

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**LakeSouth Holdings, LLC,**

*Plaintiff,*

v.

**Kohl’s Department Stores, Inc., and  
Kohl’s Illinois, Inc.,**

*Defendants.*

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**Civil Action No. \_\_\_\_\_**

**Jury Trial Demanded**

**ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

COMES NOW Plaintiff LakeSouth Holdings, LLC and files this Original Complaint for patent infringement against Kohl’s Department Stores, Inc. and Kohl’s Illinois, Inc., and alleges as follows:

**NATURE OF THE SUIT**

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

**THE PARTIES**

2. Plaintiff **LakeSouth Holdings, LLC** (“**Plaintiff**” or “**LakeSouth**”) is a Delaware limited liability company with its principal place of business located at P.O. Box 93883, Southlake, Texas 76092, which is in the Northern District of Texas.

3. Defendant **Kohl’s Department Stores, Inc.** (“**Kohl’s Department Stores**”) is a Delaware corporation with its principal place of business at N56 W 17000 Ridgewood Drive, Menomonee Falls, Wisconsin 53051. Kohl’s Department Stores is registered to do business in

Texas and may be served via its registered agent, Corporate Creations Network Inc., 4650 W. Spencer St., Appleton, WI 54914. Among Kohl's Department Stores' business activities includes managing marketing and e-commerce operations for "Kohl's"-branded stores and websites. Kohl's Department Stores is the corporate parent of Kohl's Illinois, Inc.

4. Defendant **Kohl's Illinois, Inc. ("Kohl's Illinois")** is a Nevada corporation with its principal place of business at 4340 Fox Valley Center Drive, Aurora, Illinois 60504. Kohl's Illinois is registered to do business in Texas and may be served via its registered agent, Corporate Creations Network, Inc., 4265 San Felipe, #1100, Houston, TX 77027. Kohl's Illinois is a wholly-owned subsidiary of Kohl's Department Stores, Inc.

5. Unless otherwise noted, Defendants KDS and KI are hereinafter collectively referred to as "**Defendants**" or "**Kohl's**" in this complaint.

#### **JURISDICTION AND VENUE**

6. This action arises under the patent laws of the United States, 35 U.S.C. § 101, *et seq.* This Court's jurisdiction over this action is proper under the above statutes, including 35 U.S.C. § 271, *et seq.*, 28 U.S.C. § 1331 (federal question jurisdiction), and § 1338 (jurisdiction over patent actions).

7. Upon information and belief, Kohl's, directly and/or through subsidiaries, agents, representatives, or intermediaries, has transacted business in this District and has committed and continues to commit and/or induce acts of patent infringement in this District. Thus, venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b).

8. Upon information and belief, Kohl's has conducted and does conduct substantial business in this forum, directly and/or through subsidiaries, agents, representatives, or intermediaries, such substantial business including but not limited to: (i) at least a portion of the infringements alleged herein; (ii) purposefully and voluntarily placing one or more infringing

products into the stream of commerce with the expectation that they will be purchased by consumers in this forum; or (iii) regularly doing or soliciting business, engaging in other persistent courses of conduct, or deriving substantial revenue from goods and services provided to individuals in Texas and in this judicial district. Thus, Kohl's is subject to this Court's specific and general personal jurisdiction pursuant to due process and the Texas Long Arm Statute. Venue is proper in the Northern District of Texas pursuant to 28 U.S.C. §1391 and 28 U.S.C. § 1400(b).

### **THE PATENTS AT ISSUE**

9. Mr. Gregory G. Kuelbs is a Texas resident and a prolific inventor. Mr. Kuelbs is a named inventor on more than 40 patents. Mr. Kuelbs lives in Westlake, Texas, which is in the Northern District of Texas.

10. This cause of action asserts infringement of United States Patent No. 6,612,713 ("the '713 Patent") and United States Patent No. 8,794,781 ("the '781 Patent") (collectively, "the Asserted Patents").

11. The '781 Patent, entitled "Umbrella Apparatus," duly and legally issued on August 5, 2014, from U.S. Patent Application No. 10/650,537, filed on August 28, 2003, naming as inventor Mr. Kuelbs. A true and correct copy of the '781 Patent is attached hereto as **Exhibit A** and is incorporated by reference.

12. The '713 Patent, entitled "Umbrella Apparatus," duly and legally issued on September 2, 2003, from U.S. Application No. 10/068,424, filed on February 7, 2002, naming as inventor Mr. Kuelbs. After an *inter partes* reexamination proceeding, the U.S. Patent and Trademark Office issued a reexamination certificate on September 23, 2013. A true and correct copy of the '713 Patent is attached hereto as **Exhibit B** and is incorporated by reference. A true

and correct copy of the reexamination certificate is attached as **Exhibit C** and is incorporated by reference.

13. Kohl's has not obtained a license to the Asserted Patents.

14. Kohl's does not have LakeSouth's permission to make, use, sell, offer to sell, or import products that are covered by one or more claims of the Asserted Patents.

15. Multiple companies, in and outside the context of litigation, have obtained patent licenses to the '713 Patent and '781 Patent. The licensees have supplied and/or are supplying solar-powered outdoor and patio umbrellas, licensed under the Asserted Patents, to major retailers such as Home Depot, Target.com, Wal-Mart, Sears, and Bed Bath & Beyond.

16. Kohl's needs to obtain a license to the Asserted Patents and cease its ongoing infringement of LakeSouth's patent rights.

17. The '713 Patent has been recently litigated in the Northern District of Texas. On August 10, 2015 in the *LakeSouth Holdings, LLC v. Ace Evert, Inc., et al.*, No. 3:14-cv-1348 (N.D. Texas) case, the Court issued a claim construction order construing various claims terms of the '713 Patent. A true and correct copy of the claim construction order (Dkt No. 95) is attached hereto as **Exhibit D**.

18. Plaintiff LakeSouth is the owner and assignee of all rights, title, and interest in and under the '713 Patent and '781 Patent.

19. LakeSouth has standing to sue for infringement of the '713 Patent and the '781 Patent.

20. On information and belief, to the extent any marking was required by 35 U.S.C. § 287, LakeSouth and all predecessors in interest to the '713 Patent and '781 Patent complied with any such requirements.

**GENERAL ALLEGATIONS**

21. Upon information and belief, Kohl's purchases various patio and outdoor solar-powered umbrellas that it uses, offers to sell, sells, distributes, and/or imports in the United States. Among these solar-powered umbrellas are umbrellas marketed under the "Sonoma" brand name. "Sonoma" is a Kohl's brand.

22. Kohl's uses, has used, offers to sell, has offered to sell, sells, has sold, imports, and/or has imported solar-powered umbrellas that include lights and a solar panel. These umbrellas infringe one or more claims of the Asserted Patents and include without limitation the **"Sonoma Goods for Life Cantilever LED Solar Umbrella," "Sonoma Outdoors Crank & Tilt Solar LED Patio Umbrella,"** and any and all, current and prior, reasonably similar solar-powered umbrellas having the same or equivalent functions and features to the extent relevant to the claims of the Asserted Patents ("the Accused Umbrellas").

23. The Accused Umbrellas are and have been sold, offered for sale, and/or marketed by Kohl's through its website at [www.kohls.com](http://www.kohls.com), the Kohl's mobile application for phone and tablet devices, and/or Kohl's retail stores, including stores in the Northern District of Texas.

24. Among the Accused Umbrellas that Kohl's uses, offers for sale, sells, and/or imports are, without limitation, the **"Sonoma Goods for Life Cantilever LED Solar Umbrella"** (including any and all, current and prior, reasonably similar solar-powered umbrellas having the same or equivalent functions and features and/or that are or were named or identified as "Sonoma Outdoors 10.5 ft. Offset Umbrella," "Sonoma Outdoors Crank and Tilt Cantilever Umbrella," "Sonoma Outdoors Cantilever Umbrella," "Solar Offset Umbrella"; SKU #61024125, SKU #94737312, SKU #91394591, SKU #93336538, Item UPC No. 400947373128, Style #YJAF-016-SL, #YJAF-016-SLE, #YJAF-016-SL-BN, YJAF-016-SL-

BNE, YJAF-016-SL-RD-14E). This umbrella is pictured and described on Kohl's online store as shown in Figures 1, 2, and 3 which follow:

The screenshot displays the Kohl's website interface for a product page. At the top, the Kohl's logo is on the left, a search bar in the center, and user account options (SIGN IN, LISTS, REGISTRIES) and shopping bag information (SHOPPING BAG \$0.00, CHECK OUT) on the right. Below the header is a navigation menu with categories like 'Today's Deals', 'For the Home', 'Bed & Bath', etc. The main product title is 'SONOMA Goods for Life™ Cantilever LED Solar Umbrella'. The product image shows a large, beige, cantilever-style umbrella with a black frame and base. To the right of the image, the price is listed as 'SALE \$349.99' with the original price of '\$699.99' crossed out. A shipping surcharge of '\$30.00' is also noted. Customer reviews are shown as '5 stars' with '1 Review' and '12 Questions & 4 Answers'. Below the reviews is a quantity selector (set to 1) and buttons for 'ADD TO REGISTRY', 'ADD TO LIST', and 'FIND IN STORE'. A shipping/pickup section offers 'SHIP' and 'PICK UP IN STORE' options, with a green 'ADD TO BAG' button. The 'PRODUCT DETAILS' section includes a description: 'Give gatherings more glow with this SONOMA Goods for Life LED Solar Powered Cantilever umbrella.' and a 'Gift Givers' note. A 'PRODUCT FEATURES' list includes: 'Crank and tilt system', 'Fade-resistant olefin construction', 'Adjustable full-circle design', and 'Battery-recharging panel'. 'PRODUCT DETAILS' list: '12'H x 10'W x 10'D', 'Umbrella stand included', 'Umbrella: olefin', 'Stand & frame: steel', 'Assembly required', and 'Manufacturer's 1-year limited warranty'. A disclaimer at the bottom states: 'Promotional offers available online at Kohls.com may differ from those offered in Kohl's stores.'

Figure 1 – “Sonoma Goods for Life Cantilever LED Solar Umbrella” at <http://www.kohls.com/product/prd-2322690/sonoma-outdoors-cantilever-led-solar-umbrella.jsp> (accessed 4/2/16)

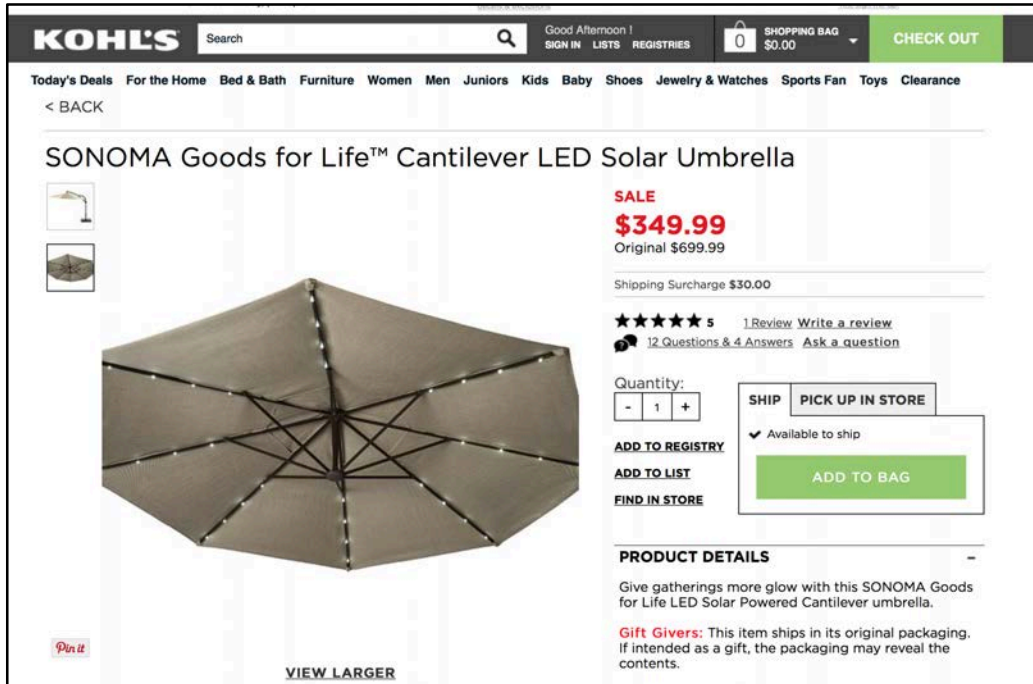


Figure 2 – “Sonoma Goods for Life Cantilever LED Solar Umbrella” at <http://www.kohls.com/product/prd-2322690/sonoma-outdoors-cantilever-led-solar-umbrella.jsp> (accessed 4/2/16)



Figure 3 – “Sonoma Goods for Life Cantilever LED Solar Umbrella” at Kohl’s iPhone app (accessed 4/4/16)

25. The “**Sonoma Goods for Life Cantilever LED Solar Umbrella**” consists of at least an umbrella canopy with multiple rib members, umbrella pole, crank system, umbrella base, solar rechargeable power unit, and LED (light emitting diodes) lighting system. Specifically, the umbrella has the following:

- a. An umbrella canopy that has at least a fabric canopy material and multiple rib members that extend radially. The umbrella canopy is connected to the umbrella pole via a hinge. Each rib member has a recessed channel running along its length through which runs the electrical wires leading to and from the LED lights.
- b. An umbrella pole that is connected to the umbrella base. The umbrella base is a support structure for the umbrella pole.
- c. A crank system that comprises a crank housing and a crank. The crank housing is coupled to the umbrella pole. The crank is attached to and external to the crank housing. Turning the crank will open and close the umbrella canopy.
- d. A solar rechargeable power unit (also referred to as a “Solar Energy Receiver”) that collects solar energy, converts the solar energy to electrical energy, stores the electrical energy via a rechargeable electrical power system, and transmits power to the umbrella’s lighting system. The power unit has a disc-shaped housing with a rounded top. It is located above the umbrella canopy and above the umbrella pole. The power unit is detachable from the pole. The power unit has at least a solar cell, rechargeable batteries, a circuit board, and related electrical wiring. The power unit has an upper portion housing a solar energy system and a lower portion housing a rechargeable electrical power system. The upper portion of the power unit contains a



solar cell that collects and converts solar energy into electrical energy. The lower portion of the power unit contains a rechargeable electrical power system consisting of rechargeable batteries, circuit board, and related electrical wiring. The solar cell is electrically connected via wires to the rechargeable electrical power system such that solar energy collected and converted into electrical energy recharges the rechargeable electrical power system. The lower portion of the power unit also has a plug hole whereby, when an electrical plug is inserted, power is transmitted from the power unit to the LED lights in the lighting system.

- e. A lighting system with 32 LED lights that are electrically connected to the power unit and mounted on each of the rib members of the umbrella canopy. Each LED light has a smooth translucent cover and is partially recessed within the corresponding rib member. The electrical wires leading to and from the LED lights are fully recessed within each corresponding rib member. The LED lights are electrically connected to the rechargeable electrical power system of the power unit.

26. Among the Accused Umbrellas that Kohl's uses, offers for sale, sells, and/or imports are, without limitation, the **“Sonoma Outdoors Crank & Tilt Solar LED Patio Umbrella”** (including any and all, current and prior, reasonably similar solar-powered umbrellas having the same or equivalent functions and features and/or that are or were named or identified as “SKU #93352333, Item UPC No. 400933523339, Style No. TJAUL-009P12-FGE/FGE/RDE/CSE). This umbrella is described in Figure 4 which follows:

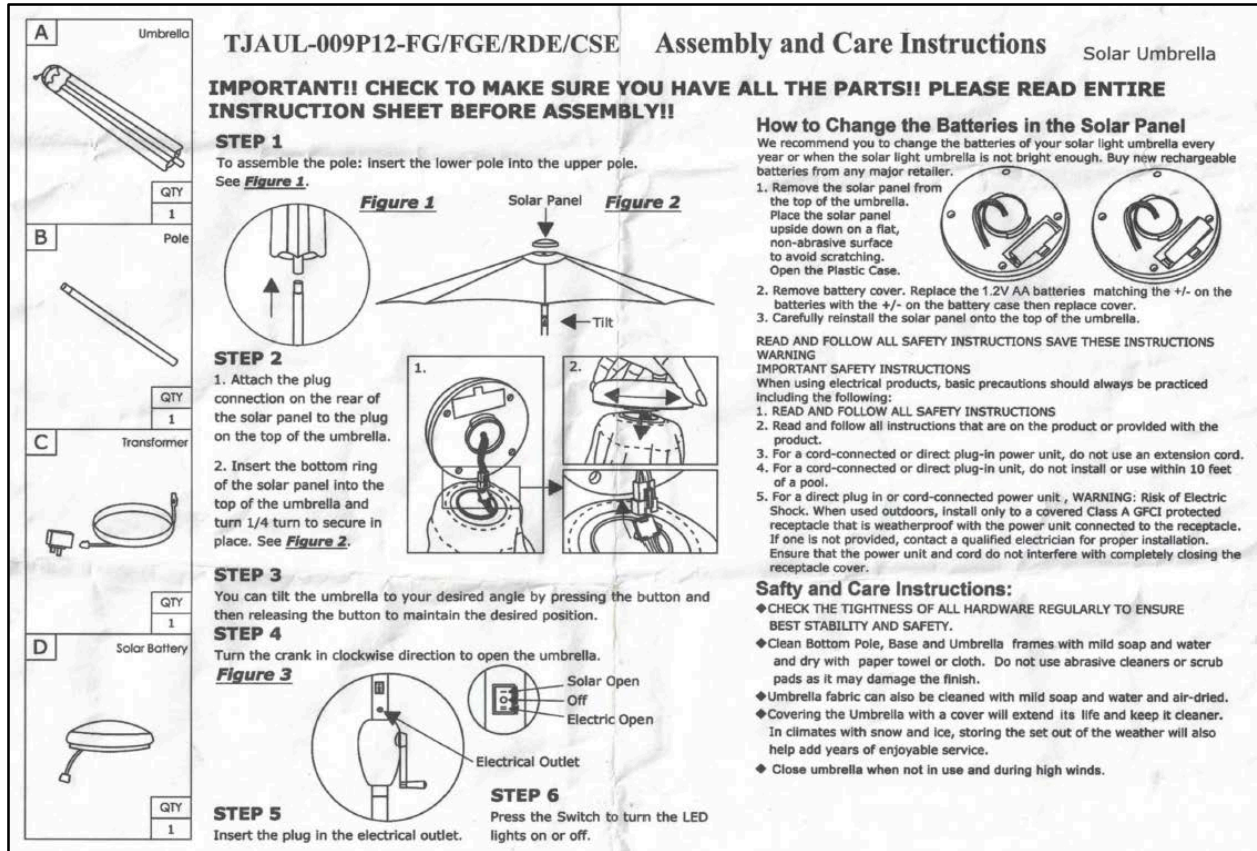


Figure 4 – “Sonoma Outdoors Crank & Tilt Solar LED Patio Umbrella”

27. The “Sonoma Outdoors Crank & Tilt Solar LED Patio Umbrella” consists of at least an umbrella canopy with multiple rib members, umbrella pole, crank system, solar rechargeable power unit, and LED (light emitting diodes) lighting system. Specifically, the umbrella has the following:

- a. An umbrella canopy that has at least a fabric canopy material and multiple rib members that extend radially. The umbrella canopy is connected to the umbrella pole via a hinge. Each rib member has a recessed channel running along its length through which runs the electrical wires leading to and from the LED lights.

- b. An umbrella pole that is intended to be used with a base support that acts a support structure for the pole, including but not limited to a table, the ground, or other support structure adapted to receive the pole.
- c. A crank system that comprises a crank housing and a crank. The crank housing is coupled to the umbrella pole. The crank is attached to and external to the crank housing. Turning the crank will open and close the umbrella canopy.
- d. A solar rechargeable power unit that collects solar energy, converts the solar energy to electrical energy, stores the electrical energy via a rechargeable electrical power system, and transmits power to the umbrella's lighting system. The power unit has a discus-shaped housing. It is located above the umbrella canopy and above the umbrella pole. The power unit is detachable from the pole. The power unit has at least a solar cell, rechargeable batteries, a circuit board, and related electrical wiring. The power unit has an upper portion housing a solar energy system and a lower portion housing a rechargeable electrical power system. The upper portion of the power unit contains a solar cell that collects and converts solar energy into electrical energy. The lower portion of the power unit contains a rechargeable electrical power system consisting of rechargeable batteries, circuit board, and related electrical wiring. The solar cell is electrically connected via wires to the rechargeable electrical power system such that solar energy collected and converted into electrical energy recharges the rechargeable electrical power system. The lower portion of the power unit also has a power wire jack whereby, when a power wire is inserted, power is transmitted from the power unit to the LED lights mounted on the rib members.

e. A lighting system with multiple LED lights that are electrically connected to the power unit and mounted on each of the rib members of the umbrella canopy. Each LED light that is mounted on a rib member has a smooth translucent cover and is partially recessed within the corresponding rib member. The electrical wires leading to and from the LED lights are fully recessed within each corresponding rib member. The LED lights are electrically connected to the rechargeable electrical power system of the power unit.

28. Further discovery may reveal additional infringing products and/or models.

29. Upon information and belief, the Accused Umbrellas are offered for sale and sold within the Northern District of Texas.

30. Kohl's has infringed and continues to infringe (literally and/or under the doctrine of equivalents), directly, indirectly, and/or through subsidiaries, agents, representatives, or intermediaries, one or more claims of the Asserted Patents including at least Claim 2 of the '713 Patent and Claim 1 of the '781 Patent by using, importing, testing, supplying, causing to be supplied, selling, and/or offering for sale in the United States the Accused Umbrellas.

31. Kohl's customers have infringed and continue to infringe the '713 Patent and the '781 Patent by using the Accused Umbrellas purchased from Kohl's. Through its retail stores, online store, phone and tablet applications, product manuals, and/or sales and marketing activities, Kohl's solicits, instructs, encourages, and aids and abets its customers to purchase and use the Accused Umbrellas, including to use the Accused Umbrellas with a base support.

32. Kohl's customers infringe the '713 Patent by using certain Accused Umbrellas (those that are not supplied with a base support) in combination with a base support including but not limited to an umbrella base, table, or the ground to support positioning the Accused

Umbrellas in an upright position. The Accused Umbrellas constitute a material part of the combination, and Kohl's has known and still knows its Accused Umbrellas are especially designed, made and/or adapted for use in a way that infringes one or more claims of the '713 Patent.

33. Further, Kohl's Accused Umbrellas are not a staple article or commodity of commerce suitable for substantial noninfringing uses. For example, the Accused Umbrellas are umbrellas, designed to be used as umbrellas, and have no substantial noninfringing use as something other than an umbrella. Kohl's has not advertised, marketed, promoted, or represented the Accused Umbrellas as having any use other than as umbrellas.

34. On information and belief, Kohl's actions have been with specific intent to cause infringement or Kohl's has been willfully blind to the resulting infringement because Kohl's has had actual knowledge of the '713 Patent and/or the '781 Patent and knowledge that its acts were inducing infringement of the Asserted Patents since before the filing of this action.

35. Kohl's direct and indirect infringement of the '713 Patent and the '781 Patent has been willful.

36. On information and belief, Kohl's has known about World Factory, Inc. ("World Factory"), the original assignee and now a non-exclusive licensee of the Asserted Patents, since late February 2014.

37. In a letter dated February 21, 2014, with a subject line titled "Solar Powered Umbrellas," World Factory, through its attorney Max Ciccarelli, informed Kohl's about several patents, including the '713 Patent.

38. The February 21, 2014 letter was addressed to Kevin Mansell, who was and is Chairman, President, and Chief Executive Officer of Kohl's Corp. and Kohl's Department Stores, Inc.

39. The February 21, 2014 letter enclosed a copy of the Reexamination Certificate for U.S. Patent No. 6,612,713.

40. Kohl's received World Factory's February 21, 2014 letter.

41. Kohl's received World Factory's February 21, 2014 letter via Federal Express.

42. Kohl's received World Factory's February 21, 2014 letter no later than March 1, 2014.

43. Before the filing of this action, Kohl's had knowledge of the contents of World Factory's February 21, 2014 letter.

44. Kohl's has known about World Factory since the date that it received World Factory's February 21, 2014 letter.

45. Mr. Mansell received World Factory's February 21, 2014 letter.

46. Mr. Mansell read World Factory's February 21, 2014 letter.

47. Before the filing of this action, Mr. Mansell had knowledge of the contents of World Factory's February 21, 2014 letter.

48. Mr. Mansell received World Factory's February 21, 2014 letter no later than March 1, 2014.

49. Kohl's has known about the '713 Patent since the date that it received World Factory's February 21, 2014 letter.

50. Mr. Mansell has known about the '713 Patent since the date that he received World Factory's February 21, 2014 letter.

51. In the February 21, 2014 letter, World Factory informed Kohl's and Mr. Mansell that the U.S. Patent Office issued a Reexamination Certificate for U.S. Patent 6,612,713 on September 23, 2013.

52. In the February 21, 2014 letter, World Factory informed Kohl's and Mr. Mansell that World Factory's patent portfolio provided broad and strong protection in the field of solar powered umbrellas and that there were additional pending applications.

53. In the February 21, 2014 letter, World Factory informed Kohl's and Mr. Mansell that World Factory was manufacturing solar lighted umbrellas for retailers in the United States.

54. In the February 21, 2014 letter, World Factory informed Kohl's and Mr. Mansell that World Factory was interested in partnering with select manufacturers, importers, and retailers either by providing complete solar powered umbrellas or by selectively licensing its technology.

55. In the February 21, 2014 letter, World Factory informed Kohl's and Mr. Mansell that if Kohl's was interested in purchasing solar powered umbrellas from World Factory, then Kohl's should contact John S. Kuelbs at World Factory. Mr. Kuelbs' contact information was provided in the letter.

56. In the February 21, 2014 letter, World Factory informed Kohl's and Mr. Mansell that if Kohl's was interested in licensing the World Factory patent portfolio, then Kohl's should contact World Factory's attorney and author of the letter, Max Ciccarelli. Mr. Ciccarelli's contact information was provided in the letter.

57. After receiving the February 21, 2014 letter from World Factory, after learning of the '713 Patent, after receiving a copy of the Reexamination Certificate for the '713 Patent, after learning that World Factory was manufacturing solar lighted umbrellas, after learning that World

Factory was willing to discuss selling solar powered umbrellas to Kohl's, and after learning that World Factory was willing to discuss licensing to Kohl's the World Factory patent portfolio, which included the '713 Patent, Kohl's used, sold, offered to sell, and/or imported the Accused Umbrellas, which were supplied by vendors other than World Factory.

58. After receiving the February 21, 2014 letter from World Factory, Kohl's chose not to use World Factory as a vendor of solar-powered umbrellas.

59. After receiving the February 21, 2014 letter from World Factory, Kohl's has not obtained a patent license to the '713 Patent or the '781 Patent from World Factory or from LakeSouth, the current owner of the Asserted Patents.

60. Kohl's did not respond to World Factory's February 21, 2014 letter.

61. Kohl's ignored World Factory's February 21, 2014 letter.

62. Mr. Mansell did not respond to World Factory's February 21, 2014 letter.

63. Mr. Mansell ignored World Factory's February 21, 2014 letter.

64. Kohl's had knowledge of the '713 Patent before the filing of this action.

65. Kohl's had knowledge of the the '781 Patent before the filing of this action.

66. Despite its knowledge of the '713 Patent and the '781 Patent, Kohl's has used, sold, offered for sale, and/or imported into the United States products covered by one or more claims of the Asserted Patents, including the Accused Umbrellas. Kohl's infringement of the Asserted Patents has been willful and intentional because it has continued its acts of infringement with knowledge of the Asserted Patents and despite an objectively high likelihood its actions constituted infringement of a valid patent.

67. LakeSouth has been and continues to be damaged as a result of Kohl's infringing conduct. Kohl's is therefore liable to LakeSouth in an amount that adequately compensates



LakeSouth for Kohl's infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

68. Kohl's failed to obtain permission from LakeSouth to use, make, offer to sell, sell, or import products incorporating the inventions claimed in the Asserted Patents.

69. For each count of infringement listed below, LakeSouth incorporates and realleges the allegations contained in the preceding paragraphs above including these General Allegations as if fully set forth in each count of infringement.

**Count I – INFRINGEMENT OF THE '781 PATENT**

70. Kohl's has been and is now directly infringing the '781 Patent in violation of 35 U.S.C. § 271(a) by using, selling, offering for sale, and/or importing into the United States products that are covered by at least Claim 1 of the '781 Patent, including but not limited to the Accused Umbrellas. Kohl's direct infringement of the '781 Patent is willful.

71. In addition, Kohl's has been and is now indirectly infringing the '781 Patent in violation of 35 U.S.C. § 271(b) by actively inducing its customers to directly infringe the '781 Patent. For example, Kohl's sells the Accused Umbrellas to its customers for the express purpose of having its customers use the Accused Umbrellas in violation of 35 U.S.C. § 271(a). Through its retail stores, online store, phone and tablet applications, product manuals, and/or sales and marketing activities, Kohl's solicits, instructs, aids and abets, and encourages its customers to purchase and use the Accused Umbrellas. Kohl's inducement of infringement of the '781 Patent is willful.

72. On information and belief, Kohl's has known about the '781 Patent since before the filing of this action. Kohl's acted despite an objectively high likelihood that its actions constituted infringement of a valid patent. Kohl's was aware that its actions would cause

infringement of the '781 Patent and acted with intent to encourage direct infringement of the '781 Patent.

73. As a result of Kohl's infringement of the '781 Patent, LakeSouth has suffered and is owed monetary damages that are adequate to compensate it for the infringement under 35 U.S.C. § 284, but in no event less than a reasonable royalty.

### **Count II – INFRINGEMENT OF THE '713 PATENT**

74. Kohl's has been and is now directly infringing the '713 Patent in violation of 35 U.S.C. § 271(a) by using, selling, offering for sale, and/or importing into the United States products that are covered by at least Claim 2 of the '713 Patent, including but not limited to certain Accused Umbrellas such as the **“Sonoma Goods for Life Cantilever LED Solar Umbrella”** (including any and all, current and prior, reasonably similar solar-powered umbrellas having the same or equivalent functions and features and/or that are or were named or identified as “Sonoma Outdoors 10.5 ft. Offset Umbrella,” “Sonoma Outdoors Crank and Tilt Cantilever Umbrella,” “Sonoma Outdoors Cantilever Umbrella”; SKU #61024125, SKU #94737312, Style #YJAF-016-SL-BN, YJAF-016-SL-BNE, YJAF-016-SL-RD-14E). Kohl's direct infringement of the '713 Patent is willful.

75. Kohl's has been and is now indirectly infringing the '713 Patent in violation of 35 U.S.C. § 271(b) by actively inducing its customers to directly infringe the '713 Patent including at least Claim 2 of the '713 Patent. For example, Kohl's sells the Accused Umbrellas to its customers for the express purpose of having its customers use the Accused Umbrellas in violation of 35 U.S.C. § 271(b). Through its retail stores, online store, phone and tablet applications, product manuals, and/or sales and marketing activities, Kohl's solicits, instructs, aids and abets, and encourages its customers to purchase and use the Accused Umbrellas,

including to use the Accused Umbrellas with a base support and/or umbrella base. Kohl's inducement of infringement of the '713 Patent is willful.

76. In addition to and/or in the alternative, Kohl's has been and is now contributorily infringing the '713 Patent, including at least Claim 2 of the '713 Patent, in violation of 35 U.S.C. § 271(c) by offering to sell, selling, and/or importing into the United States the Accused Umbrellas, which are a component of a patented machine, manufacture, combination, or composition, the Accused Umbrellas constituting a material part of the invention, and Kohl's knowing the same to be especially made or especially adapted for use in a manner that infringes one or more claims of the '713 Patent. Further, the Accused Umbrellas are not a staple article or commodity of commerce suitable for substantial noninfringing use. Kohl's contributory infringement of the '713 Patent is willful.

77. On information and belief, Kohl's has known about the '713 Patent since late February 2014. Kohl's acted despite an objectively high likelihood that its actions constituted infringement of a valid patent. Kohl's was aware that its actions would cause infringement of the '713 Patent and acted with intent to encourage direct infringement of the '713 Patent.

78. As a result of Kohl's infringement of the '713 Patent, LakeSouth has suffered and is owed monetary damages that are adequate to compensate it for the infringement under 35 U.S.C. § 284, but in no event less than a reasonable royalty.

#### **DEMAND FOR A JURY TRIAL**

79. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, LakeSouth demands a trial by jury on all issues triable of right by a jury.

**PRAYER FOR RELIEF**

80. WHEREFORE, LakeSouth respectfully requests that this Court enter judgment in its favor and grant the following relief:

81. A judgment that Kohl's has directly infringed one or more claims of the '713 Patent and '781 Patent;

82. A judgment that Kohl's has indirectly infringed one or more claims of the '713 Patent and '781 Patent;

83. A judgment and order requiring Kohl's to pay LakeSouth past and future damages under 35 U.S.C. § 284, including for supplemental damages arising from any continuing post-verdict infringement for the time between trial and entry of the final judgment with an accounting, as needed, as provided by 35 U.S.C. § 284;

84. A judgment and order finding that this is an exceptional case and awarding LakeSouth its reasonable attorneys' fees pursuant to 35 U.S.C. § 285;

85. A judgment and order requiring Kohl's to pay LakeSouth reasonable ongoing royalties on a going-forward basis after final judgment;

86. A judgment and order requiring Kohl's to pay LakeSouth pre-judgment and post-judgment interest on the damages award;

87. A judgment and order requiring Kohl's to pay LakeSouth's costs; and

88. Such other and further relief as the Court may deem just and proper.

Dated: April 15, 2016

Respectfully submitted,



**ERIC M. ALBRITTON, ATTORNEY-IN-CHARGE**

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