

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF PENNSYLVANIA

MEMORANDUM IN SUPPORT OF COMPLAINT

THE ENFORCEMENT RECORD: WHAT THE CERTIFIER ITSELF HAS ESTABLISHED ITS MARK TO MEAN

The Red Team Counterfeit Brief

FRONT MATTER — HOW TO READ THIS DOCUMENT

The master proposition. For thirty-five years, in federal courts, before both houses of Congress, at the customs border, and in its own publications, UL has established what a certification mark means: an examination event, performed by the named certifier, on the goods that carry the mark, within a defined scope, under continuing surveillance, relied upon by everyone downstream because the mark is the only means they have of knowing. Every proposition in this memorandum is UL's own — stated in documents UL drafted, judgments UL sought, testimony UL swore, and releases UL published. This Complaint does not quarrel with a single one of them. It applies them.

The sources. Every quotation herein is drawn from the public record: federal dockets, so-ordered judgments, a grand jury indictment, official Senate hearing prints, published agency letters, municipal statutes, and UL's own website and publications. Forty documents from UL's enforcement record were evaluated completely in preparing this memorandum, together with the supporting authorities addressed in the companion Case Law memorandum. Nothing herein rests on characterization; where a document is described, the document is quoted.

The two records. UL's public life runs on two parallel tracks. On the first, UL enforces its marks against the world — and in enforcing, it must tell courts, Congress, and customs exactly what the mark means, at full strength, without qualification. On the second track stand the certifications at issue in this case. This memorandum walks the first track end to end, because the first track is the authoritative dictionary for the second: the certifier's own, built at its own request, in its own words, over thirty-five years.

How the movements connect. Movements One through Nine each state one proposition of the certifier's law and prove it from the enforcement record. Movement Ten shows that the meaning is unitary — stated whole, never divided by program. The Count Map then regroups every instrument by the count it supports, so the answer to any motion aimed at a single count is one line away.

MOVEMENT ZERO — THE STORY THE RECORD TELLS

For thirty-five years, UL has taught American courts what a certification mark means. It has been a remarkably consistent curriculum.

A certification mark asserts that an examination event occurred — dated, specific, and real; UL's own filings against a licensee put a company through customs forfeiture over twenty days of daylight between the mark and the testing behind it. The event must be the certifier's own — a 2025 judgment preserves the defendants' insistence that other laboratories had certified their products, and holds them liable a million dollars anyway. The representation is scoped — by model, by facility, by category, by time — and it does not bleed: a Chicago sign company was UL's client for electric signs and still counterfeited when it marked a category it never held. The mark speaks to the whole product: a federal grand jury charged a Missouri importer on the meaning that a label declares "the lamp as a whole was certified," and when a Canadian manufacturer wrote to UL's investigator confessing that its team "mistakenly believed the inclusion of a UL certified accessory required us to display the UL mark," UL prosecuted that mistake to a \$2.2 million consent judgment. The duty to verify is real, and it belongs to the reader: a national distributor never checked UL's public database, never compared, never called, and a federal judge entered a judgment reciting — twice in one paragraph — that it asserted ignorance but conducted no due diligence. Surveillance is constitutive: UL's decrees impose unannounced inspections as remedies, and its judgments recite follow-up services as what authorization is. Reliance is not merely reasonable but structural: UL's 2013 release calls an authorized mark "the only means" five audiences have to determine certification; a federal judgment records that code authorities routinely look for the marks during inspections; the Consumer Product Safety Commission converted UL's voluntary standards into the statutory hazard benchmark; and in 2023 New York City wrote UL's name into its administrative code and made the mark's display a legal condition of sale. And when certification cannot be shown to stand behind a mark, UL's own published protocol states the remedy: remove from service and replace — fire doors already installed in buildings included.

Every one of those propositions was established at UL's request, in UL's drafting, over UL's signature blocks. UL's own white paper describes the company's ongoing work as, among other things, "correcting false and misleading claims about UL certification." That is the whole of what this Complaint asks any Defendant to do.

MOVEMENT ONE — THE MARK ASSERTS AN EXAMINATION EVENT, DATED AND REAL

Midwest Plastic Fabricators, Inc. v. Underwriters Laboratories Inc., 906 F.2d 1568 (Fed. Cir. 1990). UL defended its certification-mark registrations and won by proving what its machinery does: products are tested before listing; follow-up service agreements bind manufacturers to continued compliance; inspectors visit factories; a variation from requirements blocks shipment until resolved; inspectors are authorized to remove the mark from noncomplying products. In 1987 alone, approximately 500 UL inspectors conducted approximately 438,000 inspections in approximately 38,900 factories. The court held that a certification-mark registration carries an affirmative obligation to the public — "reasonable steps, under all the circumstances of the case, to prevent the public from being misled" — because a certification mark "sets forth specific representations about the manufacture and characteristics of the goods," and the risk of misleading the public "may be even greater" than for an ordinary trademark. This is the foundation: the machinery is real, the representation is specific, and the obligation runs to the public.

ICCS v. United States (Fed. Cir. 2020) and the customs record. A licensee shipped goods bearing genuine-format UL marks before the certification’s effective date. The Federal Circuit sustained forfeiture: the marks “falsely communicated” that UL “had already given its safety certification” when that certification “had not, in fact, happened,” and “UL certifications are not retroactive.” Twenty days of daylight between the mark and the examination made the mark counterfeit — with the certifier’s identity genuine, the format genuine, and the product later certified. The mark asserts an event in time. If the event has not occurred, the mark is false, whoever applies it and whatever happens afterward.

United States v. GuildMaster, Inc., No. 12-03108-01-CR-S-RED (W.D. Mo., indictment Dec. 12, 2012). A federal grand jury recited the machinery as the predicate of nine felony counts: UL “certified representative samples of products that were in compliance with UL’s safety requirements, and conducted follow-up inspections of those products and their manufacturers”; labels were “produced by UL or its licensees”; and “[a]s a certification mark, the UL Mark on a product was a manufacturer’s representation and advertisement to the public that the product met UL’s safety requirements.” The meaning-architecture, adopted by the United States, to charge a crime.

Links. The examination-event proposition is the spine of every movement that follows. It is the proposition Count I’s misrepresentation element applies to certificates; the Chain section of the Complaint traces how the assertion travels; and Movement Nine states UL’s own remedy when the event cannot be verified.

MOVEMENT TWO — THE EVENT MUST BE THE NAMED CERTIFIER’S

UL LLC v. Fly-E Group, Inc., No. 1:25-cv-01405-LDH-RML (E.D.N.Y.), Consent Judgment ¶6 (June 6, 2025). The admitted facts preserve the defense: “Defendants maintain that the Accused Products were certified by labs unaffiliated with UL.” The judgment then imposes \$1,000,000 in liability, jointly and severally, including three individual officers. Certification by someone else does not license this certifier’s mark. The mark speaks of the named certifier’s examination specifically.

The AFG cease-and-desist practice. UL’s demand letters state certification status from UL’s own records — “according to our findings” — because the certifier’s file is where the truth of the certifier’s mark lives. The mark points to a record; the record belongs to the certifier named.

GuildMaster ¶10 — the genuine-label diversion. As customs seizures mounted, the importer switched to genuine UL labels that had been issued “to another company for its exclusive use.” Five hundred sixty-seven lamps bearing real labels on the wrong maker’s products were seized as part of the charged conduct. Authorization is per-manufacturer. A genuine label on the wrong product is still a false statement, because the mark’s truth is relational: this label, this manufacturer, this product, this examination.

Links. Names the verifier element in Counts I, V, and VII: data generated by one party, or a report from another era, does not stand behind the certificate a named verifier signed. Pairs with Movement Three’s scoping.

MOVEMENT THREE — THE REPRESENTATION IS SCOPED: MODEL, FACILITY, CATEGORY, TIME

Model (ICCS). The certification attached to specified goods from its effective date — not to the same goods twenty days earlier.

Category (UL LLC v. B&B Signs, No. 1:15-cv-10804 (N.D. Ill.)). The complaint pleads that B&B “was never a client of UL for changing message signs and therefore never had authorization” for that category — even during the years it was a paying UL client for electric signs. The consent judgment (Sept. 15, 2016) recites that the 2002 contract authorized “certain UL Marks” on “certain signs.” Authorization is category-scoped even inside an authorized relationship.

Time (every instrument). Certifications carry validity periods; terminated clients (B&B, terminated 2007; GuildMaster, terminated 2007) who continue the marks are prosecuted as counterfeiters. Authorization ends, and the mark’s truth ends with it.

Links. The scoping propositions are the certifier’s own precision principle. The Complaint applies the same precision: which mark, which program, which governing document, which validity period. Movement Ten shows that scoping of the representation is entirely different from partitioning of the meaning — UL scopes every authorization and partitions no meaning.

MOVEMENT FOUR — SURVEILLANCE IS CONSTITUTIVE OF THE REPRESENTATION

UL LLC v. A.F.G. Distribution, Inc. (N.D. Ill. 2019), Complaint ¶34. The mark on a product is the manufacturer’s representation that the product complies “and [is] subject to UL’s Follow-Up Services.” The representation includes the surveillance.

B&B Consent Judgment ¶4 (so-ordered). The authorizing contract made the marks “subject to UL’s follow-up and inspection services (including unannounced inspections).” What authorization is, recited in a judgment.

UL LLC v. Rider Best (C.D. Cal. 2015), consent decree. The surveillance regime imposed as a remedy: unannounced inspections, no-notice audits, possession rights. When UL fixes a mark problem, the fix is inspection.

UL press release, Feb. 7, 2013. “But UL’s work does not end after the initial samples are tested. Every manufacturer authorized to apply the UL safety certification mark to products is also subject to UL’s Follow-Up Services — which entails visits to the physical manufacturing facility.”

Links. The measure of care in Counts II, IV, VI, and VII. A certificate nobody watches is, by the certifier’s own architecture, not a certificate. Midwest’s 438,000 inspections (Movement One) are this movement at enterprise scale.

MOVEMENT FIVE — THE MARK IS THE ONLY MEANS: RELIANCE IS STRUCTURAL, AND REGULATORS RELY BY LAW

UL press release, Feb. 7, 2013. “An authorized UL safety certification mark on a product is the only means for consumers, retailers, distributors, manufacturers or jurisdictional authorities to determine that sample of the goods have been certified by UL as compliant with relevant safety standards.” Five audiences. One channel. The certifier’s own epistemics: there is no other way to know.

Sworn to the Senate, twice, a decade apart. In 2008, UL’s Vice President of Anti-Counterfeiting Operations testified to the Senate Judiciary Committee that “consumers, retailers, regulators, manufacturers and distributors look to the UL Mark to determine if products comply with relevant safety standards or regulatory requirements” — and, in colloquy, that “if people plug something in, they expect it to be safe. And so we have to put this asset in place and protect the mark.” The Chairman’s own description: UL spent “an enormous amount of time . . . to get into consumers’ minds that this is a seal of approval.” In 2018, UL’s President testified to the Senate Finance Committee that “our only product is trust. It is the trust that consumers place in us when they see our mark.”

So-ordered: the regulators look. B&B Consent Judgment ¶5 recites as admitted fact that the defendants counterfeited “[b]ecause the relevant code authorities routinely look for certification marks, like the UL Marks, during their inspections of sign installations.” Government inspectors’ routine reliance, in a federal judgment — as the counterfeiter’s motive.

The regulators adopt. The Consumer Product Safety Commission’s letter of December 19, 2022 declares that micromobility products not meeting the relevant UL standards “could present a substantial product hazard under Section 15(a) of the CPSA, 15 U.S.C. § 2064(a),” and that “[c]ompliance with the standards should be demonstrated by certification from an accredited testing laboratory.” A federal regulator converting voluntary standards into the statutory benchmark, and naming certification as the proof.

The legislature mandates. New York City Local Law 39 of 2023 forbids the sale, lease, or rental of powered mobility devices unless “certified by an accredited testing laboratory for compliance with Underwriters Laboratories (UL) standard” 2849, 2272, or 2271 — and requires that “the logo, wordmark, or name of such accredited testing laboratory is displayed” on the packaging or directly on the device. The certifier’s name is in the municipal code; the mark’s display is a legal duty of sale.

The government relies operationally. The Government Accountability Office’s report GAO-18-216 (Jan. 2018) conducted undercover purchases for the Senate and had the rights holders authenticate them — UL determined authenticity for the government’s own auditors. UL has furnished “rapid mark verification services” to Customs and Border Protection since the early 1990s and has processed approximately 25,000 authentication requests. The modern enhanced UL mark is engineered for the lookup: it “utilizes a unique identifier for easier access to information at www.ul.com/database” and “describes the attributes that UL has certified about a product.”

Links. This movement is the reliance and materiality architecture of Counts I and III, and the foreseeability architecture of Count II. Reliance on a certification is not one option

among several; by the certifier's design, sworn statements, published epistemics, and now by statute, it is the system working as intended.

MOVEMENT SIX — THE MARK SPEAKS TO THE WHOLE PRODUCT

UL LLC v. Swagway LLC, No. 3:16-cv-00075 (N.D. Ind.), Consent Judgment (Apr. 15, 2016). The injunction reaches acts calculated to cause purchasers to believe a product has been “tested, inspected, or certified by Plaintiff, or guaranteed by Plaintiff,” and the surrender order reaches every label and advertisement suggesting the product “as a whole is certified or approved.” The certifier polices the difference between a certified component and a certified machine — and polices it at the machine.

UL LLC v. The Space Chariot Inc., No. 2:16-cv-08172-CAS (C.D. Cal. 2017). On contested summary judgment, the court (*italics the court's own*) fixed liability on the universal statement — advertising that “ALL” hoverboards were UL certified — where the certification was partial. Partial truth plus a universal quantifier is liability. The court entered final judgment against the corporation and, after contested summary judgment on July 7, 2017, against both individual officers personally: \$1,000,000 jointly and severally, prejudgment interest, costs, and a permanent injunction, for “willful, deliberate, and unjustifiable counterfeiting.” Dkt. 112 (Oct. 20, 2017).

GuildMaster ¶6. The grand jury's charge: the label “was the manufacturer's representation and advertisement to the public that the lamp as a whole was certified by UL.” The whole-product proposition, in an indictment.

The confession specimen. In the Arizer litigation (N.D. Ill., No. 1:20-cv-05308), the manufacturer's written response to UL's investigator explained: “UL certified power adapters are included with our Solo products and our team responsible for the packaging updates mistakenly believed the inclusion of a UL certified accessory required us to display the UL mark on our product packaging.” The component-to-whole inference, stated by the party that drew it — and prosecuted by UL to a \$2.2 million consent judgment. The inference that a certified part licenses a certified-whole representation is, in the certifier's own enforcement practice, the definition of the offense.

Links. The grammar of Counts I and III as applied to any claim that certification of a component, a subset, or a single attribute supports a whole-product representation. Four instrument classes carry the proposition: a demand, a decree, an indictment, and the violator's own confession.

MOVEMENT SEVEN — EFFECT OVER INTENT, AND THE READER'S DUTY TO VERIFY

Effect over intent. ICCS involved an innocent licensee; forfeiture followed anyway. UL's release of March 2, 2023 states the principle in UL's own words: counterfeiting arises whether by intent to mislead or by copying — “In either case, the effect is the same: customers are misled into believing the product has been UL certified when it has not.” The wrong is the false message, however produced. This is the certifier's own frame, and it is negligence-compatible by design.

The duty to check the record. UL's complaint against Greenlane pleads (original italics UL's): the distributor "had *never* verified whether *any* of its suppliers had actually been authorized," though it "could have reviewed information available in UL's online public database, or could have simply called UL." It "could have easily avoided selling millions of dollars of goods bearing counterfeit UL marks by checking UL's publicly-available online database and comparing the information found there to the information provided by the manufacturers"; instead it "attempt[ed] to shift blame to its suppliers" when it "should have known better . . . than to simply accept the markings on its products as genuine." The district court denied a motion to strike these paragraphs. And the consent judgment (Ellis, J., Jan. 26, 2023) converts the core to so-ordered admitted fact, twice in one paragraph: Greenlane "asserted that it did not know" — "but Greenlane also did not conduct any due diligence to verify whether the UL Marks . . . were genuine." One million dollars of the \$2.2 million judgment ran against Greenlane, jointly and severally. Fully paid.

The judgment's own definition, matured. The 2023 judgment's ¶4: "Following successful evaluation and testing by UL, UL certifies the goods of others by authorizing use of the UL Marks to demonstrate certification to the marketplace." The mark exists to communicate the certification. So-ordered.

Links. In the enforcement record, the party who accepts a mark without checking the record behind it is charged with willful disregard. The Complaint's Defendants wrote, verified, tested for, and republished the instruments at issue; the duty the certifier assigns to strangers reading marks in a warehouse is, a fortiori, the floor for the parties who authored the record itself.

MOVEMENT EIGHT — NOTICE CHANGES EVERYTHING: PERSISTENCE AGGRAVATES

The AFG chronology. Seizure notices, a cease-and-desist, continued sales — pleaded as escalation.

The Fly-E escalation. UL's 2025 complaint pleads two removal promises made and broken, after which the defendants increased usage to at least 29 counterfeit marks across at least 18 products — and extended the false statements into an investor report ("Provide UL certificates for both e-bike models and batteries") and a press release ("All of our lineup of e-bikes feature UL-certified lithium batteries for safety"). The complaint pleads the defendants' own cessation assurances false, on test-purchase and customs receipts.

The certifier's own severity taxonomy. UL's written responses to the Senate Judiciary Committee (2008) asked that federal authorities "prioritize those cases where the counterfeited products put at risk the life and safety of the consumer — including counterfeit UL Marks, pharmaceutical products, and other life safety goods." Its Vice President's closing words to the Chairman: "I think the clang of the jail door is really a deterrent." In 2018, its President agreed with Senator Wyden, on the record, that penalties treated as "the cost of doing business" warrant strengthening. The certifier's own position is that persistence after notice, in matters touching life and safety, belongs at the top of the enforcement pyramid.

Links. The escalation architecture of the Complaint’s post-notice allegations: certificates that stand, republish, and renew after written notice occupy the exact position the certifier’s own enforcement practice treats as aggravated.

MOVEMENT NINE — THE REMEDY: WHERE CERTIFICATION CANNOT BE VERIFIED, REMOVE — INSTALLED INCLUDED

UL Release 20PN-24 (Sept. 30, 2020). UL’s published protocol for products bearing marks whose certification cannot be verified: the products “have not been evaluated by UL . . . and it is unknown if they comply with any safety requirements,” and “UL recommends that these products be removed from service and be replaced” with certified products. The subjects of the Release were fire doors and door frames already installed in buildings. Installation was no obstacle to the remedy.

The stickers-alone decree. UL LLC v. Butson, No. 4:15-cv-00170-O (N.D. Tex.), Consent Decree (Dkt. 31, June 22, 2015): a defendant sold counterfeit UL labels themselves — stickers, attached to no product, through the domain ulapprovedlabels.com. The so-ordered recitals: the labels enabled purchasers “to bypass UL’s rigorous processes and controls for testing and certifying products,” and the conduct “places the health and safety of the general public at risk.” Stickers alone, \$150,000. With no product in the case, the entire wrong is the false assertion of examination. The decree also recites that “UL strictly controls the use of the UL Marks through, among other things, its Authorized Label Supplier Program” — even the paper the mark is printed on runs through a controlled chain of custody.

The litigated injunction. The Space Chariot final judgment (Dkt. 112) entered the same injunction grammar after full contest that UL’s consent decrees carry by agreement — the belief clause, the passing-off clause, the aiding-and-abetting clause, spoliation terms including electronic records. The decree grammar is not settlement boilerplate; it is the adjudicated remedy shape for violations of this mark’s meaning.

Links. The Complaint’s prayer is drafted in the remedy grammar the certifier itself has sought and obtained for thirty-five years — and its removal request asks for exactly what Release 20PN-24 recommends, in the circumstance the Release names: a mark asserting an examination that cannot be shown to stand behind it.

MOVEMENT TEN — THE MEANING IS UNITARY, AND THE FORK CLOSES

The absence, counted. Across the forty enforcement-record documents evaluated — registrations, complaints, decrees, an indictment, sworn testimony, agency letters, statutes, releases, protocols, white papers — not one divides the meaning of the mark by program, by file, or by standard. The definitions are stated whole: evaluation, testing, determination, compliance. No document says the mark means one thing when the file behind it is electrical and something narrower when the file is environmental. Thirty-five documents state the meaning; zero partition it.

The affirmative record. UL’s President swore to the Senate in 2018 that the mark tells consumers an independent third party has determined compliance “with safety,

performance, or other standards.” In March 2023, UL Solutions’ executive vice president and chief legal officer resolved the third term in public: “UL Marks appear on billions of products globally to demonstrate that these products meet scientific safety, performance or sustainability standards.” In March 2025, UL’s release announcing the Fly-E suit stated the mark signifies certification to “thorough scientific safety, performance or security standards” — while the same release’s corporate boilerplate names “safety, security and sustainability” together. The formula’s third term rotates with the program in view. The family meaning is open-textured by the certifier’s own usage, and sustainability sits inside it by the chief legal officer’s sentence, published while the certifications at issue in this case stood.

The fork. Either the environmental certification marks participate in the family meaning the enforcement record establishes — examined conformity, named certifier, dated event, surveillance, structural reliance — in which case the record above applies to them directly; or they are separate instruments governed by their own constitution, ISO 14025, whose mandatory requirements of independence, verification, and complete reporting the Complaint measures them against clause by clause. Both roads end at the counts. And the second road carries a price the first does not: every argument narrowing the mark family’s meaning must be made in public, about the certifier’s own marks, against its own chief legal officer’s published sentence, at a discount its enforcement docket spent thirty-five years refusing to accept from anyone else.

THE COUNT MAP — WHERE THE ENFORCEMENT RECORD DEPLOYS

Count I — §552 negligent misrepresentation (all Defendants). Movements One and Two supply the representation’s content (the examination event, by the named certifier); Movement Five supplies justifiable reliance (the only means; structural reliance; regulators by law); Movement Six supplies the whole-product grammar; Movement Ten supplies the unitary meaning. Midwest Plastic states the registrant’s affirmative obligation to prevent public deception.

Count II — §324A negligent undertaking (all Defendants). Movements Four and Five: surveillance as the undertaking’s content; the user as the foreseeable reliant (the plug-it-in expectation, sworn; “health and safety of the user,” pleaded by UL itself in 2025).

Count III — UTPCPL (all Defendants). Movement Seven’s effect-over-intent frame is the certifier’s own statement of the capacity-to-deceive standard; Movement Five supplies reliance; Movement Six supplies the deceptive whole-product structure.

Count IV — NSF, certification-body duty. Movements Three and Four by analogy of architecture: scoped authorization and constitutive surveillance are what accredited certification is, in the industry’s own leading practice.

Count V — SGS, negligent testing. Movement Two: the named party’s own examination is what the record asserts; data that was never generated for the certificate cannot stand behind it.

Count VI — UL, negligent standard creation and certification. The entire record, as author: the machinery Midwest proved, the meanings the decrees recite, the oath Brady swore, the remedy 20PN-24 publishes — measured against the PCR UL wrote and the ISO 14025 system UL selected. Movement Ten's fork closes the escape in either direction.

Count VII — Smart EPD and Lasso, EPD verification negligence. Movements Two and Four: named-verifier specificity and constitutive surveillance, applied to the verification roles ISO 14025 requires to be independent.

Count VIII — Declaratory judgment. Movement Nine: the remedy architecture — removal, correction, verification — is the certifier's own, published and sought for thirty-five years; the declarations requested ask for nothing the enforcement record does not already demand of everyone else.

CLOSING

The certifier that owns the mark has stated, repeatedly and formally — in federal court, under oath to both houses of Congress, at the customs border, and in its own published protocols — that the mark means evaluation and testing performed by the certifier; that the person it protects is the user; that the reader who accepts a mark without verification acts at his peril; that partial certification never supports a universal claim; that persistence after notice aggravates; and that a product whose certification cannot be verified should be removed from service, installed or not. This Complaint measures the certifications standing behind that same mark, and behind its co-defendants' marks, against the standards the certifiers themselves wrote. Either the marks carry the meaning their owners enforce, or they do not. Both answers are actionable, and Plaintiff asks for nothing the certifier's own program does not ask.