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OAKLEY, INC.
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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

OAKLEY, INC., a Washington
corporation,

Plaintiff,

v.

THE US HULTAN GROUP d/b/a
SHARP FACTOR, d/b/a APOLLO
ENTERPRICE EYEWEAR, a/f/k/a
APOLLO ENTERPRISE
INTERNATIONAL, INC., a California
corporation,

Defendant.

Civil Action No. 8:18-cv-00402

**COMPLAINT FOR
PATENT INFRINGEMENT,
TRADE DRESS
INFRINGEMENT, FALSE
DESIGNATION OF ORIGIN,
AND UNFAIR COMPETITION**

DEMAND FOR JURY TRIAL

1 Plaintiff Oakley, Inc. (“Oakley”) hereby complains of The US Hultan
2 Group d/b/a Sharp Factor, d/b/a Apollo Enterprice Eyewear, a/f/k/a/ Apollo
3 Enterprise International, Inc. (“Defendant”) and alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This Court has original subject matter jurisdiction over the claims
6 in this action that relate to patent infringement, trade dress infringement, false
7 designation of origin, and federal unfair competition pursuant to 35 U.S.C. §§
8 271 and 281, 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. §§ 1116(a), 1121(a),
9 and 1125(a), as these claims arise under the laws of the United States. The
10 Court has supplemental jurisdiction over the claims in this Complaint which
11 arise under state statutory and common law pursuant to 28 U.S.C. § 1367(a)
12 because the state law claims are so related to the federal claims that they form
13 part of the same case or controversy and derive from a common nucleus of
14 operative facts.

15 2. This Court has personal jurisdiction over Defendant because
16 Defendant has a continuous, systematic, and substantial presence within this
17 judicial district including by selling and offering for sale infringing products in
18 this judicial district, and by committing acts of patent and trade dress
19 infringement in this judicial district, including but not limited to selling
20 infringing eyewear directly to consumers and/or retailers in this district and
21 selling into the stream of commerce knowing such products would be sold in
22 California and this district, which acts form a substantial part of the events or
23 omissions giving rise to Oakley’s claim.

24 3. Oakley is informed and believes, and thereon alleges, that venue is
25 proper in this judicial district under 28 U.S.C. §§ 1391(b) and (d), and 1400(b)
26 because Defendant is a resident in this judicial district, and Defendant has
27 committed acts of infringement in this district and has a regular established
28 place of business in this district.

1 **THE PARTIES**

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

5 5. Oakley is informed and believes, and thereon alleges, that
6 Defendant The US Hultan Group is a corporation organized and existing under
7 the laws of the State of California, having its principal place of business at 400
8 South Alameda Street, Los Angeles, California 90013.

9 **GENERAL ALLEGATIONS**

10 6. Oakley has been actively engaged in the manufacture and sale of
11 high quality eyewear since at least 1985. Oakley is the manufacturer and
12 retailer of several lines of eyewear that have enjoyed substantial success and are
13 protected by various intellectual property rights owned by Oakley.

14 7. On August, 16, 2016, the United States Patent and Trademark
15 Office (“U.S.P.T.O.”) duly and lawfully issued United States Design Patent No.
16 D763,947 (“the D947 Patent”), titled “EYEGLASSES.” Oakley is the owner by
17 assignment of all right, title, and interest in the D947 Patent. A true and correct
18 copy of the D947 Patent is attached hereto as **Exhibit 1**.

19 8. On February 16, 2016, the U.S.P.T.O. duly and lawfully issued
20 United States Design Patent No. D749,670 (“the D670 Patent”), titled “SET OF
21 EYEGLASS COMPONENTS.” Oakley is the owner by assignment of all right,
22 title, and interest in the D670 Patent. A true and correct copy of the D670
23 Patent is attached hereto as **Exhibit 2**.

24 9. On June 5, 2012, the U.S.P.T.O. duly and lawfully issued United
25 States Design Patent No. D661,339 (“the D339 Patent”), titled “EYEGLASS.”
26 Oakley is the owner by assignment of all right, title, and interest in the D339
27 Patent. A true and correct copy of the D339 Patent is attached hereto as
28 **Exhibit 3**.

1 10. On May 8, 2012, the U.S.P.T.O. duly and lawfully issued United
2 States Design Patent No. D659,180 (“the D180 Patent”), titled “EYEGLASS.”
3 Oakley is the owner by assignment of all right, title, and interest in the D180
4 Patent. A true and correct copy of the D180 Patent is attached hereto as
5 **Exhibit 4.**

6 11. On February 7, 2012, the U.S.P.T.O. duly and lawfully issued
7 United States Design Patent No. D653,699 (“the D699 Patent”), titled
8 “EYEGLASS.” Oakley is the owner by assignment of all right, title, and
9 interest in the D699 Patent. A true and correct copy of the D699 Patent is
10 attached hereto as **Exhibit 5.**

11 12. On November, 29, 2011, the U.S.P.T.O. duly and lawfully issued
12 United States Design Patent No. D649,579 (“the D579 Patent”), titled
13 “EYEGLASS.” Oakley is the owner by assignment of all right, title, and
14 interest in the D579 Patent. A true and correct copy of the D579 Patent is
15 attached hereto as **Exhibit 6.**

16 13. On July 8, 2008, the U.S.P.T.O. duly and lawfully issued United
17 States Design Patent No. D572,745 (“the D745 Patent”), titled “EYEGLASS
18 FRAME.” Oakley is the owner by assignment of all right, title and interest in
19 the D745 Patent. A true and correct copy of the D745 Patent is attached hereto
20 as **Exhibit 7.**

21 14. On December 11, 2007, the U.S.P.T.O. duly and lawfully issued
22 United States Design Patent No. D557,326 (“the D326 Patent”), titled
23 “EYEGLASS COMPONENTS.” Oakley is the owner by assignment of all
24 right, title, and interest in the D326 Patent. A true and correct copy of the D326
25 Patent is attached hereto as **Exhibit 8.**

26 15. Defendant manufactures, uses, sells, offers for sale, and/or imports
27 into the United States eyewear that have infringed Oakley’s patent rights,
28 including the D947 Patent, D670 Patent, D339 Patent, D180 Patent, D699

1 Patent, D579 Patent, D745 Patent, and D326 Patent (collectively, the “Asserted
2 Patents”).

3 16. Oakley manufactures and sells sunglasses under the mark
4 HOLBROOK bearing distinctive trade dress in the overall design of the
5 sunglasses (“HOLBROOK Trade Dress”). An example of an Oakley product
6 bearing the distinctive HOLBROOK Trade Dress is depicted in the photograph
7 attached as **Exhibit 9**.

8 17. As a result of Oakley’s widespread use and display of the
9 HOLBROOK Trade Dress in association with its eyewear, (a) the public has
10 come to recognize and identify eyewear bearing the HOLBROOK Trade Dress
11 as emanating from Oakley, (b) the public recognizes that products bearing the
12 HOLBROOK Trade Dress constitute high quality products that conform to the
13 specifications created by Oakley, and (c) the HOLBROOK Trade Dress has
14 established strong secondary meaning and extensive goodwill.

15 18. The HOLBROOK Trade Dress is not functional. The design
16 features embodied by the HOLBROOK Trade Dress are not essential to the
17 function of the product, do not make the product cheaper or easier to
18 manufacture, and do not affect the quality of the product. The design of the
19 HOLBROOK Trade Dress is not a competitive necessity.

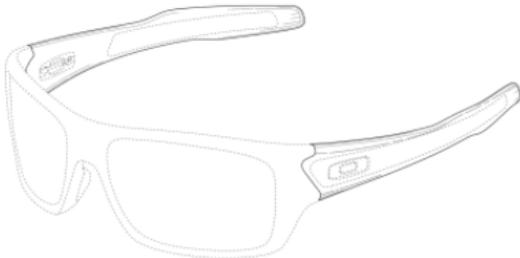
20 19. Subsequent to Oakley’s use and adoption of the HOLBROOK
21 Trade Dress, Defendant has developed, manufactured, imported, advertised,
22 and/or sold products that use trade dress that is confusingly similar to the
23 HOLBROOK Trade Dress.

24 20. Defendant’s acts complained of herein have caused Oakley to
25 suffer irreparable injury to its business. Oakley will continue to suffer
26 substantial loss and irreparable injury unless and until Defendant is enjoined
27 from its wrongful actions complained of herein.

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1 believes, and thereon alleges, that Defendant had actual knowledge of Oakley's
2 rights in the design claimed in the D947 Patent. Oakley and its iconic designs
3 are well-known throughout the eyewear industry, and Defendant's 915RV
4 model sunglasses are an identical copy of Oakley's patented design.
5 Accordingly, Defendant's actions constitute willful and intentional infringement
6 of the D947 Patent. Defendant infringed the D947 Patent with reckless
7 disregard of Oakley's patent rights. Defendant knew, or it was so obvious that
8 Defendant should have known, that its actions constitute infringement of the
9 D947 Patent. Defendant's acts of infringement of the D947 Patent were not
10 consistent with the standards of commerce for its industry.

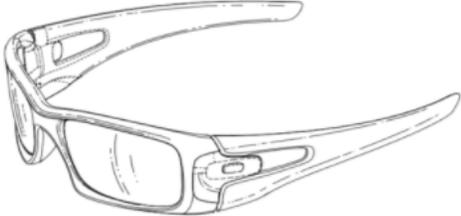
11 27. Defendant, through its agents, employees, and/or servants has, and
12 continues to, knowingly, intentionally, and willfully infringe the D670 Patent by
13 making, using, selling, offering for sale, and/or importing eyewear having a
14 design that would appear to an ordinary observer to be substantially similar to
15 the claim of the D670 Patent, for example, Defendant's 915RV model
16 sunglasses as shown below.

Defendant's 915RV Model Sunglasses	Oakley's D670 Patent
 A photograph of a pair of black sunglasses with yellow-tinted lenses. A small black tag with white text is attached to the left temple. The tag reads "OAKLEY" at the top, "915RV" in the middle, and "POLARIZED" at the bottom.	 A white line drawing of a pair of sunglasses, showing the frame, temples, and lenses. The design is a wrap-around style with a curved bridge and temples.

25 28. Defendant's acts of infringement of the D670 Patent were
26 undertaken without permission or license from Oakley. Oakley is informed and
27 believes, and thereon alleges, that Defendant had actual knowledge of Oakley's
28 rights in the design claimed in the D670 Patent. Oakley and its iconic designs

1 are well-known throughout the eyewear industry, and Defendant's 915RV
2 model sunglasses are an identical copy of Oakley's patented design.
3 Accordingly, Defendant's actions constitute willful and intentional infringement
4 of the D670 Patent. Defendant infringed the D670 Patent with reckless
5 disregard of Oakley's patent rights. Defendant knew, or it was so obvious that
6 Defendant should have known, that its actions constitute infringement of the
7 D670 Patent. Defendant's acts of infringement of the D670 Patent were not
8 consistent with the standards of commerce for its industry.

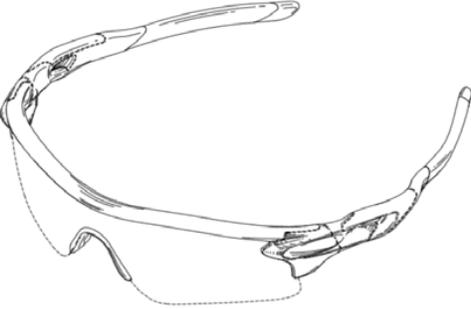
9 29. Defendant, through its agents, employees, and/or servants has, and
10 continues to, knowingly, intentionally, and willfully infringe the D339 Patent by
11 making, using, selling, offering for sale, and/or importing eyewear having a
12 design that would appear to an ordinary observer to be substantially similar to
13 the claim of the D339 Patent, for example, Defendant's 9911 model sunglasses
14 as shown below.

Defendant's 9911 Model Sunglasses	Oakley's D339 Patent
 A photograph of a pair of black, wrap-around sunglasses. A white tag with a barcode and the number '670' is attached to the left temple. A black tag with 'AE' and 'UV400 PROTECTION' is attached to the right temple. The sunglasses are shown against a plain white background.	 A technical line drawing of a pair of wrap-around sunglasses, showing the frame, temples, and lenses. The drawing is a simple black and white outline.

24 30. Defendant's acts of infringement of the D339 Patent were
25 undertaken without permission or license from Oakley. Oakley is informed and
26 believes, and thereon alleges, that Defendant had actual knowledge of Oakley's
27 rights in the design claimed in the D339 Patent. Oakley and its iconic designs
28 are well-known throughout the eyewear industry, and Defendant's 9911 model

1 sunglasses are an identical copy of Oakley's patented design. Accordingly,
2 Defendant's actions constitute willful and intentional infringement of the D339
3 Patent. Defendant infringed the D339 Patent with reckless disregard of
4 Oakley's patent rights. Defendant knew, or it was so obvious that Defendant
5 should have known, that its actions constitute infringement of the D339 Patent.
6 Defendant's acts of infringement of the D339 Patent were not consistent with
7 the standards of commerce for its industry.

8 31. Defendant, through its agents, employees, and/or servants has, and
9 continues to, knowingly, intentionally, and willfully infringe the D180 Patent by
10 making, using, selling, offering for sale, and/or importing eyewear having a
11 design that would appear to an ordinary observer to be substantially similar to
12 the claim of the D180 Patent, for example, Defendant's PL7006 model
13 sunglasses as shown below.

14 Defendant's PL7006 Model 15 Sunglasses	16 Oakley's D180 Patent
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21 32. Defendant's acts of infringement of the D180 Patent were
22 undertaken without permission or license from Oakley. Oakley is informed and
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1 believes, and thereon alleges, that Defendant had actual knowledge of Oakley's
2 rights in the design claimed in the D180 Patent. Oakley and its iconic designs
3 are well-known throughout the eyewear industry, and Defendant's PL7006
4 model sunglass is an identical copy of Oakley's patented design. Accordingly,
5 Defendant's actions constitute willful and intentional infringement of the D180
6 Patent. Defendant infringed the D180 Patent with reckless disregard of
7 Oakley's patent rights. Defendant knew, or it was so obvious that Defendant
8 should have known, that its actions constitute infringement of the D180 Patent.
9 Defendant's acts of infringement of the D180 Patent were not consistent with
10 the standards of commerce for its industry.

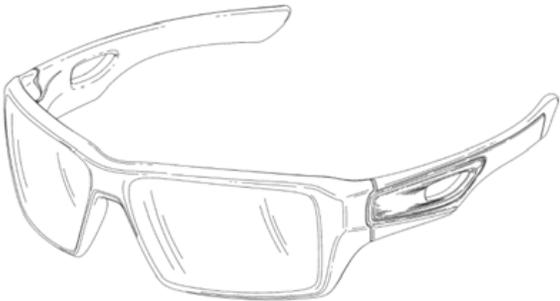
11 33. Defendant, through its agents, employees, and/or servants has, and
12 continues to, knowingly, intentionally, and willfully infringe the D699 Patent by
13 making, using, selling, offering for sale, and/or importing eyewear having a
14 design that would appear to an ordinary observer to be substantially similar to
15 the claim of the D699 Patent, for example, Defendant's 917RV model
16 sunglasses as shown below.

Defendant's 917RV Model Sunglasses	Oakley's D699 Patent
 A photograph of a pair of black, wrap-around sunglasses with dark lenses. A small tag is attached to the left temple, featuring the letters 'AE' and the text 'UV400 PROTECTION'.	 A technical line drawing of a pair of wrap-around sunglasses, showing the frame, temples, and lenses in a perspective view.

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26 34. Defendant's acts of infringement of the D699 Patent were
27 undertaken without permission or license from Oakley. Oakley is informed and
28 believes, and thereon alleges, that Defendant had actual knowledge of Oakley's

1 rights in the design claimed in the D699 Patent. Oakley and its iconic designs
2 are well-known throughout the eyewear industry, and Defendant's 917RV
3 model sunglasses are an identical copy of Oakley's patented design.
4 Accordingly, Defendant's actions constitute willful and intentional infringement
5 of the D699 Patent. Defendant infringed the D699 Patent with reckless
6 disregard of Oakley's patent rights. Defendant knew, or it was so obvious that
7 Defendant should have known, that its actions constitute infringement of the
8 D699 Patent. Defendant's acts of infringement of the D699 Patent were not
9 consistent with the standards of commerce for its industry.

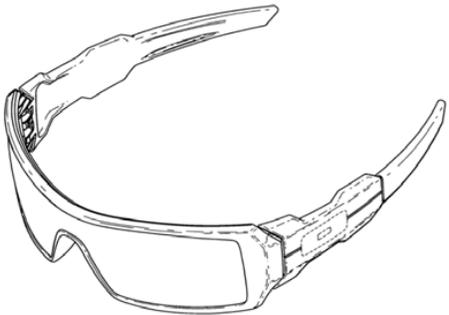
10 35. Oakley is informed and believes, and thereon alleges, that
11 Defendant, through its agents, employees, and/or servants has, and continues to,
12 knowingly, intentionally, and willfully infringe the D579 Patent by making,
13 using, selling, offering for sale, and/or importing eyewear having a design that
14 would appear to an ordinary observer to be substantially similar to the claim of
15 the D579 Patent, for example, Defendant's sunglasses shown below.

Defendant's Sunglasses	Oakley's D579 Patent
	

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24 36. Oakley is informed and believes, and thereon alleges, that
25 Defendant's acts of infringement of the D579 Patent were undertaken without
26 permission or license from Oakley. Oakley is informed and believes, and
27 thereon alleges, that Defendant had actual knowledge of Oakley's rights in the
28 design claimed in the D579 Patent. Oakley and its iconic designs are well-

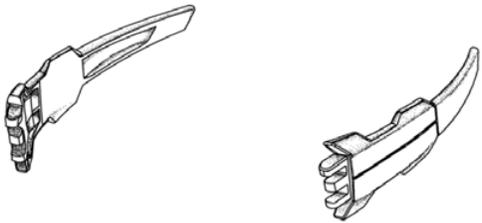
1 known throughout the eyewear industry, and Defendant's sunglasses are an
2 identical copy of Oakley's patented design. Accordingly, Oakley is informed
3 and believes, and thereon alleges, that Defendant's actions constitute willful and
4 intentional infringement of the D579 Patent. Oakley is informed and believes,
5 and thereon alleges, that Defendant infringed the D579 Patent with reckless
6 disregard of Oakley's patent rights. Oakley is informed and believes, and
7 thereon alleges, that Defendant knew, or it was so obvious that Defendant
8 should have known, that its actions constitute infringement of the D579 Patent.
9 Oakley is informed and believes, and thereon alleges, that Defendant's acts of
10 infringement of the D579 Patent were not consistent with the standards of
11 commerce for its industry.

12 37. Defendant, through its agents, employees, and/or servants has, and
13 continues to, knowingly, intentionally, and willfully infringe the D745 Patent by
14 making, using, selling, offering for sale, and/or importing eyewear having a
15 design that would appear to an ordinary observer to be substantially similar to
16 the claim of the D745 Patent, for example, Defendant's PL911A model
17 sunglasses as shown below.

Defendant's PL911A Sunglasses	Oakley's D745 Patent
	

1 38. Defendant's acts of infringement of the D745 Patent were
 2 undertaken without permission or license from Oakley. Oakley is informed and
 3 believes, and thereon alleges, that Defendant had actual knowledge of Oakley's
 4 rights in the design claimed in the D745 Patent. Oakley and its iconic designs
 5 are well-known throughout the eyewear industry, and Defendant's PL911A
 6 model sunglasses are an identical copy of Oakley's patented design.
 7 Accordingly, Defendant's actions constitute willful and intentional infringement
 8 of the D745 Patent. Defendant infringed the D745 Patent with reckless
 9 disregard of Oakley's patent rights. Defendant knew, or it was so obvious that
 10 Defendant should have known, that its actions constitute infringement of the
 11 D745 Patent. Defendant's acts of infringement of the D745 Patent were not
 12 consistent with the standards of commerce for its industry.

13 39. Oakley is informed and believes, and thereon alleges, that
 14 Defendant, through its agents, employees, and/or servants has, and continues to,
 15 knowingly, intentionally, and willfully infringe the D326 Patent by making,
 16 using, selling, offering for sale, and/or importing eyewear having a design that
 17 would appear to an ordinary observer to be substantially similar to the claim of
 18 the D326 Patent, for example, Defendant's PL911A model sunglasses as shown
 19 below.

20 Defendant's PL911A Sunglasses	Oakley's D326 Patent
21 22 23 24 25 26 27 28 	

1 40. Defendant's acts of infringement of the D326 Patent were
2 undertaken without permission or license from Oakley. Oakley is informed and
3 believes, and thereon alleges, that Defendant had actual knowledge of Oakley's
4 rights in the design claimed in D326 Patent. Oakley and its iconic designs are
5 well-known throughout the eyewear industry, and Defendant's PL911A model
6 sunglasses are an identical copy of Oakley's patented design. Accordingly,
7 Defendant's actions constitute willful and intentional infringement of the D326
8 Patent. Defendant infringed the D326 Patent with reckless disregard of
9 Oakley's patent rights. Defendant knew, or it was so obvious that Defendant
10 should have known, that its actions constitute infringement of the D326 Patent.
11 Defendant's acts of infringement of the D326 Patent were not consistent with
12 the standards of commerce for its industry.

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

16 42. Pursuant to 35 U.S.C. § 284, Oakley is entitled to damages for
17 Defendant's infringing acts and treble damages together with interests and costs
18 as fixed by this Court.

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

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

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

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

1 **SECOND CLAIM FOR RELIEF**

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

4 47. Oakley repeats and re-alleges the allegations of paragraphs 1-46 of
5 this Complaint as if set forth fully herein.

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

8 49. 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
12 7598RV-1 model sunglasses, which are sold and/or offered for sale, for
13 example, at Defendant’s 401 South Los Angeles Street, Suite 2, Los Angeles,
14 California 90013 store location, use a trade dress that is confusingly similar to
15 Oakley’s HOLBROOK Trade Dress.

16 Defendant’s 7598RV-1 Model 17 Sunglasses	16 Oakley’s HOLBROOK Trade Dress
18  19 20 21 22	20  21 22

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

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1 51. Oakley is informed and believes, and thereon alleges, that
2 Defendant infringed Oakley's trade dress rights with the intent to unfairly
3 compete with Oakley, to trade upon Oakley's reputation and goodwill by
4 causing confusion and mistake among customers and the public, and to deceive
5 the public into believing that Defendant's products are associated with,
6 sponsored by, originated from, or are approved by Oakley, when they are not,
7 resulting in a loss of reputation in, and mischaracterization of, Oakley's
8 products and its brand, damaging its marketability and saleability.

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

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

19 54. Pursuant to 15 U.S.C. § 1117, Oakley is entitled to damages for
20 Defendant's infringing acts, up to three times actual damages as fixed by this
21 Court, and its reasonable attorneys' fees for the necessity of bringing this claim.

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

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

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1 **THIRD CLAIM FOR RELIEF**

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

4 57. Oakley repeats and re-alleges the allegations of paragraphs 1-22
5 and 47-56 of this Complaint as if set forth fully herein.

6 58. This is a claim for unfair competition and false designation of
7 origin arising under 15 U.S.C. § 1125(a).

8 59. Defendant's use of the HOLBROOK Trade Dress without Oakley's
9 consent constitutes a false designation of origin, false or misleading description
10 of fact, or false or misleading representation of fact, which is likely to cause
11 confusion, or to cause mistake, or to deceive as to the affiliation, connection, or
12 association of such person with another person, or as to the origin, sponsorship,
13 or approval of his or her goods or commercial activities by another person in
14 violation of 15 U.S.C. § 1125(a).

15 60. Defendant's use of the HOLBROOK Trade Dress without Oakley's
16 consent constitutes a false designation of origin, false or misleading description
17 of fact, or false or misleading representation of fact, which in commercial
18 advertising or promotion, misrepresents the nature, characteristics, qualities, or
19 geographic origin of his or her or another person's goods or commercial
20 activities in violation of 15 U.S.C. § 1125(a).

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

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1 62. Oakley is informed and believes, and thereon alleges, that
2 Defendant's actions were undertaken willfully with full knowledge of the falsity
3 of such designation of origin and false descriptions or representations.

4 63. Oakley is informed and believes, and thereon alleges, that
5 Defendant has derived and received, and will continue to derive and receive,
6 gains, profits, and advantages from Defendant's false designation of origin, false
7 or misleading statements, descriptions of fact, false or misleading
8 representations of fact, and/or unfair competition in an amount that is not
9 presently known to Oakley. By reason of Defendant's actions, constituting false
10 designation of origin, false or misleading statements, false or misleading
11 descriptions of fact, false or misleading representations of fact, and/or unfair
12 competition, Oakley has been damaged and is entitled to monetary relief in an
13 amount to be determined at trial.

14 64. Pursuant to 15 U.S.C. § 1117, Oakley is entitled to damages for
15 Defendant's acts constituting false designation of origin, false or misleading
16 statements, false or misleading descriptions of fact, false or misleading
17 representations of fact, and/or unfair competition, up to three times actual
18 damages as fixed by this Court, and its reasonable attorneys' fees for the
19 necessity of bringing this claim.

20 65. Due to Defendant's actions, constituting false designation of origin,
21 false or misleading statements, false or misleading description of fact, false or
22 misleading representations of fact, and/or unfair competition, Oakley has
23 suffered and continues to suffer great and irreparable injury, for which Oakley
24 has no adequate remedy at law.

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

1 Defendant's sunglass models 915RV, 9911, PL7006, 917RV, PL911A and the
2 sunglasses identified above as infringing the D579 Patent, as well as any
3 products that are not colorably different from these products;

4 C. A preliminary and permanent injunction enjoining Defendant, its
5 respective officers, directors, agents, servants, employees, and attorneys, and
6 those persons in active concert or participation with Defendant, from directly or
7 indirectly infringing any of the Asserted Patents in violation of 35 U.S.C. § 271;

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

13 E. An Order for a trebling of damages and/or exemplary damages
14 because of Defendant's willful conduct pursuant to 35 U.S.C. § 284;

15 F. That the Court find for Oakley and against Defendant on Oakley's
16 claims of trade dress infringement, false designation of origin, and unfair
17 competition under 15 U.S.C. § 1125(a);

18 G. That the Court find for Oakley and against Defendant on Oakley's
19 claims of unfair competition under California Business & Professions Code
20 § 17200, et seq. and California common law;

21 H. That the Court issue a preliminary and permanent injunction
22 against Defendant, its agents, servants, employees, representatives, successors,
23 and assigns, and all persons, firms, or corporations in active concert or
24 participation with Defendant, enjoining them from engaging in the following
25 activities and from assisting or inducing, directly or indirectly, others to engage
26 in the following activities:

- 27 1. Manufacturing, importing, marketing, displaying,
28 distributing, offering to sell, and/or selling Defendant's

- 1 7598RV-1 product shown above and any products that are
2 not colorably different therefrom;
- 3 2. using Oakley's HOLBROOK Trade Dress, or any other trade
4 dress that is confusingly similar to Oakley's HOLBROOK
5 Trade Dress;
 - 6 3. falsely designating the origin of Defendant's goods;
 - 7 4. unfairly competing with Oakley in any manner whatsoever;
 - 8 5. causing a likelihood of confusion or injuries to Oakley's
9 business reputation; and,
 - 10 6. manufacturing, importing, marketing, displaying,
11 distributing, offering to sell, and/or selling any goods that
12 infringe Oakley's HOLBROOK Trade Dress.

13 I. That an accounting be ordered to determine Defendant's profits
14 resulting from its trade dress infringement, false designation of origin, and
15 unfair competition, and that Oakley be awarded monetary relief in an amount to
16 be fixed by the Court in its discretion as it finds just as an equitable remedy and
17 as a remedy under 15 U.S.C. § 1117, including:

- 18 1. all profits received by Defendant as a result of its infringing
19 actions, said amount to be trebled;
- 20 2. all damages sustained by Oakley as a result of Defendant's
21 acts of trade dress infringement, unfair competition, and
22 false designation of origin, and that such damages be trebled;
23 and
- 24 3. punitive damages stemming from Defendant's willful,
25 intentional, and malicious acts;

26 J. That such damages and profits be trebled and awarded to Oakley
27 pursuant to 15 U.S.C. § 1117;

28 K. An Order adjudging that this is an exceptional case;

1 L. That, because of the exceptional nature of this case resulting from
2 Defendant's deliberate infringing actions, this Court award to Oakley all
3 reasonable attorneys' fees, costs, and disbursements incurred as a result of this
4 action, pursuant to 15 U.S.C. § 1117 and/or 35 U.S.C. § 285;

5 M. That Oakley recover exemplary damages pursuant to California
6 Civil Code § 3294;

7 N. An award of pre-judgment and post-judgment interest and costs of
8 this action against Defendant; and,

9 O. Such other and further relief as this Court may deem just and
10 proper.

11 Respectfully submitted,
12 KNOBBE, MARTENS, OLSON & BEAR, LLP

13
14 Dated: March 13, 2018

15 By: /s/ Ali S. Razai
16 Michael K. Friedland
17 Lauren Keller Katzenellenbogen
18 Ali S. Razai
19 James F. Smith

20 Attorneys for Plaintiff OAKLEY, INC.
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DEMAND FOR JURY TRIAL

Plaintiff Oakley, Inc. hereby demands a trial by jury on all issues so triable.

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 13, 2018

By: /s/ Ali S. Razai
Michael K. Friedland
Lauren Keller Katzenellenbogen
Ali S. Razai
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Attorneys for Plaintiff OAKLEY, INC.

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