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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

18 AFL TELECOMMUNICATIONS LLC,  
19  
20 Plaintiff,  
21  
22 v.  
23 SURPLUSEQ.COM, INC., TECHSALES,  
24 LLC, DANIEL PARSONS, and JANE DOE  
25 PARSONS,  
26  
27 Defendants.

No. 2:11-cv-01086-DGC

**FIRST AMENDED COMPLAINT**  
**Jury Trial Demanded**

28 Plaintiff AFL Telecommunications LLC (“AFL” or “Plaintiff”) for its First Amended Complaint, alleges as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff AFL Telecommunications LLC is a limited liability company organized and existing under the laws of the state of Delaware, with a principal place of business at 170 Ridgeview Center, Duncan, South Carolina 29334, and is the exclusive U.S. licensee of rights in the FUJIKURA mark for optical fiber splicers pursuant to a written license agreement, and prior to that pursuant to an unwritten agreement and practice.

1           2.       Upon information and belief, defendant SurplusEQ.com, Inc. (“SurplusEQ”)  
2 is a corporation organized and existing under the laws of Arizona, with its principal place  
3 of business at 2052 East Topeka Drive, Phoenix, Arizona 85024, in this district. Plaintiff  
4 is informed and believes that SurplusEQ conducts its sale of fusion splicers and other  
5 products through its websites, including [www.surpluseq.com](http://www.surpluseq.com), [www.fiberopticeq.com](http://www.fiberopticeq.com), and  
6 [www.computereq.com](http://www.computereq.com), and its eBay.com storefront located online at  
7 <http://stores.ebay.com/SurplusEQ-store>.

8           3.       Plaintiff is informed and believes that SurplusEQ transacts business  
9 throughout the U.S., including in this district, through its websites and online storefront.

10          4.       Upon information and belief, defendant TechSales, LLC (“TechSales”) is a  
11 limited liability company organized and existing under the laws of the state of Arizona,  
12 with its principal place of business at 329 West Melinda Lane, Phoenix, Arizona 85027, in  
13 this district. The sole member of TechSales listed in its Articles of Organization is Daniel  
14 Parsons. Plaintiff is informed and believes that TechSales conducts its sale of fusion  
15 splicers and other products from its websites, including [www.efibertools.com](http://www.efibertools.com).

16          5.       Plaintiff is informed and believes that TechSales transacts business  
17 throughout the U.S., including in this district, through its websites.

18          6.       Plaintiff is informed and believes that defendant Daniel Parsons (“Parsons”)  
19 is an individual residing at 2052 East Topeka Drive, Phoenix, Arizona 85024, in this  
20 district, and that Parsons is the sole member of TechSales and the sole officer and director  
21 of SurplusEQ.

22          7.       Plaintiff is informed and believes that Parsons actively and knowingly  
23 participated in the acts of infringement, unfair competition, and false advertising described  
24 below, on his own behalf and on behalf of defendants SurplusEQ and TechSales.

25          8.       Plaintiff is informed and believes that defendant Lisa Parsons (previously  
26 named in this action as Jane Doe Parsons) is the wife of defendant Daniel Parsons, and  
27 that at all relevant times, Parsons was acting on behalf and for the benefit of his marital  
28 community.

1           9.       This Court has jurisdiction over this action under Section 39 of the  
2 Trademark Act of 1946 (the “Lanham Act”), 15 U.S.C. §1121; under 28 U.S.C. §§1331,  
3 1338(a), 1338(b), and 1367(a); and under principles of pendent jurisdiction. This Court  
4 also has jurisdiction pursuant to 28 U.S.C §1332 as there is diversity of citizenship  
5 between the parties and the matter in controversy exceeds the sum of seventy-five  
6 thousand dollars, exclusive of interest and costs.

7           10.       Jurisdiction over the Defendants is proper in that Defendants have sold and  
8 are selling and shipping infringing products or directing their sale, and are performing or  
9 directing acts of unfair competition, as alleged below, from Arizona.

10          11.       Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and (c).

11   **BACKGROUND**

12          12.       Plaintiff AFL is an indirect, wholly-owned subsidiary of Fujikura Ltd.  
13 (“Fujikura”), doing business in North America. AFL designs, manufactures, and sells  
14 fiber optic products and equipment for use in the telecommunications industry and  
15 provides related services. It is the exclusive North American licensee for distribution of  
16 fusion splicers under the FUJIKURA mark.

17          13.       Fujikura is the world’s leading manufacturer of fiber optic products and  
18 electronic components that sustain today’s high information society. Fujikura was  
19 established in 1885 and has over 49,000 employees. Its products include optical  
20 transmission systems, network systems, power systems, coated wires, magnet wires, and  
21 fusion splicers. These products are sold under the famous FUJIKURA trademark.

22          14.       Defendant SurplusEQ is an Arizona corporation engaged in the business of  
23 purchasing and reselling various electronic equipment, particularly equipment used in the  
24 fiber optic industry such as fusion splicers and optical test equipment. Defendant sells new  
25 and used equipment to customers throughout the U.S. SurplusEQ has violated Plaintiff’s  
26 trademark rights in the FUJIKURA mark in at least two distinct ways. First, SurplusEQ  
27 has imported into the U.S. and sold FUJIKURA brand fusion splicers that were designed  
28 to be sold in India and/or other countries outside the U.S., and has materially altered those

1 fusion splicers. Specifically, SurplusEQ, or others working on its behalf and with its  
2 knowledge, has removed memory chips from those fusion splicers, altered them, and  
3 replaced them so that the display shows serial numbers other than the original serial  
4 numbers assigned at the Fujikura factory. Second, SurplusEQ, or others working on its  
5 behalf and with its knowledge, has altered the FUJIKURA brand fusion splicers by  
6 replacing the original physical serial numbers with different numbers to match the altered  
7 numbers in the memory chips. Plaintiff is informed and believes that SurplusEQ, or others  
8 working on its behalf and with its knowledge, changed those serial numbers in order to  
9 prevent Plaintiff from determining SurplusEQ's supplier of these counterfeit, "gray  
10 market" products.

11 15. SurplusEQ's sale of altered products under the FUJIKURA mark is a  
12 deliberate attempt to trade on the goodwill of the FUJIKURA mark and damages the  
13 valuable trademark rights that Plaintiff and Fujikura have spent decades in developing and  
14 protecting. Defendants' actions are causing immediate and irreparable harm by creating  
15 consumer confusion concerning the FUJIKURA trademark, as to which Plaintiff has  
16 valuable exclusive rights in the U.S.

## 17 **FACTS SUPPORTING PLAINTIFF'S REQUESTED RELIEF**

### 18 Genuine Fujikura Fusion Splicers

19 16. Fujikura Ltd. is a corporation organized and existing under the laws of Japan  
20 with a principal place of business in Tokyo. Fujikura is the owner of trademark rights in  
21 the FUJIKURA mark for optical fiber splicers in the U.S.

22 17. The FUJIKURA brand was created by Fujikura and is today one of the  
23 world's leading and most respected brands in the area of fiber optic products. Fujikura is  
24 well-known in the industry, particularly for its fusion splicers and as the pioneer in  
25 developing the first fusion splicer with a profile alignment system. FUJIKURA brand  
26 fusion splicers are known for their performance, productivity, and reliability. Fusion  
27 splicers are indispensable in the construction of optical communication networks.  
28

1 18. FUJIKURA brand fusion splicers are highly sophisticated products used to  
2 align two or more optical fibers and fuse the ends of two or more optical fibers using an  
3 electric arc. FUJIKURA fusion splicers are equipped with LCD monitors and pre-loaded,  
4 copyrighted software, which together allow user-friendly operation of the products and  
5 visual inspection of splices.

6 19. FUJIKURA brand fusion splicers, particularly the FSM-50S and its  
7 successor, the FSM-60S series, are among the best-selling products of their kind  
8 worldwide and in the U.S. FUJIKURA brand products are known for their high quality,  
9 unprecedented size, weight and ruggedness, and innovative wind protection design which  
10 can withstand a 30 MPH crosswind.

11 20. Fujikura manufactures its fusion splicers, including the FSM-50S, FSM-60S,  
12 FSM-60R, FSM-18S, and FSM-18R models, in Japan and ships them for sale in countries  
13 throughout the world.

14 21. The list price of a FSM-60S model FUJIKURA fusion splicer for sale in the  
15 U.S. is approximately \$15,000.

16 22. Fujikura invests heavily in research and development. It spends over \$10  
17 million annually on the research and development of its fusion splicers.

18 23. To achieve goodwill and loyalty with its customers, Fujikura expends  
19 substantial resources to ensure the quality of its products through a rigorous quality control  
20 system. Fujikura applies serial numbers to its products in order to facilitate quality control  
21 by tracking the origin of FUJIKURA brand products and performing repairs under  
22 warranty. Customers in the U.S. rely on the assumption that the FUJIKURA brand  
23 products they are purchasing are covered under Fujikura's warranty and that their pre-  
24 loaded software is properly licensed for use in the U.S.

25 24. Fujikura exercises strict quality control over the production and distribution  
26 of its FUJIKURA brand fusion splicers. Plaintiff AFL is the only authorized distributor of  
27 FUJIKURA brand products in North America, is the only entity authorized to use the  
28 FUJIKURA mark in association with fusion splicers in North America, and is the only

1 entity designated to perform “factory authorized” warranty service on FUJIKURA brand  
2 fusion splicers in North America.

3 25. Because of Fujikura’s and Plaintiff’s exclusive and extensive use of the  
4 FUJIKURA mark, the mark has acquired enormous value, has become famous within the  
5 industry, and is recognized as identifying and distinguishing Fujikura and Plaintiff  
6 exclusively and uniquely as the source of the high-quality fusion splicers and related  
7 products sold under the mark.

8 26. Fujikura’s FUJIKURA plus stylized F design trademark is registered with  
9 the United States Patent and Trademark Office for use with “optical fiber splicers” as Reg.  
10 No. 2,332,588. The registration is valid, subsisting, and in full force and effect. Because it  
11 is incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065, it serves as  
12 conclusive evidence of Fujikura’s ownership of the mark and of Fujikura’s exclusive right  
13 to use and license use of the mark in commerce on or in connection with the goods  
14 identified in the registration, as provided by Section 33(b) of the Lanham Act, 15 U.S.C.  
15 § 1115(b). A true and correct copy of the certificate of registration for U.S. Reg. No.  
16 2,332,588 is attached hereto as Exhibit A.

17 27. Fujikura’s FUJIKURA plus stylized F color design mark is registered with  
18 the United States Patent and Trademark Office for use with “optical fibers; optical fiber  
19 fusion splicers; electric wires; electric cables” as Reg. No. 3,774,956. A true and correct  
20 copy of the certificate of registration for U.S. Reg. No. 3,774,956 is attached hereto as  
21 Exhibit B.

22 Defendants’ Infringing Fusion Splicers

23 28. Defendants have offered for sale and sold infringing FUJIKURA brand  
24 fusion splicers, including the FSM-60S model. These products are altered and modified  
25 versions of the original FUJIKURA brand products, and are not authorized for use in the  
26 U.S., as described below.

27 29. As manufactured and shipped by Fujikura, each FUJIKURA FSM-60S  
28 fusion splicer contains a display language control program within its memory chip, along

1 with a mechanism designed to detect any alterations to the program in the memory chip  
2 and to stop the splicer automatically when alterations are detected, so as to avoid any  
3 alterations to the display language. In an FSM-60S sold by Defendant SurplusEQ, the  
4 program in the memory chip was altered before the unit was sold to the ultimate consumer  
5 so that, among other things, it caused the LCD screen to display a false serial number.

6 30. The physical serial number on the exterior of the FSM-60S unit sold by  
7 SurplusEQ was altered and replaced with a false serial number. The serial number  
8 facilitates quality control by allowing a service provider to readily track the origin of  
9 FUJIKURA products when performing repairs under warranty.

10 31. The alterations to the memory chip and the serial number occurred after the  
11 FSM-60S fusion splicer had left Fujikura's possession or control.

12 32. The FUJIKURA brand products sold by SurplusEQ were intended by  
13 Fujikura for sale outside the U.S. and do not carry a Fujikura warranty for service or repair  
14 in the U.S. Accordingly, U.S. buyers of FUJIKURA brand products sold by SurplusEQ are  
15 not entitled to receive Fujikura's warranty protection.

16 33. FUJIKURA brand fusion splicers such as the FSM-60S splicers sold by  
17 Defendants are operated in part by copyrighted software owned by Fujikura and licensed  
18 to AFL, which software is stored in a memory chip in the splicer. The operating software  
19 is loaded onto the splicer in Japan as part of the manufacturing process. The copy of the  
20 software provided with each unit is licensed for use in the country where that unit is  
21 initially to be sold. For example, a splicer that Fujikura ships to Plaintiff for resale in the  
22 U.S. incorporates software licensed for use in the U.S. and a splicer that Fujikura ships to a  
23 distributor in India for resale in India incorporates software licensed for use in India.

24 34. Fujikura is the owner of the U.S. Copyright Registration No. TX 7-400-942,  
25 covering the operating software for the FSM-60 series splicers (including the FSM-60S,  
26 FSM-60R, FSM-18S, and FSM-18R models), effective May 26, 2011. A true and correct  
27 copy of the Certificate of Registration is attached hereto as Exhibit C.  
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1           35. Fujikura has granted Plaintiff the exclusive right to distribute the  
2 copyrighted software that is pre-loaded on the FUJIKURA brand fusion splicer models  
3 FSM-60S, FSM-60R, FSM-18S, and FSM-18R in the U.S., and to authorize others to do  
4 so. Plaintiff has not granted any Defendant the right to distribute that software.

5           36. Goods that are made by a foreign manufacturer and legitimately sold abroad  
6 under a trademark, but which have been imported into the U.S. without the manufacturer's  
7 permission and sold in competition with the goods of the trademark owner or its licensees,  
8 are referred to in the trade as "gray market" goods. Upon information and belief,  
9 SurplusEQ directly or indirectly acquired gray market FUJIKURA brand fusion splicers  
10 from overseas distributors who were not authorized to sell such products in the U.S. Upon  
11 information and belief, the physical serial numbers were removed from some or all of  
12 these products, substitute serial numbers were attached in their place, and the serial  
13 numbers in the memory chips were altered, in order to prevent Plaintiff and Fujikura from  
14 tracing these unauthorized fusion splicers back to the responsible distributors. Material  
15 changes to the goods as described herein rendered those goods counterfeit.

16           37. The FUJIKURA brand fusion splicers sold by SurplusEQ were altered so  
17 that they are no longer the same fusion splicers sold by Fujikura. The memory chips have  
18 been removed and replaced, and in the process have been soldered in an inferior and  
19 damaging manner. An example of this damaging installation was the inferior soldering of  
20 a memory chip, lack of condensation coating, and heat damage to other components of the  
21 printed circuit board on a Fujikura FSM-60S sold by SurplusEQ.

22           38. Plaintiff is informed and believes that SurplusEQ sold counterfeit  
23 FUJIKURA brand fusion splicers as "new" with knowledge that they had been materially  
24 altered and were not licensed for use in the U.S.

25           39. Plaintiff is informed and believes that defendant TechSales obtained  
26 counterfeit FUJIKURA brand fusion splicers that were modified, unlicensed, and  
27 infringing as described in paragraphs 27-36 above, either directly from overseas  
28 distributors or from SurplusEQ, and offered those infringing fusion splicers for sale in the



1 U.S. through its website at www.efibertools.com with knowledge that the counterfeit  
2 FUJIKURA brand fusion splicers had been materially altered and were not licensed for  
3 use in the U.S.

4 40. The removal of the serial numbers and inferior reinstallation of altered  
5 memory chips degrade the product's appearance and performance. Upon information and  
6 belief, Defendants either intentionally altered these products or distributed these products  
7 with knowledge that they had been altered. The removal of the serial numbers, the removal  
8 and defective and inferior reinstallation of memory chips, the lack of a manufacturer's  
9 warranty, and the incorporation of software that is not licensed for use in the U.S.  
10 constitute material differences as compared to the genuine FUJIKURA brand fusion  
11 splicers that are distributed by AFL in the U.S. The FUJIKURA brand fusion splicers sold  
12 by Defendants are, therefore, counterfeit and infringing products under the U.S. trademark  
13 law.

14 41. Plaintiff is informed and believes that defendant Parsons acted as the  
15 principal decision maker for both SurplusEQ and TechSales in connection with the  
16 counterfeit FUJIKURA brand fusion splicers, actively and knowingly caused the  
17 unauthorized alteration of the FUJIKURA brand fusion splicers by those parties or caused  
18 those parties to obtain altered fusion splicers with knowledge that they had been altered,  
19 and actively directed the advertising and sale of those products with knowledge that they  
20 were infringing, counterfeit, and not licensed for use in the U.S.

21 42. Defendants' unlawful actions commenced many years after Fujikura began  
22 using the marks at issue in commerce in the U.S., many years after those marks had  
23 achieved worldwide fame, many years after AFL was established as the exclusive North  
24 American distributor of FUJIKURA brand fusion splicers, and many years after the  
25 FUJIKURA mark was registered in the U.S. Patent and Trademark Office.

26 43. Defendant SurplusEQ has falsely advertised its Fujikura products as "new",  
27 purchased directly from Fujikura, and covered by a manufacturer's warranty when, in fact,  
28 they are not. In an Internet "blog" entry dated July 21, 2009, Defendant SurplusEQ stated:

1 when it comes to new fusion splicers companies like  
2 www.SurplusEQ.com buy direct from the manufacturer and  
3 don't have to be an authorized seller. Also be aware at [sic]  
4 the prices you will pay are lower because we do not do [sic]  
5 through a middle man, therefore resulting in a lesser price you  
6 pay for the same machine and actually you get the whole kit.  
7 Not to mention a full Manufacturers Warranty.

8 Those representations are false in that (1) SurplusEQ does not buy fusion splicers directly  
9 from Fujikura; (2) SurplusEQ instead buys from "middle men," namely third parties in  
10 countries other than the U.S.; (3) the counterfeit imports do not come with a full  
11 manufacturer's warranty and are not eligible for manufacturer's authorized warranty  
12 service in the U.S.; and (4) the counterfeit imports are not "the same machine" as that sold  
13 by an authorized reseller in that they have been altered and incorporate software that is not  
14 licensed for use in the U.S., and are therefore counterfeit goods. Plaintiff is informed and  
15 believes that defendant Parsons either wrote or approved such statements with knowledge  
16 that they were false.

17 44. Defendant TechSales has advertised its FUJIKURA brand fusion splicers as  
18 "new and unused" and "[g]uaranteed not modified in any way." In fact, Plaintiff is  
19 informed and believes, those statements are false in that those fusion splicers have been  
20 modified as described above. Plaintiff is informed and believes that defendant Parsons  
21 either wrote or approved such statements with knowledge that they were false.

22 45. Defendants have falsely advertised their Fujikura products in a manner that  
23 causes consumers to believe that an affiliation exists between Fujikura and Defendants, by  
24 making statements such as that on SurplusEQ's blog that "companies like  
25 www.SurplusEQ.com buy direct from the manufacturer."

26 46. Defendants' false statements are intended to, and do, give consumers the  
27 impression that Defendants are offering the same FUJIKURA brand product as is offered  
28 by AFL when in fact that is not true.

29 47. Defendants' altered and unauthorized FUJIKURA brand fusion splicers are  
30 counterfeit goods that are likely to deceive, confuse, and mislead purchasers and  
31 prospective purchasers into believing that these products were authorized by or associated

1 with Fujikura and are the same as the authorized units offered by AFL. The likelihood of  
2 confusion, mistake and deception caused by Defendants' unauthorized products is causing  
3 irreparable harm to Plaintiff.

4 48. Purchasers and prospective purchasers viewing Defendants' unauthorized  
5 FUJIKURA brand fusion splicers and perceiving a defect, lack of quality, or any  
6 impropriety are likely to mistakenly attribute them to Fujikura and/or to Plaintiff. In  
7 addition, due to the expensive, highly-specialized and technical nature of these products,  
8 Defendants' sale of altered, counterfeit FUJIKURA brand devices upon which there is no  
9 certification of quality poses a significant risk to the goodwill in the FUJIKURA mark and  
10 to the high regard in which the mark is held by potential buyers of these devices. By  
11 causing such a likelihood of confusion, mistake, deception, and potential injury,  
12 Defendants are inflicting irreparable harm to the goodwill in the FUJIKURA mark, which  
13 irreparably injures Plaintiff as the exclusive authorized distributor of FUJIKURA brand  
14 fusion splicers in the U.S. with exclusive rights to use of the FUJIKURA mark.

15 49. Defendants' unlawful conduct will continue to harm Plaintiff and deceive  
16 the public during the pendency of the case unless the Court issues a preliminary injunction  
17 to prevent such unlawful conduct.

18 50. Upon information and belief, Defendants knowingly and willfully use  
19 Fujikura's marks and sell the false and modified FUJIKURA brand fusion splicers with  
20 the deliberate intent to ride on the fame and goodwill in the FUJIKURA brand and in a  
21 deliberate attempt to create a false impression as to the source, sponsorship, and condition  
22 of Defendants' products. Defendants' conduct threatens immediate and irreparable injury  
23 to the value of the FUJIKURA mark and the public's confidence in the high quality of  
24 products sold under the FUJIKURA mark.

25 51. Defendants' conduct is intentionally fraudulent, malicious, willful and  
26 wanton.

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**FIRST CLAIM FOR RELIEF**  
**FEDERAL UNFAIR COMPETITION, FALSE DESCRIPTION, FALSE**  
**DESIGNATION OF ORIGIN**  
**(15 U.S.C. § 1125(a))**

52. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 50 above, and incorporates them herein by reference.

53. Defendants’ sale and distribution of their altered, counterfeit products bearing the FUJIKURA mark is likely to cause confusion, mistake or deception as to the source or sponsorship of Defendants’ fusion splicers. As a result of Defendants’ unauthorized use of Fujikura’s federally registered mark, the public is likely to believe that Defendants’ goods have been fully manufactured and approved by Fujikura.

54. Defendants’ unauthorized use of altered products bearing the FUJIKURA mark falsely represents Defendants’ FUJIKURA branded products as emanating from or being authorized by Fujikura and Plaintiff and places the quality of products bearing the FUJIKURA mark beyond the control of Fujikura or Plaintiff and deprives Plaintiff of the ability to maintain the prestige and reputation of the FUJIKURA brand.

55. Defendants’ infringement of the registered FUJIKURA mark is willful and is intended to reap the benefit of the goodwill in the FUJIKURA marks.

56. The removal of the serial numbers and substitution of false serial numbers, the removal and defective reinstallation of the memory chips, and the sale of counterfeit FUJIKURA brand fusion splicers purporting to be new but in fact altered, without a manufacturer’s warranty, and with software not licensed for use in the U.S., render the Defendants’ “Fujikura” products materially different from Plaintiff’s authentic FUJIKURA brand fusion splicers authorized for sale in the U.S. and counterfeit.

57. Defendants’ unauthorized sale in the U.S. of counterfeit FUJIKURA brand fusion splicers is likely to cause confusion, mistake or deception as to the source or sponsorship of Defendants’ gray market FUJIKURA brand fusion splicers. As a result of Defendants’ unauthorized use of the federally registered FUJIKURA mark, the public is

1 likely to believe that Defendants’ altered goods have been approved and authorized by  
2 Fujikura and/or AFL.

3 58. Defendants’ unauthorized sale in the U.S. of counterfeit, modified, and  
4 unlicensed FUJIKURA brand fusion splicers as new products, as bought directly from the  
5 manufacturer and not through “middle men,” and as the same as authorized imports  
6 constitutes a false designation of origin and a false description or representation that  
7 Defendants’ sale of such products is authorized by Fujikura and/or Plaintiff, and is likely  
8 to confuse consumers.

9 59. Defendants are using the FUJIKURA mark with full knowledge that the  
10 mark is associated exclusively with Fujikura and Plaintiff; that Plaintiff is the exclusive  
11 authorized U.S. distributor for such products; that the FUJIKURA mark is registered and  
12 that Defendants’ products are counterfeit; and that the FUJIKURA mark exclusively  
13 designates authentic, genuine, duly licensed, and non-modified FUJIKURA brand  
14 products manufactured under Fujikura’s excellent and high-quality standards. Defendants’  
15 acts of unfair competition are willful, deliberate and are intended to reap the benefit of the  
16 goodwill and reputation associated with the FUJIKURA mark.

17 60. Defendants’ acts of unfair competition cause substantial harm to Plaintiff  
18 AFL as the exclusive licensee of rights to sell new fusion splicers in the U.S. under the  
19 FUJIKURA mark.

20 61. Defendants’ sale and distribution of counterfeit, modified FUJIKURA brand  
21 products violates Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

22 62. Defendants’ conduct is causing immediate and irreparable injury to Plaintiff  
23 and to its reputation and to the goodwill in the FUJIKURA mark, and will continue both to  
24 damage Plaintiff and to deceive the public unless enjoined by this Court. Plaintiff has no  
25 adequate remedy at law.  
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2                                   **SECOND CLAIM FOR RELIEF**  
3                                   **FEDERAL FALSE ADVERTISING**  
4                                   **(15 U.S.C. § 1125(a))**

5             63. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1  
6 through 61 above and incorporates them herein by reference.

7             64. Defendants’ advertisement and promotion of counterfeit, unauthorized,  
8 unlicensed, and modified FUJIKURA brand fusion splicers as “new,” as bought “direct  
9 from the manufacturer,” as carrying a “full Manufacturers Warranty,” as “new and  
10 unused” and as “[g]uaranteed not modified in any way” constitutes false descriptions or  
11 representations of fact as to the nature, characteristics, and qualities of the goods,  
12 including that Defendants’ products are equivalent to FUJIKURA brand fusion splicers  
13 sold by authorized U.S. resellers, that Defendants’ products are unmodified, and that  
14 Defendants’ sale of such products is authorized by Fujikura and/or by Plaintiff. Such  
15 statements further falsely imply that the pre-loaded software required to use Defendants’  
16 counterfeit FUJIKURA brand fusion splicers is authorized for distribution by Defendants  
17 and for use in the U.S.

18             65. Such false statements are likely to confuse a substantial portion of the  
19 intended purchasers of Defendants’ goods and are material in that they are likely to  
20 influence the deceived customers’ purchasing decisions, and Defendants intended them to  
21 influence those decisions.

22             66. Defendants introduced those false statements into interstate commerce by  
23 way of, among other things, their websites and the SurplusEQ blog.

24             67. The resulting deception causes substantial harm to Plaintiff as the exclusive  
25 licensee of rights to sell new fusion splicers in the U.S. under the FUJIKURA mark, in that  
26 it diverts sales from Plaintiff’s authorized products to Defendants’ counterfeit,  
27 unauthorized products and in that it threatens the goodwill associated with the FUJIKURA  
28 trademark.

1           68. Defendants' false advertising of counterfeit, modified FUJIKURA brand  
2 products violates Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

3           69. Defendants' conduct is causing immediate and irreparable injury to Plaintiff  
4 and to its reputation and to the goodwill in the FUJIKURA mark, and will continue both to  
5 damage Plaintiff and to deceive the public unless enjoined by this Court. Plaintiff has no  
6 adequate remedy at law.

7   **THIRD CLAIM FOR RELIEF**  
8   **COMMON LAW UNFAIR COMPETITION**

9           70. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1  
10 through 68 above and incorporates them herein by reference.

11           71. Defendants' sale and distribution of the counterfeit, modified, altered, and  
12 unlicensed FUJIKURA brand products constitutes common law unfair competition in that  
13 it is likely to cause confusion, mistake or deception as to the source or sponsorship of  
14 Defendants' counterfeit FUJIKURA brand fusion splicers because the public is likely to  
15 believe that Defendants' goods have been fully manufactured and approved by Fujikura,  
16 and that they are fully functional and authorized for use in the U.S., when in fact the goods  
17 sold by Defendants are materially different from Plaintiff's authentic FUJIKURA brand  
18 fusion splicers authorized for sale in the U.S. as described above; and in that it places the  
19 quality of products bearing the FUJIKURA mark beyond the control of Fujikura or  
20 Plaintiff and deprives Plaintiff of the ability to maintain the prestige and reputation of the  
21 FUJIKURA brand.

22           72. The aforesaid conduct of Defendants is causing immediate and irreparable  
23 injury to Plaintiff and to the goodwill and reputation associated with the FUJIKURA mark,  
24 and will continue both to damage Plaintiff and to deceive the public unless enjoined by  
25 this Court. Plaintiff has no adequate remedy at law.

**FOURTH CLAIM FOR RELIEF**  
**COPYRIGHT INFRINGEMENT**

1  
2  
3           73. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1  
4 through 71 above and incorporates them herein by reference.

5           74. Fujikura is the owner of the copyright in the operating software that is pre-  
6 loaded on the FUJIKURA brand fusion splicer models FSM-60S, FSM-60R, FSM-18S,  
7 and FSM-18R, as a work made for hire.

8           75. Fujikura upgrades the operating software from time to time. Each  
9 successive version incorporates the prior version, with modifications. Beginning with the  
10 first version, created in or about March 2008, all versions of the operating software for the  
11 FSM-60S, FSM-60R, FSM-18S, and FSM-18R model splicers constitute original works of  
12 authorship that were created by Fujikura employees, who wrote the code constituting the  
13 software in Japan and within the course and scope of their employment. All versions are  
14 therefore owned by Fujikura.

15           76. Fujikura's Copyright Registration No. TX 7-400-942 relates to Version  
16 1.32b of the the operating software for the FSM-60 series splicers. Prior versions of the  
17 software carry lower version numbers. Although each new numbered version incorporates  
18 some original, copyrightable content not included in the immediately preceding version,  
19 all versions share substantial original, copyrightable content. Version 1.32b incorporates  
20 substantial copyrightable content that is also present in all prior versions of the operating  
21 software, all of which content is owned by Fujikura. All versions of the operating  
22 software were first published in Japan.

23           77. AFL is the exclusive licensee of the right to distribute in the U.S. the  
24 operating software for the Fujikura FSM-60S, FSM-60R, FSM-18S, and FSM-18R fusion  
25 splicers, pursuant to a written license agreement from Fujikura dated February 17, 2011.  
26 That agreement also grants to AFL the right to bring suit for infringement, including  
27 infringement claims existing as of the date of the agreement.  
28



1 78. Defendants’ distribution in the U.S. of fusion splicers incorporating that  
2 software is without authorization from AFL and constitutes a violation of AFL’s exclusive  
3 right to distribute copies of the copyrighted work to the public under the license agreement  
4 and Section 106 of the United States Copyright Act, 17 U.S.C. §106(3).

5 79. Unless future infringements are enjoined by this Court, AFL will suffer  
6 irreparable injury for which there is no adequate remedy at law.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff demands judgment as follows:

9 1. That an injunction be issued enjoining Defendants; their employees, agents,  
10 servants, officers, representatives, directors, attorneys, successors, affiliates, and assigns;  
11 and all those in active concert and participation with Defendants, or any of them, from:

12 a) imitating, copying, or making unauthorized use of the FUJIKURA mark,  
13 including the marks set forth in U.S. Registrations No. 2,332,588 and 3,774,956, or any  
14 other marks owned by Fujikura and exclusively licensed to Plaintiff in the U.S.

15 (collectively the “FUJIKURA Marks”);

16 b) importing, exporting, manufacturing, producing, distributing, circulating, selling,  
17 offering for sale, advertising, promoting or displaying any product bearing any of the  
18 FUJIKURA Marks;

19 c) using any of the FUJIKURA Marks in connection with the importation,  
20 promotion, advertisement, display, sale, offering for sale, manufacture, production,  
21 circulation or distribution of any product in such fashion as to relate or connect, or tend to  
22 relate or connect, such product in any way to Plaintiff or to any goods sold, manufactured,  
23 sponsored or approved by or connected with Fujikura;

24 d) using any false designation of origin or false description, or performing any act  
25 which is likely to lead members of the trade or public to believe that any infringing  
26 product distributed or sold by any Defendant is in any manner associated or connected  
27 with Plaintiff, or is sold, manufactured, licensed, sponsored, approved or authorized by  
28 Plaintiff;



1 e) engaging in any other activity constituting unfair competition with Plaintiff, or  
2 constituting infringement of the FUJIKURA Marks;

3 f) causing or participating in any alteration or modification of any product bearing  
4 any of the FUJIKURA Marks, including the removal or substitution of any memory chip  
5 in said product or causing any alteration to said product that changes the language  
6 displayed on said product;

7 g) causing or participating in the removal, covering, obscuring, altering, replacing,  
8 or otherwise defacing a serial number or other identifying code on any FUJIKURA-brand  
9 product or importing, exporting, manufacturing, producing, distributing, circulating,  
10 selling, offering for sale, advertising, promoting or displaying any FUJIKURA-brand  
11 product with a removed, obscured, hidden, replaced, or altered serial number or other  
12 identifying code.

13 h) disposing of, destroying, altering, moving, removing, concealing, tampering with  
14 or in any manner secreting any business records (including computer records) of any kind,  
15 including invoices, purchase orders, correspondence, books of account, receipts or other  
16 documentation relating or referring in any manner to the manufacture, advertising, receipt,  
17 acquisition, importation, purchase, sale, offer for sale, or distribution of any merchandise  
18 bearing any of the FUJIKURA Marks;

19 i) directly or indirectly informing any of Defendants' sources or suppliers of any  
20 merchandise bearing any of the FUJIKURA Marks of this action or of any of Plaintiff's  
21 claims herein; or instructing, assisting, enabling, aiding or abetting any other person or  
22 entity in engaging in or performing any of the activities referred to in subparagraphs (a)  
23 through (h), above; or

24 j) infringing, directly or indirectly, AFL's interest in the copyright in the Fujikura  
25 fusion splicer operating software, and specifically enjoining Defendants from reproducing,  
26 creating derivative works of, or distributing the copyrighted work, including by  
27 distributing Fujikura fusion splicers incorporating the software that were not authorized to  
28 be sold in the U.S.

1           2.       Directing that Defendant make available to Plaintiff for review, inspection  
2 and copying all books, records (including all hard drives on computers used for business  
3 purposes, including servers, as well as all computer disks and back up disks) and other  
4 documents concerning all transactions relating to the purchase, sale, alteration, and  
5 unauthorized use of products bearing the FUJIKURA Marks and provide Plaintiff the  
6 names, addresses and all other contact information in its possession (e.g., telephone  
7 numbers, fax numbers) for the source(s) of such products, including all distributors and/or  
8 suppliers.

9           3.       Directing that Defendants deliver to Plaintiff's counsel for destruction all  
10 signs, products, packaging, promotional material, advertising material, catalogs and any  
11 other item that bears, contains or incorporates any of the FUJIKURA Marks.

12           4.       Requiring Defendants to account for and pay over to Plaintiff three times the  
13 profits realized by Defendants from their infringement of the FUJIKURA Marks and their  
14 unfair competition with Plaintiff pursuant to 15 U.S.C. §§ 1117(a) and 1117(b).

15           5.       Awarding Plaintiff its actual damages arising out of Defendants' acts of  
16 willful unfair competition, trebled pursuant to 15 U.S.C. §§ 1117(a) and 1117(b) and other  
17 applicable law.

18           6.       Awarding Plaintiff statutory damages pursuant to 15 U.S.C. §1117(c).

19           7.       Awarding to Plaintiff interest, including pre-judgment interest, on the  
20 foregoing sums.

21           8.       Awarding to Plaintiff its costs in this civil action, including reasonable  
22 attorneys' fees and expenses, pursuant to 15 U.S.C. §§ 1117(a) and 1117(b) and other  
23 applicable law.

24           9.       Awarding Plaintiff exemplary and punitive damages to deter any future  
25 willful infringement as the Court finds appropriate.

26           10.      Awarding to Plaintiff its damages incurred as a result of Defendants'  
27 violation of Plaintiff's exclusive rights in the copyright, including Defendants' profits and  
28 Plaintiff's losses on infringing sales.



1 11. Directing such other action as the Court may deem appropriate to prevent the  
2 trade and public from deriving the erroneous impression that any goods or services  
3 offered, advertised or promoted by or on behalf of Defendants are authorized by Fujikura  
4 or Plaintiff, or related in any way to Plaintiff's products.

5 12. Directing that Defendants file with the Court and serve upon Plaintiff's  
6 counsel, within thirty days after entry of judgment, a report in writing under oath setting  
7 forth in detail the manner and form in which Defendants have complied with the above.

8 13. Awarding Plaintiff such other and further relief as the Court may deem just  
9 and proper.

10  
11 **DEMAND FOR JURY TRIAL**

12 Under Fed. R. Civ. P. 38(b), Plaintiff demands a jury trial on all issues so triable.  
13 RESPECTFULLY SUBMITTED this 27th day of January, 2012.

14  
15 **STITES & HARBISON PLLC**

16  
17 By           /s/ John W. Scruton            
18 Joel T. Beres  
John W. Scruton

19 **LEWIS AND ROCA LLP**  
20 Sean D. Garrison  
21 Shane E. Olafson  
*Attorneys for Plaintiff*

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**Certificate of Service**

I hereby certify that on January 27, 2012, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/EF registrants:

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