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6 *Attorneys for Plaintiff*  
7 *Deckers Outdoor Corporation*

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

11 DECKERS OUTDOOR  
12 CORPORATION, a Delaware  
13 Corporation,  
14 Plaintiff,  
15 v.  
16 ALPHABETDEAL.COM, INC., a New  
17 Jersey Corporation; and DOES 1-10,  
18 inclusive,  
19 Defendants.

) CASE NO.:  
) **COMPLAINT FOR DAMAGES AND**  
) **EQUITABLE RELIEF:**  
) **1. TRADEMARK INFRINGEMENT;**  
) **2. TRADE DRESS INFRINGEMENT;**  
) **3. TRADEMARK INFRINGEMENT**  
) **UNDER CALIFORNIA COMMON**  
) **LAW;**  
) **4. UNFAIR COMPETITION UNDER**  
) **CALIFORNIA UNFAIR BUSINESS**  
) **PRACTICES ACT, CAL. BUS. &**  
) **PROF. CODE, § 17200, ET. SEQ.;**  
) **5. UNFAIR COMPETITION UNDER**  
) **CALIFORNIA COMMON LAW**  
) **6. PATENT INFRINGEMENT – U.S.**  
) **PATENT NO. D616,189**  
) **7. PATENT INFRINGEMENT – U.S.**  
) **PATENT NO. D594,638**

**JURY TRIAL DEMANDED**



1 ascertained. Deckers is informed and believes and based thereon alleges that said  
2 Defendant and DOES 1 through 10, inclusive, are in some manner responsible for the  
3 wrongs alleged herein, and that at all times referenced each was the agent and servant  
4 of the other Defendants and was acting within the course and scope of said agency and  
5 employment.

6 7. Deckers is informed and believes, and based thereon alleges, that at all  
7 relevant times herein, Defendant and DOES 1 through 10, inclusive, knew or  
8 reasonably should have known of the acts and behavior alleged herein and the damages  
9 caused thereby, and by their inaction ratified and encouraged such acts and behavior.  
10 Deckers further alleges that Defendant and DOES 1 through 10, inclusive, have a non-  
11 delegable duty to prevent or not further such acts and the behavior described herein,  
12 which duty Defendant and DOES 1 through 10, inclusive, failed and/or refused to  
13 perform.

14 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

15 **A. Deckers' UGG® Brand**

16 8. Deckers has been engaged in the design, distribution, marketing, offering  
17 for sale, and sale of footwear since 1975. Deckers owns several brands of footwear  
18 including UGG®, Koolaburra®, Teva®, Sanuk®, and Hoka One One®.

19 9. Deckers' UGG® brand remains one of the most recognized and relevant  
20 comfort shoe brands in the industry. Since 1979, when the UGG® brand was founded,  
21 the popularity of UGG® boots has steadily grown across the nation and even the  
22 globe. The UGG® brand has always been and remains highly coveted by consumers.  
23 This commitment to quality has helped to propel the UGG® brand to its current,  
24 overwhelming level of popularity and cemented its status as a luxury brand.

25 10. In 2000, UGG® boots were first featured on Oprah's Favorite Things®  
26 where Oprah emphatically declared on national television how much she  
27 "LOOOOOVES her UGG boots." The popularity of UGG® brand footwear has grown  
28 exponentially since then with celebrities including Kate Hudson and Sarah Jessica

1 Parker among a myriad of others regularly donning them. UGG® sheepskin boots  
2 have become a high fashion luxury item and can be found on fashion runways around  
3 the world.

4 11. Deckers' UGG® products are distributed and sold to consumers through  
5 authorized retailers throughout the United States at point-of-sale and on the Internet,  
6 including through its UGG® Concept Stores and its website [www.ugg.com](http://www.ugg.com).

7 **B. Defendant's Infringing Activities**

8 12. Upon information and belief, Defendant manufactures, imports, designs,  
9 advertises, markets, distributes, offers for sale, and/or sells footwear for men and  
10 women. Defendant offers footwear through its online store, [www.alphabetdeal.com](http://www.alphabetdeal.com) as  
11 well as via Sears Marketplace ([www.sears.com](http://www.sears.com)), both of which are accessible to  
12 consumers nationwide, including within this judicial district.

13 13. The present lawsuit arises from Defendant's willful infringement of  
14 Deckers' federally registered UGG® Sun Mark, the UGG® "Bailey Button Boot Trade  
15 Dress," and U.S. Patent Nos. D616,189 and D594,638, to which Deckers has exclusive  
16 rights, by certain of Defendant's footwear products ("Accused Products"), an example  
17 of which is shown below.



24 *Accused Products*

25 14. The Accused Products shown above were purchased from Defendant via  
26 Sears Marketplace ([www.sears.com](http://www.sears.com)). Defendant fulfilled the order and shipped the  
27 Accused Products to a location within this judicial district.

28

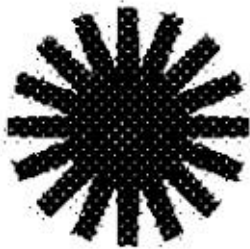


1           21. Registrations for the UGG® Sun Mark are valid and subsisting. At all  
2 times relevant hereto, the UGG® Sun Mark has been continually used by Deckers in  
3 most of the world and in the United States, on or in connection with the manufacture,  
4 distribution, sale and promotion of its products.

5           22. Deckers' UGG® Sun Mark is nationally recognized, including within this  
6 judicial district, as being affixed to goods and merchandise of the highest quality and  
7 coming from Deckers.

8           23. The UGG® Sun Mark is distinctive when applied to high-quality  
9 footwear and related merchandise, signifying to the purchaser that the products come  
10 from Deckers and are manufactured to Deckers' quality standards.

11           24. The Accused Products include on the outsole of the products a mark that  
12 is nearly identical to and/or substantially indistinguishable from the UGG® Sun Mark  
13 as shown below.



19           **UGG® Sun Mark**



20           **UGG® Sun Mark on  
21           Outsole of Authentic  
22           UGG® Footwear**



23           **Infringing Sun Mark on  
24           Outsole of Defendant's  
25           Accused Products**

26           25. Defendant's unauthorized use of the UGG® Sun Mark in interstate  
27 commerce and advertising relating to same constitutes false designation of origin and a  
28 false representation that its goods are manufactured, offered, sponsored, authorized,  
licensed by or otherwise connected with Deckers or come from the same source as  
Deckers' goods and are of the same quality as that assured by Deckers' UGG®  
trademarks.

29           26. Defendant's use of the UGG® Sun Mark is without Deckers' permission  
or authority and is in total disregard of Deckers' rights to control its trademarks.



1 Button Boot Trade Dress” is unique and distinctive, consisting of a combination of the  
2 following non-functional elements:

- 3 i Classic suede boot styling made famous by the UGG® brand;
- 4 i Overlapping of front and rear panels on the lateral side of the boot shaft;
- 5 i Curved top edges on the overlapping panels;
- 6 i Exposed fleece-type lining edging the overlapping panels and top of the  
7 boot shaft; and
- 8 i One or more buttons (depending on the height of the boot) prominently  
9 featured on the lateral side of the boot shaft adjacent the overlapping panels  
10 (hereinafter “Bailey Button Boot Trade Dress”).



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18 34. The Bailey Button Boot Trade Dress, which is a composite of the above-  
19 referenced features, is non-functional in its entirety, visually distinctive, and is unique  
20 in the footwear industry.

21 35. The design of the Bailey Button Boot Trade Dress is neither essential to  
22 its use or purpose nor does it affect the cost or quality of the boot. There are numerous  
23 other designs available that are equally feasible and efficient, none of which  
24 necessitate copying or imitating the Bailey Button Boot Trade Dress. The aforesaid  
25 combination of features provides no cost advantages to the manufacturer or utilitarian  
26 advantages to the consumer. These features, in combination, serve only to render  
27 Deckers’ UGG® Bailey Button boots distinct and recognizable as goods originating  
28 from Deckers’ UGG® brand.



1           36. The Bailey Button Boot Trade Dress is an original design by Deckers and  
2 has achieved a high degree of consumer recognition and secondary meaning, which  
3 serves to identify Deckers as the source of footwear featuring said trade dress.

4           37. The Bailey Button Boot Trade Dress is one of the most well-recognized  
5 and commercially successful styles of Deckers' UGG® brand of footwear, having been  
6 featured on Deckers' advertising and promotional materials as well as in various trade  
7 publications. Furthermore, the Bailey Button Boot Trade Dress has been featured in  
8 connection with various celebrities, has received a large volume of unsolicited media  
9 attention, and has graced the pages of many popular magazines nationwide and  
10 internationally.

11           38. Deckers has spent substantial time, effort, and money in designing,  
12 developing, advertising, promoting, and marketing the UGG® brand and its line of  
13 footwear embodying the Bailey Button Boot Trade Dress. Deckers spends millions of  
14 dollars annually on advertising of UGG® products, which include products bearing the  
15 Bailey Button Boot Trade Dress.

16           39. Deckers has sold hundreds of millions of dollars worth of UGG®  
17 products bearing the Bailey Button Boot Trade Dress.

18           40. Due to its long use, extensive sales, and significant advertising and  
19 promotional activities, Deckers' Bailey Button Boot Trade Dress has achieved  
20 widespread acceptance and recognition among the consuming public and trade  
21 throughout the United States.

22           41. There are numerous other boot designs in the footwear industry, none of  
23 which necessitate copying or imitating the Bailey Button Boot Trade Dress. However,  
24 due to the popularity and consumer recognition achieved by the Bailey Button boot,  
25 said design has often been the subject of infringement by third-parties, including  
26 Defendant.

27           42. Deckers is informed and believes and herein alleges that Defendant is a  
28 competitor and has copied Deckers' Bailey Button Boot Trade Dress in an effort to

1 exploit Deckers' reputation in the market.

2 43. Certain of the Accused Products produced, distributed, advertised and  
3 offered for sale by Defendant bear nearly identical reproductions of the Bailey Button  
4 Boot Trade Dress, such as to cause a likelihood of confusion as to the source,  
5 sponsorship or approval by Deckers of Defendant's products.

6 44. Defendant's use of Deckers' Bailey Button Boot Trade Dress is without  
7 Deckers' permission or authority and in total disregard of Deckers' rights to control its  
8 intellectual property.

9 45. Defendant's use of Deckers' Bailey Button Boot Trade Dress is likely to  
10 lead to and result in confusion, mistake or deception, and is likely to cause the public  
11 to believe that Defendant's products are produced, sponsored, authorized, or licensed  
12 by or are otherwise connected or affiliated with Deckers, all to the detriment of  
13 Deckers.

14 46. Deckers has no adequate remedy at law.

15 47. In light of the foregoing, Deckers is entitled to injunctive relief  
16 prohibiting Defendant from using Deckers' Bailey Button Boot Trade Dress, or any  
17 designs confusingly similar thereto, and to recover all damages, including attorneys'  
18 fees, that Deckers has sustained and will sustain, and all gains, profits and advantages  
19 obtained by Defendant as a result of its infringing acts alleged above in an amount not  
20 yet known, as well as the costs of this action.

21 **THIRD CLAIM FOR RELIEF**

22 **(Trademark Infringement under California Common Law)**

23 48. Deckers incorporates herein by reference the averments of the preceding  
24 paragraphs as though fully set forth herein.

25 49. Defendant's infringement of the UGG® Sun Mark and Bailey Button  
26 Boot Trade Dress constitutes trademark and trade dress infringement in violation of the  
27 common law of the state of California.

28 50. Defendant's unauthorized use of the UGG® Sun Mark and Bailey Button

1 Boot Trade Dress has caused and is likely to cause confusion as to the source of  
2 Defendant's products, all to the detriment of Deckers.

3 51. Defendant's acts are willful, deliberate, and intended to confuse the public  
4 and to injure Deckers.

5 52. Deckers has no adequate remedy at law to compensate it fully for the  
6 damages that have been caused and which will continue to be caused by Defendant's  
7 infringing conduct, unless he is enjoined by this Court.

8 53. The conduct herein complained of was extreme, outrageous, and was  
9 inflicted on Deckers in reckless disregard of Deckers' rights. Said conduct was  
10 despicable and harmful to Deckers and as such supports an award of exemplary and  
11 punitive damages in an amount sufficient to punish and make an example of  
12 Defendant, and to deter it from similar conduct in the future.

13 54. In light of the foregoing, Deckers is entitled to injunctive relief  
14 prohibiting Defendant from infringing the Bailey Button Boot Trade Dress, and to  
15 recover all damages, including attorneys' fees, that Deckers has sustained and will  
16 sustain, and all gains, profits and advantages obtained by Defendant as a result of its  
17 infringing acts alleged above in an amount not yet known, and the costs of this action.

18 **FOURTH CLAIM FOR RELIEF**

19 **(Unfair Competition – California Unfair Business Practices Act, Cal. Bus. & Prof.**  
20 **Code, § 17200, et. seq.)**

21 55. Deckers incorporates herein by reference the averments of the preceding  
22 paragraphs as though fully set forth herein.

23 56. Defendant's appropriation, adoption and use of the UGG® Sun Mark and  
24 Bailey Button Boot Trade Dress in connection with the sale and offering for sale of  
25 footwear is likely to confuse or mislead consumers into believing that Defendant's  
26 goods are authorized, licensed, affiliated, sponsored, and/or approved by Deckers, thus  
27 constituting a violation of the California Unfair Business Practices Act, Cal. Bus. &  
28 Prof. Code, § 17200, et. seq.



1 brands of footwear. As a result of Deckers' efforts, Defendant is now unjustly  
2 enriched and is benefiting from property rights that rightfully belong to Deckers.

3 65. Defendant's acts are willful, deliberate, and intended to confuse the public  
4 and to injure Deckers.

5 66. Deckers has no adequate remedy at law to compensate it fully for the  
6 damages that have been caused and which will continue to be caused by Defendant's  
7 infringing conduct, unless he is enjoined by this Court.

8 67. The conduct herein complained of was extreme, outrageous, and was  
9 inflicted on Deckers in reckless disregard of Deckers' rights. Said conduct was  
10 despicable and harmful to Deckers and as such supports an award of exemplary and  
11 punitive damages in an amount sufficient to punish and make an example of  
12 Defendant, and to deter it from similar conduct in the future.

13 68. In light of the foregoing, Deckers is entitled to injunctive relief  
14 prohibiting Defendant from infringing the UGG® Sun Mark and Bailey Button Boot  
15 Trade Dress and to recover all damages, including attorneys' fees, that Deckers has  
16 sustained and will sustain, and all gains, profits and advantages obtained by Defendant  
17 as a result of its infringing acts alleged above in an amount not yet known, and the  
18 costs of this action.

19 **SIXTH CLAIM FOR RELIEF**

20 **(Patent Infringement - U.S. Patent No. D616,189)**

21 69. Deckers incorporates herein by reference the averments of the preceding  
22 paragraphs as though fully set forth herein.

23 70. Deckers is the owner of numerous design patents to the various styles of  
24 footwear it offers under its UGG® brand. These design patents include but are not  
25 limited to the "Bailey Button Triplet" boot (U.S. Patent No. D616,189; issued on May  
26 25, 2010), a true and correct copy of which is attached hereto and incorporated herein  
27 as Exhibit A (" '189 Patent").

1           71. Deckers is the owner by assignment of all right, title and interest in and to  
2 the '189 Patent.

3           72. The Accused Products that Defendants have caused to be produced,  
4 distributed, advertised, marketed, offered for sale, and/or sold within the United States,  
5 and/or has imported into the United States bear a design that is substantially similar to  
6 the '189 Patent in direct violation of 35 U.S.C. § 271.

7           73. Defendant's aforesaid infringing acts are without Deckers' permission or  
8 authority and are in total disregard of Deckers' right to control its intellectual property.

9           74. As a direct and proximate result of Defendant's infringing conduct,  
10 Deckers has been injured and will continue to suffer injury to its business and  
11 reputation unless Defendant is restrained by this Court from infringing Deckers' '189  
12 Patent.

13           75. Defendant's acts have damaged and will continue to damage Deckers, and  
14 Deckers has no adequate remedy at law.

15           76. Deckers marks all footwear products embodying the design of the '189  
16 Patent with "Pat. No. D616,189" on a product label in compliance with 35 U.S.C. §  
17 287.

18           77. Given the widespread popularity and recognition of Deckers' Bailey  
19 Button Triplet boot and the patent notice provided on the products themselves, Deckers  
20 avers and hereon alleges that Defendant had pre-suit knowledge of Deckers' rights to  
21 the '189 Patent and has intentionally copied said design on its own brand of products  
22 in an effort to pass them off as if they originated, are associated with, are affiliated  
23 with, are sponsored by, are authorized by, and/or are approved by Deckers.

24           78. On information and belief, Defendant's acts herein complained of  
25 constitute willful acts and intentional infringement of the '189 Patent.

26           79. In light of the foregoing, Deckers is entitled to injunctive relief  
27 prohibiting Defendant from infringing the '189 Patent and to recover damages  
28 adequate to compensate for the infringement, including Defendant's profits pursuant to

1 35 U.S.C. § 289. Deckers is also entitled to recover any other damages as appropriate  
2 pursuant to 35 U.S.C. § 284.

3 **SEVENTH CLAIM FOR RELIEF**

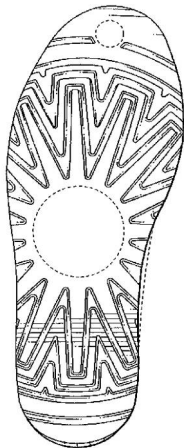
4 **(Patent Infringement - U.S. Patent No. D594,638)**

5 48. Deckers incorporates herein by reference the averments of the preceding  
6 paragraphs as though fully set forth herein.

7 49. Deckers is the owner of numerous design patents to the various styles of  
8 footwear it offers under its UGG® brand. These design patents include but are not  
9 limited to outsole designs, one of which is the “New Classic Outsole Design” (U.S.  
10 Patent No. 594,638; issued on June 23, 2009), a true and correct copy of which is  
11 attached hereto and incorporated herein as Exhibit B (“ ‘638 Patent”).

12 50. Deckers is the owner by assignment of all right, title and interest in and to  
13 the ‘638 Patent.

14 51. The Accused Products that Defendants have caused to be produced,  
15 distributed, advertised, marketed, offered for sale, and/or sold within the United States,  
16 and/or has imported into the United States bear an outsole design that is substantially  
17 similar to the ‘638 Patent in direct violation of 35 U.S.C. § 271.



25 **Design Patent D594,638**



26 **Authentic UGG®**  
27 **Footwear Featuring**  
28 **D594,638 Outsole**  
**Design**



**Infringing Outsole Design on**  
**Defendant's Accused Product**

1           52. Defendant has used, caused to be produced, distributed, advertised,  
2 marketed, offered for sale, sold within the United States, and/or has imported into the  
3 United States footwear that bears an outsole substantially similar to the ‘638 Patent in  
4 direct violation of 35 U.S.C. § 271. An example of the Accused Product is shown at  
5 the far right of the ‘638 Patent drawing and authentic UGG® footwear featuring the  
6 registered outsole below.

7           53. Defendant’s aforesaid infringing acts are without Deckers’ permission or  
8 authority and are in total disregard of Deckers’ right to control its intellectual property.

9           54. As a direct and proximate result of Defendant’s infringing conduct,  
10 Deckers has been injured and will continue to suffer injury to its business and  
11 reputation unless Defendant is restrained by this Court from infringing Deckers’ ‘638  
12 Patent.

13           55. Defendant’s acts have damaged and will continue to damage Deckers, and  
14 Deckers has no adequate remedy at law.

15           56. Deckers marks all footwear products embodying the design of the ‘638  
16 Patent with “Pat. No. 594,638” on a product label in compliance with 35 U.S.C. § 287.

17           57. Given the widespread popularity and recognition of Deckers’ UGG®  
18 boots and the patent notice provided on the products themselves, Deckers avers and  
19 hereon alleges that Defendant had pre-suit knowledge of Deckers’ rights to the ‘638  
20 Patent and has intentionally copied said design on its own brand of products in an  
21 effort to pass them off as if they originated, are associated with, are affiliated with, are  
22 sponsored by, are authorized by, and/or are approved by Deckers.

23           58. On information and belief, Defendant’s acts herein complained of  
24 constitute willful acts and intentional infringement of the ‘638 Patent.

25           59. In light of the foregoing, Deckers is entitled to injunctive relief  
26 prohibiting Defendant from infringing the ‘638 Patent and to recover damages  
27 adequate to compensate for the infringement, including Defendant’s profits pursuant to  
28



1 35 U.S.C. § 289. Deckers is also entitled to recover any other damages as appropriate  
2 pursuant to 35 U.S.C. § 284.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff Deckers Outdoor Corporation respectfully prays for  
5 judgment against Defendant Alphabetdeal.com, Inc. as follows:

6 1. A judgment that Defendant has infringed Deckers' UGG® Sun Mark,  
7 Bailey Button Boot Trade Dress, '189 Patent, and '638 Patent and that said  
8 infringement was willful;

9 2. An order granting temporary, preliminary and permanent injunctive relief  
10 restraining and enjoining Defendant, its agents, servants, employees, officers,  
11 associates, attorneys, and all persons acting by, through, or in concert with any of them  
12 from using Deckers' intellectual property, including, but not limited to:

13 a. Manufacturing, importing, advertising, marketing, promoting,  
14 supplying, distributing, offering for sale, or selling the Accused Products or any other  
15 products which bear Deckers' Bailey Button Boot Trade Dress and/or any designs  
16 confusingly similar thereto, as well as any products bearing designs that infringe upon  
17 the '189 Patent and/or '638 Patent and/or the overall appearance thereof;

18 b. Engaging in any other activity constituting unfair competition with  
19 Deckers, or acts and practices that deceive consumers, the public, and/or trade,  
20 including without limitation, the use of designations and design elements used or  
21 owned by or associated with Deckers; and


22 c. Committing any other act which falsely represents or which has the  
23 effect of falsely representing that the goods and services of Defendant are licensed by,  
24 authorized by, offered by, produced by, sponsored by, or in any other way associated  
25 with Deckers;

26 3. Ordering Defendant to recall from any distributors and retailers and to  
27 deliver to Deckers for destruction or other disposition all remaining inventory of all  
28 Accused Products and related items, including all advertisements, promotional and

1 marketing materials therefore, as well as means of making same;

2 4. Ordering Defendant to file with this Court and serve on Deckers within  
3 thirty (30) days after entry of the injunction a report in writing, under oath setting forth  
4 in detail the manner and form in which Defendant has complied with the injunction;

5 5. Ordering an accounting by Defendant of all gains, profits and advantages  
6 derived from its wrongful acts pursuant to 5 U.S.C. § 289;

7 6. Awarding Deckers all of Defe  nages sustained by  
8 Deckers as a result of Defendant's wrongful acts, and such other compensatory  
9 damages as the Court determines to be fair and appropriate;

10 7. Awarding treble damages in the amount of Defendant's profits or  
11 Deckers' damages, whichever is greater, for willful infringement;

12 8. Awarding statutory damages pursuant to 15 U.S.C. § 1117(c)(1) of up to  
13 \$200,000 for each and every use of the UGG® Sun Mark or, if the Court finds that  
14 Defendant's infringement is willful, awarding statutory damages pursuant to 15 U.S.C.  
15 § 1117(c)(2) of up to \$2,000,000 for each and every use of the UGG® Sun Mark;

16 9. Awarding applicable interest, costs, disbursements and attorneys' fees;

17 10. Awarding Deckers' punitive damages in connection with its claims under  
18 California law; and

19 11. Such other relief as may be just and proper.

20  
21 Dated: February 9, 2018

BLAKELY LAW GROUP


22  
23 By:  \_\_\_\_\_

Brent H. Blakely  
Jessica C. Covington  
*Attorneys for Plaintiff*  
*Deckers Outdoor Corporation*

1 **DEMAND FOR JURY TRIAL**

2 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Deckers  
3 Outdoor Corporation hereby demands a trial by jury as to all claims in this litigation.  
4

5 Dated: February 9, 2018 BLAKELY LAW GROUP

6  
7 By:  \_\_\_\_\_  
8 Brent H. Blakely  
9 Jessica C. Covington  
10 *Attorneys for Plaintiff*  
11 *Deckers Outdoor Corporation*  
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# **EXHIBIT A**



US00D616189S

(12) **United States Design Patent**  
**MacIntyre**

(10) **Patent No.:** **US D616,189 S**  
(45) **Date of Patent:** **\*\* \*May 25, 2010**

(54) **PORTION OF A FOOTWEAR UPPER**

D554,341 S \* 11/2007 Belley et al. .... D2/970  
D575,495 S 8/2008 Le  
D580,158 S 11/2008 Belley et al.

(75) Inventor: **Jennifer MacIntyre**, Santa Barbara, CA (US)

(73) Assignee: **Deckers Outdoor Corporation**, Goleta, CA (US)

(Continued)

FOREIGN PATENT DOCUMENTS

(\*\*) Term: **14 Years**

DE 40702148 8/2007

(21) Appl. No.: **29/343,479**

(Continued)

(22) Filed: **Sep. 14, 2009**

OTHER PUBLICATIONS

**Related U.S. Application Data**

UGG Australia, Bipster model, p. 1, Oct. 3, 2008.

(63) Continuation-in-part of application No. 29/326,868, filed on Oct. 27, 2008, now Pat. No. Des. 599,999.

(Continued)

(51) **LOC (9) Cl.** ..... **02-99**

*Primary Examiner*—Robert M Spear

(52) **U.S. Cl.** ..... **D2/970**

*Assistant Examiner*—Rashida C McCoy

(58) **Field of Classification Search** ..... D2/896,  
D2/902, 903, 905–915, 946, 970, 972, 974,  
D2/976; 36/45, 50.1, 83, 3 A, 7.1 R, 113,  
36/101, 112, 114, 116, 126–130, 48  
See application file for complete search history.

(74) *Attorney, Agent, or Firm*—Greer, Burns & Crain, Ltd.

(57) **CLAIM**

The ornamental design for a portion of a footwear upper, as shown and described.

(56) **References Cited**

**DESCRIPTION**

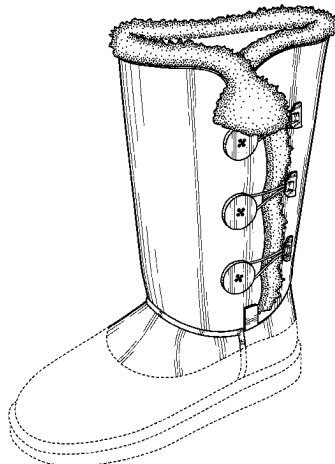
U.S. PATENT DOCUMENTS

- D21,954 S \* 11/1892 Richardson ..... D2/910
- D125,568 S 3/1941 Hard
- D155,573 S 10/1949 Bingham, Jr.
- D159,577 S \* 8/1950 Stromberg ..... D2/900
- D159,761 S \* 8/1950 Barron ..... D2/910
- D227,197 S 6/1973 Fukuoka
- D284,805 S \* 7/1986 Smith ..... D2/900
- D319,332 S 8/1991 Itzkowitz
- D357,572 S \* 4/1995 Seiler et al. .... D2/910
- D386,292 S \* 11/1997 Brooks et al. .... D2/970
- D386,294 S \* 11/1997 Brooks et al. .... D2/970
- D400,342 S \* 11/1998 Davidowitz et al. .... D2/909
- D481,863 S 11/2003 Belley et al.
- D497,476 S \* 10/2004 Huard et al. .... D2/970
- D521,228 S \* 5/2006 Kelsey ..... D2/976
- D529,269 S 10/2006 Belley et al.
- D539,024 S \* 3/2007 Belley et al. .... D2/970

FIG. 1 is a perspective view of a portion of a footwear upper showing my new design;  
FIG. 2 is a side elevational view thereof;  
FIG. 3 is an opposite side elevational view thereof;  
FIG. 4 is a front elevational view thereof;  
FIG. 5 is a rear elevational view thereof; and,  
FIG. 6 is a top plan view thereof.

The broken lines in FIGS. 1–6 represent portions of the footwear that form no part of the claimed design. The broken line which defines the bounds of the claimed design forms no part thereof.

**1 Claim, 6 Drawing Sheets**



# US D616,189 S

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## U.S. PATENT DOCUMENTS

D581,140 S 11/2008 Earle  
D585,636 S 2/2009 Earle  
D591,496 S 5/2009 Earle

## FOREIGN PATENT DOCUMENTS

EP 00718002-0006 4/2007  
EP 001159008-0005 8/2009

## OTHER PUBLICATIONS

UGG Australia, Henry model, p. 1, Oct. 3, 2008.  
UGG Australia, Erin model, p. 1, Oct. 3, 2008.

UGG Australia, Cove model, p. 1, Oct. 27, 2008.

UGG Australia, Kona model, p. 1, Oct. 27, 2008.

Steve Madden MISSYY Brown Suede boot, [www.jildorshoes.com](http://www.jildorshoes.com),  
Dec. 9, 2008.

Catalogue Moscow Shoes, summer 2006, p. 2 top center.

UGG Australia 1990 Catalog, Classic Tall model, 1990.

UGG Australia Fall/Winter 2004 Catalog, Larkspur model, 2004.

Sportsmaster, Russian Federation, Autumn/Winter 2008-2009.

\* cited by examiner

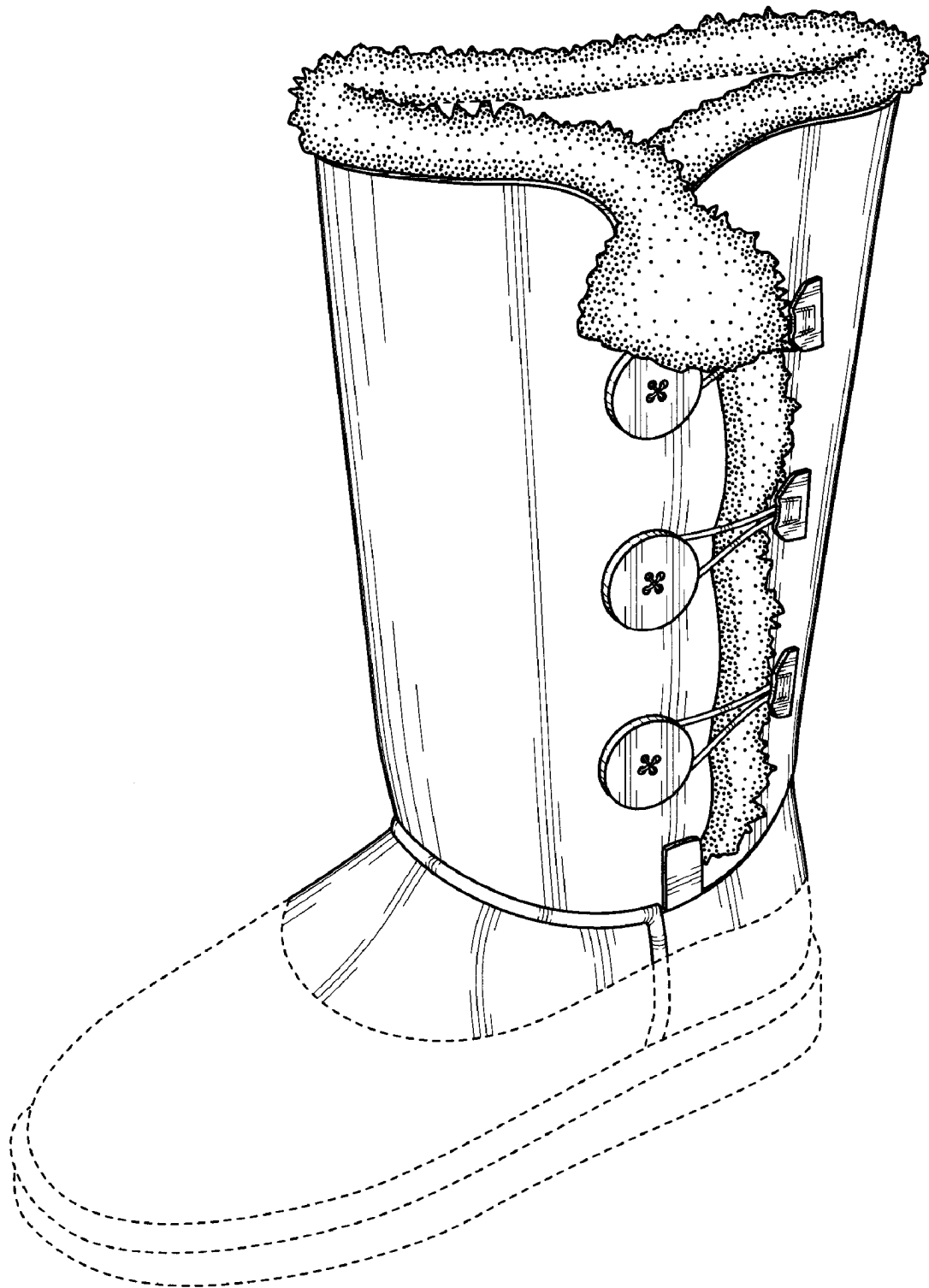


FIG. 1

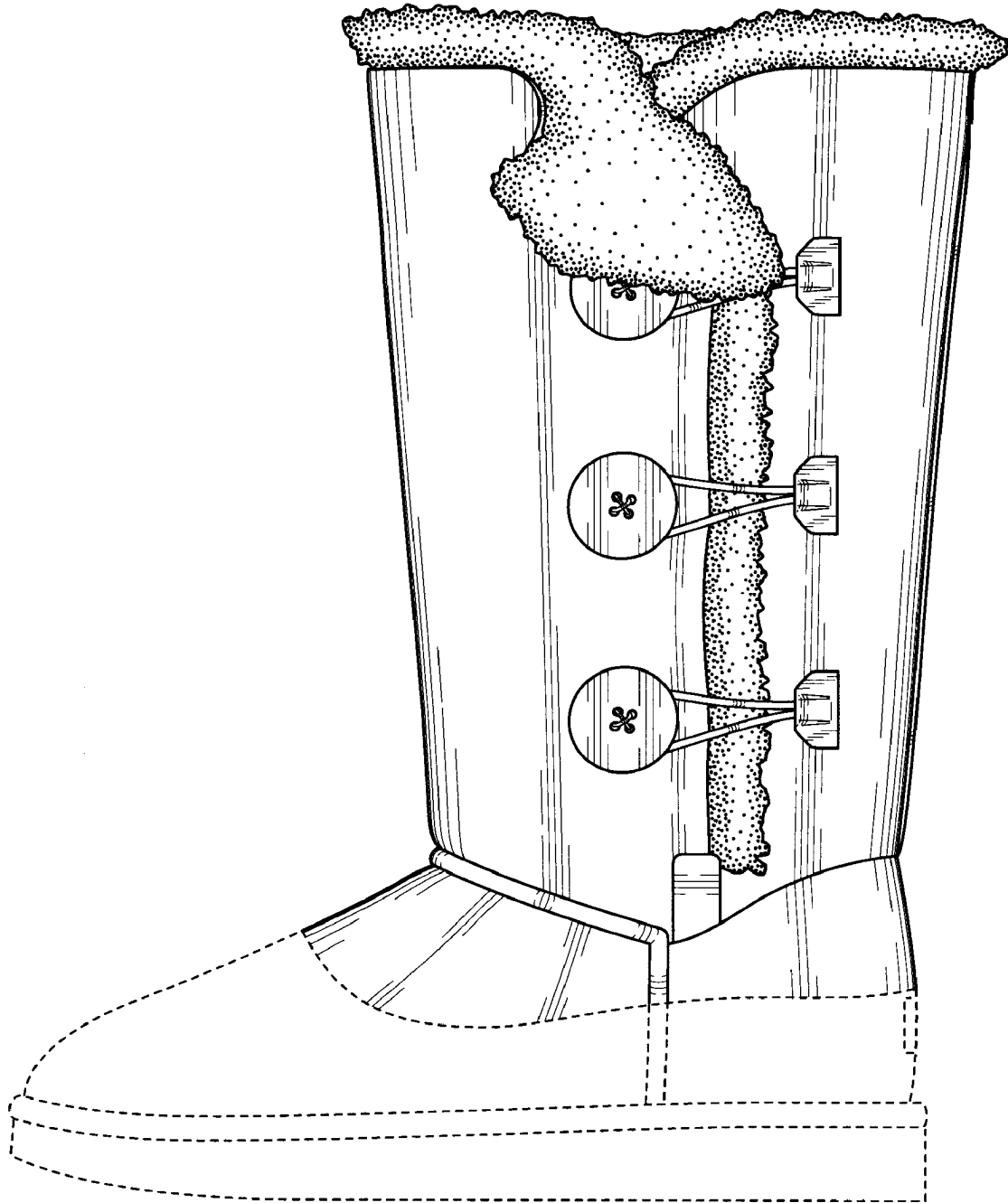


FIG. 2



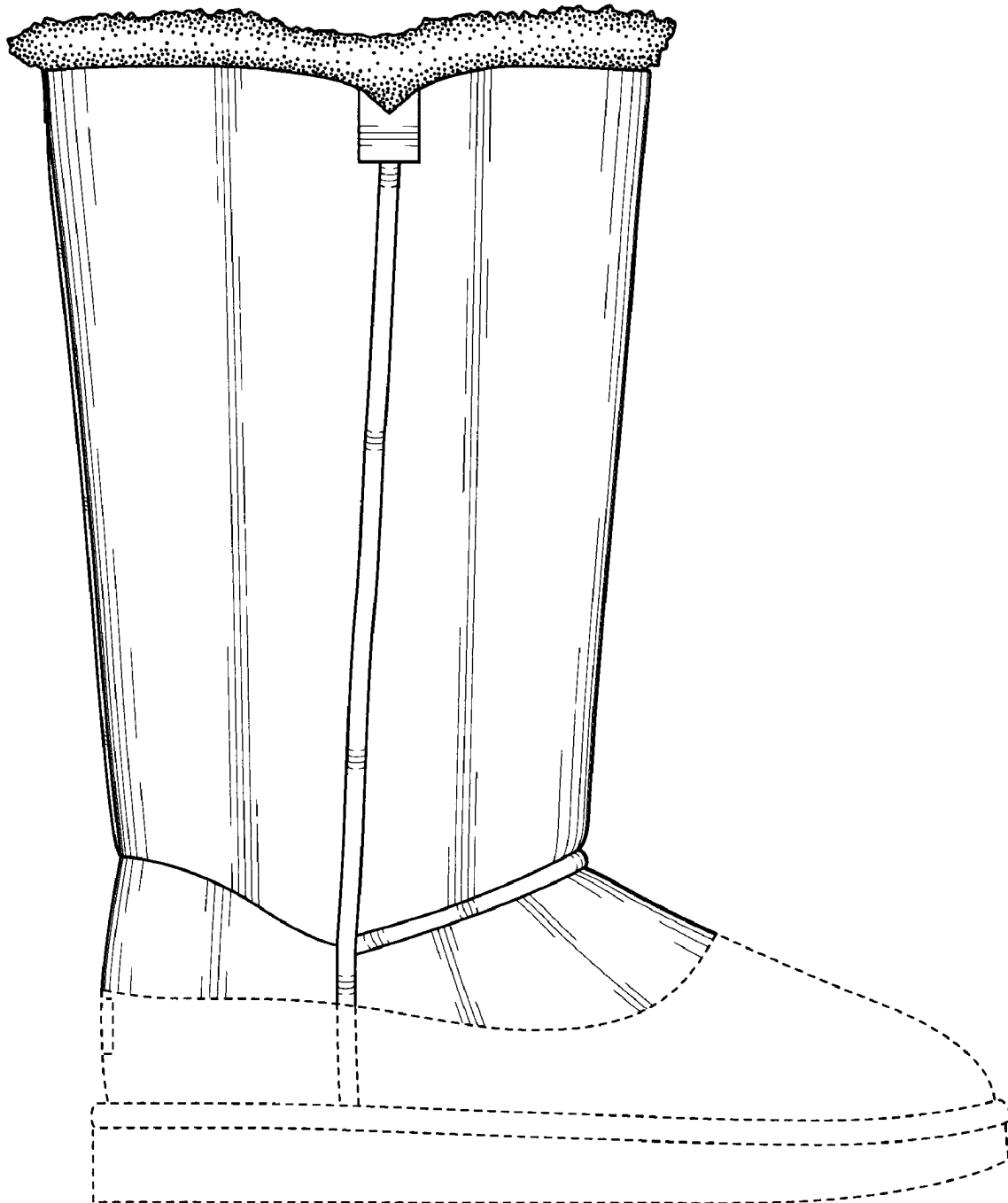


FIG. 3

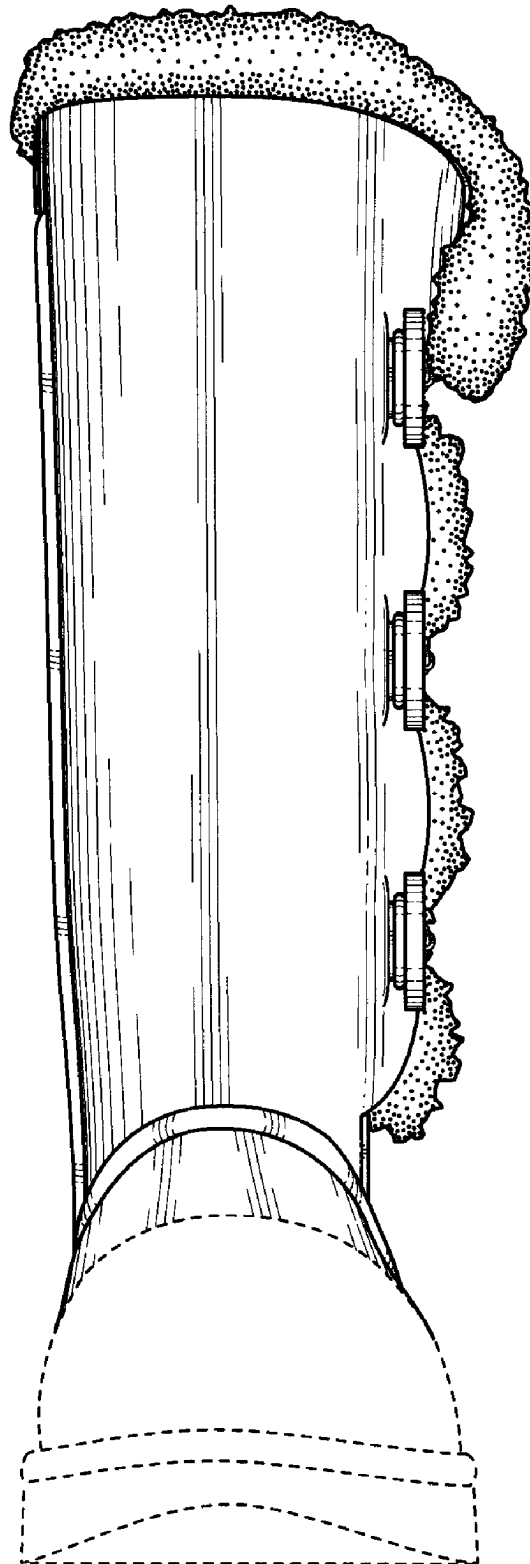


FIG. 4

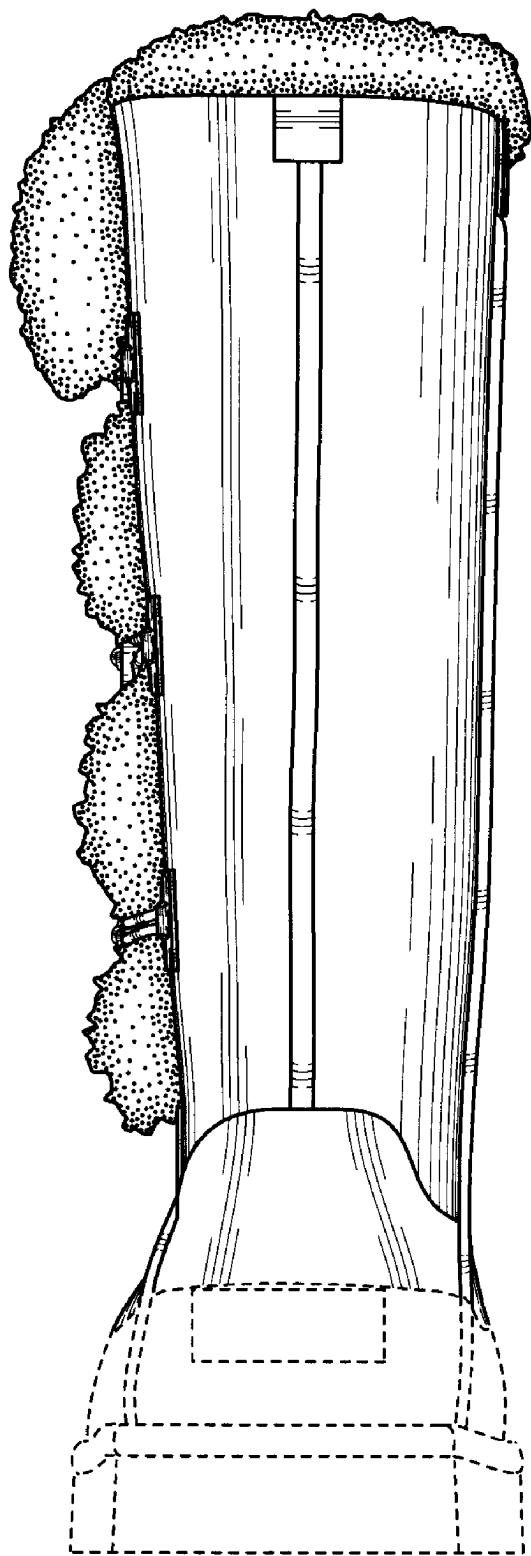


FIG. 5

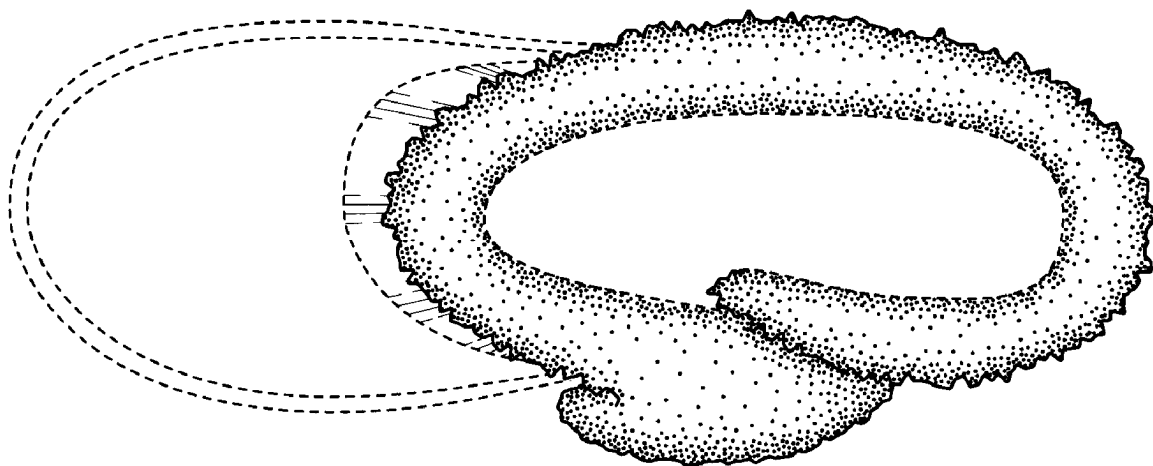


FIG. 6

# **EXHIBIT B**



US00D594638S

(12) **United States Design Patent**  
**Butler**

(10) **Patent No.:** **US D594,638 S**

(45) **Date of Patent:** **\*\* Jun. 23, 2009**

- (54) **FOOTWEAR OUTSOLE**
- (75) Inventor: **Damon R. Butler**, Portland, OR (US)
- (73) Assignee: **Deckers Outdoor Corporation**, Goleta, CA (US)
- (\*\*) Term: **14 Years**
- (21) Appl. No.: **29/325,989**
- (22) Filed: **Oct. 9, 2008**
- (51) **LOC (9) Cl.** ..... **02-04**
- (52) **U.S. Cl.** ..... **D2/952; D2/953; D2/960**
- (58) **Field of Classification Search** ..... D2/902, D2/906, 908, 947, 951-960; D5/1, 47, 61; 36/3 B, 22 R, 24.5, 25 R, 28, 32 R, 67 A, 36/59 C, 103

See application file for complete search history.

(56) **References Cited**

U.S. PATENT DOCUMENTS

- D61,017 S \* 5/1922 Heilhecker ..... D2/953
- D90,450 S \* 8/1933 Oakley ..... D2/955
- D257,647 S \* 12/1980 Combaret ..... D2/953
- D307,971 S \* 5/1990 Maccano et al. .... D2/953
- D325,808 S \* 5/1992 Austin ..... D2/955
- D350,430 S \* 9/1994 Pallera ..... D2/952
- D369,895 S \* 5/1996 Finn ..... D2/959
- D396,549 S \* 8/1998 von Conta et al. .... D2/955
- D398,745 S \* 9/1998 Cass ..... D2/954
- D401,742 S 12/1998 Loverin
- D402,446 S \* 12/1998 Kelchak ..... D2/952
- D405,593 S 2/1999 Hamel
- D412,777 S 8/1999 Norton et al.
- D455,895 S \* 4/2002 Yang ..... D2/955
- D458,011 S \* 6/2002 Yang ..... D2/954
- D460,249 S 7/2002 Yang
- D468,082 S \* 1/2003 Brown ..... D2/955
- D473,696 S \* 4/2003 Mangee ..... D2/952
- D474,587 S 5/2003 Wilson
- 6,564,475 B2 \* 5/2003 Collins et al. .... 36/3 R
- D475,842 S \* 6/2003 Cook ..... D2/909
- D500,400 S 1/2005 Le
- D512,208 S \* 12/2005 Kubo et al. .... D2/960
- D514,286 S \* 2/2006 Kayano et al. .... D2/955
- D548,433 S \* 8/2007 McClaskie ..... D2/952
- D555,887 S \* 11/2007 Link ..... D2/955
- D556,984 S \* 12/2007 Brie et al. .... D2/952

- D556,986 S \* 12/2007 Horne et al. .... D2/953
- D556,987 S \* 12/2007 Nakano ..... D2/957
- D564,736 S \* 3/2008 Belley et al. .... D2/952
- D575,946 S \* 9/2008 Mitani et al. .... D2/967
- D580,141 S \* 11/2008 Banik et al. .... D2/954

FOREIGN PATENT DOCUMENTS

DE 40402623 11/2004

OTHER PUBLICATIONS

- UGG Australia, Winter 2002 Collection, Aspen Outsole, p. 21.
- UGG Australia, Fall/Winter 2008, Ultimate Short Outsole, pp. 1 and 2.
- UGG Australia, Fall/Winter 2008, Upside Outsole, pp. 1 and 2.
- UGG Australia, Fall/Winter 2004, Coquette Outsole, pp. 1 and 2.

\* cited by examiner

*Primary Examiner*—Celia A Murphy

(74) *Attorney, Agent, or Firm*—Greer, Burns & Crain, Ltd.

(57) **CLAIM**

The ornamental design for a footwear outsole, as shown and described.

**DESCRIPTION**

FIG. 1 is a perspective view of a footwear outsole showing my new design;

FIG. 2 is a bottom plan view thereof;

FIG. 3 is a top plan view thereof;

FIG. 4 is a first side elevational view thereof;

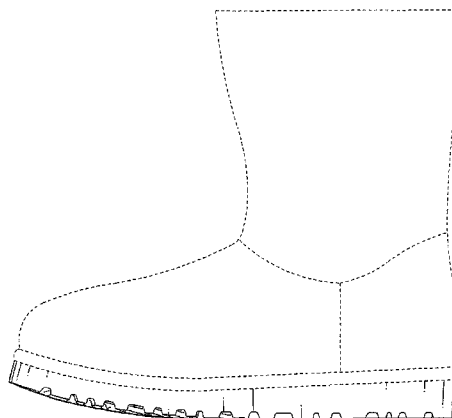
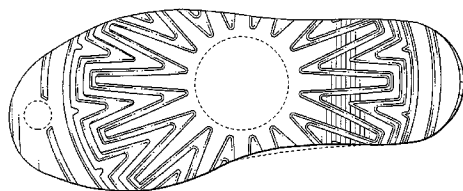
FIG. 5 is an opposite side elevational view thereof;

FIG. 6 is a front elevational view thereof; and,

FIG. 7 is a rear elevational view thereof.

The broken lines immediately adjacent to the claimed subject matter throughout the views form the boundaries of the design. The broken-line circle in FIGS. 1, 2 and 6 define the interior boundaries of the design. The broken lines showing the boot upper represent the portions of the design that form no part of the claim. None of the broken lines or the areas within them forms any part of the claim.

**1 Claim, 5 Drawing Sheets**



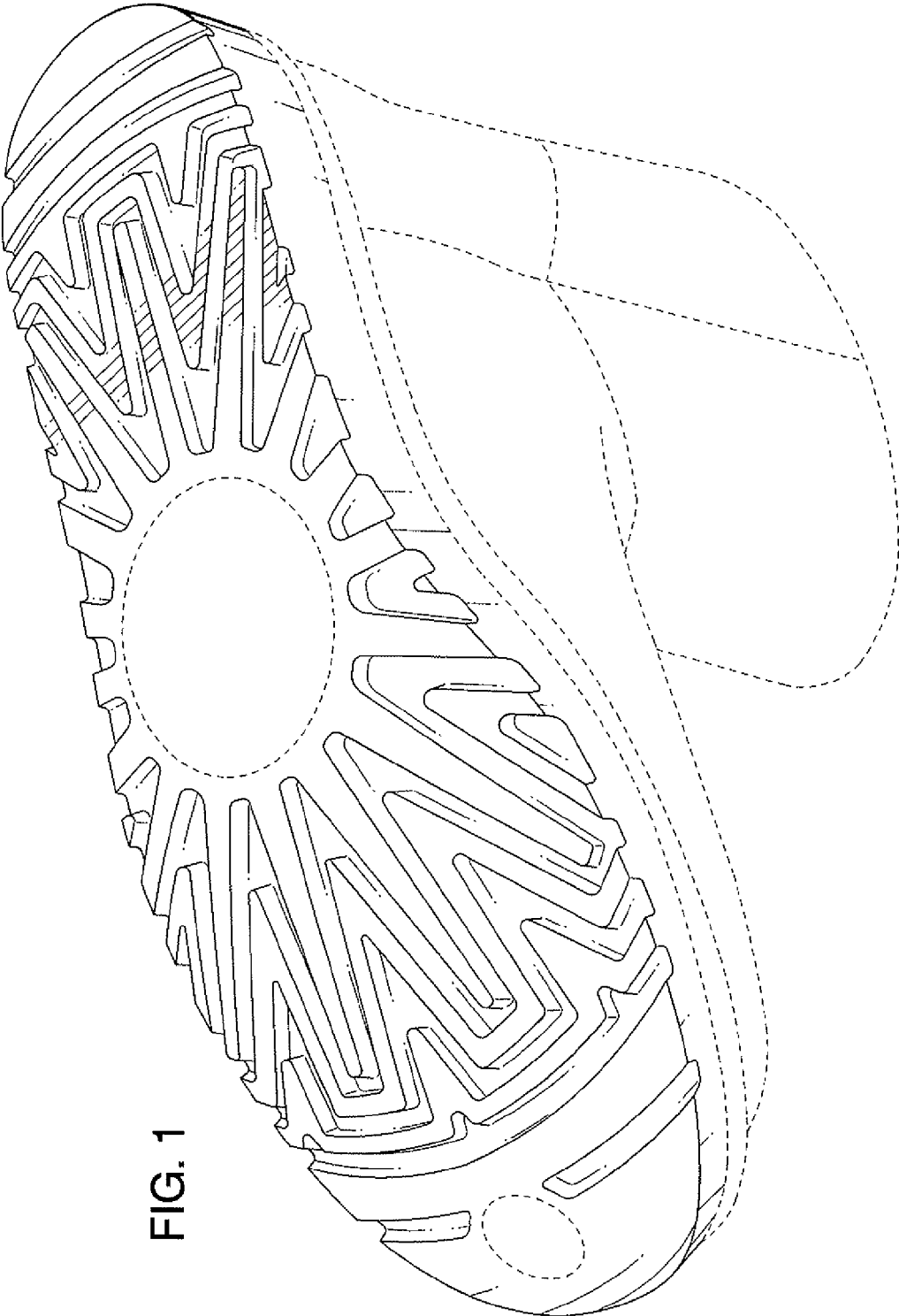


FIG. 1

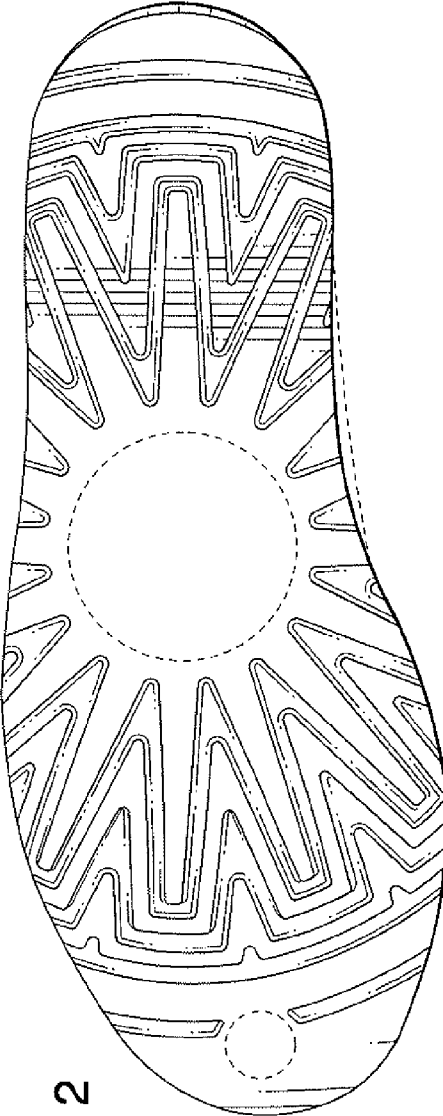


FIG. 2

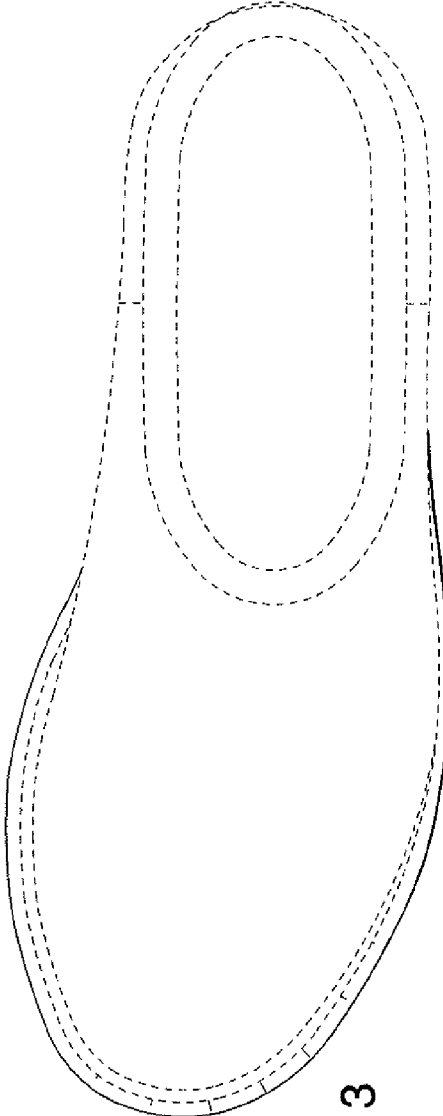


FIG. 3





