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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CASE NO. 7:23-cv-11111

OTTER PRODUCTS, LLC,

Plaintiff,

v.

4PX EXPRESS USA INC.;

Defendant.

COMPLAINT

Plaintiff Otter Products, LLC (“Plaintiff”), through its attorneys complaining of 4PX Express USA Inc. ("Defendant") hereby alleges as follows:

STATEMENT OF THE CASE

1. This is a suit by Plaintiff against Defendant for: (i) counterfeiting and / or infringement of trademarks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114; (ii) federal trademark dilution in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(c); (iii) unfair competition, false designation of origin, and false description in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); and (iv) unfair and deceptive business practices in violation of N.Y. Gen. Bus. L. § 349.

2. This is not the first time that Defendant has been accused of counterfeiting and trademark infringement concerning their distribution of knock-off merchandise. This is not even the first time that Plaintiff has sued Defendant over its distribution of unauthorized merchandise. Despite this previous lawsuit, Defendant’s distribution of illegal merchandise continued.

Defendant's infringement is clearly knowing and willful.

3. This action concerns the distribution of large quantities of merchandise bearing counterfeits and infringements of Plaintiff's federally registered trademarks in the United States. Defendant has willfully infringed Plaintiff's valuable trademarks, creating a strong likelihood of confusion among consumers who expect that merchandise bearing Plaintiff's trademarks will be genuine product by Plaintiff, and causing both monetary and other irreparable injury to Plaintiff and the public at large.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the federal trademark claims asserted in this action under 15 U.S.C. § 1121, and 28 U.S.C. § 1331 and 28 U.S.C. § 1338. This Court has supplemental subject matter jurisdiction over state law claims pursuant to 28 U.S. C. § 1367(a) in that the state law claims form part of the same case or controversy as the federal claims.

5. Defendant is subject to the Court's jurisdiction because they have committed the acts complained of herein in this District and do business in this District. Specifically, Defendant has shipped infringing merchandise into this District and into Rockland County, Ny. Further, Defendant is registered to do business in New York.

6. Defendant is subject to the jurisdiction of this Court pursuant to and in accordance with Rule 4 of the Federal Rules of Civil Procedure.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) (1-3).

PARTIES

8. Plaintiff is a limited liability company duly organized and existing under the laws of the State of Colorado and having its principal place of business located at 209 S. Meldrum Street, Fort Collins, CO 80521.

9. Upon information and belief, Defendant is a California company with its

principal place of business located at 5600-5650 Grace Place, Commerce, CA 90022. Defendant is registered and authorized to do business in the State of New York.

FACTUAL ALLEGATIONS


A. Plaintiff's Famous Products and Trademarks


10. Plaintiff began with the entrepreneurial vision of its founder, Curt Richardson. An injection molder by trade, Richardson designed the first "OtterBox" in 1995. The first OtterBox was a durable waterproof box used to keep electronics dry while participating in outdoor sports such as kayaking or fishing. However, through iterative design changes, what started as a waterproof box evolved into a line of functional, durable, and award-winning personal electronics cases.

11. Since its inception, Otter Products has marked their brands' products (OtterBox[®] respectively) with trademarks that have come to symbolize their profound company heritage, entrepreneurial spirit, and superior craftsmanship. This reputation started with the design of the first OtterBox[®] in 1995 and has since expanded into a robust global marketplace. From its prescient inceptions to its products' establishment as household name, Plaintiff has expended great amounts of time, money, and effort advertising and promoting its trademarks globally, including throughout the United States and in this District. As a result of these investments and its widespread success, Plaintiff has developed considerable goodwill and reputations for the highest quality products. Plaintiff has continuously used their trademarks to distinguish their OtterBox[®] products, as well as uphold these reputations.

12. Plaintiff is the owner of various trademarks registered with the United States Patent and Trademark Office ("USPTO"). Such trademarks include, but are not limited to the following, among others:

Trademark	USPTO Registration Number	Registration Date	Goods
OTTERBOX	3788534	08/25/2009	IC 009. US 021 023 026 036 038. G & S: Protective cases for handheld electronic devices, namely, portable music players, portable video players, cell phones and computers; specially adapted protective carrying cases for computers.
OTTER BOX	3788535	05/11/2010	IC 009. US 021 023 026 036 038. G & S: Protective cases for handheld electronic devices, namely, portable music players, portable video players, cell phones and computers; specially adapted protective carrying cases for computers.
OTTERBOX	4602221	09/09/2014	IC 009. US 021 023 026 036 038. G & S: Protective covers and cases for handheld electronic devices, namely, cell phones, portable media players, tablets, personal digital assistants, e-book readers, and computers; protective covers and cases for computers.

DEFENDER SERIES	4616874	10/07/2014	IC 009. US 021 023 026 036 038. G & S: Protective covers and cases for personal electronic devices, namely, cell phones.
DEFENDER SERIES	3623789	05/19/2009	IC 009. US 021 023 026 036 038. G & S: Protective cases for interactive, handheld electronic devices, namely, portable music players, portable video players and tablet computers.
	3791318	05/18/2010	IC 009. US 021 023 026 036 038. G & S: Protective cases for handheld electronic devices, namely, portable music players, portable video players, cell phones and computers; specially adapted protective carrying cases for computers.
STRADA SERIES	4864518	12/1/2015	IC 009. US 021 023 026 036 038. G & S: Protective cases and covers for personal electronic devices, namely, mobile phones, smartphones, tablets, computers, e-book readers, portable media players; Bags, folios and carrying cases specially

			adapted for personal electronic devices, namely, mobile phones, smartphones, tablets, computers, e-book readers, portable media players.
STATEMENT SERIES	4952893	05/03/2016	IC 009. US 021 023 026 036 038. G & S: Protective cases, covers, bags, and carrying cases for personal electronic devices, namely, mobile phones, smartphones, tablet computers, and e-book readers
 <p>GIVING BACK</p>	5356304	12/12/2017	IC 009. US 021 023 026 036 038. G & S: Protective cases and covers for mobile electronic devices, namely, smartphones, tablet computers; protective cases and covers adapted to accommodate external accessories for use with mobile electronic devices, namely, smartphones, tablet computers; accessories specially adapted for use with protective cases and covers for smartphones, tablet computers,

			namely, batteries and power management systems in the nature of external batteries, battery boxes and battery chargers.
DEFENDER SERIES PRO	5726083	04/16/2019	IC 009. US 021 023 026 036 038. G & S: Protective cases, carrying cases, casings, and covers for portable electronic devices, namely, cell phones, tablet computers, cases and holsters specially adapted for holding or carrying mobile electronic devices, namely, mobile phones, tablet computers.
TRACTION SERIES	5910713	11/12/2019	IC 009. US 021 023 026 036 038. G & S: Protective cases and covers for personal electronic devices, namely, mobile phones, smartphones, and tablet computers.
VUE SERIES	5727921	04/16/2019	IC 009. US 021 023 026 036 038. G & S: Protective cases, covers, bags, and carrying cases for personal electronic devices, namely, mobile phones, smartphones,

			tablet computers, and e-book readers.
FIGURA SERIES	5765856	05/28/2019	IC 009. US 021 023 026 036 038. G & S: Protective cases, covers, bags, and carrying cases for personal electronic devices, namely, mobile phones, smartphones, tablet computers, and e-book readers.
STATEMENT SERIES MODERNE	5765857	05/28/2019	IC 009. US 021 023 026 036 038. G & S: Protective cases, covers, bags, and carrying cases for personal electronic devices, namely, mobile phones, smartphones, tablet computers, and e-book readers.
LUMEN SERIES	6073954	06/09/2020	IC 009. US 021 023 026 036 038. G & S: Protective covers and cases for handheld electronic devices, namely, cell phones, smartphones and personal digital assistants.

<p style="text-align: center;">OTTERBOX</p>	<p style="text-align: center;">6077573</p>	<p style="text-align: center;">06/16/2020</p>	<p>IC 009. US 021 023 026 036 038. G & S: Protective display screen covers for tablet computers, smart phones and electronic reading devices; Stands, mounts, covers and cases specifically adapted for electronic devices, namely, speakers, microphones, smart speakers, display screens, and smart displays; Protective cases for laptop computer, tablet computers, and accessories for laptop and tablet computers, namely, keyboards and speakers.</p>
<p style="text-align: center;">WAKE</p>	<p style="text-align: center;">6126479</p>	<p style="text-align: center;">08/11/2020</p>	<p>IC 009. US 021 023 026 036 038. G & S: Protective cases and covers for mobile electronic devices, namely, smartphones, tablet computers, electronic reading devices and mobile electronic devices.</p>

VIVA SERIES	6149005	09/08/2020	IC 009. US 021 023 026 036 038. G & S: Protective cases, covers, and carrying cases for personal electronic devices, namely, mobile phones, smartphones, and tablet computers.
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(with others, hereinafter collectively referred to as the “Plaintiff’s Registered Trademarks”).

13. The Plaintiff’s Registered Trademarks are valid, in full force and effect, protectable and exclusively owned by Plaintiff. Plaintiff has continuously used the Plaintiff’s Registered Trademarks during all time periods relevant to Plaintiff’s claims. As a result, a select Plaintiff’s Registered Trademarks have become incontestable pursuant to 15 U.S.C. § 1065.

14. The Plaintiff’s Registered Trademarks have been used regularly in interstate commerce, including within this District, to identify and distinguish Plaintiff’s high-quality merchandise including, but not limited to, dirt resistant mobile phone cases, dirt resistant tablet cases, shock resistant mobile phone cases, shock resistant tablet cases, drop resistant mobile phone cases, drop resistant tablet cases, mobile phone accessories, tablet accessories, and other goods.

15. Due to the overwhelming amount of resources exhausted by Plaintiff in order to create, protect, enforce, and promote the Plaintiff’s Registered Trademarks, the Plaintiff’s Registered Trademarks have achieved secondary meaning as identifiers of high quality merchandise including, but not limited to, dirt resistant mobile phone cases, dirt resistant tablet cases, shock resistant mobile phone cases, shock resistant tablet cases, drop resistant mobile phone cases, drop resistant tablet cases, mobile phone accessories, tablet accessories, and other

goods.

16. The Plaintiff's Registered Trademarks are recognized around the world and throughout the United States by consumers as signifying authentic, high-quality OtterBox® products. As such, the Plaintiff's Registered Trademarks qualify as famous marks as the term is used in 15 U.S.C. § 1125(c)(1) and achieved such fame prior to Defendant's conduct that is the subject of this Complaint.

B. Defendant's Unauthorized Activities

17. Defendant is the United States company of a China-based parent and acts as a global logistics storage, fulfillment, and transportation company. Upon information and belief, Defendant imports merchandise from overseas and fulfill orders by storing and shipping product when instructed to do so by its customers. Defendant operates storage and shipping facilities across the United States including one in Perth Amboy, NJ.

18. Defendant is importing, storing, distributing, and using in interstate commerce merchandise bearing counterfeits and infringements of the Plaintiff's Registered Trademarks (the "Counterfeit Product").

19. Despite having notice of its illegal activities, Defendant continued to distribute a large amount of Counterfeit Product. Defendant is a willful infringer of the Plaintiff's Registered Trademarks causing irreparable harm to Plaintiff and the unsuspecting public who are being defrauded into purchasing such illegal merchandise.

20. This is not the first time that Defendant and/or its parent company has been accused of counterfeiting, trademark infringement, or copyright infringement by third parties.

21. According to the Better Business Bureau website (www.bbb.org), Defendant bears a poor 1.09 out of 5 stars rating. Included in these reviews are two (2) reviews claiming

Defendant is distributing fake merchandise. These reviews include the following:

- A. “This company is scam (sic) and they rob you of your money and send bogus goods that are not even true to size...” and
- B. “This company is scam (sic) and they rob you of your money and send bogus [redacted] goods that are not even true to size”

22. In February 2020, in the case United States v. Pavel Babichenko, et al., CR18-258-S-BLW (D.Idaho), Defendant’s China-based parent company was mentioned in a “Motion to Dismiss Superseding Indictment for Ethnically Selective Prosecution and Enforcement.” A reported decision claims that in 2018, the FBI had knowledge of Defendant’s parent company’s distribution of counterfeit Apple products but chose to not pursue enforcement of the counterfeit product.

23. On November 11, 2021, the lawsuit Beachbody, LLC, et al v. 4PX Express USA, et al., 2:201-cv-08907 (C.D. Cal.) was commenced. In that lawsuit, that plaintiff accused Defendant of similarly distributing counterfeit and pirated goods.

24. This is not even the first time that Defendant has been sued by Plaintiff for counterfeiting and trademark infringement.

25. On May 25, 2021, Plaintiff filed the lawsuit Otter Products, LLC v. 4PX Express USA Inc., 7:21-cv-0460 (S.D.N.Y) (the “Prior Action”) alleging the same illegal conduct that forms the basis of the herein action and as further described below.

26. Plaintiff regularly monitors the eBay.com marketplace (“eBay”) for the sale of Counterfeit Product. As part of these policing efforts, Plaintiff routinely requests the shutdown of listings offering for sale and selling Counterfeit Products; make purchases of Counterfeit Product to obtain information about sellers; and send cease and desist letters to eBay users who are offering for sale and selling Counterfeit Product.

27. On or about September 28, 2023, Plaintiff discovered a suspicious listing on

eBay from the eBay seller using the username “zhaosh-20”. Plaintiff’s agent made a purchase from the “zhaosh-20” eBay seller of a “OtterBox” cellphone case (the “Purchase”).

28. Subsequently, Plaintiff reviewed the Purchase and confirmed that the Purchase was not authentic OtterBox merchandise and did, in fact, bear counterfeits and infringements of the Plaintiff’s Registered Trademarks.

29. The return address on the Purchase states: “Express, ca@orangeconnex.com, 1000 High Street (EF), Perth Amboy, NJ 08861”. This is the return address for Defendant and was also identified in the Previous Action as Defendant’s return address.

30. On October 4, 2013, Plaintiff’s counsel reached out to Defendant’s counsel for the Prior Action requesting confirmation that the purchase made from “zhaosh-20” was shipped by Defendant. Subsequently, on October 13, 2023, Defendant’s counsel confirmed that Defendant did ship the Counterfeit Product at issue.

31. On October 30, 2023, Defendant informed Plaintiff that it had in its possession additional inventory from “zhaosh-20”.

32. Thereafter, Plaintiff was able to identify numerous other eBay sellers that, upon information and belief, are affiliated with the “zhaosh-20” eBay seller and using Defendant’s services.

33. The related eBay sellers were also distributing a large amount of Counterfeit Product.

34. This is the same conduct that formed the basis of the Previous Action and, therefore, Plaintiff failed to take effective preventive measure, if any, to curtail the abuse of its services. Instead, Defendant turned a blind eye to its customers’ illegal conduct in order to profit from their unlawful activities.

35. Defendant’s distribution of Counterfeit Product in the United States constitutes

an illegal use in commerce of the Plaintiff's Registered Trademarks in connection with the sale, offering for sale, or distribution of the Counterfeit Products.

36. The Counterfeit Product distributed by Defendant was not manufactured, authorized, or sponsored by Plaintiff. Thus, consumers will be confused and disappointed by the differences between the Counterfeit Products distributed by Defendant and genuine Plaintiff merchandise manufactured and distributed by Plaintiff.

37. As a result of Defendant's actions, Plaintiff is losing profits from lost sales of genuine product, is suffering a loss of enormous goodwill created in its Plaintiff's Registered Trademarks, and will continue to suffer such loss if Defendant is allowed to continue its illegal activity.

38. Upon information and belief, Defendant has knowingly and willfully engaged in its illicit activities in direct violation of Plaintiff's rights and/or has shown a blatant disregard for the same. For these reasons, this qualifies as an exceptional case under 15 U.S.C. § 1117(a).

39. Plaintiff has suffered irreparable injury as a direct and proximate result of Defendant's wrongful distribution of the Counterfeit Products.

40. Plaintiff has no adequate remedy at law.

41. As proven by the First Action, Defendant's unlawful acts will undoubtedly persist without judicial intervention. As such, Defendant must be restrained and enjoined from further violating Plaintiff's well-established rights in and to the Plaintiff's Registered Trademarks.

FIRST CLAIM FOR RELIEF
(Trademark Counterfeiting, 15 U.S.C. § 1114)

42. Plaintiff hereby realleges and incorporates by reference all prior allegations as set forth in Paragraphs 1 through 41.

43. Defendant has knowingly, intentionally, and without the consent of Plaintiff used in commerce reproductions, counterfeits, and/or copies of the Plaintiff's Registered Trademarks in connection with the importation, storage, and distribution of illicit goods covered by USPTO registrations for the Plaintiff's Registered Trademarks . Such use is likely to: cause confusion or mistake or deceive consumers; cause consumers to believe Defendant's illicit merchandise is affiliated with, sponsored by, authorized or approved by, or is otherwise associated with Plaintiff despite the fact that it is not.

44. Defendant's use of the counterfeit marks was willful and done with the knowledge that the marks are counterfeit, and as such, Defendant' acts constitute willful trademark counterfeiting in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

45. Defendant's acts constitute use in commerce of the Plaintiff's Registered Trademarks.

46. Not only are Defendant directly liable for infringement due to importing, storing, and distributing its Counterfeit Product but since it had both general and specific notice of such illegal activity but continued to provide its importing, storage, and shipping services to the sellers of the Counterfeit Product, Defendant are also contributorily liable for trademark counterfeiting.

47. For the aforementioned reasons, Plaintiff is entitled to: (a) damages for all of Defendant's profits derived from their unlawful conduct and/or Plaintiff's lost profits from sales of genuine goods due to Defendant's conduct, trebled, to the full extent provided under Sections 35(a) and 35(b) of the Lanham Act, 15 U.S.C. § 1117(a)-(b), or alternatively, statutory damages in the amount of up to \$2,000,000 for each mark counterfeited as provided by 15 U.S.C. § 1117(c) of the Lanham Act; and (b) reasonable attorneys' fees, investigative fees, and pre-judgment interest according to 15 U.S.C. § 1117(b).

48. Plaintiff has no adequate remedy at law for Defendant's ongoing wrongful conduct. Plaintiff has been, and absent injunctive relief will continue to be, irreparably harmed by Defendant's actions.

SECOND CLAIM FOR RELIEF
(Trademark Infringement, 15 U.S.C. §1114)

49. Plaintiff hereby realleges and incorporates by reference all prior allegations as set forth in Paragraphs 1 through 41.

50. Defendant has knowingly, intentionally, and without the consent of Plaintiff used in commerce reproductions, counterfeits, and/or copies of the Plaintiff's Registered Trademarks in connection with the importation and distribution of goods covered by USPTO registrations for the Plaintiff's Registered Trademarks . Such use is likely to: cause confusion or mistake or deceive consumers; cause consumers to believe Defendant's illicit merchandise is affiliated with, sponsored by, authorized or approved by, or is otherwise associated with Plaintiff despite the fact that it is not.

51. Defendant's use of the infringing marks was willful and done with the knowledge that the marks are infringing, and as such, Defendant's acts constitute willful trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

52. Defendant's acts constitute use in commerce of the Plaintiff's Registered Trademarks.

53. Not only is Defendant directly liable for infringement due to importing, storing, and distributing its Counterfeit Product but since it had both general and specific notice of such illegal activity but continued to provide its importing and shipping services to the sellers of the Counterfeit Product, Defendant is also contributorily liable for trademark infringement.

54. For the aforementioned reasons, Plaintiff is entitled to: (a) damages for all of

Defendant's profits derived from their unlawful conduct and/or Plaintiff's lost profits from sales of genuine goods due to Defendant's conduct to the full extent provided under Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a); and (b) reasonable attorneys' fees, investigative fees, and pre-judgment interest according to 15 U.S.C. § 1117(b).

55. Plaintiff has no adequate remedy at law for Defendant's ongoing wrongful conduct. Plaintiff has been, and absent injunctive relief will continue to be, irreparably harmed by Defendant's actions.

THIRD CLAIM FOR RELIEF
(Unfair Competition, False Designation of Origin & False Description,
15 U.S.C. §1125(a))

56. Plaintiff hereby realleges and incorporates by reference all prior allegations as set forth in Paragraphs 1 through 41.

57. Defendant's importation and distribution of goods bearing the Plaintiff's Registered Trademarks constitutes use in commerce of false designations of origin and false and misleading descriptions and representations that Defendant's illicit merchandise is affiliated with, sponsored by, authorized or approved by, or is otherwise associated with Plaintiff despite the fact that it is not. As a result of Defendant's unauthorized use of the Plaintiff's Registered Trademarks, the public is likely to be misled and confused as to the source, sponsorship, or affiliation of Defendant's counterfeit merchandise.

58. Defendant's sale, offering for sale, distribution, or advertising of goods bearing the Plaintiff's Registered Trademarks constitutes unfair competition as it is intended to cause confusion and deceive consumers and trades upon the established reputation and goodwill of Plaintiff.

59. Defendant's conduct is willful, intended to reap the benefit of Plaintiff's established goodwill, and violates Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), all to

the severe detriment of Plaintiff.

60. Defendant's acts entitle Plaintiff to damages for all of Defendant's profits derived from their past unlawful conduct and/or for all of Plaintiff's lost profits from lost sales of genuine goods due to Defendant's conduct, trebled, to the full extent provided under Sections 35(a) and 35(b) of the Lanham Act, 15 U.S.C. §1117(a)-(b), or in the alternative to statutory damages under Section 35(c) of the Lanham Act, 15 U.S.C. §1117(c).

61. Plaintiff has no adequate remedy at law for Defendant's ongoing wrongful conduct. Plaintiff has been, and absent injunctive relief will continue to be, irreparably harmed by Defendant's actions.

FOURTH CLAIM FOR RELIEF
(Federal Trademark Dilution, 15 U.S.C. § 1125(c))

62. Plaintiff hereby reallege and incorporate by reference all prior allegations as set forth in Paragraphs 1 through 41.

63. Defendant's use of the Plaintiff's Registered Trademarks or marks confusingly similar thereto in order to sell their products constitutes Defendant's commercial use in commerce of the Plaintiff's Registered Trademarks.

64. The Plaintiff's Registered Trademarks are world famous and distinctive. They achieved such status long prior to Defendant's activities complained of herein.

65. Defendant's use of the Plaintiff's Registered Trademarks constitutes tarnishment of the Plaintiff's Registered Trademarks.

66. Plaintiff is suffering and will continue to suffer irreparable harm from Defendant's dilutive activities.

67. Defendant's acts as aforesaid are diluting the distinctive quality of the Plaintiff's Registered Trademarks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

68. Defendant has intentionally and willfully appropriated the Plaintiff's Registered Trademarks and traded on Plaintiff's reputation.

69. Defendant's wrongful acts of dilution will continue unless enjoined by this Court.

FIFTH CLAIM FOR RELIEF
(Unlawful Importation of Goods Bearing Registered United States Trademarks in Violation of Section 526(a) of the Tariff Act, 19 U.S.C. § 1526(a))

70. Plaintiff hereby re-alleges and incorporates by reference all prior allegations as set forth in Paragraphs 1 through 41.

71. Defendant's acts alleged herein constitute the importation of merchandise which bears imitations of the Plaintiff's Registered Trademarks without Plaintiff's consent, in violation of Section 526(a) of the Tariff Act, 19 U.S.C. § 1526(a).

72. Defendant's use of the infringing marks was willful, intentional, and done with the knowledge that the marks are counterfeit marks, as defined in Section 34(d) of the Lanham Act, 15 U.S.C. § 1116(d).

73. Defendant's acts entitle Plaintiff to damages for all of Defendant's profits derived from their past unlawful conduct and/or for all of Plaintiff's lost profits from lost sales of genuine goods due to Defendant's conduct, trebled, to the full extent provided under Sections 35(a) and 35(b) of the Lanham Act, 15 U.S.C. § 1117(a)-(b), or in the alternative to statutory damages under Section 35(c) of the Lanham Act, 15 U.S.C. § 1117(c).

74. Plaintiff has no adequate remedy at law for Defendant's ongoing wrongful conduct. Plaintiff has been, and absent injunctive relief will continue to be, irreparably harmed by Defendant's actions.

SIXTH CLAIM FOR RELIEF
(Unfair and Deceptive Business Practices, N.Y. Gen. Bus. L. § 349)

75. Plaintiff hereby realleges and incorporates by reference all prior allegations as set forth in Paragraphs 1 through 41.

76. The wrongful conduct of Defendant, including but not limited to, the distribution of Counterfeit Products constitutes materially misleading and deceptive trade practices under New York General Business Law § 349.

77. This wrongful conduct was consumer-oriented within the meaning of Section 349, as it is the intent of Defendant to distribute Counterfeit Product into the marketplace and therefore harm the general consuming public.

78. Because of this deceptive conduct, Plaintiff has been and will continue to be damaged both monetarily and in ways impossible to remedy through monetary judgment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that the Court order the following relief:

I. That the Court enter an injunction ordering that Defendant, their agents, servants, employees, and all other persons in privity or acting in concert with them be enjoined and restrained from:

a) using any counterfeit or infringement of the Plaintiff's Registered Trademarks to identify any goods not authorized by Plaintiff;

b) counterfeiting or infringing the Plaintiff's Registered Trademarks by importing, manufacturing, distributing, selling, offering for sale, advertising, promoting, displaying any products bearing any simulation, reproduction, counterfeit, or copy of the Plaintiff's Registered Trademarks ;

c) using any simulation, reproduction, counterfeit, or copy of the Plaintiff's Registered Trademarks in connection with the importation, promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of any unauthorized products in such fashion as to relate or connect, or tend to relate or connect, such products in any way to Plaintiff, or to any goods sold, manufactured, sponsored or approved by, or connected with Plaintiff,

d) making any statement or representation whatsoever, or using any false designation of origin or false description, or performing any act, which can or is likely to lead the trade or public, or individual members thereof, to believe that any services provided, products manufactured, distributed, sold or offered for sale, or rented by Defendant are in any way associated or connected with Plaintiff;

e) engaging in any other conduct constituting an infringement of the Plaintiff's Registered Trademarks, of Plaintiff's rights in, or to use or to exploit, said trademark, or constituting any weakening of Plaintiff's names, reputations, and goodwill.

II. That Defendant be required to deliver to Plaintiff for destruction all unauthorized materials bearing any of the Plaintiff's Registered Trademarks in association with unauthorized goods and the means for production of same pursuant to 15 U.S.C. § 1118.

III. Requiring Defendant to pay to Plaintiff such damages for all of Defendant's profits derived from their unlawful conduct and/or Plaintiff's lost profits from sales of genuine goods due to Defendant's infringement, counterfeiting, false designation of origin, unfair competition trebled to the full extent provided under Sections 35(a) and 35(b) of the Lanham Act, 15 U.S.C. § 1117(a)-(b), or alternatively, statutory damages in the amount of up to \$2,000,000 for each mark counterfeited as provided by 15 U.S.C. § 1117(c) of the Lanham Act.

IV. Ordering that Defendant compensate Plaintiff for the costs of this action, reasonable attorneys' fees, investigative fees, and pre-judgment interest according to 15 U.S.C. § 1117(b).

V. Plaintiff be awarded their actual damages and attorneys' fees pursuant to N.Y. Gen. Bus. L. § 349.

VI. Defendant be required to pay pre-judgment interest on all damages and profits awards.

VII. Directing that this Court retain jurisdiction of this action for the purpose of enabling Plaintiff to apply to the Court at any time for such further orders and interpretation or execution of any Order entered in this action, for the modification of any such Order, for the

enforcement or compliance therewith and for the punishment of any violations thereof.

VIII. Ordering that pursuant to 11 U.S.C. § 523(a)(6), Defendant be prohibited from a discharge under 11 U.S.C. § 727 for malicious, willful, and fraudulent injury to Plaintiff.

IX. Awarding to Plaintiff such other and further relief as the Court may deem just and proper, together with the costs and disbursements that Plaintiff has incurred in connection with this action.

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Dated: December 22, 2023