

1 LYNN H. PASAHOW (CSB NO. 054283)
 lpasahow@fenwick.com
 2 J. DAVID HADDEN (CSB NO. 176148)
 dhadden@fenwick.com
 3 SAINA S. SHAMILOV (CSB NO. 215636)
 sshamilov@fenwick.com
 4 ELIZABETH J. WHITE (CSB NO. 262073)
 bwhite@fenwick.com
 5 FENWICK & WEST LLP
 Silicon Valley Center
 6 801 California Street
 Mountain View, CA 94041
 7 Telephone: (650) 988-8500
 Facsimile: (650) 938-5200

8 Attorneys for Plaintiff
 9 Spring Design Inc.

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN JOSE DIVISION

FENWICK & WEST LLP
 ATTORNEYS AT LAW
 MOUNTAIN VIEW

14 Spring Design Inc.,
 15 Plaintiff,

16 v.

17 Barnesandnoble.com LLC,
 18 Defendant.

Case No. C 09 05185 JW

FIRST AMENDED COMPLAINT FOR:

- 17 **(1) BREACH OF WRITTEN NON-DISCLOSURE AGREEMENT;**
- 18 **(2) TRADE SECRET MISAPPROPRIATION; AND**
- 19 **(3) UNFAIR COMPETITION**
- 20 **DEMAND FOR JURY TRIAL**

21
 22 Plaintiff Spring Design Inc. (“Spring”) hereby alleges for its First Amended Complaint
 23 against Defendant Barnesandnoble.com LLC (“B&N”) as follows:

24 **PARTIES**

25 1. Plaintiff Spring is a California corporation with its principal place of business in
 26 Cupertino, California.

27 2. On information and belief, Defendant B&N is a limited liability company organized
 28 under the laws of the state of Delaware with a principal place of business in the state of New York.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332. The amount in controversy, including the value of Plaintiff’s trade secrets, the actual and potential harm to Plaintiff, and the unjust enrichment of Defendant, exceeds \$75,000.

4. This Court has personal jurisdiction over the Defendant named herein because Defendant has, on information and belief, regularly transacted business in this District, contracted to supply goods or services in this District directly or through its agents, and purposely availed itself of the privileges and benefits of the state of California.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a) because Defendant corporation is subject to personal jurisdiction, and therefore resides, in this district.

INTRADISTRICT ASSIGNMENT

6. Assignment of this action to the San Jose Division is proper under Civil Local Rules 3-2(c) and 3-2(e), in that a substantial part of the events giving rise to the claims alleged herein occurred in the County of Santa Clara.

GENERAL ALLEGATIONS

7. Founded in 2006 and headquartered in Cupertino, California, Spring delivers innovative e-reader solutions and products to the e-book market. Spring pioneered its patent-pending interactive dual-screen navigation design in 2006 and has been working with major book stores, newspapers, and publishers over the last two years to educate them about the capabilities and advantages of the dual screen design and the navigation and interaction techniques with the dual screens (“Duet Navigator™ Technology”).

8. Within the online bookstore industry, the two dominant players are Amazon and Defendant B&N.¹ In November 2007, Amazon released its electronic reader device, the Kindle™, into the U.S. marketplace. Expected to generate between \$400 million and \$750 million in revenue by 2010, the Kindle has consistently been ranked among Amazon’s Bestsellers in its Electronics

¹ Goolsbee, Austan and Chevalier, Judith A., Measuring Prices and Price Competition Online: Amazon and Barnes and Noble (June 2002). Yale ICF Working Paper No. 02-23. Available at SSRN: <http://ssrn.com/abstract=319701> or DOI: 10.2139/ssrn.319701

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

1 category.² An updated version of the product, the Kindle™ 2, was released in February 2009. That
 2 same month, Phil Baker, a strategy and development consultant enlisted by B&N's Vice President
 3 of Digital Products, Tony Astarita, to help develop electronic reader solutions, expressed an interest
 4 in learning more about Spring's design for a new electronic reader device.

5 9. In anticipation of their meeting, Spring and B&N entered into a non-disclosure
 6 agreement ("NDA") on February 12, 2009, whereby the parties agreed not to disclose, reproduce,
 7 transmit or use the other's confidential information except to certain employees on a need-to-know
 8 basis. The NDA is governed in all respects by the substantive laws of the State of New York. The
 9 NDA acknowledges that in the event of a breach, the other party will have no adequate remedy in
 10 money or damages and shall be entitled to seek equitable relief including an injunction or specific
 11 performance. A true and correct copy of the NDA is attached as Exhibit A.

12 10. On February 17, 2009, Spring presented their design for an interactive dual-screen
 13 navigation electronic reader to Phil Baker. Spring's PowerPoint presentation included photos
 14 showing versions of the product's flat tablet interactive dual-screen design, some of which were
 15 equipped with leather protective covers. The presentation emphasized the novelty and advantages
 16 of the interactive dual-screen navigation design, offering "a new solution for readable, mobile,
 17 connected and versatile reading." Selected slides from that presentation are attached hereto as
 18 Exhibit B. At the end of the presentation and after a product demo, Baker told the Spring
 19 representatives that he had never seen such an advanced electronic reader design and that he would
 20 follow up with higher-ups at B&N.

21 11. Word of Spring's design spread quickly within the B&N organization. On March
 22 20, 2009, Spring representatives met with Ravi Gopalakrishnan, B&N's newly hired e-book
 23 architect. Gopalakrishnan indicated during that meeting that B&N's main prerogative was to create
 24 a product that would effectively compete with Amazon's Kindle™. Gopalakrishnan indicated
 25 during the meeting that B&N was planning to develop a device with a single EPD screen and
 26

27 ² Arrington, Michael, Amazon May Sell \$750 Million in Kindles by 2010 (May 2008). *TechCrunch*.
 28 Available at <http://www.techcrunch.com/2008/05/14/amazon-may-sell-750-million-in-kindles-by-2010-thats-a-lot-of-kindles/>

1 questioned Spring about why they were using dual screens. Spring's Albert Teng explained to
2 Gopalakrishnan that a single EPD display would not support a graphical user interface using the
3 Android operating system.

4 12. On April 4, 2009, Spring representatives participated in a conference call with Steve
5 Pendergrast and Scott Pendergrast, the operators of B&N's e-books business unit, who said that
6 they liked the interactive dual-screen navigation concept and the colored graphical user interface in
7 Spring's design. They indicated that B&N would be interested in entering into a business
8 partnership with Spring but that Spring would first need to present their e-reader device to B&N's
9 executives in New York.

10 13. On May 13, 2009, Spring presented its e-reader device to a group of B&N
11 executives which included William Lynch, President of Barnes & Noble.com, and Kevin Frain,
12 Executive V.P. of E-Commerce Operations of Barnes & Noble.com. At their meeting, Spring
13 presented them with a product demo and delivered a PowerPoint presentation that provided an
14 overview of its design for an innovative Android-based eReader named "Alex™." The PowerPoint
15 slides were affixed with a label designating the material contained therein as confidential and
16 subject to the parties' NDA. One of the presentation slides, entitled "How we are Different" and
17 attached hereto as Exhibit C, lists the many features distinguishing Spring's Alex™ device from
18 those already on the marketplace, including its Android operating system. Another slide, entitled
19 "End User Benefits" and attached hereto as Exhibit D, describes Alex™ as offering an electronic
20 paper display (EPD) screen for displaying reading content with a separate liquid crystal display
21 (LCD) screen for navigation and a "sharing" feature to allow readers to "easily connect and engage
22 with others who share the same reading interest." Another slide, attached hereto as Exhibit I,
23 describes Alex™ as allowing users to "share your virtual bookshelf or library." Another slide,
24 attached hereto as Exhibit E, elaborates on the advantages of the interactive dual-screen navigation
25 design, which allows users to browse and make annotations on the LCD screen without disturbing
26 reading content on the EPD screen. During the meeting, William Lynch said that he had never seen
27 a device with dual-screen interaction and that he thought the design was very advanced. Lynch
28 learned from the meeting that Spring's Albert Teng had met with the Kindle™ development team

1 in 2005. He warned Teng that he should not show the product demo to the Amazon Kindle™
2 group, because Amazon was likely to steal Spring's idea and develop their own version even with
3 related patents pending from Spring. On May 15, 2009, William Lynch e-mailed the Spring
4 presenters to thank them for showing B&N their "innovative work" and indicated that he was
5 "looking forward" to a partnership between the two organizations. *See* Exhibit F.

6 14. On July 23, 2009, B&N's Director of Partner Integrations, Audrey Carney, emailed
7 Spring's Albert Teng requesting a summary of Spring's product development and reiterating that
8 she was looking forward to "working more" with Spring to make B&N's content available on
9 Alex™. In response, Teng provided Carney with an update of Spring's most recent developments,
10 including a PowerPoint slide explaining how specific features of Alex™ represented a unique
11 departure from the Amazon's Kindle™ 2—the main competitor of B&N's planned electronic
12 reader. In that comparison slide, attached hereto as Exhibit G, Spring disclosed that the following
13 set of product features would provide B&N with a competitive advantage over Amazon's Kindle™
14 product: an open source Android 1.5 operating system; an interactive dual-display design featuring
15 an EPD screen and a separate LCD screen; an advanced user interface with text, color picture,
16 animation, video, and touch screen interactivity; WiFi and 3G connectivity; a USB 2.0 for
17 multimedia file transfer; a Micro SD slot and replaceable battery; and various other applications,
18 including a PDF tool, browser, reader, and many Android applications.

19 15. On October 20, 2009, B&N announced the release of Nook™—its Android-
20 based, interactive dual-screen electronic reader that included the confidential features of Alex™
21 which had taken Spring years to research, design and develop.

22 16. Although B&N's promotional literature and comments by William Lynch have
23 touted the "innovation" of the combination of product features available on the Nook™, that
24 combination of features is central to Spring's Alex™ design and was disclosed to B&N under the
25 terms of the NDA for the limited purpose of negotiating a business partnership. In his media call
26 on October 21, 2009, the transcript of which is attached hereto as Exhibit H, Lynch boasted that the
27 Nook™ offers the first color touch screen for navigating, annotating, and making notes on the
28 reading content, which is displayed in a second, paper-like display screen. He also emphasized the

1 Nook's™ micro SD slot, its ability to easily upload PDFs, its access to 3G and Wi-Fi networks, and
2 its e-book library sharing feature to bring readers closer together. He also mentioned that B&N
3 will offer protective covers for the Nook™ made by "well-known designers." Echoing the
4 comparison slide Spring provided to B&N in July 2009 discussing the competitive advantages of
5 the Alex™ vis-à-vis the Kindle™, Lynch also told reporters that the Nook™ was in a good position
6 to compete with the Kindle™ in light of its color touch screen and sharing capabilities. Every one
7 of these features was disclosed to B&N by Spring under the terms of the NDA in anticipation of a
8 potential business partnership between the parties. Although the current version of the Nook™
9 does not offer Alex™'s SDK toolkit enabling developers to build two-screen optimized
10 applications on Android, Lynch commented during the media call that B&N is planning to put out
11 such an SDK for Android developers, in which case it will have misappropriated Spring's *entire*
12 design concept.

13 17. From the time that they first began meeting with B&N up until B&N launched the
14 Nook™, Spring was led to believe that it was disclosing the confidential features of its Alex™
15 device in exchange for B&N's implicit promise that it would share content sale revenue with
16 Spring and that it would consider distributing Spring's e-reader device in 2010. B&N's
17 announcement in late October that it would be releasing its own Android-based, dual-screen e-
18 reader device, the Nook™, was a complete surprise to Spring. Indeed, as late as October 1, 2009,
19 B&N had conducted a meeting with Spring's CEO to discuss possible revenue sharing for
20 Spring's Alex™ device in the university textbook market in addition to the potential e-book
21 revenue sharing deal already discussed during prior meetings. B&N never disclosed to Spring
22 that it was developing an Android-based dual-screen device with many of the same product
23 features contained in Spring's design.

24 ///

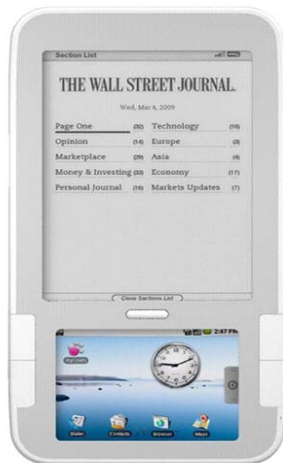
25 ///

26 ///

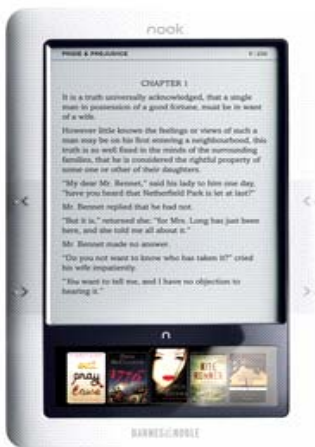
27 ///

28 ///

1 18. Since B&N released its Nook™, striking similarities between the Nook™ and
 2 Spring’s Alex™ have created confusion in the market as to the origin of the products and the
 3 source of their innovations.



4
5
6
7
8
9
10
11
12 Spring's Alex design disclosed to B&N under the NDA



13
14
15
16
17
18
19
20
21
22 B & N's Nook™

23 19. Upon information and belief, Defendant B&N unlawfully misappropriated and
 24 used Spring’s confidential information and trade secrets to develop and sell a competing product,
 25 the Nook™, for its own benefit.

26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

FIRST CAUSE OF ACTION
(Breach of Written Non-Disclosure Agreement)

20. Plaintiff incorporates by reference paragraphs 1-19 above as if fully set forth herein.

21. B&N breached the NDA—attached hereto as Exhibit A—by using and disclosing
 Spring’s confidential information to develop its own competing electronic reader device, the
 Nook™, without Spring’s consent and in direct violation of the terms of the NDA.

22. As a direct and proximate result of B&N’s breach of the NDA, Spring has been
 damaged in an amount and in ways to be proven at trial, including without limitation from the
 loss of sales and profits it would have earned from the Alex™ device and any electronic content
 sold on Alex™ but for Defendant’s acts, and the damage to Spring’s reputation among potential
 customers, business partners, and in the industry in general. As specified in the NDA and
 acknowledged by the parties, the damages incurred by Spring due to B&N’s unlawful use and

1 disclosure of Spring's confidential information cannot be adequately remedied by money alone
2 and Spring is also entitled to an equitable relief.

3 **SECOND CAUSE OF ACTION**
4 **(Misappropriation of Trade Secrets)**

5 23. Plaintiff incorporates by reference paragraphs 1-22 above as if fully set forth herein.

6 24. The combination of product features contained in the design of Spring's electronic
7 reader device, the "Alex™," was at all relevant times a trade secret of Spring. This compilation
8 of product features afforded Spring with an opportunity to gain a significant competitive
9 advantage over competitors in the e-reader industry. Such confidential information derives actual
10 and potential economic value from not being generally known to the public or to other persons
11 who can obtain economic value from their disclosure or use.

12 25. Spring has made reasonable efforts to maintain and protect the secrecy of such
13 trade secrets.

14 26. On information and belief, Defendant B&N has misappropriated Spring's trade
15 secrets by using and/or disclosing the trade secrets without Spring's authorization or consent.

16 27. As a direct and proximate result of B&N's misappropriation of Spring's trade
17 secrets, Spring has been damaged in an amount to be proven at trial.

18 28. Defendant B&N's misappropriation of Spring's trade secrets has caused and will
19 continue to cause Spring irreparable and substantial injury and therefore cannot be fully redressed
20 through damages alone. An injunction prohibiting B&N from further use or disclosure of B&N's
21 trade secrets—in particular, to prevent any further sales of the Nook™ and/or any other products
22 using Spring's trade secrets and to enjoin B&N from providing content for download to Nook™
23 devices that have already been distributed—is necessary to provide Spring complete relief.

24 **THIRD CAUSE OF ACTION**
25 **(Common Law Unfair Competition)**

26 29. Plaintiff incorporates by reference paragraphs 1-28 above as if fully set forth herein.

27 30. Plaintiff disclosed confidential information about the product features of its
28 Android-based, interactive dual-screen navigation electronic reader device to B&N in exchange

1 for B&N's implicit promise that it would seriously consider entering into a business partnership
2 with Spring. Although B&N at some point decided to develop its *own* Android-based, dual-
3 screen electronic reader device, it concealed this fact from Spring and continued to accept
4 confidential information from Spring up until the month before it announced the launch of its own
5 product incorporating features identical to those disclosed by Spring.

6 31. On information and belief, without Spring's consent, and in bad faith, B&N
7 misappropriated Spring's confidential information relating to the design of Spring's e- reader
8 device and used it to develop its own competing device.

9 32. As a direct and proximate result of B&N's unfair competition, Spring has been
10 damaged in an amount to be proven at trial.

11 33. Defendant B&N's unfair competition has caused and will continue to cause Spring
12 irreparable and substantial injury and therefore cannot be fully redressed through damages alone.
13 An injunction prohibiting B&N from further acts of unfair competition—in particular, to prevent
14 any further sales of the Nook™ and/or any other products using Spring's trade secrets and to
15 enjoin B&N from providing content for download to Nook™ devices that have already been
16 distributed—is necessary to provide Spring complete relief.

17 **PRAYER FOR RELIEF**

18 1. Based on the foregoing, Spring requests entry of judgment in its favor against
19 Defendant B&N as follows:

20 (A) For an award of damages to remedy harm incurred by Spring due to B&N's breach
21 of the NDA;

22 (B) For an award of damages to remedy harm incurred by Spring due to B&N's unfair
23 competition acts;

24 (C) For an award of damages to remedy harm incurred by Spring due to B&N's trade
25 secret misappropriation;

26 (D) For preliminary and permanent injunctive relief, and/or an order of specific
27 performance and other equitable remedies, restraining and enjoining B&N from using or disclosing
28 Spring's confidential information or trade secrets, and selling and offering for sale the Nook™ and

1 any other products designed and developed using Spring's confidential information or trade
2 secrets. Furthermore, with respect to any Nook™ devices that have already been distributed,
3 Spring asks that B&N be enjoined from providing any further electronic content for download onto
4 such devices;

5 (E) For an award of its attorney's fees and costs;

6 (F) For such other and further relief as the Court may deem just and proper.

7 Dated: November 11, 2009

FENWICK & WEST LLP

8
9 By: /s/ Lynn H. Pasahow
10 Lynn H. Pasahow

11 Attorneys for Plaintiff
12 Spring Design Inc.

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues so triable.

Dated: November 11, 2009

FENWICK & WEST LLP

By: /s/ Lynn H. Pasahow
Lynn H. Pasahow

Attorneys for Plaintiff
Spring Design Inc.

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW