

1 Michael K. Friedland (SBN 157,217)
michael.friedland@knobbe.com
2 Lauren Keller Katzenellenbogen (SBN 223,370)
lauren.katzenellenbogen@knobbe.com
3 Ali S. Razai (SBN 246,922)
ali.razai@knobbe.com
4 Daniel C. Kiang (SBN 307,961)
daniel.kiang@knobbe.com
5 **Knobbe, Martens, Olson & Bear, LLP**
2040 Main Street, Fourteenth Floor
6 Irvine, CA 92614
Telephone: (949) 760-0404
7 Facsimile: (949) 760-9502

8 Attorneys for Plaintiffs
OAKLEY, INC. and LUXOTTICA GROUP S.p.A.
9

10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13

14	OAKLEY, INC., a Washington	}	Civil Action No. 8:18-cv-00403
15	corporation, and LUXOTTICA		
16	GROUP S.p.A., an Italian corporation,		
17	Plaintiffs,		
18	v.		
19	ASIA PACIFIC TRADING CO.,	}	COMPLAINT FOR
20	INC., a California corporation,		
21	Defendant.		
		}	PATENT INFRINGEMENT,
			TRADEMARK INFRINGEMENT,
		}	TRADEMARK DILUTION,
			TRADE DRESS INFRINGEMENT,
		}	FALSE DESIGNATION OF
			ORIGIN, AND UNFAIR
		}	COMPETITION
			DEMAND FOR JURY TRIAL

22
23
24
25
26
27
28

1 Plaintiffs Oakley, Inc. (“Oakley”) and Luxottica Group S.p.A.
2 (“Luxottica”) (collectively, “Plaintiffs”) hereby complain of Asia Pacific
3 Trading Co., Inc. (“Defendant”) and allege as follows:

4 **JURISDICTION AND VENUE**

5 1. This Court has original subject matter jurisdiction over the claims
6 in this action pursuant to 35 U.S.C. §§ 271 and 281, 15 U.S.C. §§ 1114 and
7 1125, as these claims arise under the laws of the United States. The Court has
8 supplemental jurisdiction over the claims in this Complaint which arise under
9 state statutory and common law pursuant to 28 U.S.C. § 1367(a) because the
10 state law claims are so related to the federal claims that they form part of the
11 same case or controversy and derive from a common nucleus of operative facts.

12 2. This Court has personal jurisdiction over Defendant because
13 Defendant has a continuous, systematic, and substantial presence within this
14 judicial district. For example, by selling and offering for sale infringing
15 products in this judicial district, including but not limited to selling infringing
16 products directly to consumers and/or retailers in this district and selling into the
17 stream of commerce knowing such products would be sold in California and this
18 district, Defendant’s acts form a substantial part of the events or omissions
19 giving rise to Oakley’s and Luxottica’s claims.

20 3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b),
21 1391(d), and 1400(b) because Defendant is a California corporation with its
22 principal place of business located within this district, and because Defendant
23 has committed acts of infringement by selling and offering to sell infringing
24 products in this district and Defendant has a regular and established place of
25 business in this district.

26 ///

27 ///

28 ///

1 **THE PARTIES**

2 4. Plaintiff Oakley is a corporation organized and existing under the
3 laws of the State of Washington, having its principal place of business at One
4 Icon, Foothill Ranch, California 92610.

5 5. Plaintiff Luxottica is a corporation organized and existing under the
6 laws of the Republic of Italy, having its principal place of business at Piazzale
7 Luigi Cadorna 3, Milan, 20123 Italy.

8 6. Plaintiffs are informed and believe, and thereon allege, that
9 Defendant Asia Pacific Trading Co., Inc. is a corporation organized and existing
10 under the laws of the State of California, having its principal place of business
11 at 5132 S. Alameda Street, Vernon, California 90014.

12 **GENERAL ALLEGATIONS**

13 7. Oakley is one of the world's most iconic brands. The company and
14 its products, particularly in the realm of eyewear, are instantly and universally
15 recognized for their innovative technology and distinctive style. Since its
16 founding, Oakley's engineers and designers have worked continuously to bring
17 new technology and breakthrough designs to the market.

18 8. Oakley has been actively engaged in the manufacture and sale of
19 high quality eyewear since at least 1985. Oakley is the manufacturer and
20 retailer of several lines of eyewear that have enjoyed substantial success and are
21 protected by various intellectual property rights owned by Oakley.

22 9. On July 31, 2007, the United States Patent and Trademark Office
23 ("USPTO") duly and lawfully issued United States Design Patent No. D547,794
24 ("the D794 Patent"), titled "Eyeglasses." Oakley is the owner by assignment of
25 all right, title, and interest in the D794 Patent. A true and correct copy of the
26 D794 Patent is attached hereto as **Exhibit 1**.

27 10. On December 4, 2007, the USPTO duly and lawfully issued United
28 States Design Patent No. D556,818 ("the D818 Patent"), titled "Eyeglass

1 Components.” Oakley is the owner by assignment of all right, title, and interest
2 in the D818 Patent. A true and correct copy of the D818 Patent is attached
3 hereto as **Exhibit 2**.

4 11. On November 6, 2007, the USPTO duly and lawfully issued United
5 States Design Patent No. D554,689 (“the D689 Patent”), titled “Eyeglass
6 Frame.” Oakley is the owner by assignment of all right, title, and interest in the
7 D689 Patent. A true and correct copy of the D689 Patent is attached hereto as
8 **Exhibit 3**.

9 12. On June 1, 2010, the USPTO duly and lawfully issued United
10 States Design Patent No. D616,920 (“the D920 Patent”), titled “Eyeglass
11 Component.” Oakley is the owner by assignment of all right, title, and interest
12 in the D920 Patent. A true and correct copy of the D920 Patent is attached
13 hereto as **Exhibit 4**.

14 13. On November 25, 2008, the USPTO duly and lawfully issued
15 United States Design Patent No. D581,446 (“the D446 Patent”), titled
16 “Eyeglass.” Oakley is the owner by assignment of all right, title, and interest in
17 the D446 Patent. A true and correct copy of the D446 Patent is attached hereto
18 as **Exhibit 5**.

19 14. On June 1, 2010, the USPTO duly and lawfully issued United
20 States Design Patent No. D616,919 (“the D919 Patent”), titled “Eyeglass
21 Front.” Oakley is the owner by assignment of all right, title, and interest in the
22 D919 Patent. A true and correct copy of the D919 Patent is attached hereto as
23 **Exhibit 6**.

24 15. On May 8, 2012, the USPTO duly and lawfully issued United
25 States Design Patent No. D659,180 (“the D180 Patent”), titled “Eyeglass.”
26 Oakley is the owner by assignment of all right, title, and interest in the D180
27 Patent. A true and correct copy of the D180 Patent is attached hereto as **Exhibit**
28 **7**.

1 16. On February 19, 2013, the USPTO duly and lawfully issued United
2 States Design Patent No. D676,479 (“the D479 Patent”), titled “Eyeglass.”
3 Oakley is the owner by assignment of all right, title, and interest in the D479
4 Patent. A true and correct copy of the D479 Patent is attached hereto as **Exhibit**
5 **8**.

6 17. On March 25, 2008, the USPTO duly and lawfully issued United
7 States Design Patent No. D565,089 (“the D089 Patent”), titled “Eyeglass and
8 Eyeglass Components.” Oakley is the owner by assignment of all right, title,
9 and interest in the D089 Patent. A true and correct copy of the D089 Patent is
10 attached hereto as **Exhibit 9**.

11 18. On March 18, 2008, the USPTO duly and lawfully issued United
12 States Design Patent No. D564,572 (“the D572 Patent”), titled “Eyeglass and
13 Eyeglass Components.” Oakley is the owner by assignment of all right, title,
14 and interest in the D572 Patent. A true and correct copy of the D572 Patent is
15 attached hereto as **Exhibit 10**.

16 19. Defendant manufactures, uses, sells, offers for sale, and/or imports
17 into the United States eyewear that infringes Oakley’s patent rights, including
18 the D794 Patent, the D818 Patent, the D689 Patent, the D920 Patent, the D446
19 Patent, the D919 Patent, the D180 Patent, the D479 Patent, the D089 Patent, and
20 the D572 Patent (collectively, the “Asserted Patents”).

21 20. Oakley manufactures and sells sunglasses under the mark
22 HOLBROOK bearing distinctive trade dress in the overall design of the
23 sunglasses (“HOLBROOK Trade Dress”). An example of an Oakley product
24 bearing the distinctive HOLBROOK Trade Dress is depicted in the photograph
25 attached as **Exhibit 11**.

26 21. As a result of Oakley’s widespread use and display of the
27 HOLBROOK Trade Dress in association with its eyewear, (a) the public has
28 come to recognize and identify eyewear bearing the HOLBROOK Trade Dress

1 as emanating from Oakley, (b) the public recognizes that products bearing the
2 HOLBROOK Trade Dress constitute high quality products that conform to the
3 specifications created by Oakley, and (c) the HOLBROOK Trade Dress has
4 established strong secondary meaning and extensive goodwill.

5 22. The HOLBROOK Trade Dress is not functional. The design
6 features embodied by the HOLBROOK Trade Dress are not essential to the
7 function of the product, do not make the product cheaper or easier to
8 manufacture, and do not affect the quality of the product. The design of the
9 HOLBROOK Trade Dress is not a competitive necessity.

10 23. Subsequent to Oakley's use and adoption of the HOLBROOK
11 Trade Dress, Defendant has developed, manufactured, imported, advertised,
12 and/or sold products that use trade dress that is confusingly similar to the
13 HOLBROOK Trade Dress.

14 24. Luxottica is the world's leading designer, manufacturer, marketer
15 and retailer of high quality eyeglass frames and sunglasses.

16 25. Luxottica owns numerous trademark registrations, including U.S.
17 Trademark Registration No. 0595513 for the mark WAYFARER for sunglasses
18 ("the WAYFARER Mark").

19 26. The WAYFARER Mark was registered with the USPTO on
20 September 21, 1954 on the Principal Register. A true and correct copy of the
21 certificate of registration of the WAYFARER Mark is attached hereto as
22 **Exhibit 12.**

23 27. U.S. Trademark Registration No. 0595513 for the mark
24 WAYFARER has become incontestable through the filing of a declaration of
25 incontestability with the U.S. Patent and Trademark Office.

26 28. The WAYFARER Mark has not been abandoned, canceled, or
27 revoked. The WAYFARER Mark constitutes an enforceable trademark that
28 uniquely identifies sunglasses as emanating from, sponsored by, and/or

1 authorized by Luxottica.

2 29. As a result of the widespread use and display of the WAYFARER
3 Mark as a distinctive trademark identifying sunglasses, (a) the public has come
4 to recognize and identify products bearing the WAYFARER Mark as emanating
5 from Luxottica, (b) the public recognizes that products bearing the
6 WAYFARER Mark constitute high quality products that conform to the
7 specifications created by Luxottica, and (c) the WAYFARER Mark has
8 established strong secondary meaning and extensive goodwill.

9 30. The products sold by Luxottica have been widely advertised,
10 promoted, and distributed to the purchasing public throughout the United States
11 and the world.

12 31. Products sold under the WAYFARER Mark, by reason of their
13 style and design and quality of workmanship, have come to be known to the
14 purchasing public throughout the United States as representing products of high
15 quality, which are sold under good merchandising and customer service
16 conditions. As a result, the WAYFARER Mark, and the goodwill associated
17 therewith, are of great value to Luxottica.

18 32. By virtue of the wide renown acquired by the WAYFARER Mark,
19 coupled with the national and international distribution and extensive sale of
20 products distributed under this trademark, the WAYFARER Mark has become
21 famous.

22 33. Defendant has infringed and diluted Luxottica's famous
23 WAYAFARER Mark by using the exact mark in connection with the sale of
24 identical goods, namely sunglasses.

25 34. Defendant's acts complained of herein have caused Plaintiffs to
26 suffer irreparable injury to their business. Plaintiffs will continue to suffer
27 substantial loss and irreparable injury unless and until Defendant is enjoined
28 from its wrongful actions complained of herein.

1 35. Plaintiffs are informed and believe, and on that basis, allege that
2 Defendant's acts complained of herein are willful and deliberate.


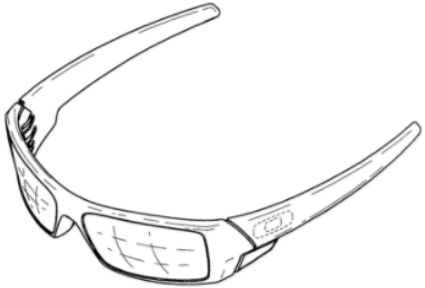
3 **FIRST CLAIM FOR RELIEF**

4 (Patent Infringement)
5 (35 U.S.C. § 271)

6 36. Oakley repeats and re-alleges the allegations of paragraphs 1-35 of
7 this Complaint as if set forth fully herein.

8 37. This is a claim for patent infringement under 35 U.S.C. § 271.


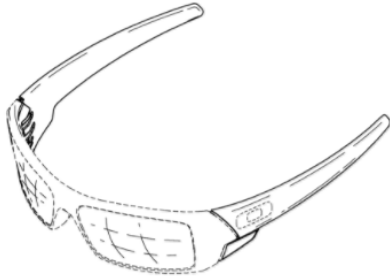
9 38. Defendant, through its agents, employees, and/or servants has, and
10 continues to, knowingly, intentionally, and willfully infringe the D794 Patent by
11 making, using, selling, offering for sale, and/or importing eyewear having a
12 design that would appear to an ordinary observer to be substantially similar to
13 the claim of the D794 Patent, for example Defendant's PC7045 sunglass model
14 as shown below.

Defendant's PC7045 Sunglass Model	Oakley's D794 Patent
	

15
16
17
18
19
20
21
22 39. Defendant's acts of infringement of the D794 Patent were
23 undertaken without permission or license from Oakley. Oakley is informed and
24 believes, and thereon alleges, that Defendant had actual knowledge of Oakley's
25 rights in the design claimed in the D794 Patent. Oakley and its iconic designs
26 are well-known throughout the eyewear industry, and Defendant's PC7045
27 sunglass model is an identical copy of Oakley's patented design. Accordingly,
28 Defendant's actions constitute willful and intentional infringement of the D794

1 Patent. Defendant infringed the D794 Patent with reckless disregard of
2 Oakley's patent rights. Defendant knew, or it was so obvious that Defendant
3 should have known, that its actions constitute infringement of the D794 Patent.
4 Defendant's acts of infringement of the D794 Patent were not consistent with
5 the standards of commerce for its industry.


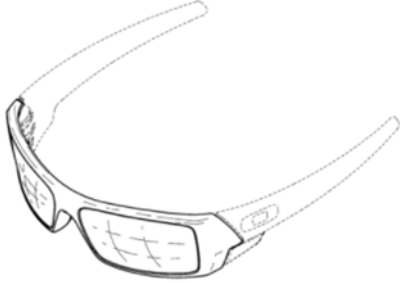
6 40. Defendant, through its agents, employees, and/or servants has, and
7 continues to, knowingly, intentionally, and willfully infringe the D818 Patent by
8 making, using, selling, offering for sale, and/or importing eyewear having a
9 design that would appear to an ordinary observer to be substantially similar to
10 the claim of the D818 Patent, for example Defendant's PC7045 sunglass model
11 as shown below.

Defendant's PC7045 Sunglass Model	Oakley's D818 Patent
	

12
13
14
15
16
17
18
19 41. Defendant's acts of infringement of the D818 Patent were
20 undertaken without permission or license from Oakley. Oakley is informed and
21 believes, and thereon alleges, that Defendant had actual knowledge of Oakley's
22 rights in the design claimed in the D818 Patent. Oakley and its iconic designs
23 are well-known throughout the eyewear industry, and Defendant's PC7045
24 sunglass model is an identical copy of Oakley's patented design. Accordingly,
25 Defendant's actions constitute willful and intentional infringement of the D818
26 Patent. Defendant infringed the D818 Patent with reckless disregard of
27 Oakley's patent rights. Defendant knew, or it was so obvious that Defendant
28 should have known, that its actions constitute infringement of the D818 Patent.

1 Defendant's acts of infringement of the D818 Patent were not consistent with
2 the standards of commerce for its industry.


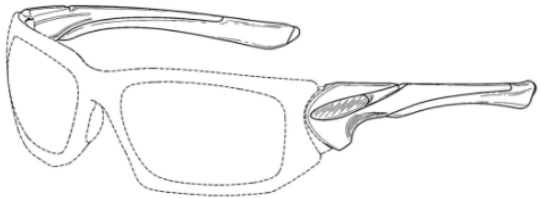
3 42. Defendant, through its agents, employees, and/or servants has, and
4 continues to, knowingly, intentionally, and willfully infringe the D689 Patent by
5 making, using, selling, offering for sale, and/or importing eyewear having a
6 design that would appear to an ordinary observer to be substantially similar to
7 the claim of the D689 Patent, for example, Defendant's PC7045 sunglass model
8 as shown below.

Defendant's PC7045 Sunglass Model	Oakley's D689 Patent
	

16 43. Defendant's acts of infringement of the D689 Patent were
17 undertaken without permission or license from Oakley. Oakley is informed and
18 believes, and thereon alleges, that Defendant had actual knowledge of Oakley's
19 rights in the design claimed in the D689 Patent. Oakley and its iconic designs
20 are well-known throughout the eyewear industry, and Defendant's PC7045
21 sunglass model is an identical copy of Oakley's patented design. Accordingly,
22 Defendant's actions constitute willful and intentional infringement of the D689
23 Patent. Defendant infringed the D689 Patent with reckless disregard of
24 Oakley's patent rights. Defendant knew, or it was so obvious that Defendant
25 should have known, that its actions constitute infringement of the D689 Patent.
26 Defendant's acts of infringement of the D689 Patent were not consistent with
27 the standards of commerce for its industry.

28 ///



1 44. Defendant, through its agents, employees, and/or servants has, and
2 continues to, knowingly, intentionally, and willfully infringe the D920 Patent by
3 making, using, selling, offering for sale, and/or importing eyewear having a
4 design that would appear to an ordinary observer to be substantially similar to
5 the claim of the D920 Patent, for example Defendant’s KP17790 sunglass
6 model as shown below.

Defendant’s KP17790 Sunglass Model	Oakley’s D920 Patent
 A photograph of a pair of black and orange sunglasses with a wrap-around design and dark lenses.	 A technical line drawing of a pair of wrap-around sunglasses, showing the frame, temples, and lens details.

13 45. Defendant’s acts of infringement of the D920 Patent were
14 undertaken without permission or license from Oakley. Oakley is informed and
15 believes, and thereon alleges, that Defendant had actual knowledge of Oakley’s
16 rights in the design claimed in the D920 Patent. Oakley and its iconic designs
17 are well-known throughout the eyewear industry, and Defendant’s KP17790
18 sunglass model is an identical copy of Oakley’s patented design. Accordingly,
19 Defendant’s actions constitute willful and intentional infringement of the D920
20 Patent. Defendant infringed the D920 Patent with reckless disregard of
21 Oakley’s patent rights. Defendant knew, or it was so obvious that Defendant
22 should have known, that its actions constitute infringement of the D920 Patent.
23 Defendant’s acts of infringement of the D920 Patent were not consistent with
24 the standards of commerce for its industry.

25 46. Defendant, through its agents, employees, and/or servants has, and
26 continues to, knowingly, intentionally, and willfully infringe the D446 Patent by
27 making, using, selling, offering for sale, and/or importing eyewear having a
28 design that would appear to an ordinary observer to be substantially similar to




1 the claim of the D446 Patent, for example Defendant's PC52132 sunglass model
2 as shown below.

3 Defendant's PC52132 4 Sunglass Model	5 Oakley's D446 Patent
	

6
7
8
9
10 47. Defendant's acts of infringement of the D446 Patent were
11 undertaken without permission or license from Oakley. Oakley is informed and
12 believes, and thereon alleges, that Defendant had actual knowledge of Oakley's
13 rights in the design claimed in the D446 Patent. Oakley and its iconic designs
14 are well-known throughout the eyewear industry, and Defendant's PC52132
15 sunglass model is an identical copy of Oakley's patented design. Accordingly,
16 Defendant's actions constitute willful and intentional infringement of the D446
17 Patent. Defendant infringed the D446 Patent with reckless disregard of
18 Oakley's patent rights. Defendant knew, or it was so obvious that Defendant
19 should have known, that its actions constitute infringement of the D446 Patent.
20 Defendant's acts of infringement of the D446 Patent were not consistent with
21 the standards of commerce for its industry.

22 48. Defendant, through its agents, employees, and/or servants has, and
23 continues to, knowingly, intentionally, and willfully infringe the D919 Patent by
24 making, using, selling, offering for sale, and/or importing eyewear having a
25 design that would appear to an ordinary observer to be substantially similar to
26 the claim of the D919 Patent, for example Defendant's P43663 and PC0643
27 sunglass models as shown below.


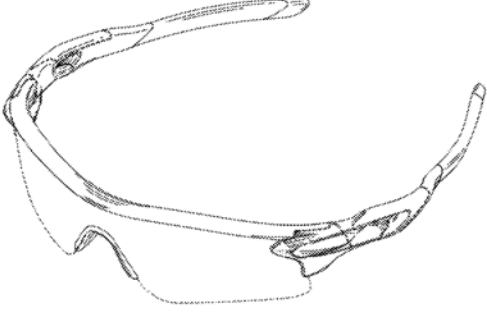
28 ///

Defendant's P43663 and PC0643 Sunglass Model	Oakley's D919 Patent
<p data-bbox="532 285 646 317">P43663</p>  <p data-bbox="532 537 646 569">PC0643</p> 	

49. Defendant's acts of infringement of the D919 Patent were undertaken without permission or license from Oakley. Oakley is informed and believes, and thereon alleges, that Defendant had actual knowledge of Oakley's rights in the design claimed in the D919 Patent. Oakley and its iconic designs are well-known throughout the eyewear industry, and each of Defendant's P43663 and PC0643 sunglass models is an identical copy of Oakley's patented design. Accordingly, Defendant's actions constitute willful and intentional infringement of the D919 Patent. Defendant infringed the D919 Patent with reckless disregard of Oakley's patent rights. Defendant knew, or it was so obvious that Defendant should have known, that its actions constitute infringement of the D919 Patent. Defendant's acts of infringement of the D919 Patent were not consistent with the standards of commerce for its industry.

50. Defendant, through its agents, employees, and/or servants has, and continues to, knowingly, intentionally, and willfully infringe the D180 Patent by making, using, selling, offering for sale, and/or importing eyewear having a design that would appear to an ordinary observer to be substantially similar to the claim of the D180 Patent, for example Defendant's KP510 sunglass model as shown below.

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


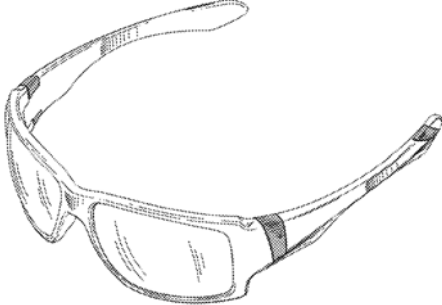
Defendant's KP510 Sunglass Model	Oakley's D180 Patent
	

51. Defendant's acts of infringement of the D180 Patent were undertaken without permission or license from Oakley. Oakley is informed and believes, and thereon alleges, that Defendant had actual knowledge of Oakley's rights in the design claimed in the D180 Patent. Oakley and its iconic designs are well-known throughout the eyewear industry, and Defendant's KP510 sunglass model is an identical copy of Oakley's patented design. Accordingly, Defendant's actions constitute willful and intentional infringement of the D180 Patent. Defendant infringed the D180 Patent with reckless disregard of Oakley's patent rights. Defendant knew, or it was so obvious that Defendant should have known, that its actions constitute infringement of the D180 Patent. Defendant's acts of infringement of the D180 Patent were not consistent with the standards of commerce for its industry.

52. Defendant, through its agents, employees, and/or servants has, and continues to, knowingly, intentionally, and willfully infringe the D479 Patent by making, using, selling, offering for sale, and/or importing eyewear having a design that would appear to an ordinary observer to be substantially similar to the claim of the D479 Patent, for example Defendant's PC0220 sunglass model as shown below.

///
///

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


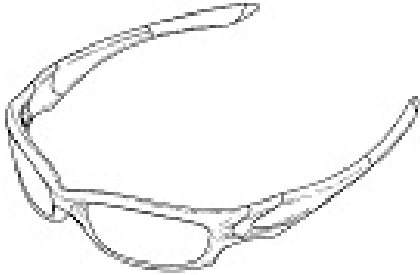
Defendant's PC0220 Sunglass Model	Oakley's D479 Patent
	

53. Defendant's acts of infringement of the D479 Patent were undertaken without permission or license from Oakley. Oakley is informed and believes, and thereon alleges, that Defendant had actual knowledge of Oakley's rights in the design claimed in the D479 Patent. Oakley and its iconic designs are well-known throughout the eyewear industry, and Defendant's PC0220 sunglass model is an identical copy of Oakley's patented design. Accordingly, Defendant's actions constitute willful and intentional infringement of the D479 Patent. Defendant infringed the D479 Patent with reckless disregard of Oakley's patent rights. Defendant knew, or it was so obvious that Defendant should have known, that its actions constitute infringement of the D479 Patent. Defendant's acts of infringement of the D479 Patent were not consistent with the standards of commerce for its industry.

54. Defendant, through its agents, employees, and/or servants has, and continues to, knowingly, intentionally, and willfully infringe the D089 Patent by making, using, selling, offering for sale, and/or importing eyewear having a design that would appear to an ordinary observer to be substantially similar to the claim of the D089 Patent, for example Defendant's KP1402 sunglass model as shown below.

///
///

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



Defendant's KP1402 Sunglass Model	Oakley's D089 Patent
	

55. Defendant's acts of infringement of the D089 Patent were undertaken without permission or license from Oakley. Oakley is informed and believes, and thereon alleges, that Defendant had actual knowledge of Oakley's rights in the design claimed in the D089 Patent. Oakley and its iconic designs are well-known throughout the eyewear industry, and Defendant's KP1402 sunglass model is an identical copy of Oakley's patented design. Accordingly, Defendant's actions constitute willful and intentional infringement of the D089 Patent. Defendant infringed the D089 Patent with reckless disregard of Oakley's patent rights. Defendant knew, or it was so obvious that Defendant should have known, that its actions constitute infringement of the D089 Patent. Defendant's acts of infringement of the D089 Patent were not consistent with the standards of commerce for its industry.

56. Defendant, through its agents, employees, and/or servants has, and continues to, knowingly, intentionally, and willfully infringe the D572 Patent by making, using, selling, offering for sale, and/or importing eyewear having a design that would appear to an ordinary observer to be substantially similar to the claim of the D572 Patent, for example Defendant's KP6336 sunglass model as shown below.

///
///
///

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

Defendant's KP6336 Sunglass Model	Oakley's D572 Patent
	

57. Defendant's acts of infringement of the D572 Patent were undertaken without permission or license from Oakley. Oakley is informed and believes, and thereon alleges, that Defendant had actual knowledge of Oakley's rights in the design claimed in the D572 Patent. Oakley and its iconic designs are well-known throughout the eyewear industry, and Defendant's KP6336 sunglass model is an identical copy of Oakley's patented design. Accordingly, Defendant's actions constitute willful and intentional infringement of the D572 Patent. Defendant infringed the D572 Patent with reckless disregard of Oakley's patent rights. Defendant knew, or it was so obvious that Defendant should have known, that its actions constitute infringement of the D572 Patent. Defendant's acts of infringement of the D572 Patent were not consistent with the standards of commerce for its industry.

58. As a direct and proximate result of Defendant's acts of infringement, Defendant has derived and received gains, profits, and advantages in an amount that is not presently known to Oakley.

59. Pursuant to 35 U.S.C. § 285, Oakley is entitled to reasonable attorneys' fees for the necessity of bringing this claim.

60. Pursuant to 35 U.S.C. § 289, Oakley is entitled to Defendant's total profits from Defendant's infringement of the Asserted Patents.

///
///

1 61. Due to Defendant's actions, constituting patent infringement,
2 Oakley has suffered great and irreparable injury, for which Oakley has no
3 adequate remedy at law.

4 62. Defendant will continue to infringe Oakley's patent rights to the
5 great and irreparable injury of Oakley, unless and until Defendant is enjoined by
6 this Court.

7 **SECOND CLAIM FOR RELIEF**

8 (Trademark Infringement)
9 (15 U.S.C. § 1114)

10 63. Plaintiffs repeat and re-allege the allegations of paragraphs 1-62 of
11 this Complaint as if set forth fully herein.

12 64. This is a claim for trademark infringement under 15 U.S.C. § 1114.

13 65. Defendant is involved in the sale, offer for sale, distribution,
14 advertising, and/or promotion of sunglasses that bear the WAYFARER Mark
15 without Luxottica's consent.

16 66. Long after Luxottica's adoption and use of the WAYFARER Mark,
17 after the federal registration of the WAYFARER Mark, and after the
18 WAYFARER Mark had become famous, Defendant has affixed and used marks
19 that are confusingly similar to the WAYFARER Mark without Luxottica's
20 consent in a manner that infringes upon Luxottica's rights in violation of 15
21 U.S.C. § 1114. An example of Defendant's infringing use of the WAYFARER
22 Mark from Defendant's website, www.aptcinc.com, is shown below:

23 [31](#), [32](#), [33](#), [34](#), [35](#), [36](#), [37](#), [38](#), [39](#), [40](#), [41](#), [42](#), [43](#), [44](#), [45](#), [46](#), [47](#), [48](#), [49](#), [50](#), [back page](#), [Home](#), [Price list](#)



25 ///

26 ///

1 67. Defendant's use in commerce of marks that are confusingly similar
2 to the WAYFARER Mark in connection with the sale, offer for sale,
3 distribution, advertising, and/or promotion of sunglasses is likely to cause
4 confusion, or to cause mistake, or to deceive.

5 68. Defendant did so with the intent to unfairly compete with
6 Luxottica, to trade upon Luxottica's reputation and goodwill by causing
7 confusion and mistake among customers and the public, and to deceive the
8 public into believing that Defendant's products are associated with, sponsored
9 by, originate from, or are approved by Luxottica, when they are not.

10 69. Defendant's activities constitute willful and intentional
11 infringement of the WAYFARER Mark in total disregard of Luxottica's
12 proprietary rights. Defendant infringed Luxottica's trademark rights despite
13 having knowledge that the use of the WAYFARER Mark was, and is, in direct
14 contravention of Luxottica's rights.

15 70. Luxottica is informed and believes, and thereon alleges, that
16 Defendant has derived and received, and will continue to derive and receive,
17 gains, profits, and advantages from the use of the WAYFARER Mark in an
18 amount that is not presently known to Luxottica. By reason of Defendant's
19 actions, constituting unauthorized use and infringement of the WAYFARER
20 Mark, Luxottica has been damaged and is entitled to monetary relief in an
21 amount to be determined at trial.

22 71. Due to Defendant's actions, constituting unauthorized use and
23 infringement of the WAYFARER Mark, Luxottica has suffered and continues to
24 suffer great and irreparable injury, for which Luxottica has no adequate remedy
25 at law.

26 ///

27 ///

28 ///

1 **THIRD CLAIM FOR RELIEF**

2 (Federal Trademark Dilution)

3 (15 U.S.C. § 1125(c))

4 72. Plaintiffs repeat and re-allege the allegations of paragraphs 1-71 of
5 this Complaint as if set forth fully herein.

6 73. This is a claim for trademark dilution under 15 U.S.C. § 1125(c).

7 74. The products sold by Luxottica under the WAYFARER Mark have
8 been widely advertised, promoted, and distributed to the purchasing public
9 throughout the United States and the world.

10 75. By virtue of the wide renown acquired by the WAYFARER Mark,
11 coupled with the national and international distribution and extensive sale of
12 various products distributed under this trademark, the WAYFARER Mark has
13 become famous.

14 76. Defendant's unauthorized commercial use of its marks in
15 connection with the sale, offer for sale, distribution, advertising, and/or
16 promotion of its sunglasses are likely to cause dilution by blurring or dilution by
17 tarnishment of the famous WAYFARER Mark.

18 77. Luxottica is informed and believes, and thereon alleges, that
19 Defendant's actions were done willfully and maliciously with the intent to
20 exploit Luxottica's reputation and dilute the WAYFARER Mark.

21 78. By reason of the aforesaid acts constituting trademark dilution,
22 Plaintiffs have been damaged and are entitled to monetary relief in an amount to
23 be determined at trial.

24 79. Due to Defendant's actions, constituting trademark dilution,
25 Plaintiffs have suffered and continue to suffer great and irreparable injury, for
26 which Plaintiffs have no adequate remedy at law.

27 ///

28 ///

1 **FOURTH CLAIM FOR RELIEF**

2 (California Trademark Infringement and Trademark Dilution)

3 80. Plaintiffs repeat and re-allege the allegations of paragraphs 1-79 of
4 this Complaint as if set forth fully herein.

5 81. Defendant's acts of infringement and dilution of Luxottica's
6 famous WAYFARER Mark are willful and deliberate and committed with
7 knowledge that Defendant's unauthorized use of Luxottica's famous
8 WAYFARER Mark causes a likelihood of confusion.

9 82. Defendant's acts complained of herein constitute infringement of
10 Luxottica's trademark rights under California Business & Professions Code §
11 14245 *et seq.*, and under California common law.

12 83. Defendant's acts complained of herein also constitute dilution of
13 Luxottica's famous WAYFARER Mark under California Business &
14 Professions Code § 14247 *et seq.*

15 84. Luxottica is informed and believes, and thereon alleges, that
16 Defendant has derived and received and will continue to derive and receive,
17 gains, profits and advantages from Defendant's infringement and dilution of
18 Luxottica's famous WAYFARER Mark in an amount that is not presently
19 known to Luxottica. By reason of Defendant's wrongful acts as alleged in this
20 Complaint, Luxottica has been damaged and is entitled to monetary relief in an
21 amount to be determined at trial.

22 85. Due to Defendant's infringement and dilution of Luxottica's
23 famous WAYFARER Mark, Luxottica has suffered and continues to suffer
24 great and irreparable injury for which Luxottica has no adequate remedy at law.

25 86. Defendant's willful acts of infringement and dilution of Luxottica's
26 famous WAYFARER Mark constitute fraud, oppression, and malice.
27 Accordingly, Luxottica is entitled to exemplary damages.

28 ///

1 **FIFTH CLAIM FOR RELIEF**

2 (Trade Dress Infringement)
3 (15 U.S.C. § 1125(a))

4 87. Oakley repeats and re-alleges the allegations of paragraphs 1-86 of
5 this Complaint as if set forth fully herein.

6 88. This is a claim for trade dress infringement under 15 U.S.C.
7 § 1125(a).

8 89. Subsequent to Oakley’s use and adoption of the HOLBROOK
9 Trade Dress, Defendant has developed, manufactured, imported, advertised,
10 and/or sold products that use trade dress that is confusingly similar to the
11 HOLBROOK Trade Dress. As shown below, for example, Defendant’s P3074
12 sunglass model uses a trade dress that is confusingly similar to Oakley’s
13 HOLBROOK Trade Dress.

14

Defendant’s P3074 Sunglass Model	Oakley’s HOLBROOK Trade Dress
	

15
16
17
18
19
20
21

22 90. Defendant’s use of the HOLBROOK Trade Dress in connection
23 with its sunglasses is likely to cause confusion, or to cause mistake, or to
24 deceive as to the affiliation, connection, or association of Defendant with
25 Oakley.

26 91. Oakley is informed and believes, and thereon alleges, that
27 Defendant infringed Oakley’s trade dress rights with the intent to unfairly
28 compete with Oakley, to trade upon Oakley’s reputation and goodwill by

1 causing confusion and mistake among customers and the public, and to deceive
2 the public into believing that Defendant's products are associated with,
3 sponsored by, originated from, or are approved by Oakley, when they are not,
4 resulting in a loss of reputation in, and mischaracterization of, Oakley's
5 products and its brand, damaging its marketability and saleability.

6 92. Defendant's activities constitute willful and intentional
7 infringement of Oakley's trade dress rights in total disregard of Oakley's
8 proprietary rights, and were done despite Defendant's knowledge that use of the
9 HOLBROOK Trade Dress was and is in direct contravention of Oakley's rights.

10 93. Oakley is informed and believes, and thereon alleges, that
11 Defendant has derived and received, and will continue to derive and receive,
12 gains, profits, and advantages from Defendant's trade dress infringement in an
13 amount that is not presently known to Oakley. By reason of Defendant's
14 actions, constituting trade dress infringement, Oakley has been damaged and is
15 entitled to monetary relief in an amount to be determined at trial.

16 94. Pursuant to 15 U.S.C. § 1117, Oakley is entitled to recover (1)
17 Defendant's profits, (2) any damages sustained by Oakley, and (3) the costs of
18 the action. In assessing damages, the Court may enter judgment up to three
19 times actual damages, and in awarding profits, the Court may in its discretion
20 enter judgment for such sum as the court shall find to be just, according to the
21 circumstances of the case. The Court may also award Plaintiffs their reasonable
22 attorneys' fees for the necessity of bringing this claim.

23 95. Due to Defendant's actions, constituting trade dress infringement,
24 Oakley has suffered great and irreparable injury, for which Oakley has no
25 adequate remedy at law.

26 96. Defendant will continue to infringe Oakley's trade dress rights to
27 the great and irreparable injury of Oakley, unless and until Defendant is
28 enjoined by this Court.

1 **SIXTH CLAIM FOR RELIEF**

2 (False Designation of Origin &
3 Federal Unfair Competition)
4 (15 U.S.C. § 1125(a))

5 97. Plaintiffs repeat and re-allege the allegations of paragraphs 1-96 of
6 this Complaint as if set forth fully herein.

7 98. This is a claim for trademark infringement, unfair competition and
8 false designation of origin arising under 15 U.S.C. § 1125(a).

9 99. Defendant's use of the WAYFARER Mark without Luxottica's
10 consent constitutes a false designation of origin, false or misleading description
11 of fact, or false or misleading representation of fact, which is likely to cause
12 confusion, or to cause mistake, or to deceive as to the affiliation, connection, or
13 association of Defendant with Luxottica, or as to the origin, sponsorship, or
14 approval of Defendant's goods or commercial activities by Luxottica in
15 violation of 15 U.S.C. § 1125(a).

16 100. Defendant's use of the WAYFARER Mark without Luxottica's
17 consent constitutes a false designation of origin, false or misleading description
18 of fact, or false or misleading representation of fact, which in commercial
19 advertising or promotion, misrepresents the nature, characteristics, qualities, or
20 geographic origin of Defendant's goods or commercial activities in violation of
21 15 U.S.C. § 1125(a).

22 101. Such conduct by Defendant is likely to confuse, mislead, and
23 deceive Defendant's customers, purchasers, and members of the public as to the
24 origin of the WAYFARER Mark or cause said persons to mistakenly believe
25 that Defendant and/or its products have been sponsored, approved, authorized,
26 or licensed by Luxottica or are in some way affiliated or connected with
27 Luxottica, all in violation of 15 U.S.C. § 1125(a).

28 102. Defendant's use of the HOLBROOK Trade Dress without Oakley's
consent constitutes a false designation of origin, false or misleading description

1 of fact, or false or misleading representation of fact, which is likely to cause
2 confusion, or to cause mistake, or to deceive as to the affiliation, connection, or
3 association of such person with another person, or as to the origin, sponsorship,
4 or approval of his or her goods or commercial activities by another person in
5 violation of 15 U.S.C. § 1125(a).

6 103. Defendant's use of the HOLBROOK Trade Dress without Oakley's
7 consent constitutes a false designation of origin, false or misleading description
8 of fact, or false or misleading representation of fact, which in commercial
9 advertising or promotion, misrepresents the nature, characteristics, qualities, or
10 geographic origin of his or her or another person's goods or commercial
11 activities in violation of 15 U.S.C. § 1125(a).

12 104. Such conduct by Defendant is likely to confuse, mislead, and
13 deceive Defendant's customers, purchasers, and members of the public as to the
14 origin of the HOLBROOK Trade Dress or cause said persons to believe that
15 Defendant and/or its products have been sponsored, approved, authorized, or
16 licensed by Oakley or are in some way affiliated or connected with Oakley, all
17 in violation of 15 U.S.C. § 1125(a) and constitutes unfair competition with
18 Oakley.

19 105. Plaintiffs are informed and believe, and thereon allege, that
20 Defendant's actions were undertaken willfully with full knowledge of the falsity
21 of such designation of origin and false descriptions or representations.

22 106. Such conduct by Defendant is likely to confuse, mislead, and
23 deceive Defendant's customers, purchasers, and members of the public as to the
24 origin of the Defendant's products or cause said persons to believe that
25 Defendant and/or its products have been sponsored, approved, authorized, or
26 licensed by Oakley and/or Luxottica or are in some way affiliated or connected
27 with Oakley and/or Luxottica, all in violation of 15 U.S.C. § 1125(a) and
28 constitutes unfair competition with Plaintiffs.

1 107. Plaintiffs are informed and believe, and thereon allege, that
2 Defendant has derived and received, and will continue to derive and receive,
3 gains, profits, and advantages from Defendant's false designation of origin, false
4 or misleading statements, descriptions of fact, false or misleading
5 representations of fact, and unfair competition in an amount that is not presently
6 known to Plaintiffs. By reason of Defendant's actions, constituting false
7 designation of origin, false or misleading statements, false or misleading
8 descriptions of fact, false or misleading representations of fact, and unfair
9 competition, Plaintiffs have been damaged and are entitled to monetary relief in
10 an amount to be determined at trial.

11 108. Pursuant to 15 U.S.C. § 1117, Oakley is entitled to recover (1)
12 Defendant's profits, (2) any damages sustained by Oakley, and (3) the costs of
13 the action. In assessing damages, the Court may enter judgment up to three
14 times actual damages, and in awarding profits, the Court may in its discretion
15 enter judgment for such sum as the court shall find to be just, according to the
16 circumstances of the case. The Court may also award Plaintiffs their reasonable
17 attorneys' fees for the necessity of bringing this claim.

18 109. Due to Defendant's actions, constituting false designation of origin,
19 false or misleading statements, false or misleading description of fact, false or
20 misleading representations of fact, and unfair competition, Plaintiffs have
21 suffered and continue to suffer great and irreparable injury, for which Plaintiffs
22 have no adequate remedy at law.

23 110. Defendant will continue its false designation of origin, false or
24 misleading statements, false or misleading description of fact, false or
25 misleading representations of fact, and unfair competition, unless and until
26 Defendant is enjoined by this Court.

27 ///

28 ///

1 **SEVENTH CLAIM FOR RELIEF**

2 (California Unfair Competition)

3 111. Plaintiffs repeat and re-allege the allegations of paragraphs 1-110
4 of this Complaint as if set forth fully herein.

5 112. This is a claim for unfair competition, arising under California
6 Business & Professions Code § 17200, *et seq.* and California common law.

7 113. Defendant's acts of trademark infringement, trademark dilution,
8 trade dress infringement, and false designation of origin complained of herein
9 constitute unfair competition with Plaintiffs under the common law and
10 statutory laws of the State of California, particularly California Business &
11 Professions Code § 17200 *et seq.*

12 114. Plaintiffs are informed and believe, and thereon allege, that
13 Defendant has derived and received, and will continue to derive and receive,
14 gains, profits and advantages from Defendant's unfair competition in an amount
15 that is not presently known to Plaintiffs.

16 115. By reason of Defendant's wrongful acts as alleged in this
17 Complaint, Plaintiffs have been damaged and are entitled to monetary relief in
18 an amount to be determined at trial.

19 116. By its actions, Defendant has injured and violated the rights of
20 Plaintiffs and has irreparably injured Plaintiffs, and such irreparable injury will
21 continue unless Defendant is enjoined by this Court.

22 **WHEREFORE**, Oakley and Luxottica pray for judgment in their favor
23 against Defendant for the following relief:

24 A. An Order adjudging Defendant to have willfully infringed the
25 Asserted Patents under 35 U.S.C. § 271;

26 B. A preliminary and permanent injunction enjoining Defendant, its
27 respective officers, directors, agents, servants, employees, and attorneys, and
28 those persons in active concert or participation with Defendant, from infringing

1 the Asserted Patents in violation of 35 U.S.C. § 271, including, for example,
2 through the manufacture, use, sale, offer for sale, and/or importation into the
3 United States of Defendant's PC7045, KP17790, PC52132, P43663, PC0643,
4 KP510, PC0220, KP1402, and KP6336 sunglass models, and any products that
5 are not colorably different from these products;

6 C. That Defendant account for all gains, profits, and advantages
7 derived by Defendant's infringement of the Asserted Patents in violation of
8 35 U.S.C. § 271, and that Defendant pay to Oakley all damages suffered by
9 Oakley and/or Defendant's total profit from such infringement pursuant to 35
10 U.S.C. §§ 284 and 289;

11 D. That the Court find for Luxottica and against Defendant on
12 Luxottica's claim of trademark infringement under 15 U.S.C. § 1114;

13 E. That the Court find for Luxottica and against Defendant on
14 Luxottica's claims of trademark dilution under 15 U.S.C. § 1125;

15 F. That the Court find for Luxottica and against Defendant on
16 Luxottica's claims of trademark infringement and trademark dilution under
17 California Business & Professions Code § 14245 *et seq.*, and under California
18 common law;

19 G. That the Court find for Oakley and against Defendant on Oakley's
20 claim of trade dress infringement under 15 U.S.C. § 1125(a);

21 H. That the Court find for Plaintiffs and against Defendant on
22 Plaintiffs' claims of false designation of origin and unfair competition under 15
23 U.S.C. § 1125(a);

24 I. That the Court issue a preliminary and permanent injunction
25 against Defendant, its agents, servants, employees, representatives, successors,
26 and assigns, and all persons, firms, or corporations in active concert or
27 participation with Defendant, enjoining them from engaging in the following
28

1 activities and from assisting or inducing, directly or indirectly, others to engage
2 in the following activities:

- 3 1. manufacturing, using, displaying, distributing, marketing,
4 advertising, and/or selling any goods bearing the
5 WAYFARER Mark or any mark confusingly similar thereto;
- 6 2. Manufacturing, importing, marketing, displaying,
7 distributing, offering to sell, and/or selling Defendant's
8 P3074 sunglass model shown above or any products that is
9 not colorably different therefrom;
- 10 3. using Oakley's HOLBROOK Trade Dress, or any other trade
11 dress that is confusingly similar to Oakley's HOLBROOK
12 Trade Dress;
- 13 4. falsely designating the origin of Defendant's goods;
- 14 5. unfairly competing with Oakley and/or Luxottica in any
15 manner whatsoever; and,
- 16 6. causing a likelihood of confusion or injuries to Oakley
17 and/or Luxottica's business reputation;

18 J. That an accounting be ordered to determine Defendant's profits
19 resulting from its trademark infringement, trademark dilution, trade dress
20 infringement, false designation of origin, and unfair competition;

21 K. That Oakley and Luxottica be awarded monetary relief in an
22 amount to be fixed by the Court in its discretion as it finds just as an equitable
23 remedy and as a remedy under 15 U.S.C. § 1117, including:

- 24 1. all profits received by Defendant from sales and revenues of
25 any kind made as a result of its infringing actions;
- 26 2. all damages sustained by Oakley as a result of Defendant's
27 acts of trade dress infringement, false designation of origin,
28 and unfair competition;

1 3. all damages sustained by Luxottica as a result of Defendant's
2 acts of trademark infringement, trademark dilution, false
3 designation of origin, and unfair competition; and,

4 4. the costs of this action;

5 L. That such award to Plaintiffs of damages and profits be trebled
6 pursuant to 15 U.S.C. § 1117;

7 M. An Order adjudging that this is an exceptional case;

8 N. That, because of the exceptional nature of this case resulting from
9 Defendant's deliberate infringing actions, this Court award to Oakley and
10 Luxottica all reasonable attorneys' fees, costs, and disbursements incurred as a
11 result of this action, pursuant to 15 U.S.C. § 1117;

12 O. That Oakley and Luxottica recover exemplary damages pursuant to
13 California Civil Code § 3294;

14 P. An Order for a trebling of damages to Oakley because of
15 Defendant's willful patent infringement pursuant to 35 U.S.C. § 284;

16 Q. An award to Oakley of the attorney fees, expenses, and costs
17 incurred by Oakley in connection with this action pursuant to 35 U.S.C. § 285;

18 R. An award of pre-judgment and post-judgment interest and costs of
19 this action against Defendant; and,

20 S. Such other and further relief as this Court may deem just and
21 proper.

22 KNOBBE, MARTENS, OLSON & BEAR, LLP

23
24 Dated: March 13, 2018

By: /s/ Lauren Keller Katzenellenbogen
Michael K. Friedland
Lauren Keller Katzenellenbogen
Ali S. Razai
Daniel C. Kiang

25
26
27 Attorneys for Plaintiffs
28 OAKLEY, INC. and
LUXOTTICA GROUP S.p.A.

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

Plaintiffs Oakley, Inc. and Luxottica Group S.p.A. hereby demand a trial by jury on all issues so triable.

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 13, 2018

By: /s/ Lauren Keller Katzenellenbogen
Michael K. Friedland
Lauren Keller Katzenellenbogen
Ali S. Razai
Daniel C. Kiang

Attorneys for Plaintiffs
OAKLEY, INC. and
LUXOTTICA GROUP S.p.A.

27771297