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16 FUTURE MOTION, INC.

17 **UNITED STATES DISTRICT COURT**

18 **NORTHERN DISTRICT OF CALIFORNIA**

19 **FUTURE MOTION**, INC., a Delaware
20 Corporation,

21 Plaintiff,

22 v.

23 **JW BATTERIES** LLC, a Texas Company,

24 Defendant.

Case No.

ORIGINAL COMPLAINT FOR:

- 25 (1) **CIRCUMVENTION OF A
26 TECHNOLOGICAL MEASURE
27 UNDER 17 U.S.C. § 1201;**
- (2) **VIOLATION OF THE
28 COMPUTER FRAUD AND
ABUSE ACT UNDER 18 U.S.C. §
1030;**
- (3) **FALSE DESIGNATION OF
ORIGIN UNDER 15 U.S.C §
1125(a)**

JURY TRIAL DEMANDED

1 Plaintiff Future Motion, Inc. (“Future Motion” or “Plaintiff”) alleges, based on
2 actual knowledge with respect to Future Motion and Future Motion’s acts, and based on
3 information and belief with respect to all other matters, against Defendant JW
4 BATTERIES LLC (“JW” or “Defendant”) as follows:
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7 **NATURE OF THE CASE**

8 This is a civil action for (1) circumventing a technological measure in violation of
9 the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201 (a)-(b); (2) violation of the
10 Computer Fraud and Abuse Act, 18 U.S.C. § 1030; and (3) false designation under the
11 Lanham Act, 15 U.S.C. § 1125(a).
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13

14 **THE PARTIES**

15 1. Plaintiff Future Motion, Inc. (“Plaintiff” or “Future Motion”) is a Delaware
16 corporation with a principal place of business at 1201 Shaffer Road, Santa Cruz,
17 California 95060.
18

19 2. Defendant is a Texas company with a registered address at 9900 Spectrum
20 Drive, Austin, Texas 78717.
21

22 3. Defendant does business as “JW Batteries” at the website jwbatteries.com,
23 the YouTube channel <https://www.youtube.com/channel/UC4RogZp3soadWqebJzJJypw>,
24 the Facebook channel <https://www.facebook.com/jwbatteries/>, and a brick-and-mortar
25 store at 1430 Dragon Street, Suite 13, Dallas, Texas 75207.
26

27 **JURISDICTION AND VENUE**

28 4. This Court has subject matter jurisdiction over the claims arising under the
Digital Millennium Copyright Act (“DMCA”) pursuant to 28 U.S.C. §§ 1331 and 1338.

1 merchandise, and operates an online retail store featuring the aforementioned goods at
2 <https://onewheel.com>. An example of a user riding one of Future Motion’s Onewheel
3 products is shown in the photo below:
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12 10. Future Motion has expended significant time and resources developing and
13 marketing its products, as well as protecting its intellectual property rights relating to the
14 products.
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17 11. Future Motion has developed computer code, which resides in processors
18 incorporated in the Onewheel skateboards, to control various functions and safety
19 features of its self-balancing skateboards, for instance by monitoring the status of the
20 skateboard and causing it to slow down or stop if it approaches an unsafe operating
21 condition.
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23

24 12. Several of the important safety features of Future Motion’s Onewheel
25 skateboards result from communications between the battery management system
26 processor (“BMS”), which monitors the status of the skateboard battery, and the main
27 controller of the skateboard. If the controller receives information from the BMS
28 indicating that the battery is approaching an unsafe state, the controller is programmed to
take action to avoid potential rider injury.

1 13. For example, if the controller receives information from the BMS
2 indicating that the battery is approaching its maximum power output, the controller
3 prevents additional power from being drawn, to avoid exceeding the battery’s safe power
4 output capability.
5

6 14. As another example, if the controller receives information from the BMS
7 indicating that the battery is approaching a very low state of charge, the controller
8 provides “pushback” that raises the nose of the board, essentially forcing the skateboard
9 to slow to a stop, and signaling to the rider to recharge the battery before resuming use of
10 the skateboard.
11

12 15. The Future Motion BMS sends additional information to the controller that
13 affects rider safety. This includes, for example, information regarding the electric current
14 drawn from the battery, which can lead to excessive battery heat if the current is allowed
15 to exceed the safe limits of the battery.
16

17 16. On all of Future Motion’s current Onewheel products, the controller is
18 programmed not to allow the skateboard motor to operate unless the processor receives
19 information from the BMS indicating that the battery is in a safe riding condition.
20 Therefore, in the absence of circumvention of Future Motion’s technology measures,
21 batteries with cells disposed too densely, and batteries reaching an unsafe power
22 condition, will not function with Onewheel skateboards due to the risk of a battery fire.
23

24 17. Similarly, a battery approaching an extremely high power draw or an
25 extremely low state of charge will cause pushback to avoid rider injury that could result
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1 in the absence of these safeguards, for instance if the skateboard motor were able to shut
2 down suddenly rather than gradually or under the user’s control.

3
4 18. The required communication from the Onewheel BMS to the Onewheel
5 controller functions as a technological measure that controls access to the copyrighted
6 software that resides on the controller (and that controls the skateboard), by preventing
7 such access and control if the skateboard is modified without authorization into an unsafe
8 condition, such as with an unsafe or unsuitable battery.
9
10

11 19. The Onewheel controller is connected to the Internet through a smartphone
12 software application that is available to Onewheel users. The smartphone app monitors
13 the state of charge of the battery and reports it to the user, allows the user to tune the
14 riding characteristics of the motor, and sends various information, such as speed and
15 mileage information, to a remote server.
16
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18 **B. Defendant’s Activities**

19
20 20. Defendant is advertising and selling a computer processor chip (the
21 “JWFFM Chip”) intended to circumvent the Future Motion safety and technological
22 measures described above. On information and belief, the “FFM” in “JWFFM” is an
23 abbreviation for “F*ck Future Motion,” indicating Defendant’s bad faith intentions
24 toward Future Motion.
25

26 21. Defendant offers and sells its JWFFM Chip to customers, including
27 customers in this judicial district, at least through its e-commerce website at
28 <https://jwbatteries.com/products/jwffm-chip-1>. Attached as Exhibit A is a copy of
Defendant’s web page offering the JWFFM Chip for sale.

1 22. The JWFFM Chip is designed to be installed so that it intercepts
2 communications between the Onewheel BMS processor and the Onewheel controller, and
3
4 to circumvent Future Motion’s technological control measures by both altering and
5 deleting information from the BMS that could otherwise indicate an unsafe riding
6
7 condition. In this manner, the JWFFM Chip allows unauthorized, aftermarket batteries to
8
9 access the Onewheel controller and to control the skateboard, regardless of whether the
10 battery meets Future Motion’s safety requirements.

11 23. For example, the JWFFM Chip provides altered information to the
12 controller, to intentionally misinform the controller about the type of battery installed in
13
14 the product. This is extremely dangerous, because the controller is programmed to draw
15 power based on certain assumptions about the battery type. Therefore, the JWFFM Chip
16
17 could cause an unsafe amount of power to be drawn, causing battery overheating.

18 24. Defendant teaches customers how to install the JWFFM Chip in order to
19
20 circumvent Future Motion’s technological measures, at least in a video on Defendant’s
21 YouTube channel at <https://www.youtube.com/watch?v=kSWicH8hUFo&t=407s>.

22 25. Defendant also offers to install the JWFFM Chip in Onewheel skateboards
23
24 for customers. Exhibit A, p. 2 highlights a portion of Defendant’s web page on which
25 Defendant offers to install the JWFFM Chip at its location in Dallas, Texas.

26 26. Also at least on its website at [https://jwbatteries.com/collections/onewheel-](https://jwbatteries.com/collections/onewheel-batteries)
27 [batteries](https://jwbatteries.com/collections/onewheel-batteries), Defendant offers Onewheel replacement batteries which, upon information and
28 belief, do not meet Future Motion’s safety requirements, and which can only be used in

1 current Future Motion Onewheel skateboards in conjunction with Defendant’s JWFFM
2 Chip.

3
4 27. Defendant’s JWFFM Chip poses a significant risk of injury or even death to
5 both Onewheel users and other members of the public, (i) by increasing the likelihood of
6 sudden and unexpected motor shutdown of the Onewheel skateboard while a user is
7 riding the board, and (ii) by increasing the likelihood of a catastrophic battery fire that
8 could damage or destroy not only the Onewheel board, but also nearby property,
9 structures or wildlands.

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12 28. In addition to its JWFFM Chip, Defendant offers “JWXR” stickers, at least
13 through its website at <https://jwbatteries.com/collections/accessories/products/stickers>,
14 which incorporate Future Motion’s distinctive, stylized XR trademark, as shown below:
15



19 **Defendant’s Use of JWXR**



21 **Future Motion’s XR Mark**

22 29. Defendant’s incorporation of Future Motion’s stylized XR mark into its
23 stickers creates the false impression that Defendant is affiliated with Future Motion, or
24 that Future Motion sponsors or approved Defendant or its products.

25 30. Defendant’s incorporation of Future Motion’s stylized XR mark into its
26 stickers also leads to post-sale confusion by consumers, because a third-party consumer
27 seeing a Onewheel skateboard branded with Defendant’s JWXR sticker would likely
28 believe that Defendant is the source of the skateboard, or at least that Defendant is
affiliated with, sponsored by, or approved by Future Motion, none of which is the case.

1 **CLAIM 1 – CIRCUMVENTION OF A TECHNOLOGICAL MEASURE**

2 **UNDER 17 U.S.C. § 1201**

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4 31. Future Motion restates and incorporates by reference Paragraphs 1-30 as if
5 fully set forth herein.

6
7 32. Future Motion’s Onewheel skateboards each include a controller, which is
8 a digital signal processor programmed with Future Motion’s proprietary computer code
9 that controls the electric motor of the skateboard.

10
11 33. Future Motion’s controller code is owned by Future Motion, and is a work
12 protected by the copyright laws of the United States.

13
14 34. The required electronic communications between the Future Motion BMS
15 and the Future Motion controller effectively control access to the copyrighted controller
16 code, by requiring the application of specific information to the controller by the BMS, to
17 ensure that Future Motion’s Onewheel skateboards can only be operated when connected
18 to a battery that is safe to use with the product, and when the battery is in a safely usable
19 condition.

20
21
22 35. By installing its JWFFM chip in Onewheel skateboards, Defendant is
23 circumventing Future Motion’s technological measures that effectively control access to
24 the Onewheel controller code, by avoiding, bypassing, or otherwise impairing the
25 technological measures, without Future Motion’s authority and in violation of 17 U.S.C.
26 § 1201(a)(1)(A).

27
28 36. Defendant is manufacturing, importing, offering to the public, providing,
and/or otherwise trafficking in its JWFFM chip, which is primarily designed for the

1 purpose of circumventing Future Motion’s technological measures that effectively
2 control access to the Onewheel controller code, by avoiding, bypassing, or otherwise
3 impairing the technological measures, and which has no other commercially significant
4 purpose, without Future Motion’s authority and in violation of 17 U.S.C. §§
5 1201(a)(2)(A)-(B).
6

7
8 37. Defendant’s actions in violation of 17 U.S.C. § 1201 have injured Future
9 Motion and are threatening further irreparable injury to Future Motion, by tarnishing
10 Future Motion’s reputation, creating potential liability for property damage as well as for
11 injuries to customers and other members of the public, and reducing Future Motion’s
12 revenue from authorized product sales and service.
13

14
15 38. Based on Defendant’s actions in violation of 17 U.S.C. §1201, Future
16 Motion is entitled to injunctive relief, damages, costs, and reasonable attorney’s fees
17 pursuant to 17 U.S.C. § 1203.
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19
20 **CLAIM 2 – VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT**

21 **UNDER 18 U.S.C. § 1030**

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23 39. Future Motion restates and incorporates by reference Paragraphs 1-30 as if
24 fully set forth herein.

25 40. Future Motion’s Onewheel skateboards each include a controller which
26 connects to the Internet through a smartphone and is used in interstate communication,
27 and which is therefore a “protected computer” for purposes of the Computer Fraud and
28 Abuse Act, 18 U.S.C. § 1830(e)(2).

1 41. Defendant has violated the Computer Fraud and Abuse Act, 18 U.S.C. §
2 1030(a)(5)(C), by intentionally accessing a protected computer without authorization, and
3
4 as a result of such conduct, causing damage and loss to Future Motion.

5 42. As described in more detail above, Defendant’s JWFFM Chip circumvents
6
7 Future Motion’s technological measures intended to safeguard access to its protected
8 Onewheel controller, by “spoofing” the controller into accepting altered and filtered BMS
9
10 data that does not reflect the true nature and state of the product battery. Defendant had
11 no authorization to access Future Motion’s protected computers by providing them with
12 falsified BMS data.
13

14 43. On information and belief, Defendant’s conduct in manufacturing, offering,
15
16 selling, installing, and/or otherwise providing its JWFFM Chip has caused economic loss
17 to Future Motion of at least \$5,000 in value during the 1-year period preceding the
18 commencement of this action, in violation of 18 U.S.C. § 1830(c)(4)(A)(i)(I).
19

20 44. On information and belief, Defendant’s conduct in manufacturing, offering,
21
22 selling, installing, and/or otherwise providing its JWFFM Chip has caused a threat to
23 public health and safety by circumventing Future Motion’s safety measures intended to
24 prevent sudden motor shutdown, user injury, and battery fires, in violation of 18 U.S.C. §
25 1830(c)(4)(A)(i)(IV).

26 45. Defendant’s unlawful access to Future Motion’s Onewheel controllers,
27
28 which includes providing the controllers with falsified BMS data, has caused Future
Motion irreparable injury. Unless restrained and enjoined, Defendant will continue to
commit such acts.

1 46. Based on Defendant’s actions in violation of 18 U.S.C. § 1830(c)(4)(a)(i),
2 Future Motion is entitled to compensatory damages, injunctive relief, and/or other
3 equitable relief pursuant to 18 U.S.C. § 1830(g).
4

5 **CLAIM 3 – FALSE DESIGNATION OF ORIGIN**

6 **UNDER 15 U.S.C § 1125(a)**

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8 47. Future Motion restates and incorporates by reference Paragraphs 1-30 as if
9 fully set forth herein.
10

11 48. Defendant’s sale of JWXR stickers incorporating Future Motion’s stylized
12 trademark XR constitutes a use in commerce of a word or symbol which is likely to cause
13 confusion among consumers or to deceive consumers as to the affiliation, connection, or
14 association of Defendant with Future Motion, or as to the origin, sponsorship, or approval
15 of Defendant’s goods, services, or commercial activities by Future Motion.
16
17

18 49. Defendant’s sale of JWXR stickers incorporating Future Motion’s stylized
19 trademark XR is also likely to create confusion wherein consumers seeing a Future
20 Motion Onewheel skateboard branded with Defendant’s JWXR mark would believe
21 Defendant to be the source of the skateboard, making it more likely that the consumer
22 would turn to Defendant to purchase parts, accessories, and services that could otherwise
23 be provided by Future Motion.
24
25

26 50. Based on Defendant’s actions in violation of 15 U.S.C. § 1125(a), Future
27 Motion is entitled to injunctive relief pursuant to 15 U.S.C. § 1116, as well as
28 Defendant’s profits, Future Motion’s damages, and the costs of this action pursuant to 15
U.S.C. § 1117.

1 51. Defendant's willful infringement of Future Motion's trademark rights, with
2 the intent to profit from Future Motion's well-known XR mark, constitutes an
3 exceptional case entitling Future Motion to its reasonable attorney fees pursuant to 15
4 U.S.C. § 1117.

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6 **PRAYER FOR RELIEF**

7
8 WHEREFORE, Future Motion prays for the following relief:

- 9
10 A. For temporary, preliminary, and permanent injunctive relief, including but
11 not limited to requiring Defendant to cease manufacturing, having made,
12 offering, selling, or installing its JWFFM Chip and its JWXR stickers, and
13 turn over all remaining unsold inventory of those items to Future Motion
14 for destruction;
15
16 B. For damages sufficient to fully compensate Future Motion for all of the
17 harm caused by Defendant's actions and for having to respond to
18 Defendant's actions;
19
20 C. For Defendant's profits pursuant to 17 U.S.C. § 1203(c)(2), 15 U.S.C. §
21 1117(a), or as otherwise allowable by law;
22
23 D. For statutory damages pursuant to 17 U.S.C. § 1203(c)(3), or as otherwise
24 allowable by law;
25
26 E. For exemplary and/or punitive damages as allowable by law;
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28 F. For attorney's fees pursuant to 17 U.S.C. § 1203(b)(5), 15 U.S.C. §
1117(a), or as otherwise allowable by law;
G. For the costs of this action;

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H. For pre- and post-judgment interest; and

I. For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Future Motion hereby demands a trial by jury of all issues so triable.

Dated: August 31, 2021

Respectfully Submitted,
MICLEAN GLEASON LLP

By: /s/ David J. Miclean
David J. Miclean
Attorneys for Plaintiff Future Motion, Inc.

Dated: August 31, 2021

Respectfully Submitted,
KOLITCH ROMANO LLP

By: /s/ Shawn J. Kolitch
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