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9 Spring Design Inc.

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

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14 Spring Design Inc.,  
15 Plaintiff,

16 v.

17 Barnesandnoble.com LLC,  
18 Defendant.

Case No. C 09 05185 JW

**SECOND AMENDED COMPLAINT FOR:**

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

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

**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.<sup>1</sup> 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

<sup>1</sup> 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

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1 category.<sup>2</sup> 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 <sup>2</sup> 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 ///

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26 ///

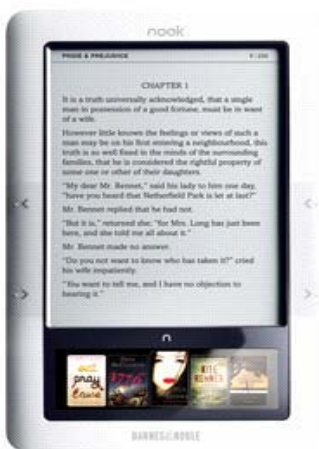
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1 18. Since B&N released its Nook™, striking similarities between the Nook™ and  
 2 Spring’s Alex™ have created confusion in the market as to the origin of the products and the  
 3 source of their innovations.



Spring's Alex design disclosed to B&N under the NDA



B & N's Nook™

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

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

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

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

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

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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 (Cal Civ. Code §§ 3426, *et seq.*)

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

7 24. As a result of its substantial investment of time and resources, Spring developed  
8 the combination of product features contained in the design of its electronic reader device, the  
9 “Alex™,” which were at all relevant times trade secrets within the meaning of California Civil  
10 Code Section 3426.1(d). These product features afforded Spring with an opportunity to gain a  
11 significant competitive advantage over competitors in the e-reader industry. Such confidential  
12 information derives actual and potential economic value from not being generally known to the  
13 public or to other persons, such as B&N, who can obtain economic value from its disclosure or  
14 use.

15 25. Spring has made reasonable efforts to maintain and protect the secrecy of such  
16 trade secrets, including entry of a confidentiality agreement between Spring and B&N precluding  
17 its disclosure.

18 26. Defendant B&N, by the acts alleged herein, has misappropriated Spring’s trade  
19 secrets in violation of the Uniform Trade Secrets Act, California Code Section 3426 *et seq.*,  
20 entitling Spring to injunctive relief and damages.

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

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

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**THIRD CAUSE OF ACTION**  
**(Misappropriation of Trade Secrets)**  
(New York Common Law)<sup>3</sup>

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

30. In the alternative to the claim laid out in paragraphs 23-28, B&N’s unauthorized use of Spring’s trade secrets in violation of the parties’ non-disclosure agreement also supports a claim for trade secret misappropriation under New York common law.

**FOURTH CAUSE OF ACTION**  
**(Unfair Competition)**

(Cal. Bus. & Prof. Code §§ 17200, *et. seq.*)

31. Plaintiff incorporates by reference paragraphs 1-30 above as if fully set forth herein.

32. B&N’s acts as alleged herein constitute unfair competition in that such acts were and are unlawful, unfair, deceptive, and/or fraudulent business acts or practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et. seq.*

33. B&N’s unlawful breach of the NDA is described above in detail in the foregoing paragraphs.

34. Defendant B&N has made false and misleading advertisement statements to the public, through, for example, B&N President William Lynch’s public comments that B&N is responsible for Nook™’s “innovative” combination of product features.

35. To the extent any proprietary information disclosed by Spring to B&N was not a trade secret, B&N obtained and used Spring’s confidential and proprietary information through deceptive means. While promising to keep Spring’s proprietary information confidential and not use it and letting Spring believe that B&N was seriously considering entering into a business partnership with Spring, B&N was developing its own Android-based dual-screen electronic reader device to compete with Spring’s Alex™ that incorporated nearly all Spring’s proprietary features. Yet, at no point during numerous discussions with Spring, did B&N disclose to Spring

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<sup>3</sup> In its Order Denying Plaintiff’s Preliminary Injunction of December 1, 2009, the Court found that New York law controls Plaintiff’s Breach of Contract claim, but California law governs Plaintiff’s Misappropriation of Trade Secrets and Unfair Competition claims. D.I. 77.

1 its development plans. B&N concealed this fact from Spring and continued to accept confidential  
 2 and proprietary information from Spring up until the month before it announced the launch of its  
 3 own product incorporating features nearly identical to those disclosed by Spring.

4 36. The continuing activities of the Defendant in breaching the NDA, in developing  
 5 and exploiting the confidential and proprietary information from Spring, and misleading the  
 6 public by representing that B&N is responsible for the Nook™'s innovative combination of  
 7 product features, constitute an on-going pattern and practice of unfair competition.

8 37. As a direct and proximate result of Defendant B&N's unfair competition, Spring  
 9 has been harmed in an amount to be proven at trial, and the public has been misled about the true  
 10 nature of B&N's business and the origin of the Nook™'s innovative combination of product  
 11 features. An injunction prohibiting B&N from further acts of unfair competition—in particular,  
 12 to prevent any further sales of the Nook™ and/or any other products using Spring's proprietary  
 13 and confidential information and to enjoin B&N from providing content for download to Nook™  
 14 devices that have already been distributed—is necessary to provide Spring complete relief and to  
 15 put an end to B&N's ongoing pattern and practice of wrongful conduct. B&N has obtained  
 16 benefits from its unlawful activity, for which B&N is required to disgorge or to make restitution.

17 **FIFTH CAUSE OF ACTION**

18 **(Unfair Competition)**

19 (New York Common Law)<sup>4</sup>

20 38. Plaintiff incorporates by reference paragraphs 1-37 above as if fully set forth  
 21 herein.

22 39. In the alternative to the claim laid out in paragraphs 31-37, B&N's unauthorized  
 23 and bad faith use of Spring's proprietary information also supports a claim for unfair competition  
 24 under New York common law.

25 **PRAYER FOR RELIEF**

26 Based on the foregoing, Spring requests entry of judgment in its favor against Defendant

27 <sup>4</sup> In its Order Denying Plaintiff's Preliminary Injunction of December 1, 2009, the Court found  
 28 that New York law controls Plaintiff's Breach of Contract claim, but California law governs  
 Plaintiff's Misappropriation of Trade Secrets and Unfair Competition claims. D.I. 77.

1 B&N as follows:

2 (A) For compensatory damages against Defendant to be proven at trial;

3 (B) For disgorgement and restitution from Defendant to be proven at trial;

4 (C) For preliminary and permanent injunctive relief, and/or an order of specific  
5 performance and other equitable remedies, restraining and enjoining B&N from using or disclosing  
6 Spring's confidential and proprietary information or trade secrets, and selling and offering for sale  
7 the Nook™ and any other products designed and developed using Spring's confidential and  
8 proprietary information or trade secrets. Furthermore, with respect to any Nook™ devices that  
9 have already been distributed, Spring asks that B&N be enjoined from providing any further  
10 electronic content for download onto such devices;

11 (D) For an award to Spring of its reasonable attorney's fees and costs;

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

13 Dated: January 12, 2010

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

17 Attorneys for Plaintiff  
18 Spring Design Inc.

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**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: January 12, 2010

FENWICK & WEST LLP

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

Attorneys for Plaintiff  
Spring Design Inc.

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