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AUG 11 2009
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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

EDL

CV 09 3672

11 **NORDIC WINDPOWER USA, INC., a**
12 Delaware corporation,

Case No.

COMPLAINT FOR:

13 Plaintiff,

1. Trademark Infringement Pursuant To 15 U.S.C. §1114
2. Trademark Infringement Pursuant To 15 U.S.C. §1125(a)
3. Trademark Dilution in Violation of the Lanham Act
4. Unfair Competition and False Designation Of Origin Pursuant To 15 U.S.C. §1125(a)
5. Trade Dress Infringement Pursuant To 15 U.S.C. §1125(a)
6. Common Law Trademark Infringement
7. Common Law And Cal. Bus. & Prof. Code §17200
8. California Statutory Injury To Business Reputation And Dilution In Violation Of California Business And Professions Code § 14330

14 v.

15 **NORDIC TURBINES, INC., a Nevada**
16 corporation

17 Defendant.

DEMAND FOR JURY TRIAL

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1 Plaintiff Nordic Windpower USA Inc. ("Nordic Windpower") brings these claims against
2 Defendant Nordic Turbines Inc. ("Nordic Turbines") as follows:

3 **JURISDICTION**

4 1. This Court has federal subject matter jurisdiction under the Lanham Act 15 U.S.C. §§
5 1051 *et seq.* proscribing false designation of origin, trademark dilution and trademark infringement.
6 Jurisdiction is conferred under 28 U.S.C. §§ 1331, 1338(a) and 1338(b) and 15 U.S.C. § 1121.

7 2. This action is also based upon state laws protecting against trademark infringement
8 and unfair competition and deceptive trade practices. This Court has jurisdiction over the state
9 claims pursuant to 28 U.S.C. § 1338(b). This Court also has jurisdiction over the state claims under
10 28 U.S.C. § 1367(a) and the doctrine of pendent jurisdiction.

11 3. This Court further has subject matter jurisdiction pursuant to 28 U.S.C. § 1332, as
12 there is diversity of citizenship between the parties and the amount in controversy exceeds the sum
13 of \$75,000, exclusive of interest and costs.

14 4. This Court has personal jurisdiction over Nordic Turbines since it is engaged in
15 substantial business or has committed tortious acts within this Judicial District. Specifically, upon
16 information and belief, Nordic Turbines is seeking investors located within this Judicial District.

17 **INTRA-DISTRICT ASSIGNMENT**

18 5. The action should be assigned to the San Francisco division of the northern district of
19 California because a substantial part of the events or omissions giving rise to the action occurred, or
20 a substantial part of property that is the subject of the action is situated near this location or division.

21 **VENUE**

22 6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) because
23 Nordic Turbines is subject to personal jurisdiction in this Judicial District, and a substantial part of
24 the events or omissions giving rise to the claim occurred, or a substantial part of property that is the
25 subject of the action is situated in this Judicial District.

26 **PARTIES**

27 7. Plaintiff Nordic Windpower is a privately held corporation organized under the laws
28 of Delaware with a principal place of business located at 125 University Ave., Berkeley, CA 94710.

1 8. Plaintiff Nordic Windpower is a wholly owned subsidiary of Nordic Windpower Ltd.,
2 a company incorporated in the United Kingdom.

3 9. Upon information and belief, Defendant Nordic Turbines is an over-the-counter
4 publicly traded Nevada corporation with a principal place of business located 1694 Falmouth Road,
5 Suite 147, Centerville, Massachusetts.

6 10. Upon information and belief, Nordic Turbines transacts business throughout the
7 United States and specifically within this Judicial District.

8 **BACKGROUND AND FACTS**

9 **Nordic Windpower's Business**

10 11. Plaintiff Nordic Windpower manufactures and sells novel two-bladed, utility-scale
11 wind turbines with patent pending flexible "teeter hub" technology.

12 12. Nordic Windpower's proprietary N1000 wind turbine is the first utility-scale
13 alternative to the industry's dominant three-bladed design and is at least 10 percent less costly to
14 manufacture, install, operate and maintain than competing systems.

15 13. As the first and only company in the U.S. market offering utility-scale two blade
16 turbines, Nordic Windpower has faced the daunting task of building the market for its innovative
17 two-blade turbine.

18 14. In an effort to raise industry awareness about Nordic Windpower's novel two-blade
19 turbines, Nordic Windpower has spent at least \$500,000 promoting and advertising its wind turbines
20 and wind-powered electricity generators under the "NORDIC WINDPOWER" mark since 2007.

21 15. As a result of Nordic Windpower's efforts, the "NORDIC WINDPOWER" mark is
22 well recognized by members of the trade and the relevant purchasing public who have come to
23 associate Nordic Windpower as the source of wind turbines and wind-powered electricity generators
24 sold under the "NORDIC WINDPOWER" mark.

25 16. In recognition of its innovative technology, on July 2, 2009 Secretary Steven Chu
26 announced that the U.S. Department of Energy will give Nordic Windpower \$16 million in
27 conditional loan guarantees to support the tooling and commercial-scale up of Nordic Windpower's
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1 assembly plant in Pocatello, Idaho. Nordic Windpower is expected to create more than 75 new
2 skilled jobs at its Pocatello facility.

3 17. Nordic Windpower's efforts have led to first customer shipments commencing in
4 September 2009.

5 18. Nordic Windpower's recognition in the market place is growing day by day. Nordic
6 Windpower has been featured in the New York Times, USA Today, Wind Power Monthly, MIT's
7 Technology Review, www.technologyreview.com/energy/23109/, energycurrent.com,
8 nawindpower.com, sanfrancisco.bizjournal.com, and energy-daily.com, among others.

9 19. If Defendant Nordic Turbines is now allowed to take advantage of Nordic Turbines'
10 goodwill, Nordic Windpower's reputation as an innovator and market developer will be permanently
11 injured in a manner not curable by money damages.

12 **Nordic Windpower's Trademarks**

13 20. Nordic Windpower has offered its wind turbines and wind-powered electricity
14 generators in the United States in interstate commerce under the trademark "NORDIC
15 WINDPOWER" since at least by May 2007.

16 21. Nordic Windpower advertises its wind turbines and wind-powered electricity
17 generators to potential customers throughout the United States and abroad.

18 22. Nordic Windpower owns and uses U.S. Trademark Registration No. 3,536,392 for the
19 mark "NORDIC WINDPOWER" for use in connection with wind turbines and wind-powered
20 electricity generators.

21 23. Registration No. 3,536,392 is listed on the Principal Register of the United States
22 Patent and Trademark Office and is valid and subsisting. A true and correct copy of Registration
23 No. 3,536,392 is attached as Exhibit 1.

24 24. Nordic Windpower's continuous use of the "NORDIC WINDPOWER" mark has
25 resulted in the development of immeasurable goodwill associated with Nordic Windpower and its
26 wind turbines and wind-powered electricity generators among members of the trade and the relevant
27 purchasing public.

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Nordic Turbines' Infringement

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2 25. Upon information belief, in an attempt to ride Nordic Windpower's coattails and
3 benefit from the goodwill and market presence Nordic Windpower has recently generated, on or
4 about June 15, 2009 Defendant Nordic Turbines changed its name from Vista Dorada Corp. to
5 Nordic Turbines.

6 26. Nordic Turbines now trades on the National Association Of Securities Dealers
7 ("NASD") Over-the-Counter Bulletin Board under the symbol NDTI.

8 27. Upon information and belief, companies trade "Over-the-Counter" so that they can
9 raise capital from unrelated third parties without being regulated as closely as they would be through
10 the regular stock exchange.

11 28. Upon information and belief, Nordic Turbines is aggressively seeking investment
12 from investors throughout the United States and specifically in this judicial district to raise
13 investment to fund manufacturing projects in China.

14 29. Specifically, Nordic Turbines has prepared a corporate presentation to solicit U.S.
15 investors for its Chinese manufacturing projects. Exhibit 3, filed under seal.

16 30. Nordic Turbines and Wuhan Guoce Nordic New Energy Co. Ltd., a People's
17 Republic of China company ("WGNNE") are in the process of consummating a merger.

The Parties' "Relationship"

18
19 31. The two-blade wind turbine was originally developed by Deltawind AB ("Delta
20 Wind"), a Swedish corporation.

21 32. In 2006, Deltawind entered into an agreement with WGNNE and, as a result,
22 WGNNE currently has a license to Deltawind's technology.

23 33. In September 2007, Nordic Windpower LLC, a Nevada corporation, acquired the
24 assets of Deltawind.

25 34. Nordic Windpower LLC consolidated the company under Nordic Windpower Ltd.,
26 Plaintiff Nordic Windpower's parent company.

1 35. In connection with completing the asset transfer agreement with Nordic Windpower
2 LLC, Deltawind sent WGNNE paperwork required by the Chinese government requesting
3 acknowledgement of the asset transfer agreement.

4 36. WGNNE is thus aware of Nordic Windpower.

5 37. Nordic Turbines, via its relationship with WGNNE, is also aware of Nordic
6 Windpower.

7 38. After completing the asset transfer agreement with Deltawind, Nordic Windpower
8 spent time and money improving upon the technology it acquired.

9 39. Thus, the technology Deltawind licensed to WGNNE is not the same technology that
10 Nordic Windpower is now exploiting in the U.S.

11 40. For example, in March 2008, Nordic Windpower filed a U.S. patent application
12 claiming the control tuning of the teeter-hub mechanism.

13 **Nordic Turbines' Illegal Acts**

14 **Trademark Infringement**

15 41. Nordic Turbines did not begin using the name "NORDIC TURBINES" in the United
16 States until June 2009.

17 42. Nordic Turbines' use of "NORDIC" in its name and common law marks constitutes
18 willful infringement.

19 43. Nordic Turbines has had constructive notice of the "NORDIC WINDPOWER" mark
20 since at least November 25, 2008 when Registration No. 3,536,392 issued.

21 44. Further, Nordic Turbines should have known that its name would cause confusion
22 with Nordic Windpower.

23 45. For example, Deltawind notified WGNNE of the asset transfer to Nordic Windpower.
24 Because WGNNE and Nordic Turbines have been planning a merger, Nordic Turbines knew or
25 should have known of Nordic Windpower's existence and the confusion that was likely to result
26 from its name change.

1 46. Further, when changing its name from Vista Dorada Corp. to Nordic Turbines,
2 Nordic Turbines should have discovered Nordic Windpower because, e.g., Nordic Windpower is the
3 first result when a Google search of "Nordic Turbines" is run.

4 47. As a result of Nordic Turbines' name change, there has been actual confusion in the
5 market place.

6 48. For example, an article published on August 5, 2009 entitled "Nordic Turbines, GC
7 Nordic Merger Set In Motion With USD 10m Loan" states "Nordic, until recently called Vista
8 Dorada, *is not to be confused with California-based Nordic Windpower*, which received a USD 16m
9 loan guarantee from the US Department of Energy for its two-blade wind turbine assembly plant in
10 July 2009." (emphasis added) which can be found at

11 <http://www.newenergymatters.com/rss.php?login=Mark.Litwintschik&key=48ca426&cat=12>.

12 **Nordic Windpower's Confidential Management Presentation**

13 49. Nordic Windpower spent over 100 man hours preparing a management presentation
14 that sets forth, among other things, Nordic Windpower's technological advantages and financial
15 projections. Exhibit 2, filed under seal.

16 50. The management presentation contains Nordic Windpower's confidential business
17 information.

18 51. The management presentation provides images of Nordic Windpower's patent
19 pending technology on page 6.

20 52. The management presentation provides reliability and maintenance projections on
21 page 14.

22 **Nordic Turbines Misappropriation of Nordic Windpower's**

23 **Confidential Business Information**

24 53. Nordic Turbines somehow gained access to Nordic Windpower's confidential
25 management presentation.

26 54. Nordic Turbines' corporate presentation uses text taken directly from Nordic
27 Windpower's confidential management presentation.

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1 55. Nordic Turbines' corporate presentation uses images taken directly from Nordic
2 Windpower's confidential management presentation.

3 56. Although most of the information contained in Nordic Turbines' corporate
4 presentation is taken from Nordic Windpower's confidential management presentation, an egregious
5 example of Nordic Turbines' copying of Nordic Windpower's confidential business information can
6 be found on page 8 of Nordic Turbines' corporate presentation. Page 8 from Nordic Turbines'
7 corporate presentation is virtually identical to page 6 from Nordic Windpower's confidential
8 management presentation. Specifically, page 8 from Nordic Turbines' corporate presentation
9 reproduces both Nordic Windpower's images of its patent pending teeter-hub mechanism and the
10 text describing Nordic Windpower's patent pending system.

11 57. Additionally, Page 18 from Nordic Turbines' corporate presentation is identical to
12 page 14 from Nordic Windpower's confidential management presentation. Specifically, page 8 from
13 Nordic Turbines' corporate presentation reproduces exactly all of the reliability and maintenance
14 projections found in Nordic Windpower's confidential management presentation.

15 **Nordic Turbines' Infringement of Nordic Windpower's Trade Dress**

16 58. Nordic Windpower's mark and corporate presentation have a unique and non-
17 functional trade dress including the colors blue and orange.

18 59. Nordic Windpower includes the blue and orange color scheme on promotional
19 material and advertisements such that Nordic Windpower is identified by this unique color design
20 which acts as a source identifier and trade dress. When the existing and potential customers of
21 Nordic Windpower see this trade dress, they know and are assured that the product and/or
22 advertisement is a genuine Nordic Windpower product and/or advertisement.

23 60. The unique blue and orange color scheme has acquired a special or secondary
24 meaning to identify wind turbines and wind-powered electricity generators emanating from Nordic
25 Windpower.

26 61. In addition to the inherent distinctiveness of the trade dress, Nordic Windpower has
27 invested considerable finances and resources in developing and establishing its reputation and good
28

1 will in said trade dress, and has engaged in ongoing and extensive nationwide advertising,
2 promotion, distribution and sale of products incorporating its trade dress and trademarks.

3 62. The unique blue and orange color scheme does not serve a functional purpose and is
4 not primarily functional.

5 63. Nordic Turbines is using an identical blue and orange color scheme.

6 64. Without authority or consent of Nordic Windpower, Nordic Turbines has utilized
7 Nordic Windpower's trade dress with the intent of capitalizing on Nordic Windpower's goodwill by
8 palming off Nordic Windpower's products and/or investment pitches as products and/or investment
9 pitches of Nordic Turbines.

10 **FIRST CLAIM FOR RELIEF**

11 **(Trademark Infringement Pursuant To 15 U.S.C. §1114)**

12 65. Nordic Windpower repeats and re-alleges the allegations set forth in paragraphs 1-63
13 above as if set forth fully herein.

14 66. Nordic Windpower owns the mark "NORDIC WINDPOWER" and U.S. Trademark
15 Registration No. 3,536,392 for the mark "NORDIC WINDPOWER" for use in interstate commerce
16 in connection with wind turbines and wind-powered electricity generators.

17 67. Since at least May 2007, Nordic Windpower has used the "NORDIC WINDPOWER"
18 mark in interstate commerce in connection with the advertising, marketing, promotion and sale of
19 wind turbines and wind-powered electricity generators.

20 68. Upon information and belief, Nordic Windpower's continuous use of "NORDIC
21 WINDPOWER" in the United States has priority over Nordic Turbines' infringing use.

22 69. The "NORDIC WINDPOWER" mark is arbitrary and fanciful and has acquired
23 secondary meaning.

24 70. Nordic Turbines' name is confusingly similar in appearance, sound and/or meaning to
25 Nordic Windpower's federally registered mark, and is being used in connection with services that
26 are competitive with and/or similar to Nordic Windpower's wind turbines and wind-powered
27 electricity generators.

1 71. Specifically, Nordic Turbines has used a confusingly similar name in interstate
2 commerce in connection with the sale, offer for sale, advertisement, promotion and marketing of
3 wind turbines and wind-powered electricity generators or to raise investment capital for the
4 manufacture of wind turbines and wind-powered electricity generators that neither originate from
5 nor are authorized by Nordic Windpower.

6 72. Such use of Nordic Turbines' confusingly similar name is likely to confuse, mislead
7 and deceive members of the public as to the origin of Nordic Turbines' goods/services, or cause the
8 public to believe that Nordic Turbines and Nordic Windpower are in some way affiliated or
9 connected.

10 73. Upon information and belief, Nordic Turbines' use of the name "NORDIC" in
11 connection with wind turbines and wind-powered electricity generators or to raise investment capital
12 for the manufacture of wind turbines and wind-powered electricity generators was intentional in that
13 Nordic Turbines knew that the name used by it is confusingly similar to Nordic Windpower's mark
14 and that such use would deceive the public and cause customer confusion.

15 74. Nordic Turbines is not and has never been authorized or licensed by Nordic
16 Windpower to advertise, promote, market, offer for sale, sell or raise investment capital for any of its
17 wind turbines and wind-powered electricity generators under or in connection with the name
18 "NORDIC."

19 75. Nordic Windpower has demanded that Nordic Turbines cease and desist from its acts
20 of trademark infringement. Nordic Windpower has given Nordic Turbines actual notice of Nordic
21 Windpower's continual use of its mark in connection with wind turbines and wind-powered
22 electricity generators or to raise investment capital for the manufacture of wind turbines and wind-
23 powered electricity generators. However, Nordic Turbines has refused to cease using its name in
24 connection with wind turbines and wind-powered electricity generators or to raise investment capital
25 for the manufacture of wind turbines and wind-powered electricity generators.

26 76. Nordic Turbines' unauthorized use of "NORDIC" in connection with wind turbines
27 and wind-powered electricity generators or to raise investment capital for the manufacture of wind
28 turbines and wind-powered electricity generators constitutes infringement in violation of the Lanham

1 Act, 15 U.S.C. §1114(1), to the substantial and irreparable injury of the public and of Nordic
2 Windpower's business reputation and goodwill.

3 77. Nordic Turbines' acts have been deliberate, willful, intentional and purposeful.

4 78. Nordic Turbines threatens to continue to advertise, promote, market, sell and offer for
5 sale wind turbines and wind-powered electricity generators or to raise investment capital for the
6 manufacture of wind turbines and wind-powered electricity generators using a name that is
7 confusingly similar to Nordic Windpower's mark, and unless restrained and enjoined, will continue
8 to do so to Nordic Windpower's irreparable damage.

9 79. As a direct and proximate result of Nordic Turbines' trademark infringement, Nordic
10 Windpower is entitled to the equitable remedy of an accounting for, and disgorgement of, all
11 revenues and/or profits wrongfully derived by Nordic Turbines from its trademark infringement.

12 80. It would be difficult to ascertain the amount of compensation that could afford Nordic
13 Windpower adequate relief for such continuous acts of trademark infringement. Nordic
14 Windpower's remedy at law therefore is not adequate to compensate it for the injuries that will result
15 from Nordic Turbines' continued infringement of Nordic Windpower's trademark rights.
16 Accordingly, the Court should enjoin and restrain Nordic Turbines from committing any further such
17 acts.

18 81. In addition, Nordic Windpower has incurred costs and attorneys' fees to bring this
19 action.

20 **SECOND CLAIM FOR RELIEF**

21 **(Trademark Infringement Pursuant To 15 U.S.C. §1125(a) et seq.)**

22 82. Nordic Windpower repeats and re-alleges the allegations set forth in paragraphs 1-80
23 above as if set forth fully herein.

24 83. Nordic Turbines' unauthorized use of "NORDIC" in connection with wind turbines
25 and wind-powered electricity generators or to raise investment capital for the manufacture of wind
26 turbines and wind-powered electricity generators constitutes infringement in violation of the Lanham
27 Act, 15 U.S.C. §1125(a), *et seq.*, to the substantial and irreparable injury of the public and of Nordic
28 Windpower's business reputation and goodwill.

1 92. Defendants' conduct and actions have lessened the capacity of Nordic Windpower's
2 mark to identify and distinguish Nordic Windpower's goods and services in violation of section
3 25(c) of the Lanham Act, 15 U.S.C. § 1125(c).

4 93. Nordic Turbines' acts have been deliberate, willful, intentional and purposeful.

5 94. Nordic Turbines threatens to continue to advertise, promote, market, sell and offer for
6 sale wind turbines and wind-powered electricity generators or to raise investment capital for the
7 manufacture of wind turbines and wind-powered electricity generators using a name that is
8 confusingly similar to Nordic Windpower's mark, and unless restrained and enjoined, will continue
9 to do so to Nordic Windpower's irreparable damage.

10 95. It would be difficult to ascertain the amount of compensation that could afford Nordic
11 Windpower adequate relief for such continuous acts of trademark infringement. Nordic
12 Windpower's remedy at law therefore is not adequate to compensate it for the injuries that will result
13 from Nordic Turbines' continued infringement of Nordic Windpower's trademark rights.
14 Accordingly, the Court should enjoin and restrain Nordic Turbines from committing any further such
15 acts.

16 96. In addition, Nordic Windpower has incurred costs and attorneys' fees to bring this
17 action.

18 **FOURTH CLAIM FOR RELIEF**

19 **(Unfair Competition and False Designation Of Origin**

20 **Pursuant To 15 U.S.C. §1125(a) et seq.)**

21 97. Nordic Windpower repeats and re-alleges the allegations set forth in paragraphs 1-95
22 above as if set forth fully herein.

23 98. Nordic Turbines' advertisement, promotion, marketing, offer for sale and sale of wind
24 turbines and wind-powered electricity generators or to raise investment capital for the manufacture
25 of wind turbines and wind-powered electricity generators bearing a confusingly similar name to
26 Nordic Windpower's mark is likely to confuse, mislead and deceive the public as to the origin,
27 sponsorship or approval of Nordic Turbines, or to cause the public to believe that Nordic Turbines
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1 and Nordic Windpower are in some way affiliated or connected. Such conduct constitutes a unfair
2 competition and false designation of origin in violation of 15 U.S.C. §1125(a).

3 99. As a direct and proximate result of Nordic Turbines' trademark infringement, Nordic
4 Windpower is entitled to the equitable remedy of an accounting for, and disgorgement of, all
5 revenues and/or profits wrongfully derived by Nordic Turbines from its trademark infringement.

6 100. Nordic Turbines' acts have been deliberate, willful, intentional and purposeful.

7 101. Nordic Turbines threatens to continue to advertise, promote, market, sell and offer for
8 sale wind turbines and wind-powered electricity generators or to raise investment capital for the
9 manufacture of wind turbines and wind-powered electricity generators using a name that is
10 confusingly similar to Nordic Windpower's mark, and unless restrained and enjoined, will continue
11 to do so to Nordic Windpower's irreparable damage.

12 102. It would be difficult to ascertain the amount of compensation that could afford Nordic
13 Windpower adequate relief for such continuous acts of unfair competition and false designation of
14 origin in addition to causing a multiplicity of judicial proceedings. Nordic Windpower's remedy at
15 law therefore is not adequate to compensate it for the injuries that will result from Nordic Turbines'
16 continued infringement of Nordic Windpower's trademark rights. Accordingly, the Court should
17 enjoin and restrain Nordic Turbines from committing any further such acts.

18 103. In addition, Nordic Windpower has incurred costs and attorneys' fees to bring this
19 action.

20 **FIFTH CLAIM FOR RELIEF**

21 **(Trade Dress Infringement Pursuant To 15 U.S.C. §1125(a))**

22 104. Nordic Windpower repeats and re-alleges the allegations set forth in paragraphs 1-
23 102 above as if set forth fully herein.

24 105. Nordic Windpower has rights in its unique blue and orange color scheme.

25 106. Nordic Windpower's trade dress is primarily non-functional.

26 107. Nordic Windpower's trade dress has acquired "secondary meaning," i.e., that the
27 public has come to recognize the trade dress as associated with Nordic Windpower's wind turbines
28 and wind-powered electricity generators.

1 108. Nordic Turbines' trade dress is likely to cause confusion or mislead consumers by
2 causing them to think that the Nordic Turbines' product or Nordic Turbines' product and Nordic
3 Windpower's product come from the same source.

4 109. As a direct and proximate result of Nordic Turbines' trademark and trade dress
5 infringement, Nordic Windpower is entitled to the equitable remedy of an accounting for, and
6 disgorgement of, all revenues and/or profits wrongfully derived by Nordic Turbines from its
7 trademark and trade dress infringement.

8 110. Nordic Turbines' acts have been deliberate, willful, intentional and purposeful.

9 111. Nordic Turbines threatens to continue to advertise, promote, market, sell and offer for
10 sale wind turbines and wind-powered electricity generators or to raise investment capital for the
11 manufacture of wind turbines and wind-powered electricity generators using a name and trade dress
12 that is confusingly similar to Nordic Windpower's mark and trade dress, and unless restrained and
13 enjoined, will continue to do so to Nordic Windpower's irreparable damage.

14 112. It would be difficult to ascertain the amount of compensation that could afford Nordic
15 Windpower adequate relief for such continuous acts of trademark and trade dress infringement in
16 addition to causing a multiplicity of judicial proceedings. Nordic Windpower's remedy at law
17 therefore is not adequate to compensate it for the injuries that will result from Nordic Turbines'
18 continued infringement of Nordic Windpower's trademark and trade dress rights. Accordingly, the
19 Court should enjoin and restrain Nordic Turbines from committing any further such acts.

20 113. In addition, Nordic Windpower has incurred costs and attorneys' fees to bring this
21 action.

22 **SIXTH CLAIM FOR RELIEF**

23 **(Common Law Trademark Infringement)**

24 114. Nordic Windpower repeats and re-alleges the allegations set forth in paragraphs 1-
25 112 above as if set forth fully herein.

26 115. Nordic Windpower has common law trademark rights for NORDIC WINDPOWER.

27 116. Nordic Turbines' unauthorized use in interstate commerce of a confusingly similar
28 mark constitutes infringement of Nordic Windpower's trademark rights to the substantial and

1 irreparable injury of the public and Nordic Windpower's business reputation and good will.

2 117. As a direct and proximate result of Nordic Turbines' trademark infringement, Nordic
3 Windpower is entitled to the equitable remedy of an accounting for, and disgorgement of, all
4 revenues and/or profits wrongfully derived by Nordic Turbines from its trademark infringement.

5 118. Nordic Turbines' acts have been deliberate, willful, intentional and purposeful to
6 Nordic Windpower's rights.

7 119. Nordic Turbines threatens to continue to advertise, promote, market, sell and offer for
8 sale wind turbines and wind-powered electricity generators or to raise investment capital for the
9 manufacture of wind turbines and wind-powered electricity generators using a name that is
10 confusingly similar to Nordic Windpower's mark, and unless restrained and enjoined, will continue
11 to do so to Nordic Windpower's irreparable damage.

12 120. It would be difficult to ascertain the amount of compensation that could afford Nordic
13 Windpower adequate relief for such continuous acts of trademark infringement. Nordic
14 Windpower's remedy at law therefore is not adequate to compensate it for the injuries that will result
15 from Nordic Turbines' continued infringement of Nordic Windpower's trademark rights.
16 Accordingly, the Court should enjoin and restrain Nordic Turbines from committing any further such
17 acts.

18 121. In addition, Nordic Windpower has incurred costs and attorneys' fees to bring this
19 action.

20 **SEVENTH CLAIM FOR RELIEF**

21 **(Unfair Competition)**

22 **(Common Law And Cal. Bus. & Prof. Code §17200, Et. Seq.)**

23 122. Nordic Windpower repeats and re-alleges the allegations set forth in paragraphs 1-
24 120 above as if set forth fully herein.

25 123. Nordic Turbines' actions as alleged herein were and are likely to deceive the
26 consuming public and therefore constitute unlawful, unfair and fraudulent business practices in
27 violation of California Business & Professions Code §§ 17200 *et seq.* and unfair competition under
28 California common law.

1 124. Upon information and belief, Nordic Turbines has used these unlawful, unfair and
2 fraudulent business practices to deceive the consuming public and therefore constitute unlawful,
3 unfair and fraudulent business practices in violation of California Business & Professions Code
4 §§17200 *et seq.* and unfair competition under California common law.

5 125. Nordic Turbines' unlawful, unfair and fraudulent business practices described above
6 present a continuing threat to members of the public in that they are likely to be deceived as to the
7 origin and quality of Nordic Turbines and Nordic Windpower's services.

8 126. Nordic Turbines' acts have been deliberate, willful, intentional and purposeful.

9 127. Nordic Turbines threatens to continue to advertise, promote, market, sell and offer for
10 sale wind turbines and wind-powered electricity generators or to raise investment capital for the
11 manufacture of wind turbines and wind-powered electricity generators using a name that is
12 confusingly similar to Nordic Windpower's mark, and unless restrained and enjoined, will continue
13 to do so to Nordic Windpower's irreparable damage.

14 128. It would be difficult to ascertain the amount of compensation that could afford Nordic
15 Windpower adequate relief for such continuous acts of trademark infringement. Nordic
16 Windpower's remedy at law therefore is not adequate to compensate it for the injuries that will result
17 from Nordic Turbines' continued infringement of Nordic Windpower's trademark rights.
18 Accordingly, the Court should enjoin and restrain Nordic Turbines from committing any further such
19 acts.

20 129. In addition, Nordic Windpower has incurred costs and attorneys' fees to bring this
21 action.

22 **EIGHTH CLAIM FOR RELIEF**

23 **(California Statutory Injury To Business Reputation And Dilution**

24 **In Violation Of California Business And Professions Code § 14330)**

25 130. Nordic Windpower repeats and re-alleges the allegations set forth in paragraphs 1-
26 128 above as if set forth fully herein.

27 131. Nordic Turbines' acts complained of herein are diluting the distinctive nature of
28 Nordic Windpower's marks and are injuring Nordic Windpower's business reputation in violation of

1 California Business and Professions Code section 14330(a).

2 132. Nordic Turbines' acts have been deliberate, willful, intentional and purposeful.

3 133. Nordic Turbines threatens to continue to advertise, promote, market, sell and offer for
4 sale wind turbines and wind-powered electricity generators or to raise investment capital for the
5 manufacture of wind turbines and wind-powered electricity generators using a name that is
6 confusingly similar to Nordic Windpower's mark, and unless restrained and enjoined, will continue
7 to do so to Nordic Windpower's irreparable damage.

8 134. It would be difficult to ascertain the amount of compensation that could afford Nordic
9 Windpower adequate relief for such continuous acts of trademark infringement. Nordic
10 Windpower's remedy at law therefore is not adequate to compensate it for the injuries that will result
11 from Nordic Turbines' continued infringement of Nordic Windpower's trademark rights.
12 Accordingly, the Court should enjoin and restrain Nordic Turbines from committing any further such
13 acts.

14 135. In addition, Nordic Windpower has incurred costs and attorneys' fees to bring this
15 action.

16 **WHEREFORE, Nordic Windpower prays for judgment as follows:**

17 1) That Nordic Turbines and its officers, agents, representatives, servants and employees, and
18 all persons in active concert or participation with them, be preliminarily and permanently enjoined
19 and restrained:

20 (a) from using the mark "NORDIC TURBINES" or any other confusingly similar mark or
21 trade dress in connection with the sale, advertisement, marketing or promotion of any service or any
22 other similar infringement (including raising investment capital) of Nordic Windpower's trademark
23 rights, for services not originating from or authorized by Nordic Windpower;

24 (b) from engaging in unfair competition by advertising, promoting, marketing, selling or
25 offering for sale their services or otherwise using "NORDIC TURBINES" or a blue and orange color
26 scheme in such a way as to mislead, deceive and/or confuse the origin of any of Nordic Turbines'
27 wind turbines and wind-powered electricity generators or to raise investment capital for the
28 manufacture of wind turbines and wind-powered electricity generators;

1 (c) from engaging in any conduct that tends to confuse, mislead or deceive members of the
2 public into believing that the goods and services sold by Nordic Turbines, or Nordic Turbines itself
3 are connected with Nordic Windpower, sponsored, approved or authorized by Nordic Windpower, or
4 are in some way connected or affiliated with Nordic Windpower;

5 (d) to recall and deliver up for destruction all advertising, promotional or marketing materials
6 or other products that infringe Nordic Windpower's trademark and trade dress rights;

7 (e) to engage in corrective advertising to dispel the confusion caused by Nordic Turbines and
8 Nordic Turbines' wrongful acts;

9 (f) within thirty days after service of judgment with notice of entry thereof upon it, be
10 required to file with the Court and serve upon Nordic Windpower's attorneys a written report under
11 oath setting forth in detail the manner in which Nordic Turbines has complied with the foregoing
12 paragraphs;

13 2) Full restitution, actual damages suffered as a result of the infringement, an equitable
14 accounting and disgorgement of all revenues and/or profits wrongfully derived by Nordic Turbines
15 from its trademark infringement, trade dress infringement, trademark dilution, unfair competition,
16 false designation of origin, common law trademark infringement, injury to business reputation and
17 dilution, and intentional interference with prospective economic advantage;

18 3) Any and all damages sustained by Nordic Windpower resulting from the wrongful and
19 infringing acts of Nordic Turbines;

20 4) A judgment that Nordic Windpower's rights to the mark "NORDIC WINDPOWER" in
21 connection with wind turbines and wind-powered electricity generators are valid and enforceable;

22 5) A judgment that this case is exceptional pursuant to 15 U.S.C. §1117;

23 6) A judgment that Nordic Turbines have competed unfairly with Nordic Windpower in
24 violation of Cal. Bus. & Prof. Code §17200, *et seq.* and California common law;

25 7) A judgment that Nordic Turbines have competed unfairly with Nordic Windpower in
26 violation of Cal. Bus. & Prof. Code §14330, *et seq.* and California common law;

27 8) Nordic Windpower's costs and attorneys' fees in pursuing this action; and,

28 9) Such other and further relief as this Court may deem appropriate.

JURY DEMAND

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Nordic Windpower, pursuant to Fed.R.Civ.P. 38(b) and L.R. 3-6, hereby demands a trial by jury as to all issues so triable.

Dated: August 10, 2009

BAKER & McKENZIE LLP

By: April Wurster
April M. Wurster
Attorneys for Plaintiff

Int. Cl.: 7

Prior U.S. Cls.: 13, 19, 21, 23, 31, 34 and 35

Reg. No. 3,536,392

United States Patent and Trademark Office

Registered Nov. 25, 2008

**TRADEMARK
PRINCIPAL REGISTER**

NORDIC WINDPOWER

NORDIC WINDPOWER USA (DELAWARE CORPORATION)
125 UNIVERSITY AVE
BERKELEY, CA 94710

FOR: WIND TURBINES; WIND-POWERED ELECTRICITY GENERATORS, IN CLASS 7 (U.S. CLS. 13, 19, 21, 23, 31, 34 AND 35).

FIRST USE 5-0-2007; IN COMMERCE 5-0-2007.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "WIND POWER", APART FROM THE MARK AS SHOWN.

SER. NO. 77-404,127, FILED 2-22-2008.

B. PARADEWELAI, EXAMINING ATTORNEY