits in
21 numerous cup holders sold throughout the country, such as the KAZeKUP Ultimate
22 Cup Holder, Hopkins Retro-Cha Retro Cupholder, NOVA Cup Holder, Beverage
23 Caddy Converter, and THE MUGGER. These are just a sampling of couple holders
24 that NUTRIBULLET mugs fit in. Therefore, any claim that the NUTRIBULLET
25 does not fit in cup holders is literally false.

26 (g) **False Statement:** Separately from the comparison table, the NUTRI
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1 NINJA PRO packaging claims to be “#1 MOST POWERFUL”.

2 **The Truth:** This claim is also literally false because the NUTRIBULLET
3 PRO and/or the NUTRIBULLET SPORT are at least of equal power because both
4 have 900 watt motors and NUTRUBULLET SPORT has been sold at the same
5 price point as the NUTRI NINJA PRO.

6 Based upon these factual misrepresentations, the false reviews that Euro-Pro
7 has posted to the Internet on websites that are disseminated across interstate
8 commerce, including [www.asseenontvonsale.com/compare/nutribullet-vs-ninja-](http://www.asseenontvonsale.com/compare/nutribullet-vs-ninja-pulse/)
9 [pulse/](http://www.asseenontvonsale.com/compare/nutribullet-vs-ninja-pulse/), and through television infomercials disseminated in interstate commerce,
10 Euro-Pro is able to convince consumers that its inferior product is equal to or
11 superior to the quality of the market leader.

12 25. Euro-Pro’s conduct constitutes false advertising under Section 43(a) of
13 the Lanham Act (15 U.S.C. § 1125(a)) because any person who in connection with
14 any goods, or any container for goods, uses in commerce any misleading
15 description of fact, or false or misleading representation of fact, which in
16 commercial advertising or promotion, misrepresents the nature, characteristics,
17 qualities of another person’s goods is liable for all damages resulting therefrom.
18 Euro-Pro’s enumerated misrepresentations of fact clearly and unambiguously fall
19 with the legal definition of false advertising contained within Section 43(a) of the
20 Lanham Act.

21 26. Euro-Pro’s acts of false advertising, including the false reviews and false
22 comparison to the NUTRIBULLET in Euro-Pro’s infomercials, have irreparably
23 injured Homeland and such irreparable injury will continue unless Euro-Pro is
24 preliminarily and permanently enjoined by this Court from continuing to engage in
25 such ongoing acts of unfair competition, for which Homeland has no adequate
26 remedy at law, and ordered to issue corrective advertising to re-educate consumers

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1 who have been unfairly misled. To cure the harm caused by the deceptive
2 advertising, Euro-Pro must send notices directly to all consumers who purchased
3 the NUTRI NINJA PRO advising such consumers of the deception and giving such
4 consumers the right to a full refund. To prevent future harm, Euro-Pro must be
5 ordered to immediately advise retailers that no further NUTRI NINJA PRO
6 products can be sold and recall all NUTRI NINJA PRO boxes on store shelves for
7 Euro-Pro to re-label them by removing all false statements. Euro-Pro is on notice
8 that it must preserve all records relating to consumers who purchased the NUTRI
9 NINJA PRO, and advise all retailers to which the infringing products were sold to
10 maintain such consumer records to the extent that they exist.

11 27. For each of Euro-Pro's acts of false advertising, Homeland is entitled
12 to recover its actual damages as well as Euro-Pro's profits from such conduct, and
13 such conduct was willing, intentional and knowing thereby rendering this case
14 exceptional within the meaning of 15 U.S.C. § 1117(a). Accordingly, Homeland is
15 entitled to treble damages and its reasonable costs, including attorneys' fees, and
16 injunctive relief.

17 **III. SECOND CAUSE OF ACTION:**

18 **TRADE DRESS INFRINGEMENT UNDER 15 U.S.C. § 1125(a)**

19 28. Plaintiff Homeland realleges paragraphs 1 through 27 herein above as
20 though fully set forth herein.

21 29. Homeland is the owner of the family of BULLET trademarks for
22 kitchen appliances, including the NUTRIBULLET. Homeland's use of the
23 BULLET trademarks has come to be known as a symbol of consistency and quality
24 for all goods offered under the BULLET family of trademarks. Homeland has
25 developed distinctive packaging for each of its products that defines inherently
26 distinctive packaging trade dress, including for the NUTRIBULLET, and
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1 Homeland has developed and maintained substantial secondary meaning in such
2 intellectual property through its spending of several hundred million dollars on
3 advertising and promotion of the BULLET line of kitchen appliances and
4 associated trade dress, including the NUTRIBULLET's trade dress. Homeland's
5 advertising and promotion of the NUTRIBULLET's trade dress, through means
6 such as infomercials, has made the primary significance of Homeland's trade dress
7 as an identification of the source of the NUTRIBULLET, rather than identifying the
8 NUTRIBULLET itself in the mind's of the public. Every other competitor has
9 developed its own distinctive trade dress for their packaging for their competing
10 blenders and kitchen appliances. *See* Exhibit 1. It is by comparing Homeland's
11 trade dress to the trade dress of other blender packaging in the market place that the
12 distinctiveness of Homeland's trade dress becomes apparent and the striking
13 similarity of Euro-Pro's trade dress to Homeland's trade dress comes into clear
14 focus. Only Euro-Pro, with its history of violating the intellectual property rights of
15 others, has chosen to adopt trade dress that is confusingly similar to Homeland's
16 trade dress.

17 30. Euro-Pro has infringed and is infringing on the distinctive
18 NUTRIBULLET trade dress by using packaging trade dress for the NUTRI NINJA
19 PRO that is confusingly similar to the NUTRIBULLET trade dress in color scheme,
20 fonts, layout, phraseology, and overall look and feel to trade off the appearance of
21 the market leader to attract consumers to Euro-Pro's competing blender.

22 31. NUTRIBULLET's protected product packaging includes a color
23 scheme where the background is predominantly green.

24 32. NUTRIBULLET's protected product packaging includes a block font
25 in all capital lettering with white or green coloring distinct from background color
26 of the packaging.

1 33. NUTRIBULLET's protected product packaging includes the layout of
2 texts and pictorial elements such as: (a) the trademark logo for the product at the
3 top left hand corner on the front of the packaging; (b) a depiction of a blender with
4 an inverse container against a cornucopia of fruits and vegetables such as broccoli,
5 (sliced) oranges, strawberries, and kiwis; (c) pictures of blender containers filled
6 with blended contents on the left side of the blender; (d) the wattage of the blender
7 displayed on the right side of the packaging; and (e) a band of text on the bottom
8 edge of the packaging touting the blender's feature.

9 34. NUTRIBULLET's protected product packaging includes phraseology
10 such as "Nutri," "Pro," "Extractor," "Watt," "Power" and "Extractor Blade."

11 35. Homeland's trade dress is not functional since it is not essential to the
12 use of the NUTRIBULLET line products. Moreover, Homeland's trade dress does
13 not affect the cost or quality of the blender and were chosen arbitrarily. Euro-Pro's
14 use of confusingly similar trade dress for bait and switch tactics has caused, and
15 will continue to cause, consumer confusion as to Homeland's association with,
16 affiliation with, or sponsorship of Euro-Pro's products.

17 36. Euro-Pro's conduct constitutes trade dress infringement pursuant to
18 Section 43(a) of The Lanham Act (15 U.S.C. § 1125(a)) because it causes
19 confusion, has caused confusion, and will continue to cause confusion.

20 37. Euro-Pro's Trade Dress has created a likelihood of confusion because:
21 (a) Euro-Pro's Trade Dress is similar to Homeland's Trade Dress as described as
22 depicted in Exhibit 2; (b) Euro-Pro's products bearing the trade dress are the exact
23 same type of goods – blenders – which are sold by Homeland; (c) the marketing
24 channels used for the NUTRI NINJA PRO are the same as the NUTRIBULLET –
25 online and brick-and-mortar retailers for kitchen appliances; and (d) Euro-Pro's
26 intent is to deceive the public to trade upon Homeland's goodwill and reputation by
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1 adopting confusingly similar trade dress.

2 38. Moreover, Euro-Pro's acts of trade dress infringement have irreparably
3 injured Homeland and such irreparable injury will continue unless Euro-Pro is
4 preliminarily and permanently enjoined by this Court from continuing to engage in
5 such ongoing acts of unfair competition, for which Homeland has no adequate
6 remedy at law, and ordered to issue corrective advertising to re-educate consumers
7 who have been unfairly misled. To cure the harm caused by the deceptive trade
8 dress, Euro-Pro must send notices directly to all consumers who purchased the
9 NUTRI NINJA PRO advising such consumers of the deception and giving such
10 consumers the right to a full refund. To prevent future harm, Euro-Pro must be
11 ordered to immediately advise retailers that no further NUTRI NINJA PRO
12 products can be sold and recall all NUTRI NINJA PRO boxes on store shelves for
13 Euro-Pro to re-label them by removing all false statements and misleading trade
14 dress. Euro-Pro is on notice that it must preserve all records relating to consumers
15 who purchased the NUTRI NINJA PRO, and advise all retailers to which the
16 infringing products were sold to maintain such consumer records to the extent that
17 they exist.

18 39. For each of Euro-Pro's acts of trade dress infringement, Homeland is
19 entitled to recover its actual damages as well as Euro-Pro's profits from such
20 conduct, and such conduct was willing, intentional and knowing thereby rendering
21 this case exceptional within the meaning of 15 U.S.C. § 1116(d). Accordingly, this
22 is an exceptional case within the meaning of 15 U.S.C. § 1117(a) thereby entitling
23 Homeland to treble damages and its reasonable costs, including attorneys' fees, and
24 injunctive relief.

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1 **IV. THIRD CAUSE OF ACTION:**
2 **TRADE LIBEL**

3 40. Defendants incorporate by reference all allegations contained in
4 paragraphs 1 through 39 as though fully set forth herein.

5 41. Founded in 2003, Homeland is an established leader in the food
6 blender market. Specifically, Homeland has spent several hundred million dollars
7 advertising its BULLET blenders. Infomercials for the MAGIC BULLET and
8 related MAGIC BULLET blenders are being shown somewhere in the world at
9 every minute of every day. The family of BULLET blenders includes *inter alia*, the
10 MAGIC BULLET, the BABY BULLET, the PARTY BULLET, the BULLET
11 EXPRESS, the MAGIC BULLET PLATINUM PRO, the NUTRIBULLET,
12 NUTRIBULLET SPORT, and the NUTRIBULLET PRO. The superior quality of
13 the BULLET product line in combination with extensive marketing efforts has
14 caused the BULLET blenders to become famous in the minds of relevant
15 consumers.

16 42. EURO-PRO has made false statements about the quality and
17 performance of Homeland's NUTRIBULLET to achieve economic advantage.
18 These false statements, as detailed in Paragraphs 7 through 9, supra, are not a matter
19 of opinion or mere puffery, but rather are objectively false statements of fact.
20 EURO-PRO knew these statements were false, or made these false statements of
21 fact with reckless disregard for the truth because inspection of NUTRIBULLET
22 products that have been on sale at least since 2013 would have revealed the falsity
23 of the factual misrepresentations. Euro-Pro has published the false statements by
24 distributing the false statements to consumers on a national basis, including within
25 this judicial district. Euro-Pro's false statements about the NUTRIBULLET have
26 damaged, and will continue to damage, Homeland's hard earned reputation as a

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1 provider of superior, quality products because the false statements cast Homeland in
2 a false light as a provider of inferior products that do not perform as promised.

3 43. Euro-Pro's disparagement of Homeland's products has caused
4 damages and irreparable injury to Homeland, including, but not limited to lost sales,
5 disruption of business relationships, loss of market share and of customer goodwill.

6 44. In stores where the NUTRI NINJA PRO started appearing in the
7 second quarter of 2014, sales of the NUTRIBULLET declined an average of about
8 31%. By comparison, in stores where the NUTRI NINJA PRO was not sold,
9 NUTRIBULLET sales increased in the second quarter of 2014 by an average of
10 14.5%. Hence, there was a net loss in sales of 45.5% due to Euro-Pro's false
11 statements.

12 45. The false statements by Euro-Pro proximately caused damage to
13 Homeland in that they have deterred customers from purchasing Homeland's
14 NUTRIBULLET goods. They have also deterred customers from conducting
15 business with Homeland. As a direct and proximate result of these false statements,
16 Homeland has suffered pecuniary loss in the sum of at least \$1,252,503.53, using
17 the net loss of 45.5% in the second quarter of sales for 2014 as a basis to extrapolate
18 the sales Homeland would achieved but for Euro-Pro's false statements.

19 46. Furthermore, Euro-Pro failed to conduct any meaningful due diligence
20 before making its objectively false statements about the NUTRIBULLET and
21 willfully and deliberately intended to cause harm to Homeland without justification.
22 Such unlawful conduct was intended to and did actually cause harm, and continues
23 to cause harm to Homeland with oppressive and malicious intent as those terms are
24 defined in California Civil Code § 3294, thereby entitling Homeland to an award of
25 punitive damages under the California Civil Code.

26 47. To cure the harm caused by the libelous statements made by Euro-Pro,
27

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1 the Defendant must send notices directly to all consumers who purchased the
2 NUTRI NINJA PRO advising such consumers of the trade libel and giving such
3 consumers the right to a full refund. To prevent future harm, Euro-Pro must be
4 ordered to immediately advise retailers that no further NUTRI NINJA PRO
5 products can be sold and recall all NUTRI NINJA PRO boxes on store shelves for
6 Euro-Pro to re-label them by removing all false statements and misleading trade
7 dress in order to cure the damage caused to Homeland’s reputation caused by the
8 trade libel.

9
10 **V. FOURTH CAUSE OF ACTION:**

11 **UNFAIR COMPETITION UNDER CAL. BUS. & PROF. CODE § 17200**

12 48. Plaintiff Homeland realleges paragraphs 1 through 47 herein above as
13 though fully set forth herein.

14 49. By engaging in the above-described practices and actions, Defendant
15 has committed one or more acts of unfair competition within the meaning of
16 California *Business and Professions Code* (“BPC”) §§ 17200 *et seq.* As used in
17 this Complaint, and in BPC § 17200, “unfair competition” means (1) an unlawful,
18 unfair or fraudulent business act or practice; (2) unfair, deceptive, untrue or
19 misleading advertising; and/or (3) an act prohibited by Chapter 1 (commencing
20 with BPC § 17500). This conduct as alleged is actionable pursuant to BPC §§
21 17200 and 17203.

22 50. EURO-PRO has engaged in, and continues to engage in, such unfair
23 competition with full knowledge that such acts and practices are wrongful,
24 arbitrary, without reasonable business or commercial justification, unethical,
25 oppressive, and have caused substantial harm and injury to Homeland. Moreover,
26 EURO-PRO’s conduct, as described above, is unlawful, unfair, and deceptive, and

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1 violates BPC §§ 17200 *et seq.* and constitutes, *inter alia*, false advertising, trade
2 libel, and trade dress infringement, resulting in injury in fact to Homeland in the
3 form of lost revenue, lost profits, lost market share, lost business value and good
4 will, and lost business opportunities as a result of EURO-PRO's unlawful actions
5 and practices in violation of BPC sections 17200 *et seq.* As a direct and proximate
6 result of EURO-PRO's unlawful conduct, Homeland is entitled to preliminary and
7 permanent injunctive relief restraining EURO-PRO, its officers, directors,
8 members, agents and employees, and all persons acting in concert with it, from
9 engaging in any further acts in violation of Section 17200 of the California
10 Business and Professions Code.

11 51. To cure the harm caused by the false advertising and deceptive trade
12 dress, Euro-Pro must send notices directly to all consumers who purchased the
13 NUTRI NINJA PRO advising such consumers of the deception and giving such
14 consumers the right to a full refund. To prevent future harm, Euro-Pro must be
15 ordered to immediately advise retailers that no further NUTRI NINJA PRO
16 products can be sold and recall all NUTRI NINJA PRO boxes on store shelves for
17 Euro-Pro to re-label them by removing all false statements and misleading trade
18 dress.

19 **VI. FIFTH CAUSE OF ACTION:**
20 **FALSE ADVERTISEMENT**

21 **UNDER CAL. BUS. & PROF. CODE §§ 17500 AND 17508**

22 52. Homeland hereby incorporates by reference the allegations contained
23 in paragraphs 1 through 51, inclusive.

24 53. Euro-Pro's misstatements of fact in which it has made false comparisons
25 between the NUTIRBULLET and the NUTRI NINJA PRO, as alleged generally
26 throughout this Complaint and specifically in Paragraphs 7 through 9, constitute
27

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1 untrue and/or misleading advertising in violation of Cal. Bus. Prof. Code § 17500,
2 which Euro-Pro knew to be untrue or misleading, or by the exercise of reasonable
3 care should have known to be untrue or misleading.

4 54. In addition to violating Cal. Bus. Prof. Code § 17,500 by making false
5 and/or misleading statements in its advertising, Euro-Pro has also violated Cal. Bus.
6 Prof. Code § 17,508, governing comparative advertising. Euro-Pro has violated §
7 17,508 because Euro-Pro has made comparisons between the NUTIRBULLET and
8 the NUTRI NINJA PRO that purport to be based on factual, objective evidence and
9 which compares the NUTRI NINJA PRO's effectiveness to that of other brands,
10 namely, the NUTRIBULLET, when in fact the comparisons made by Euro-Pro are
11 objectively false.

12 55. Euro-Pro's acts of false advertising have irreparably injured Homeland
13 and such irreparable injury will continue unless Euro-Pro is preliminarily and
14 permanently enjoined by this Court from continuing to engage in such ongoing acts
15 for which Homeland has no adequate remedy at law in violation of Cal. Bus. Prof.
16 Code §§ 17,500 and §17,508, and Euro-Pro must be ordered to issue corrective
17 advertising to re-educate consumers who have been unfairly misled. To cure the
18 harm caused by the untrue and/or misleading advertising, Euro-Pro must send
19 notices directly to all consumers who purchased the NUTRI NINJA PRO advising
20 such consumers of the false advertising and giving such consumers the right to a
21 full refund. To prevent future harm, Euro-Pro must be ordered to immediately
22 advise retailers that no further NUTRI NINJA PRO products can be sold and recall
23 all NUTRI NINJA PRO boxes on store shelves for Euro-Pro to re-label them by
24 removing all false advertising.

25 56. For each of Euro-Pro's acts of false advertising, Homeland is entitled
26 to recover its actual damages, and its reasonable costs, including attorneys' fees,
27

1 corrective advertising, and injunctive relief.

2 **VII. DEMAND FOR JURY TRIAL:**

3 Plaintiff hereby exercises its right to a jury trial under the Seventh
4 Amendment to the United States Constitution and hereby demands a jury trial in
5 accordance therewith.

6
7 **VIII. PRAYER OF RELIEF:**

8 WHEREFORE, Plaintiff Homeland prays as follows:

- 9 1. That Plaintiff be awarded judgment in its favor and against Defendant;
- 10 2. That Plaintiff be awarded damages in the amount of at least \$3,000,000 for
11 the false advertising, unfair competition, and trade libel alleged herein;
- 12 3. That Plaintiff be awarded damages in the amount of at least \$1,252,503.53
13 out of the \$3,000,000 for trade libel alleged herein;
- 14 4. Plaintiff be awarded statutory damages pursuant to Section 35(c) of the
15 Lanham Act, 15 U.S.C. § 1117(c) or, alternatively, Homeland's actual
16 damages and Defendant's profits for Euro-Pro's violations of Section 43(a)
17 of the Lanham Act, 15 U.S.C. § 1125(a);
- 18 5. That Plaintiff be awarded Homeland's actual damages and injunctive relief
19 for false advertising in violation of Cal. Bus. & Prof. Code §§ 17500 and
20 17508;
- 21 6. That Plaintiff be awarded injunctive relief for false advertising in violation of
22 Cal. Bus. & Prof. Code § 17200;
- 23 7. That Plaintiff be awarded treble damages for Euro-Pro's willful and knowing
24 infringement of the NUTRIBULLET trade dress pursuant to 15 U.S.C. §
25 1117(a);

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- 1 8. That Plaintiff be awarded injunctive relief requiring that all false product
- 2 reviews be deleted and Euro-Pro be enjoined from posting reviews of
- 3 Plaintiff's products under the guise of consumer reviews;
- 4 9. That Euro-Pro to be ordered to issue corrective advertising to re-educate
- 5 consumers who have been unfairly misled under which Euro-Pro is required
- 6 to send notice to all consumers who purchased the NUTRI NINJA PRO
- 7 advising such consumers of the false advertising and giving such consumers
- 8 the right to a full refund.
- 9 10. To prevent future harm, Euro-Pro must be ordered to immediately advise
- 10 retailers that no further NUTRI NINJA PRO products can be sold and recall
- 11 all NUTRI NINJA PRO boxes on store shelves for Euro-Pro to re-label them
- 12 by removing all false advertising and confusing trade dress.
- 13 11. That Plaintiff be awarded Homeland's costs, attorney's fees, investigatory
- 14 fees and expenses to the full extent provided by Section 35 of the Lanham
- 15 Act, 15 U.S.C. § 1117;
- 16 12. That Plaintiff be awarded punitive damages in accordance with Cal. Civ.
- 17 Code § 3294 of an amount adequate to punish and deter Euro-Pro from
- 18 engaging in false advertising and trade libel, especially in light of its long
- 19 history or engaging in such conduct;
- 20 13. That Plaintiff be awarded private attorney general fees in accordance with
- 21 Cal. Code Civ. Proc. § 1021.5.
- 22 14. Plaintiff be awarded its costs of suit and reasonable attorney fees;
- 23 15. Interest on all damages, according to proof; and
- 24 16. Any and all other relief the Court deems just.
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Respectfully submitted,
TROJAN LAW OFFICES
by

November 17, 2014

/s/R. Joseph Trojan
R. Joseph Trojan
Attorneys for Plaintiffs

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