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DOCKET NUMBER 2779
Office of the Secretary Int'l Trade Commission

January 6, 2011

The Honorable Marilyn R. Abbott
Secretary
U.S. International Trade Commission
500 E. Street, S.W.
Washington, D.C. 20436

CBI 11-109

Re: Certain Radio Control Hobby Transmitters and Receivers and Products
Containing Same

Dear Secretary Abbott:

Enclosed for filing on behalf of complainant Horizon Hobby, Inc. ("Horizon Hobby") are the following documents in support of Horizon Hobby's request that the Commission commence an investigation pursuant to Section 337 of Tariff Act of 1930, as amended. A request for confidential treatment of confidential Exhibits E, F, G, M, Q, and U is included with this filing.

Accordingly, complainants submit the following documents for filing:

1. An original and twelve (12) copies of the verified complaint and an original and six (6) copies of the accompanying Exhibits, with the confidential Exhibits segregated from the other material submitted (Exhibits that include an original and one (1) copy unbound, without tabs) (Rules 201.6(c), 210.4(0(3)(i), and 210.8(a)(1)(i));
2. Two (2) additional copies of the complaint and accompanying non-confidential and confidential Exhibits, one each for service upon the eleven proposed respondents (Rules 210.4(0(3)(i), 210. 8(a)(1)(iii), and 210.11(a));
3. A copy of U.S. Patent No. 7,391,320 (filed October 18, 2005) ("320 Patent") is included as Appendix A to the original Complaint, and copies thereof included respectively as Exhibit J in all copies of the Complaint (Rule 210.12(a)(9)(i));
4. A copy of the Assignment Record for the '320 Patent is included as Appendix B in the original complaint, and copies thereof included as Exhibit K in all copies of the Complaint (Rule 210.12(a)(9)(ii));

5. A copy of the prosecution history of the '320 Patent is included as Appendixes C to the original complaint. Three (3) additional copies (plus an additional unbound copy) thereof are also included (Rule 210.12(c)(1));
6. Four (4) copies of each patent and technical reference mentioned in the '320 Patent included as Appendix D (Rule 210.12(c)(2));
7. A copy of U.S. Federal Trademark Reg. No. 3,080,770 (SPEKTRUM trademark) is included as Appendix E to the original Complaint, and copies thereof included as Exhibit H in all copies of the Complaint (Rule 210.12(a)(9)(i));
8. A copy of the Assignment Record for the SPEKTRUM trademark is included as Appendixes F in the original complaint, and copies thereof included as Exhibits I in all copies of the Complaint (Rule 210.12(a)(9)(ii));
9. An identification of each license agreement for the SPEKTRUM trademark included as Confidential Exhibit 7 (Rule 210.12(a)(9)(iii));
10. One (1) additional copy of the complaint and for service upon the embassy in Washington, D.C. of the country of the foreign respondents (China) (Rules 210.8(a)(1)(iv) and 210.11(a)(1)(ii));
11. A letter and certification pursuant to 19 C.F.R. 201.6(b) and Commission Rules 210.5(d) requesting confidential treatment of confidential Exhibits E, F, G, M, Q, and U.

Sincerely,



Sean Patrick Suiter

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The Honorable Marilyn R. Abbott
Secretary
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500 E. Street, S.W.
Washington, D.C. 20436

Re: Certain Radio Control Hobby Transmitters and Receivers and Products
Containing Same

Dear Secretary Abbott:

This firm represents complainant Horizon Hobby, Inc. ("Horizon Hobby") who is concurrently filing a complaint pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

In accordance with Commission Rules 201.6 and 210.5 (19 C.F.R. §§ 201.6 and 210.5), Horizon Hobby requests confidential treatment of the business information contained in confidential Exhibits E, F, G, M, Q, and U.

The information for which confidential treatment is sought is proprietary commercial and financial information not otherwise publicly available. Specifically, these exhibits contain proprietary commercial information concerning Horizon Hobby's licensing of the asserted trademarks, and information concerning Horizon Hobby's enforcement of its patent and trademarks.

The information described above qualifies as confidential business information pursuant to Rule 201.6(a) because:

1. it is not available to the public;
2. unauthorized disclosure of such information could cause substantial harm to competitive position of complainant; and
3. the disclosure of which could impair the Commission's ability to obtain information necessary to perform its statutory function.

Please contact me if you have any question regarding this request, or if this request is not granted in full.

Thank you for your attention to this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Sean Suiter". The signature is written in a cursive style with a horizontal line underneath the name.

Sean Patrick Suiter

**INDEX OF EXHIBITS AND APPENDICES
EXHIBITS**

EXHIBIT	EXHIBIT NAME	CONFIDENTIAL / PUBLIC
A	ANNOTATED CONTENT FROM Koko-RC.com.cn WEB SITE ¹	PUBLIC
B	CONTENT FROM Email Advertisement for Koko Technology Limited ¹	PUBLIC
C	ANNOTATED CONTENT FROM Email Advertisement for Koko Technology Limited ¹	PUBLIC
D	CONTENT FROM Email Advertisement for Koko Technology Limited ¹	PUBLIC
E	CONTENT FROM Horizon Hobby Internal Email Thread ¹	CONFIDENTIAL
F	Horizon Hobby, Inc. eBay Weekly Report August 1-7, 2010	CONFIDENTIAL
G	License Agreement Between Bachmann Industries, Inc. and Horizon Hobby, Inc.	CONFIDENTIAL
H	Federal Trademark Reg. No. 3,080,770 ("SPEKTRUM")	PUBLIC
I	Assignment Record for Trademark Reg. No. 3,080,770	PUBLIC
J	U.S. Patent No. 7,391,320 (filed October 18, 2005)	PUBLIC
K	Assignment Record for Patent No. 7,391,320	PUBLIC
L	Claim Chart for U.S. Patent No. 7,391,320	PUBLIC
M	Declaration of Steve Hall	CONFIDENTIAL
N	ANNOTATED CONTENT FROM RCGroups.com WEB SITE ¹	PUBLIC
O	U.S. Copyright Reg. No. TX 7-226-001	PUBLIC
P	Comparison of Embedded Code From Authentic and Counterfeit Receivers.	PUBLIC
Q	Receipt of Purchase and E-mail Exchange between Shane R. Thielen and Koko Technology Ltd.	CONFIDENTIAL
R	Photographs of Products and Packaging Received From Koko	PUBLIC
S	ANNOTATED CONTENT FROM SDSHobby.com WEB SITE ¹	PUBLIC
T	ANNOTATED CONTENT FROM SDSHobby.net WEB SITE ¹	PUBLIC

¹ In all cases where an exhibit is described as "CONTENT FROM" or "ANNOTATED CONTENT FROM," the content comprises complete, unmodified screenshots, or complete, unmodified e-mails. Irrelevant materials such as advertisements and additional e-mails in an e-mail chain have been omitted for clarity. Annotations are in the form of blue arrows with descriptive text. Any potentially exculpatory material has been left intact.

U	Receipt of Purchase and E-mail Exchange between Shane R. Thielen and Cyclone Toy & Hobby	CONFIDENTIAL
V	Photographs of Products and Packaging Received From Cyclone Toy & Hobby	PUBLIC
W	ANNOTATED CONTENT FROM GlobalSources.com WEB SITE ¹	PUBLIC
X	ANNOTATED CONTENT FROM FCC.gov WEB SITE ¹	PUBLIC
Y	Prosecution history of Federal Trademark Reg. No. 3,080,770 ("SPEKTRUM")	PUBLIC

APPENDICES

APPENDIX	APPENDIX NAME	CONFIDENTIAL / PUBLIC
A	U.S. Patent No. 7,391,320 (filed October 18, 2005)	PUBLIC
B	Assignment Record for Patent No. 7,391,320	PUBLIC
C	Prosecution history of Patent No. 7,391,320	PUBLIC
D	Each patent and technical reference mentioned in Patent No. 7,391,320	PUBLIC
E	Federal Trademark Reg. No. 3,080,770 ("SPEKTRUM")	PUBLIC
F	Assignment Record for the SPEKTRUM trademark	PUBLIC

BEFORE THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:

CERTAIN RADIO CONTROL HOBBY
TRANSMITTERS AND RECEIVERS
AND PRODUCTS CONTAINING SAME

Investigation:

TA-337-_____

VERIFIED COMPLAINT UNDER SECTION 337 OF THE
TARIFF ACT OF 1930, AS AMENDED

PUBLIC

Complainant

Horizon Hobby, Inc.
4105 Fieldstone Road
Champaign, IL 61822

Counsel for Complainant

Sean Patrick Suiter
Suiter Swantz pc llo
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(402) 496-0300

Respondents

Koko Technology Ltd.
4F, Building 3, Area B,
Hekan Industrial Zone, No.41,
Wuhe Road South, Bantian
Shenzhen
Guangdong
China 518129

Cyclone Toy & Hobby
4/F Dawei Bldg
Industrial West RD
Longhua Bao'an District
Shenzhen, Guangdong
China
TEL:0086-755-28095420
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Introduction

1. Horizon Hobby (Complainant) is a corporation registered in the State of Delaware with its principle place of business in the State of Illinois. Horizon Hobby is one of the largest designers, manufacturers, and distributors of radio controlled (“R/C”) hobby vehicles and accessories in the world. Horizon Hobby has been in business since 1985 and employs over 700 designers, engineers, administrators, manufacturers and customer support staff within the United States. Additionally, many vendors and their employees and profits rely on Horizon Hobby. Horizon Hobby continues to develop its product line and intellectual property. In 2005 Horizon Hobby completely changed the R/C industry with the invention of SPEKTRUM technology. SPEKTRUM technology is protected by a United States patent, trademark, and copyright. A majority of Horizon Hobby’s profits and employees are directly employed in improving, implementing, and administering the SPEKTRUM product line. Additionally, Horizon Hobby is continually investing and working to improve its SPEKTRUM technology products in an effort to increase its export footprint in both Europe and Asia.

2. Respondents are located in the People’s Republic of China and are engaged in copying and exporting counterfeit Horizon Hobby SPEKTRUM technology products into the United States. Over time Respondents’ counterfeiting efforts have grown bolder and more aggressive; first counterfeiting a single component, and now, on information and belief, engaging in counterfeiting additional products in the SPEKTRUM product line. Respondents are predominately shipping directly to end-users within the United States and have recently increased the scope and magnitude of their counterfeiting efforts through concerted direct marketing to both R/C hobbyist and R/C hobby stores. Respondent’s pre-complaint conduct demonstrates a willingness to change names, locations, and tactics in order to continue counterfeiting. Respondents are selling counterfeit goods unlawfully to the severe detriment of Horizon Hobby and the domestic R/C industry. Each

counterfeit product infringes at least one of Horizon Hobby's valid patent, trademark, and/or copyright. Incredibly, Respondents are even representing they are Horizon Hobby by including (with their counterfeit products) business reply cards using the HORIZON HOBBY formative and United States address.

3. This Complaint is filed by Horizon Hobby, Inc., ("Horizon Hobby") pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337. Upon information and belief, Respondents have continuously and flagrantly imported predatory, sub-standard and potentially dangerous products into the United States; those products, in addition to the potential harm they may do to consumers, infringe Horizon Hobby's valid patent. Respondents distribute their predatory, infringing products through small-scale, virtually anonymous online auction websites, and have attempted to establish in retail distribution channels. Respondents' broad, shallow distribution network, coupled with their status as foreign entities, effectively shields Respondents from any enforcement mechanism other than the Tariff Act of 1930; therefore Horizon Hobby respectfully requests that the U.S. International Trade Commission ("Commission") institute an investigation relating to the predatory and unlawful foreign importation into the United States, sale for importation, and/or sale within the United States after importation of certain infringing radio control hobby transmitters and receivers, and products containing same that utilize, without Horizon Hobby's authorization, the inventions claimed in claims 1, 2, 3, 4, and 5 of Horizon Hobby's valid United States patent, U.S. Patent No. 7,391,320 (the "320 Patent"), to the detriment of the radio control hobby vehicle industry in the United States.

4. Horizon Hobby further requests that an investigation be commenced relating to the predatory and unlawful foreign importation into and subsequent sale within the United States after importation, of certain infringing radio control hobby transmitters and receivers, and products containing same embedded with computer code subject to Horizon Hobby's valid United States copyright registration, U.S. Copyright Reg. No. TX-7-226-001, to the detriment

of the hobby radio control industry in the United States. Respondents have duplicated Horizon Hobby's products to the point of copying Horizon Hobby's FCC id number. The micro processors in Respondent's infringing products contain exact replicas of Horizon Hobby's registered machine code; but while Horizon Hobby laboriously tests and refines the computer code it puts into its legitimate products, Respondents likely do not even have source code to test and refine; they can only copy machine code which may or may not be safe for use with their sub-standard and sometimes defective parts.

5. Horizon Hobby further requests that an investigation be commenced relating to the predatory and unlawful foreign importation into and subsequent sale within the United States after importation, of certain infringing radio control hobby transmitters and receivers, products containing same, and packaging bearing a mark confusing similar to the SPEKTRUM trademark, to the detriment of the radio control hobby vehicle industry in the United States. The use of the SPEKTRUM trademark has not been authorized by Horizon Hobby pursuant to a world-wide, exclusive license granted to Horizon Hobby of a valid U.S. trademark registration, U.S. Trademark Reg. No. 3,080,770. Respondents have slavishly duplicated every single source identifying feature on Horizon Hobby's products and packaging, all the way down to the owner's manual which is marked as copyrighted material of Horizon Hobby, and the business rely card which is addressed to Horizon Hobby. Respondents are not only co-opting Horizon Hobby's good will in the marketplace, they are also actively imposing a financial burden on Horizon Hobby to service Respondents defective, infringing products.

6. Horizon Hobby seeks as relief a permanent, general exclusion order (or, in the alternative, a limited exclusion order) barring from entry into the United States the infringing transmitters and receivers, and products containing same. Horizon Hobby also seeks a permanent cease and desist order prohibiting each Respondent from engaging in any and all commercial activities in the United States relating to or concerning their respective infringing transmitters and

receivers and products containing such transmitters and receivers.

Parties

Complainant

7. Horizon Hobby, Inc. is incorporated in Delaware and is located at 4105 Fieldstone Road, Champaign, IL 61822. Horizon Hobby, Inc. is the owner of several patents, including the '320 Patent which discloses using spread spectrum technology in radio controlled hobby vehicles. Horizon Hobby designs, develops and supports its inventions and products by employing engineers and customer support personnel in the United States. Horizon Hobby's invention of using spread spectrum technology in radio controlled hobby vehicles is recognized as revolutionary in the industry; and Horizon Hobby practices its inventions by manufacturing radio controlled hobby vehicles and components for radio controlled hobby vehicles, in the People's Republic of China, for worldwide distribution. Horizon Hobby's continued innovations are vital to the radio controlled hobby vehicle industry in the United States, and such innovations are threatened by foreign predation.

8. Horizon Hobby practices the '320 Patent in several lines of products including Horizon Hobby's SPEKTRUM line of radio telemetry products which includes the TM1000 DSM2 full range and fly-by aircraft telemetry modules, and the DX7 7-Channel Heli x/AR7000 & 4-DS821 MD 2 radio controller. A domestic industry exists in the United States by virtue of Horizon Hobby's significant investment in the United States in equipment, labor and capital, and research and development related to the '320 Patent. Horizon Hobby has sold a significant, confidential number of products related to the '320 patent. Horizon Hobby will be forced to eliminate jobs and halt capital investment in the United States if Respondents' predatory practices continue.

9. In the United States, Horizon Hobby employs engineers to invent, design and develop its products; programmers to design, develop and test its embedded computer code; and quality assurance and customer support

personnel to maintain the goodwill embodied in the SPEKTRUM trademark. Horizon Hobby employs more than 50 individuals in the United States to design and support products related to the '320 Patent, and has invested significant, confidential sums over the last three years in research and development of various technologies in the United States, including technologies embodied in the '320 Patent.

10. In the United States, Horizon Hobby leases and maintains facilities totally approximately 430,000 square feet in several locations in Illinois and California, and maintains equipment necessary to further invent, develop and tests its products.

11. Horizon Hobby's ability to compete and its success as a company depend on its ability to innovate and to protect these innovations. To that end, Horizon Hobby spends significant sums on research and development each year, for the benefit of the entire radio control hobby vehicle industry in the United States. Horizon Hobby generates significant revenue from sales of products covered by its patents, and expects to generate even more revenue from products that benefit from its ongoing research and development based on the technology of Horizon Hobby's patents. In addition, many of Horizon Hobby's innovations rely on programmable electronics with embedded software. Horizon Hobby invests significant sums developing such software to maximize the value of its products, and the functionality of its products to the rest of the industry. Furthermore, Horizon Hobby has developed significant goodwill in the SPEKTRUM trademark through rigorous quality control and customer care; Horizon Hobby devotes significant time and resources toward protecting the SPEKTRUM trademark by policing the use of the mark in commerce. Loss of consumer confidence in any high quality brand would have a chilling effect on the industry.

Respondents

12. Upon information and belief, Koko Technology Ltd. ("Koko") is a limited company organized and existing under the laws of Hong Kong, maintaining its

principal place of business at 4F, Building 3, Area B, Hekan Industrial Zone, No.41, Wuhe Road South, Bantian, Shenzhen, Guangdong China 0518129.

13. Upon information and belief, Cyclone Toy & Hobby (“Cyclone”) is a limited company organized and existing under the laws of Honk Kong, maintaining its principal place of business at 4/F Dawei Bldg, Industrial West RD, Longhua Bao'an District, Shenzhen, Guangdong China. Cyclone Toy and Hobby includes Cyclone Technology Industrial Limited and Shenzen SDS Electric Co., Limited. Upon information and belief, Cyclone Toy & Hobby owns and operates the websites SDSHobby.com, SDSHobby.net and Cyclonetoy.com.

Domestic Industry

14. In accordance with 19 U.S.C. § 1337(a)(2) and 1337 (a)(3), a radio controlled hobby vehicle industry exists in the United States. The industry, which includes radio controlled vehicle manufacturers as well as amateur hobbyists, relies on Horizon Hobby’s innovations and specifically on the ‘320 Patent. Respondents have imported or sold for importation into the United States, large quantities of defective or sub-standard, infringing products, and thereby undermined consumer confidence in industry innovations, and potentially exposed consumers to dangerous products. Lack of consumer confidence will stifle further innovation and result in lost jobs and investment in the United States.

15. Radio controlled hobby vehicles utilize small light-weight receivers to selectively control various controls and features of the vehicle. For example, radio controlled aircraft usually include a throttle, a rudder, an elevator, and aileron servos operably connected and controlled via a receiver. In operation, a hobbyist utilizes a controller/transmitter operating on a previously selected frequency to control the hobby vehicle via the receiver. This required a system of tracking the frequencies being utilized by all hobbyist so as to avoid cross-control and other undesirable consequences of more than one controller/transmitter selected to control one or more vehicles operated by receivers on the same channel. Additionally, tight frequency spacing over the

small available signal bandwidth increased the likelihood of noise and interference effecting safety and the positive control of rapidly moving vehicles. Prior to the invention of the SPEKTRUM technology by Horizon Hobby, an R/C hobbyist would refer to a “frequency board” (see for example <http://www.hooked-on-rc-airplanes.com/rc-frequencies.htm>). Usually a painted sheet of plywood mounted on posts. The plywood commonly included a series of frequency numbers to determine which frequencies were in use and which frequencies were available; generally, 1-60. A hobbyist would approach the frequency board and hang an identifying tag over a selected number so as to indicate that the frequency number was in use. In crowded venues the best (most robust and desirable) frequencies were quickly taken during preferred times. Additionally, not all receiver / transmitter / controller systems were capable of effectively utilizing all available frequencies. The growth of the industry in the United States was effectively limited because only a certain number of hobbyists could ever participate in one location, at one time.

16. With the invention of the SPEKTRUM technology by Horizon Hobby, frequency boards, frequency selection is no longer necessary. Horizon Hobby’s patented invention allows R/C hobbyists to use spread spectrum transmitters and receivers to control their R/C vehicles. Spread spectrum transmitters and receivers are easier for the consumer to use because they do not require frequency selection; they are safer because they are not prone to cross-control or interference, and they remove the artificial limit imposed by frequency boards. The SPEKTRUM system is universally recognized as having revolutionized the R/C hobby. Horizon Hobby’s innovations have made complex radio controlled hobby vehicles more accessible to more people, and thereby expanded the industry in the United States.

17. Upon information and belief, Many companies in the United States specialize in designing and manufacturing R/C hobby vehicles including BRP, Inc., which manufactures R/C racing cars and accessories in Ohio (See <http://brpracing.com/>); Century Helicopter Products which designs and manufactures R/C helicopters in California (See

<http://www.centuryheli.com/>); and Traxxas which manufactures R/C vehicles in Texas (See http://www.traxxas.com/about/trx_about_history.htm). In addition to manufacturing R/C products, enthusiasts all over the United States build, purchase, modify and race R/C vehicles. This industry relies on Horizon Hobby's innovations and inventions. The spread spectrum technology embodied in the '320 Patent has permeated every corner of the R/C hobby vehicle industry in the United States and all over the world. Multitudes of racers and pilots have used SPEKTRUM branded products and related technologies; without those technologies and the consumer confidence to use them, embodied in the SPEKTRUM trademark, the radio control hobby vehicle industry in the United States cannot flourish.

18. Horizon Hobby develops software necessary for the proper function of its products. That software is tested and refined during the development cycle of a given product. Developing, testing and refining embedded software is a major component of the radio controlled hobby vehicle industry. Horizon Hobby cannot continue to develop embedded software to serve the radio control hobby vehicle industry in the United States unless its copyrighted material is adequately defended from predatory, foreign infringers. Respondents have damaged the industry in the United States by copying embedded computer code into defective or sub-standard hardware for which it was not designed, exposing consumers to risks of property damage and even personal injury. Such exposure will have a chilling effect on the radio control hobby vehicle industry in the United States.

19. Horizon Hobby has developed a substantial amount of goodwill in the products associated with the SPEKTRUM Trademark by maintaining consistently high quality control. Purchasers of the infringing products are likely to mistakenly believe that the products are subject to the same quality assurance as non-infringing products. Continued sales in the United States of infringing products have resulted in irreparable injury to Horizon Hobby because such sales have created, and continue to create, consumer confusion and dissatisfaction to the detriment of Horizon Hobby's goodwill and dilute the

distinctive quality of the SPEKTRUM Trademark. Respondents' activities have severely damaged the industry in the United States by undermining consumer confidence in a brand known for quality and innovation; without such confidence, consumers will be unwilling to invest in new and innovative products and the industry will be brought to a halt.

20. Horizon Hobby has significant investment in labor and capital in the United States, and a substantial investment in exploitation of the '320 Patent through research and development, engineering, licensing, product development, testing and quality control.

21. Respondents' predatory, infringing activities have deprived Horizon Hobby of the right to exploit the '320 Patent, the exclusive right to produce copies of its embedded computer code, and the goodwill embodied in the SPEKTRUM trademark, and have thereby severely damaged the radio control hobby vehicle industry in the United States. Without viable protection for valid patents, copyrights and trademarks, industry innovators such as Horizon Hobby cannot continue to develop new inventions or products, and the radio controlled hobby vehicle industry in the United States will collapse for lack of innovation, leading to lost jobs and lost capital investment in the United States.

The Patent at Issue and Non-technical Description of the Patent

22. The patent at issue is U.S. Patent No. 7,391,320 (filed October 18, 2005) (the "'320 Patent"), titled "Method and system for controlling radio controlled devices," which issued on June 24, 2008.

23. Horizon Hobby owns, by assignment, all rights, title and interest in and to the '320 Patent. A copy of the assignment of the '320 Patent from the inventors to Horizon Hobby can be found in Appendix B and is attached as Exhibit K.

24. A copy of the Patent is attached as Exhibit J. A copy of the U.S. Patent and Trademark Office file history for the Patent is submitted with this

complaint as Appendix C, and copies of the patents and applicable pages of each technical reference mentioned in the file history are submitted with this complaint as Appendix D.

25. The '320 Patent describes a method and system for controlling a radio control (R/C) device via a secure radio link where spread spectrum modulation is employed to provide a digital radio frequency (RF) link between a controller and an R/C device. The controller is coupled with a transmitter module and a radio controlled device is coupled with a receiver module to provide an add-on upgrade capability. The invention may also include error detection and correction, interpolation of lost packets, failsafe technology and force-feedback telemetric technology to further enhance the user experience with radio controlled devices.

Unlawful and Unfair Acts of Proposed Respondents' Patent Infringement

26. Upon information and belief, Respondents were aware of the '320 Patent. This complaint and the notice of investigation that will be published by the Commission in the Federal Register, should the Commission initiate this investigation, will serve as notice to Respondents of the Patent, should Respondents contend that they did not previously have knowledge of the Patent. Furthermore, Horizon Hobby has or will send a copy of this complaint to each Respondent contemporaneous with its submission. Upon information and belief, Respondents actively and knowingly aid, abet, and induce infringement of the Patent by Respondents' customers, which activities constitute active inducement to infringe pursuant to 35 U.S.C. § 271(b).

Koko

27. Exhibit C shows the content of an e-mail sent by Koko, offering a radio control receiver for sale and importation into the United States. The text of the message clearly indicates that Koko manufactures the pictured product, described as "AR6100E." AR6100E is the model number of a receiver manufactured pursuant to the '320 Patent.

28. Horizon Hobby purchased in the United States, a radio receiver marketed as a "Spektrum AR6100E." The infringing receiver was analyzed and it was found on close examination that the Gerber Files appeared to be identical in that the circuit boards for the infringing receiver and an authentic SPEKTRUM AR6100E were identical. Additionally, the Hex Code of the infringing receiver and the SPEKTRUM AR6100E are substantially similar. Furthermore, the hardware was found to copy the hardware of Horizon Hobby's legitimate product, but with critical component substitutions. Such substitutions are detrimental to consumers who expect a known level or reliability, and may dangerously compromise the functionality of the product, and thereby damage the image of the industry in the United States. As used and marketed, the receiver was found to infringe, either directly or indirectly, the '320 Patent. Upon information and belief, the infringing receiver purchased by Horizon Hobby was manufactured by Koko.

29. Horizon Hobby, through its attorney of record, purchased two infringing radio transmitters and ten infringing radio receivers, directly from Koko. The infringing radio transmitters and receivers were shipped from Hong Kong, through South Korea, and imported into the United States, in Anchorage Alaska, on October 22, 2010. See Exhibit Q. Upon information and belief, Koko did not know, and could not have known that the infringing radio transmitters and receivers were purchased on behalf of Horizon Hobby. Koko admitted that it manufactures the infringing radio transmitters and receivers, and offered to import 1,000 infringing radio transmitters per month, and 5,500 infringing radio receivers per month. Koko also offered to increase monthly production if necessary. See Exhibit Q.

30. Upon information and belief, Koko has imported into the United States, defective, infringing radios bearing a mark confusing similar (identical) to the SPEKTRUM trademark, and bearing a model number identical to Horizon Hobby's own model number. Koko has passed off defective, infringing products as Horizon Hobby's products, irrevocably damaging the radio control hobby

vehicle industry in the United States by undermining consumer confidence in an industry leader, and in the innovations that drive the growth of the industry in the United States.

31. Furthermore, by including business reply cards addressed to Horizon Hobby, Koko has not only robbed Horizon Hobby of the benefit of its valid patent, but also attempted to shift liability for the cost of replacing its defective products onto Horizon Hobby. Horizon Hobby may be forced to bear the cost of repairing or replacing Koko's defective products at the expense of jobs and investment in the United States.

32. Non-infringing radio transmitters regularly sell for \$200 per unit, and non-infringing radio receivers regularly sell for \$50 per unit. The quantities offered by Koko to a single potential distributor in the United States would cost the domestic industry \$475,000 per month or \$5.7 million per year in lost sales.

33. The infringing radio transmitters and receivers manufactured by Koko and imported into the United States were examined by Horizon Hobby and found to infringe the '320 Patent. Furthermore, upon close examination, at least one infringing transmitter was found to bear a code indicating it was defective, and the infringing radio contained old gimbals. Unlike authentic Horizon Hobby SPEKTRUM DX6i transmitters, the infringing transmitter did not seem to have a genuine battery cover, and trims were drilled manually. Horizon Hobby informed Koko of the infringing nature of its products, yet Koko continued to offer those products for importation into the United States, even offering discounts for purchases of a certain quantity. See Exhibit Q.

34. Upon information and belief, Respondent Koko currently manufactures and will continue to manufacture, sells for importation, imports, and/or sells within the United States after importation certain infringing radio control hobby transmitters and receivers, and products containing such transmitters and receivers that infringe the '320 Patent either literally or under the doctrine of equivalents. These activities constitute direct infringement pursuant to 35 U.S.C. § 271(a).

35. Upon information and belief, Respondent Koko currently manufactures and will continue to manufacture, sells for importation, imports, and/or sells within the United States after importation certain infringing radio control hobby transmitters and receivers, and products containing such transmitters and receivers that constitute a material part of the invention claimed in the '320 Patent, knowing those transmitters, receivers and products to be especially made and/or adapted for use in an infringement of the '320 Patent, and not staple articles of commerce suitable for substantially non-infringing use; therefore, Respondents are contributory infringers pursuant to 35 U.S.C. § 271(c).

Cyclone

36. Horizon Hobby, through its attorney of record, purchased an infringing radio transmitter and an infringing radio receiver, directly from Cyclone through its subsidiary website SDSHobby.net. The infringing radio transmitter and receiver were shipped from Singapore and imported into the United States on or before November 5, 2010. See Exhibit U. Upon information and belief, Cyclone did not know, and could not have known that the infringing radio transmitters and receivers were purchased on behalf of Horizon Hobby.

37. The infringing radio transmitters and receivers manufactured by Cyclone and imported into the United States were examined by Horizon Hobby and found to infringe the '320 Patent.

38. Upon information and belief, radio control hobby receivers, suitable only for inclusion in radio control systems that would directly infringe the '320 Patent, have actually been imported for sale and sold in the United States. Furthermore, those receivers have actually been used in radio control systems that directly infringe the '320 Patent. See Exhibit N. Upon information and belief, the radio control hobby receivers cited in Exhibit N were manufactured by Respondents.

39. Upon information and belief, the infringing, predatory products

manufactured and imported into the United States by Respondents are dangerous; they do not meet the specifications or quality control standards of legitimate Horizon Hobby products and are prone to malfunction. See Exhibit E.

40. There has been and continues to be an active market for Respondents' counterfeit products on eBay as evidenced by Exhibit F. This market is comprised of numerous, virtually anonymous individual sellers, importing infringing products from respondents, or from foreign entities purchasing infringing products from respondents. The use of online auction sites to distribute Respondents predatory, counterfeit products has further damaged the industry in the United States by depriving consumers of any warranties or accountability as to the quality of their products. Respondents' use of online auction sites to distribute their infringing products has forced Horizon Hobby to devote resources toward enforcing its intellectual property rights rather than investing in innovations in the United States. Furthermore, Respondents' employment of a large network of small scale, nearly anonymous importers ensures that any type of limited exclusionary activity will be easily circumvented.

41. All of these predatory infringing activities have severely damaged the radio control hobby vehicle industry in the United States by eroding consumer confidence in the functionality and value of the invention embodied in the '320 Patent with sub-standard or defective parts and poor quality control. Respondents have thereby stifled innovation in the industry, to the detriment of the industry as a whole and to consumers.

42. Upon information and belief, Respondent Cyclone, through its associated companies Cyclone Technology Industrial Limited and Shenzhen SDS Electric Co., currently manufactures and will continue to manufacture, sells for importation, imports, and/or sells within the United States after importation certain infringing radio control hobby transmitters and receivers, and products containing such transmitters and receivers that infringe the '320 Patent either

literally or under the doctrine of equivalents. These activities constitute direct infringement pursuant to 35 U.S.C. § 271(a).

43. Upon information and belief, Respondent Cyclone, through its associated companies Cyclone Technology Industrial Limited and Shenzhen SDS Electric Co., currently manufactures and/or imminently will manufacture, sells for importation, imports, and/or sells within the United States after importation certain infringing radio control hobby transmitters and receivers, and products containing such transmitters and receivers that constitute a material part of the invention claimed in the '320 Patent, knowing those transmitters, receivers and products to be especially made and/or adapted for use in an infringement of the '320 Patent, and not staple articles of commerce suitable for substantially non-infringing use; therefore, Respondents are contributory infringers pursuant to 35 U.S.C. § 271(c).

The Copyright at Issue

44. On or about April 25, 2008, Horizon Hobby completed development of computer software for its radio receivers. That software, in the form of computer code, is embedded in every Horizon Hobby radio receiver, and thereby becomes fixed in a tangible medium of expression. The embedded computer code is stored in memory registers and may be presented in hexadecimal form showing the values stored in each register.

45. On September 24, 2010, Horizon Hobby registered the software embedded in its radio receivers with the United States Copyright Office. Horizon Hobby owns the entire interest in a valid copyright in the embedded computer code, Copyright Reg. No. TX 7-226-001. See Exhibit O.

Unlawful and Unfair Acts of Proposed Respondents Copyright Infringement

46. Upon information and belief, Respondents have, without authorization, reproduced Horizon Hobby's copyrighted software, prepared derivative works based upon Horizon Hobby's copyrighted software, distributed copies of Horizon Hobby's copyrighted software to the public by sale or other transfer,

and/or performed Horizon Hobby's copyrighted software publicly, or enabled others to do so; therefore, Respondents are infringers pursuant to 17 U.S.C. § 501(a).

47. Upon information and belief, Respondents have imported into the United States, without authority from Horizon Hobby, copies of the copyrighted software acquired outside the United States. Respondents are therefore infringers pursuant to 17 U.S.C. § 602(a)(1), actionable under 17 U.S.C. § 501.

48. Upon information and belief, these predatory infringing activities have severely damaged the radio control hobby vehicle industry in the United States by exposing consumers to products with unknown software capabilities, and to software embedded in substandard hardware, which may never have been tested. Furthermore, upon information and belief, the signals generated by the predatory, infringing products have never been evaluated for compliance with FCC regulations.

49. Horizon Hobby's authentic radio receiver, with embedded computer code, was made available to the public in approximately May, 2008. Respondents have had access to the computer code, in its embedded form, since that time.

50. Horizon Hobby has conducted extensive analysis of the counterfeit receiver it purchased, in the United States, through an online supplier. Part of that analysis included an in depth comparison between the embedded computer code in the counterfeit receiver, and Horizon Hobby's own copyrighted computer code whereupon they were found to be substantially similar. See Exhibit P. Respondents predatory copying of Horizon Hobby's computer code is severely detrimental to the industry in the United States because Respondents have no interest in maintaining and updating the computer code based on user experience, while Horizon Hobby will continue to enhance the embedded code on its own products; Respondents will therefore stifle development of the industry in the United States by maintaining a market in products with obsolete and potentially dangerous computer code that would

not otherwise exist. Upon information and belief, the counterfeit radio receiver purchased by Horizon Hobby was manufactured by Respondents, and Respondents copied the infringing computer code into the counterfeit radio receiver.

The Trademarks at Issue

51. The trademarks at issue are U.S. Reg. No. 3,080,770 (registered April 11, 2006), 'SPEKTRUM,' and CTM Application No. 00495756, 'SPEKTRUM,' (collectively, the "SPEKTRUM" trademark).

52. Pursuant to a license agreement effective July 19, 2007, Bachman Industries, Inc. granted Horizon Hobby an exclusive, perpetual, world-wide license to use the SPEKTRUM trademark in commerce, in association with radio transmitter modules and receivers and components thereof; namely, digital sequencing modules and transceivers for installation into hobby model vehicles for digital encoding. A copy of the license agreement is attached as Exhibit G.

53. The license agreement further grants Horizon Hobby the right to take any action Horizon Hobby deems necessary to protect the rights of Horizon Hobby and Bachman Industries in the event the Trademarks are infringed.

Unlawful and Unfair Acts of Proposed Respondents Trademark Infringement

54. Upon information and belief, these predatory, infringing activities have severely damaged the radio control hobby vehicle industry in the United States by undermining consumer confidence in a leading industry innovator, and by association, all of the industry participants that use of distribute SPEKTRUM branded products.

55. Upon information and belief, Koko has offered and continues to offer radio control transmitters and receivers for sale in the United States using a mark confusingly similar to the well established SPEKTRUM trademark. Koko has listed its infringing products on various websites using pictures of products visually identical to Horizon Hobby's legitimate products, including the SPEKTRUM trademark and Horizon Hobby's own model numbers. See Exhibit A.

Koko has also offered its infringing products for sale in the United States through direct e-mail solicitation, again using pictures of products visually identical to Horizon Hobby's legitimate products, including the SPEKTRUM trademark and Horizon Hobby's own model numbers. See Exhibits B, C and D. Koko has undermined consumer confidence in the industry by manufacturing and distributing, in the United States, defective products, using a trademark that can only be intended to deceive consumers as to the quality of its products. Without consumer confidence in quality brands and the innovations associated with those brands, the hobby radio control industry cannot flourish in the United States.

56. Horizon Hobby, through its attorney of record, purchased two infringing radio transmitters and ten infringing radio receivers, directly from Koko. The infringing radio transmitters and receivers were shipped from Hong Kong, through South Korea, and imported into the United States, in Anchorage Alaska, on October 22, 2010. See Exhibit Q. Upon information and belief, Koko did not know, and could not have known that the infringing radio transmitters and receivers were purchased on behalf of Horizon Hobby. Koko offered to import 1,000 infringing radio transmitters per month, and 5,500 infringing radio receivers per month. Koko also offered to increase monthly production if necessary. See Exhibit Q. All of the infringing transmitters and infringing receivers bore marks confusingly similar to the well established SPEKTRUM trademark. Furthermore, the packaging for each of the infringing products contained marks confusingly similar to the well established SPEKTRUM trademark. See Exhibit R. Koko also included "Business Reply" cards addressed to Horizon Hobby; the only conceivable purpose for including such cards is to deceive consumers as to the source of Koko's infringing products.

57. Upon information and belief, Cyclone has offered and continues to offer radio control transmitters and receivers for sale in the United States using a mark confusingly similar to the well established SPEKTRUM trademark. Cyclone has listed its infringing products on various websites using pictures of products

visually identical to Horizon Hobby's legitimate products, including the SPEKTRUM trademark and Horizon Hobby's own model numbers. See Exhibits S and T. Cyclone has also offered its infringing products for sale in the United States through direct e-mail solicitation. Cyclone has undermined consumer confidence in the industry by manufacturing and distributing, in the United States, using a trademark that can only be intended to deceive consumers as to the quality of its products. Without consumer confidence in quality brands and the innovations associated with those brands, the hobby radio control industry cannot flourish in the United States.

58. Horizon Hobby, through its attorney of record, purchased one infringing radio transmitter and one infringing radio receiver, directly from Cyclone. The infringing radio transmitter and receiver were shipped from Singapore, and imported into the United States through Los Angeles on or before November 5, 2010. See Exhibit U. Upon information and belief, Cyclone did not know, and could not have known that the infringing radio transmitter and receiver were purchased on behalf of Horizon Hobby. The infringing transmitter and infringing receivers bore marks confusing similar to the well established SPEKTRUM trademark. Furthermore, the packaging for each of the infringing products contained marks confusingly similar to the well established SPEKTRUM trademark.

59. Upon information and belief, Respondents use or have used, in commerce, a reproduction, counterfeit, copy, or colorable imitation of the SPEKTRUM trademark in connection with the sale, offering for sale, distribution, or advertising of goods without the consent of Horizon Hobby or Bachman Industries, and such use is likely to cause confusion, or to cause mistake, or to deceive pursuant to 15 U.S.C. § 1114(1)(a).

60. Upon information and belief, Respondents reproduce, counterfeit, copy, or colorably imitate the SPEKTRUM trademark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce

upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive pursuant to 15 U.S.C. § 1114(1)(b).

Harmonized Tariff Schedule

61. Upon information and belief, all infringing products imported by Respondents are categorized under item number 8526.92.00 (Radio remote control apparatus) of the Harmonized Tariff Schedule of the United States.

Related Registrations, Applications, Litigation and Administrative Actions

62. Upon information and belief, none of the patents, copyrights or trademarks cited herein is the subject of any litigation.

63. Upon information and belief, none of Respondents' unfair acts or unfair methods of competition are or have been the subject of any court or agency litigation or special investigation.

64. Upon information and belief, the invention disclosed in the '320 patent is not the subject of any foreign patent application; Horizon Hobby's software is not registered in any foreign copyright office; and the SPEKTRUM trademark is not registered in any foreign trademark registration office for use with remote controlled hobby vehicles.

Conclusion

65. Respondents have egregiously marketed products that have no purpose except to infringe the '320 Patent, using marks identical to the SPEKTRUM trademark, in packaging indistinguishable from Horizon Hobby's own packaging, and loaded with computer object code obviously ripped from Horizon Hobby's own legitimate products. Respondents have not missed a single opportunity to associate their infringing products with Horizon Hobby, even to the point of shifting liability for their defects onto Horizon Hobby. Respondents have demonstrated an active intent to completely supplant Horizon Hobby in the

market, not through legitimate competition, but by stealing Horizon Hobby's patented inventions and usurping Horizon Hobby's good name.

66. Without effective relief, Horizon Hobby cannot maintain its workforce or continue to invest capital in the United States.

Relief

WHEREFORE, by reason of the foregoing, Horizon Hobby requests that the United States International trade commission:

(a) Institute an immediate investigation pursuant to Section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, with respect to Respondents' violations of that section based on the importation into the United States, sale for importation, sale within the United States after importation, or sale within the United States after importation of radio control hobby transmitters and receivers, and products containing same, that infringe the SPEKTRUM Trademark, that infringe Horizon Hobby's copyright, or that infringe one or more claims of the '320 Patent;

(b) Schedule and conduct a hearing on permanent relief pursuant to 19 U.S.C. § 1337(d) and (f);

(c) Issue a permanent general exclusion order, pursuant to 19 U.S.C. § 1337(d), excluding from entry into the United States radio control hobby transmitters and receivers, and products containing same, as described and claimed in the '320 Patent, incorporating Horizon Hobby's embedded computer code, or bearing marks confusingly similar to the SPEKTRUM trademark; a general exclusion being necessary based on the ease with which foreign Respondents may establish new identities, and the large number of individuals attempting to sell infringing products through online auction websites; but not excluding any products addressed to Horizon Hobby at 4105 Fieldstone Road, Champaign, IL 61822;

(d) Issue a permanent limited exclusion order specifically directed to each named Respondent and its subsidiaries and affiliates, pursuant to 19 U.S.C. §

1337(d), excluding from entry into the United States Respondents' radio control hobby transmitters and receivers, and products containing such transmitters and receivers, as described and claimed in the '320 Patent, incorporating Horizon Hobby's embedded computer code, or bearing marks confusingly similar to the SPEKTRUM trademark; but not excluding any products addressed to Horizon Hobby at 4105 Fieldstone Road, Champaign, IL 61822;

(e) Issue a permanent cease and desist order, pursuant to 19 U.S.C. § 1337(f), prohibiting the importation, sale for importation, use, offering for sale after importation, inventory for distribution, distribution, licensing, or otherwise transferring within the United States, Respondents' radio control hobby transmitters and receivers, and products containing such transmitters and receivers, as described and claimed in the '320 Patent, incorporating Horizon Hobby's embedded computer code, or bearing marks confusingly similar to the SPEKTRUM trademark; and

(f) Issue such other and further relief as the Commission deems just and proper under the law, based upon the facts determined by the investigation and the authority of the Commission.

Respectfully submitted,



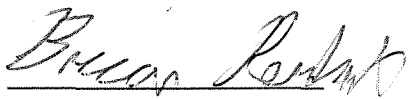
Sean Patrick Suiter
Counsel for Complainant
Horizon Hobby, Inc.

VERIFICATION OF COMPLAINT

I, Brian Reinhart, declare, in accordance with 19 C.F.R. § 210.4 and § 210.12(a), as follows:

1. I am counsel for Horizon Hobby, Inc., and I am duly authorized to sign this Complaint;
2. I have read the Complaint and I am aware of its contents;
3. The Complaint is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
4. To the best of my knowledge, information and belief founded upon reasonable inquiry, the claims and legal contentions of the Complaint are warranted by existing law or a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law; and
5. The allegations and other factual contentions made in the Complaint have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Brian Reinhart
Counsel for
Horizon Hobby, Inc.