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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 PACCAR INC., a Delaware corporation, )  
10 )  
11 Plaintiff, ) No.  
12 v. ) **COMPLAINT**  
13 )  
14 MALIBU INTERNATIONAL LIMITED, a )  
California corporation, )  
Defendant. )  
\_\_\_\_\_ )

15 Plaintiff PACCAR Inc. (“PACCAR”) states the following for its complaint against  
16 defendant Malibu International Limited (“Malibu” or “Defendant”):

17 1. This is an action for unfair competition, trademark infringement and dilution,  
18 deceptive trade practices and unlawful trade practices arising out of the Trademark Act of  
19 1946, 15 U.S.C. § 1051 et seq. (2002), (“Lanham Act”); Washington’s Trademark Laws,  
20 RCW 19.77.010 et seq., the Washington Consumer Protection Act, RCW 19.86.020, and the  
21 common law.

22 2. Defendant is marketing and selling products, namely replica, scaled model  
23 trucks, under trademarks and/or trade dress that are confusingly similar to PACCAR’s  
24 trademarks and/or trade dress as set forth below. Defendant’s use of the trademarks and/or  
25 trade dress is likely to cause confusion, mistake, or deception as to the affiliation, connection,  
26 or association of Defendant with PACCAR, or as to the origin of Defendant’s services, or as

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1 to its sponsorship or approval by PACCAR, and is likely to dilute the distinctive quality of  
2 PACCAR's trademarks and/or trade dress.

3 **THE PARTIES**

4 3. PACCAR Inc. is a corporation duly organized and existing under the laws of  
5 the state of Delaware, and maintains its principal place of business in Bellevue, Washington.

6 4. Upon information and belief, Defendant Malibu is a corporation duly  
7 organized and existing under the laws of California.

8 **JURISDICTION AND VENUE**

9 5. This Court has subject matter jurisdiction over this action under the  
10 Lanham Act pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1338, and supplemental  
11 jurisdiction over the state claims pursuant to 28 U.S.C. § 1367.

12 6. This Court has personal jurisdiction over Defendant under 28 U.S.C. § 1331  
13 because, on information and belief, Defendant has distributed or sold merchandise under the  
14 infringing trademarks and/or trade dress in this state, has engaged in acts or omissions within  
15 this state causing injury, has engaged in acts or omissions outside of this state causing injury  
16 within this state, has manufactured or distributed products used or consumed within this state  
17 in the ordinary course of trade, or have otherwise made or established contacts with this state  
18 sufficient to permit the exercise of personal jurisdiction.

19 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because a  
20 substantial portion of the events giving rise to the claims occurred in this District.

21 **FACTUAL BACKGROUND**

22 8. PACCAR, founded in 1905, is one of the world's leading manufacturers of  
23 premium commercial vehicles. In the United States, PACCAR sells these vehicles under two  
24 primary brands: KENWORTH and PETERBILT. The KENWORTH brand dates back to  
25 1923, when the Kenworth Motor Truck Company was established in Seattle, Washington.  
26 The KENWORTH brand was acquired by PACCAR in 1944. The PETERBILT brand dates

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1 back to approximately 1938, when T.A. Peterman founded his company in Tacoma,  
2 Washington, upon which the brand was built. The PETERBILT brand was acquired by  
3 PACCAR in 1958. To this day, the KENWORTH and PETERBILT brands have been  
4 maintained as separate and distinct by PACCAR, with each gaining a distinct reputation and  
5 goodwill within the industry.

6 9. KENWORTH and PETERBILT have become two of the most trusted brands  
7 in the truck industry. Each brand has featured certain unique combinations of design elements  
8 on various models of its respective trucks over the course of years or, in some cases, decades.  
9 Through such consistent and long-standing use, these combinations of unique design  
10 characteristics have come to be associated by the relevant consumer with either KENWORTH  
11 or PETERBILT.

12 10. For example, certain models of KENWORTH trucks have consistently  
13 featured the following unique combination of design characteristics (which together in any  
14 combination form the “KENWORTH trade dress”):

- 15 • A particular “cathedral” grill design;
- 16 • A “bug” logo design;
- 17 • A long hood sloped at a distinctive angle;
- 18 • A distinctively designed “daylight door” on the rear part of the cab;
- 19 • Five “sleeper” windows;
- 20 • Distinctive placement and design of the toolbox;
- 21 • Dual rectangular headlamps with fog lamps; and
- 22 • A distinctive flat bumper.

23 An example of a KENWORTH truck featuring these design characteristics is  
24 KENWORTH’s W900 model, displayed below:



11. By way of further example, certain models of PETERBILT trucks have consistently featured the following unique combination of design characteristics (which together in any combination form the “PETERBILT trade dress”):

- A particular grill design featuring three vertical bars and a nearly square shape;
- An oval logo design;
- A two-paned windshield;
- A rectangular or “boxed” shaped hood slanting inward toward the grill;
- Oversized “sleeper” doors;
- Distinctive headlamps that are not molded into the fenders; and
- A distinctive flat bumper.

An example of a PETERBILT truck featuring these design characteristics is PETERBILT’s 389 model (previously known as the 379 model), is displayed below:



1           12.     The KENWORTH W900 and/or the PETERBILT 379 have played prominent  
2 roles in feature films, television shows, and/or other media.

3           13.     Both the KENWORTH trade dress and the PETERBILT trade dress are non-  
4 functional and the relevant public recognizes and understands that the respective trade dresses  
5 distinguish and identify the trucks manufactured by KENWORTH and PETERBILT.

6           14.     As a result of PACCAR's promotion and sale of products under the  
7 KENWORTH trade dress and the PETERBILT trade dress, both trade dresses have gained  
8 significant recognition and goodwill among the relevant purchasing public.

9           15.     The KENWORTH trade dress and the PETERBILT trade dress are inherently  
10 distinctive with respect to the products and services sold under them.

11          16.     By way of example of the valuable goodwill associated with the KENWORTH  
12 and PETERBILT trade dresses, a number of third party companies have entered into licenses  
13 with PACCAR to sell various products featuring the image of KENWORTH or PETERBILT  
14 trucks and/or their associated trademarks and trade dress. One such example is scaled model  
15 trucks, which are replicas of KENWORTH or PETERBILT models, sold in various retail  
16 outlets such as Wal-Mart and Target, and are manufactured and/or sold by PACCAR  
17 licensees.

18          17.     PACCAR receives royalties for the licensed use of its intellectual property,  
19 including the trademarks and/or trade dress associated with its KENWORTH and  
20 PETERBILT trucks.

21          18.     Defendant is currently selling or in the past has sold, without license, scaled  
22 model trucks that are knock offs of scaled model KENWORTH and PETERBILT trucks  
23 within the United States. The knock offs are substantially identical to previous model trucks  
24 sold by Defendant pursuant to license. Defendant or its manufacturer has altered these scaled  
25 model trucks so that they are substantially identical to the prior licensed scaled model trucks  
26 sold, except that the PETERBILT and KENWORTH trademarks no longer appear on them.

1 Otherwise, the unique and distinctive design characteristics of each of the brand's respective  
2 trucks has remained substantially the same, making them recognizable to the relevant public.  
3 Defendant's infringing activities include use of the signage and/or displays as displayed  
4 below:



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14 19. Defendant's activities are likely to cause confusion, mistake, and deception as  
15 to the affiliation, connection, or association of Defendant with PACCAR, and as to the origin,  
16 sponsorship, or approval of Defendant's products.

17 20. By causing such a likelihood of confusion, mistake, and deception, Defendant  
18 is inflicting irreparable harm to the goodwill symbolized by the KENWORTH and  
19 PETERBILT trade dresses, for which PACCAR has no adequate remedy at law.

20 **FIRST CLAIM FOR RELIEF**

21 **(Federal Unfair Competition—15 U.S.C. § 1125(a))**

22 21. PACCAR realleges each of the allegations set forth in paragraphs 1 through 20  
23 above.

24 22. Defendant's use of confusingly similar imitations of the KENWORTH trade  
25 dress and PETERBILT trade dress is likely to cause confusion, deception, and mistake by  
26 creating the false and misleading impression that Defendant's goods are manufactured or

1 distributed by PACCAR, or are associated or connected with PACCAR, or have the  
2 sponsorship, endorsement or approval of PACCAR.

3 23. Defendant has used trade dresses in the form of its knock off scaled model  
4 trucks confusingly similar to the PACCAR's KENWORTH and PETERBILT trade dresses in  
5 violation of 15 U.S.C. § 1125(a). Defendant's infringement of the PACCAR trade dresses  
6 constitutes a false designation of origin, or a false or misleading description or representation  
7 of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to the  
8 affiliation, connection, or association of Defendant with PACCAR, or as to the origin of  
9 Defendant's products, for which PACCAR has no adequate remedy at law.

10 24. Defendant's actions demonstrate an intentional, willful, and malicious intent to  
11 trade on the goodwill associated with PACCAR's trade dresses to PACCAR's irreparable  
12 injury.

13 25. Defendant has caused and is likely to continue causing substantial injury to the  
14 public and to PACCAR, and PACCAR is entitled to injunctive relief and to recover  
15 Defendant's profits, actual damages, enhanced profits and damages, costs, and reasonable  
16 attorneys' fees under 15 U.S.C. § § 1125(a), 1116 and 1117.

17 **SECOND CLAIM FOR RELIEF**

18 **(Federal Trademark Dilution—15 U.S.C. § 1125(c))**

19 26. PACCAR realleges each of the allegations set forth in paragraphs 1 through 25  
20 above.

21 27. PACCAR has extensively and continuously promoted and used the  
22 KENWORTH and PETERBILT trade dresses in the United States, and the trade dresses have  
23 thereby become famous and well-known symbols of PACCAR's goods and services.

24 28. Defendant is making commercial use of trade dresses that dilute and are likely  
25 to dilute the distinctiveness of PACCAR's KENWORTH and PETERBILT trade dresses by  
26 eroding the public's exclusive identification of these famous trade dresses with PACCAR,

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1 tarnishing and degrading the positive associations and prestigious connotations of the trade  
2 dresses, and otherwise lessening the capacity of the trade dresses to identify and distinguish  
3 goods and services.

4 29. Defendant's actions demonstrate an intentional, willful, and malicious intent to  
5 trade on the goodwill associated with PACCAR's KENWORTH and PETERBILT trade  
6 dresses to the great and irreparable injury of PACCAR.

7 30. Defendant's conduct has caused, and is likely to continue causing, substantial  
8 injury to PACCAR's goodwill and business reputation, and dilution of the distinctiveness and  
9 value of PACCAR's KENWORTH and PETERBILT trade dresses, in violation of  
10 15 U.S.C. § § 1125(c), 1116, and 1117.

11 **THIRD CLAIM FOR RELIEF**

12 **(Washington State Trademark Dilution—RCW 19.77.010 et seq.)**

13 31. PACCAR realleges each of the allegations set forth in paragraphs 1 through 30  
14 above.

15 32. Defendant's acts set forth above violate Washington laws, and particularly  
16 RCW 19.77.010 et seq., in that Defendant has diluted the distinctive quality of the PACCAR  
17 trade dresses, causing irreparable harm to PACCAR's goodwill and business reputation.  
18 PACCAR is entitled to injunctive relief and to recover damages, costs, and reasonable  
19 attorneys' fees.

20 **FOURTH CLAIM FOR RELIEF**

21 **(Washington State Trademark Infringement—RCW 19.77.140)**

22 33. PACCAR realleges each of the allegations set forth in paragraphs 1 through 32  
23 above.

24 34. Defendant has been and is passing off its goods as those of PACCAR, causing  
25 a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval of  
26 Defendant's goods, causing a likelihood of confusion as to Defendant's affiliation,



1 connection, or association with PACCAR, and otherwise damaging the public. Defendant's  
2 conduct constitutes unfair and deceptive acts or practices in the course of a business, trade, or  
3 commerce in violation of Washington's Trademark Laws, RCW 19.77.140.

4 35. Defendant's unauthorized use of confusingly similar imitations of PACCAR's  
5 KENWORTH and PETERBILT trade dresses has caused and is likely to cause substantial  
6 injury to the public and to PACCAR, and PACCAR is entitled to injunctive relief and to  
7 recover damages, costs, and reasonable attorneys' fees.

8 **FIFTH CLAIM FOR RELIEF**

9 **(Common Law Unfair Trade Practices)**

10 36. PACCAR realleges each of the allegations set forth in paragraphs 1 through 35  
11 above.

12 37. Defendant's acts constitute common law trademark infringement and unfair  
13 competition, and have created and will continue to create a likelihood of confusion to the  
14 irreparable injury of PACCAR and its KENWORTH and PETERBILT trade dresses unless  
15 restrained by this Court, as PACCAR has no adequate remedy at law for this injury.

16 38. Defendant acted with full knowledge of PACCAR's use of, and statutory and  
17 common law rights to, PACCAR's KENWORTH and PETERBILT trade dresses and without  
18 regard to the likelihood of confusion of the public created by Defendant's activities.

19 39. Defendant's actions demonstrate an intentional, willful, and malicious intent to  
20 trade on the goodwill associated with PACCAR's KENWORTH and PETERBILT trade  
21 dresses to the great and irreparable injury of PACCAR.

22 40. As a result of Defendant's acts, PACCAR has been damaged in an amount not  
23 as yet determined or ascertainable. At a minimum, however, PACCAR is entitled to  
24 injunctive relief and an accounting of Defendant's profits, damages, and costs.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, PACCAR prays for judgment as follows:

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1           1.       That Defendant and all of its agents, officers, employees, representatives,  
2 successors, assigns, attorneys, and all other persons acting for, with, by, through, or under  
3 authority from Defendant, or in concert or in participation with Defendant, and each of them,  
4 be enjoined preliminarily and permanently from:

5                   a.       using PACCAR's KENWORTH and PETERBILT trade  
6 dresses, or any copy, reproduction, colorable imitation, or simulation of PACCAR's  
7 KENWORTH and PETERBILT trade dresses on or in connection with Defendant's goods or  
8 services;

9                   b.       using any trademark, service mark, name, logo, design, or  
10 source designation of any kind on or in connection with Defendant's goods or services that is  
11 a copy, reproduction, colorable imitation, or simulation of, or confusingly similar to the  
12 trademarks, trade dresses, service marks, names, or logos of PACCAR;

13                  c.       using any trademark, trade dress, service mark, name, logo,  
14 design, or source designation of any kind on or in connection with Defendant's goods or  
15 services that is likely to cause confusion, mistake, deception, or public misunderstanding that  
16 such goods or services are produced or provided by PACCAR or are sponsored or authorized  
17 by or in any way connected or related to PACCAR;

18                  d.       using any trademark, service mark, name, logo, design, or  
19 source designation of any kind on or in connection with Defendant's goods or services that  
20 dilutes or is likely to dilute the distinctiveness of the trademarks, service marks, names, or  
21 logos of PACCAR; and

22                  e.       passing off, palming off, or assisting in passing off or palming  
23 off, Defendant's goods or services as those of PACCAR, or otherwise continuing any and all  
24 acts of unfair competition as alleged in this Complaint.

25           2.       That Defendant be ordered to recall all products bearing PACCAR's  
26 KENWORTH and PETERBILT trade dresses, or any other confusingly similar mark or dress,

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1 which have been shipped by Defendant or under its authority to any customer, including, but  
2 not limited to, any wholesaler, distributor, retailer, consignor, or marketer, and also to deliver  
3 to each customer a copy of this Court's order as it relates to said injunctive relief against  
4 Defendant;

5 3. That Defendant be ordered to deliver for impoundment and for destruction all  
6 apparel, bags, boxes, labels, tags, signs, packages, receptacles, advertising, sample books,  
7 promotional material, stationery, or other materials in the possession, custody, or under the  
8 control of Defendant that are found to adopt, infringe, or dilute any of PACCAR's trademarks  
9 or trade dress or that otherwise unfairly compete with PACCAR and its products and services;

10 4. That Defendant be compelled to account to PACCAR for any and all profits  
11 derived by Defendant from the sale or distribution of infringing goods as described in this  
12 Complaint;

13 5. That PACCAR be awarded damages in an amount yet to be determined;

14 6. That PACCAR be awarded damages for the injury to its reputation and  
15 goodwill, and damages for the injury from Defendant's false designation of origin, in an  
16 amount up to three times the actual damages sustained, pursuant to 15 U.S.C. § 1117;

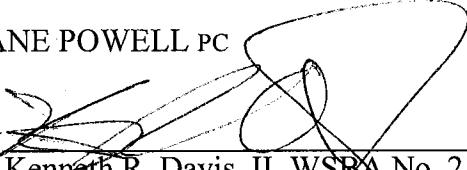
17 7. That PACCAR be awarded its reasonable attorneys' fees, disbursements, and  
18 costs of this action pursuant to 15 U.S.C. § 1117;

19 8. That PACCAR be awarded prejudgment interest; and

20 9. That PACCAR be awarded such other and further relief as this Court deems  
21 just and equitable.

22 DATED: April 8, 2009

23 LANE POWELL PC

24 By   
25 Kenneth R. Davis, II, WSBA No. 21928  
26 Attorneys for Plaintiff PACCAR Inc.