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**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION**

KINEKT DESIGN, LLC,
:
:
:
Plaintiff,
:
:
vs.
:
:
ONE MOMENT IN TIME, LLC,
:
MORMON GIFT SHOP, LATTER DAY
:
PRODUCTS, LLC d/b/a LATTER DAY
:
PRODUCTS, LDS PRODUCTS and
:
LDS BOOKSTORE, CTR RING SHOP,
:
CTR RING SALES, BOOKS AND
:
THINGS, KENNETH HALTERMAN
:
a/k/a K. ROCKY HALTERMAN,
:
MICHAEL LAMB, BRANDON YOUNG,
:
BRYCE MORTIMER and LYLE
:
MORTIMER,
:
Defendants.
:

CASE NO.

COMPLAINT

COMPLAINT FOR PATENT, TRADEMARK AND COPYRIGHT INFRINGEMENT

Plaintiff, Kinect Design, LLC, by and through its attorneys, by way of Complaint against the Defendants, One Moment In Time, LLC, Mormon Gift Shop, Latter Day Products, LLC d/b/a LDS Products and LDS Bookstore, CTR Ring Shop, CTR Ring Sales, Books and Things, Kenneth Halterman a/k/a K. Rocky Halterman, Michael Lamb, Brandon Young, Bryce Mortimer and Lyle Mortimer, says as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement under 35 U.S.C. §271, et seq., trademark infringement under 15 U.S.C. §1114, false advertising and false designation of origin under 15 U.S.C. §1125, trademark dilution under 15 U.S.C. §1117, copyright infringement under 17 U.S.C. 501, et seq., deceptive trade practices in violation of §13-11a-1, et seq. of the Utah Code and various claims arising under the common law of Utah.

2. The Court has subject matter jurisdiction over this action pursuant to the provisions of 15 U.S.C. §1121, 28 U.S.C. §1331 and 28 U.S.C. §1338. The Court has supplemental jurisdiction over the State law claims under 28 U.S.C. §1367 because the state law claims form part of the same case or controversy, are integrally related to the federal claims and arise from a common set of facts.

3. This Court has personal jurisdiction over the Defendants because Defendants reside and/or are located within this judicial district, Defendants direct their business activities towards, and conduct business with, consumers within this judicial district through fully interactive, commercial Internet websites, and the products that are the subject of this action were, and continue to be, sold to consumers within this judicial district.

4. Venue is proper in this judicial district under 28 U.S.C. §1391, as Defendants reside within this judicial district and a substantial part of the events giving rise to the claims occurred in this district, in that Defendants have sold, and continue to sell, products that infringe upon Plaintiff's patent and trademark within this district and cause Plaintiff harm within this district.

THE PRODUCT, PATENT, TRADEMARK AND COPYRIGHT

5. Kinect is the inventor and designer of a piece of jewelry known as the "Gear Ring." The Gear Ring is a kinetic ring containing micro-precision gears that turn when the outer rims are spun, and is constructed using only high-quality matte stainless steel. Kinect launched its Gear Ring to the public on February 1, 2010.

6. On June 7, 2011, the United States Patent and Trademark Office duly and legally issued United States Design Patent No. D639,199 (hereinafter referred to as the "Patent") to Glen Liberman and Ben Hopson for the design of an ornamental gear ring (hereinafter referred to as the "Gear Ring®"). Mr. Hopson assigned all right, title and interest to the Patent to Kinect Design, LLC. A photographic exemplar of the Gear Ring® is attached hereto as "**Exhibit A**" and the Patent is attached hereto as "**Exhibit B**."

7. Since the events complained of in this Complaint, Plaintiff has also obtained a utility patent for the Gear Ring, United States Utility Patent Number US20120090356 (Rotational education entertainment and therapeutic device) from the United States Patent and Trademark Office.

8. Plaintiff has placed a notice of said Patent on all marketing and other informational material related to the Gear Ring®.

9. On June 12, 2011, the United States Patent and Trademark Office duly and legally issued trademark Registration Number 4157820 to Kinect Design, LLC for the Gear Ring®

(hereinafter referred to as the “Trademark”). A copy of the Gear Ring Trademark is attached hereto as “**Exhibit C**”. On May 1, 2012, the United States Patent and Trademark Office also duly and legally issued trademark Registration Number 4134362 to Kinect Design, LLC for “Kinect®”.

10. Plaintiff has also submitted the Gear Ring® registered trademark to the United States Customs and Border Protection (“CBP”), Intellectual Property Rights Branch, and was assigned CBP Recordation Number TMK-12-00687 effective July 6, 2012, as well as submitted the Gear Ring® mark and the Kinect® mark pursuant to the WIPO Madrid Protocol.

11. On August 31, 2012, Plaintiff obtained a registered copyright, Registration Number TX0007566733, through the United States Copyright Office of all the content contained on Kinectdesign.com, which includes images of the Gear Ring® (hereinafter referred to as the “Copyright”). A copy of the copyright is attached hereto as “**Exhibit D**”.

12. The “Gear Ring” Registration constitutes prima facie evidence of the validity of the Gear Ring mark, of Plaintiff’s ownership of that mark and of Plaintiff’s exclusive right to use the “Gear Ring” mark.

13. Since 2010, Plaintiff has exclusively and continuously used the Gear Ring mark and images in interstate commerce to identify its patented product and to distinguish that product from the goods made, sold or offered by others by, among other things, prominently displaying the mark on its products, on its Internet website and on advertising materials promoting its patented product. The mark indicates to the public that goods and services provided under the Gear Ring mark originate with, and are provided exclusively by, Plaintiff.

14. Plaintiff has extensively marketed and promoted the “Gear Ring” for many years, utilizing various electronic and print media, in order to build the goodwill and reputation of the Gear Ring mark in the United States and around the world.

15. Plaintiff adheres to strict quality standards in the manufacture of its jewelry, and prides itself on the uniqueness of its patented product, the superiority of materials used in its manufacturing and the attention to detail in its construction.

16. As a result, Plaintiff’s mark has attained widespread and favorable public recognition, and the public has come to associate the Gear Ring mark with excellent workmanship and jewelry of the highest quality.

17. In addition, as a result of Plaintiff’s longstanding use and promotional efforts, as well as the quality of its products, the Gear Ring mark has become a distinctive mark that symbolizes substantial goodwill, and the public relies on that mark to identify and distinguish Plaintiff’s jewelry.

18. The Gear Ring mark and Gear Ring patent therefore have significant value and the goodwill associated with them represents a valuable business asset.

19. Because of the uniqueness of Plaintiff’s product, and to ensure the integrity of the materials used and construction of the Gear Ring, Plaintiff sells the Gear Ring exclusively through its Internet website and through telephone orders. It is critical to Plaintiff’s business to maintain the integrity of its top-notch goods and customer service and, as a result, no third party has ever been given authority or license to sell, re-sell, wholesale, manufacture, distribute and/or duplicate the Gear Ring product, and the Gear Ring is not available in any retail stores or on any third-party websites.

20. Plaintiff has expended a significant amount of time, money and other resources to develop, produce, advertise and otherwise promote the Gear Ring, and has taken any and all steps necessary to protect its rights and interests in and to the Gear Ring, both in this country and internationally.

THE PARTIES

21. Plaintiff, Kinect Design, LLC (hereinafter referred to as “Kinect” or the “Plaintiff”) is a limited liability company of the State of New Jersey with its principal place of business located at 184 South Livingston Avenue, Suite 9-239, Livingston, New Jersey 07039.

22. Defendant, One Moment In Time, LLC (hereinafter referred to as “Defendant OMT”), is manufacturer and distributor of LDS (Latter Day Saint) gifts, jewelry and other products, including CTR rings. A CTR ring is a symbol of the Mormon faith which stands for “Choose the Right.” Defendant OMT acts as a wholesaler of these CTR rings and, upon information and belief, either manufactures them and/or purchases them in bulk, then sells and distributes them to various other companies and entities.

23. One of the products offered for sale by Defendant OMT is a CTR “gear ring” identical to Plaintiff’s patented Gear Ring®, the only difference being the inscription “CTR” on the ring.

24. Defendant, Mormon Gift Shop (hereinafter referred to as “Defendant MGS”), is, upon information and belief, owned by, and affiliated with, Defendant OMT. Defendant OMT/Defendant MGS owns and operates the websites known as Mormongifts.com and Mormongiftshop.com.

25. Defendant Kenneth Halterman a/k/a K. Rocky Halterman (hereinafter referred to as “Defendant Halterman”), is the Manager and Registered Agent of Defendant OMT. However,

Defendant Michael Lamb is listed as the contact person for Defendant OMT and Defendant MGS.

26. Defendant, Latter Day Products, LLC d/b/a Latter Day Products, LDS Products and LDS Bookstore (hereinafter referred to as “Defendant LDP”), operates and manages websites which sell CTR rings and LDS gifts and jewelry, including LatterDayProducts.com, LDSBookstore.com, CTRRingShop.com and LDSJewelry.com, among others. Defendant LDP markets itself as a provider of “One Moment in Time” brand jewelry, and offers One Moment In Time CTR “gear rings” for retail sale on its various websites which are identical to Plaintiff’s patented Gear Ring®, and which have been purchased or otherwise acquired from Defendant OMT.

27. Defendant Brandon Young (hereinafter referred to as “Defendant Young”) is the owner of Defendant LDP and its websites.

28. Defendant, CTR Ring Sales (hereinafter referred to as “Defendant CTR Sales”), is another provider of One Moment In Time CTR rings, and owns and operates the website known as CTRRingSales.com. Defendant CTR Sales offers CTR “gear rings” for retail sale on its website which are identical to Plaintiff’s patented Gear Ring®, and which have been purchased or otherwise acquired from Defendant OMT.

29. Defendant, Michael Lamb, is the owner and/or operator of Defendant CTR Sales.

30. Defendant Books and Things (hereinafter referred to as “Defendant B&T”) also provides One Moment in Time CTR rings, and owns and operates several websites including booksandthings.com, theldsbookstore.com and cedarfort.com, among others. Defendant B&T offers CTR “gear rings” for retail sale on its websites which are identical to Plaintiff’s patented Gear Ring®, and which have been purchased or otherwise acquired from Defendant OMT.

31. Defendants, Lyle Mortimer and Bryce Mortimer (hereinafter referred to as the “Mortimer Defendants”), are the owners and/or operators of Defendant B&T.

FACTS COMMON TO ALL COUNTS

32. Plaintiff has extensively marketed and promoted the Gear Ring® for many years and each and every Gear Ring® product, as well as all promotional materials, advise of the fact that the Gear Ring is protected by the Patent and Trademark, and Plaintiff’s website clearly indicates that all Gear Ring® images are protected by the Copyright.

33. Plaintiff is a small, start-up company seeking to grow its business based on its ingenuity in inventing the Gear Ring®, as well as its expenditure of significant resources to protect its invention, but has thus far, failed to reach its full business profit potential because of constant unlawful copying of Plaintiff’s design and name, manufacturing of counterfeit products which duplicate Plaintiff’s patented design, and sales of counterfeit products.

34. Plaintiff has been using the Gear Ring® mark in interstate commerce to identify and distinguish Plaintiff’s product and the mark has never been assigned or licensed to any third party. Plaintiff prides itself on its use of high quality materials and attention to detail in the manufacture of the Gear Ring®, and because of its uniqueness and the superior quality of the workmanship and materials used to construct the Gear Ring®, Plaintiff sells the Gear Ring® at a price of One Hundred Sixty-Five Dollars (\$165.00) per ring.

35. Unfortunately, other individuals and entities have discovered what a unique and interesting product the Gear Ring® is and how much of a demand there is for the product and have decided to capitalize on Plaintiff’s efforts in inventing and developing the Gear Ring®. In particular, there are several factories in China that have found a way to duplicate Plaintiff’s patented Gear Ring® using inferior materials and shoddy construction. These factories sell the

counterfeit “gear ring” products on the Internet, oftentimes in batches, for one-tenth (1/10) the cost of a genuine Gear Ring®. The majority of these sales take place through the websites known as Aliexpress.com and/or Alibaba.com, which are online marketplace or e-commerce sites catering to manufacturers.

36. Purchasers of these counterfeit “gear ring” products, which were manufactured by the Chinese factories and advertised on, and purchased from, Aliexpress and Alibaba, then re-sell the counterfeit products on United States-based online marketplace or e-commerce sites, such as eBay, Google, iOffer, Amazon, etc., or re-sell the counterfeit products directly to retailers, for less than half the price of a genuine Gear Ring®.

37. For example, a wholesaler or retailer may purchase from Aliexpress a batch of 25 counterfeit “gear rings” for \$50, then re-sell each ring to online marketplace consumers for \$20 or \$30 a piece.

38. Because of the prevalence of infringement of Plaintiff’s product and the resultant damage being suffered by Plaintiff, Plaintiff is vigilant in searching for unlawful copying of its product design and sales of these counterfeit products. Not only does Plaintiff conduct daily Internet searches to determine whether any websites are selling counterfeit gear ring jewelry, but it also utilizes the services of “secret shoppers” to make purchases from these websites, as well as shop various physical store locations in an effort to determine the source of the infringement.

39. Since the introduction of the Gear Ring®, Plaintiff has discovered numerous instances of infringement, many of which are large-scale wholesale/retail operations involving many parties, large numbers of counterfeit products and a significant amount of monetary and non-monetary damage. This is one of the larger infringement schemes uncovered by Plaintiff.

40. In early October 2012, Plaintiff discovered a “Spinning Gear CTR Ring” being offered for sale on the website known as CTRRingShop.com. The ring being offered for sale was an exact duplicate of Plaintiff’s patented Gear Ring®, and the image included in the advertisement was one of Plaintiff’s copyrighted images. The only discernible difference between Plaintiff’s patented product and the counterfeit product being offered for sale on CTRRingShop.com was the engraving of the letters “CTR” on the ring. The ring brand was listed as “One Moment In Time,” and the ring was being offered for sale for Thirty Four Dollars and Ninety-Five Cents (\$34.95). In addition, the advertisement offered customers the option of selecting their appropriate size, which indicated that CTR Ring Shop had many different sizes, and therefore, rings, available for purchase. A copy of the screen print of this advertisement is attached hereto as “**Exhibit E.**”

41. Plaintiff conducted a search of CTRRingShop.com, which revealed that the website was registered to Defendant LDP and the contact person was Defendant Young.

42. Plaintiff then researched the brand “One Moment In Time” and thereafter discovered the existence of Defendant OMT and the fact that it was also doing business as and/or had an affiliate company known as Mormon Gift Shop. Further research revealed that Defendant OMT and Defendant MGS own and operate the websites known as Mormongiftshop.com and Mormongifts.com.

43. Plaintiff also determined that either Defendant OMT or Defendant LDP was advertising an “LDS Mens Spinning Gear CTR Ring for Boys” on the website known as Amazon.com. Again, this ring was an exact duplicate of Plaintiff’s patented Gear Ring®, and the image included in the advertisement was a copyrighted image from Plaintiff’s website. Like the ring on CTRRingShop.com, this ring also contained the engraving of the letters “CTR” on

the ring, but was otherwise identical to Plaintiff's patented Gear Ring®. The ring was again being offered for sale for Thirty Four Dollars and Ninety-Five Cents (\$34.95). A copy of the screen print of this advertisement is attached hereto as "**Exhibit F.**"

44. Plaintiff subsequently discovered three (3) separate listings on Amazon.com offering the counterfeit "gear ring" products for sale. It appears that there was a separate advertisement for each size ring being offered. The advertisements were identical, except for the ring size, and the three (3) listing identifications were ASIN B009M9M30K, ASIN B009M9M13E and ASIN B009M9LYEQ. The ring brand was listed as "One Moment In Time," however, it is unclear whether Defendant OMT or Defendant LDP was responsible for the advertisements.

45. Whichever Defendant was responsible for the Amazon.com advertisements also used a blog to syndicate and/or distribute their advertisements to Twitter.com, Pinterest.com and other websites, and direct traffic to the Amazon.com advertisements and their individual websites.

46. Plaintiff also conducted a search of Defendant Lamb in an attempt to ascertain his relationship to Defendant OMT, aside from being named as the "contact person." This search revealed that Defendant Lamb was the owner of another company known as CTR Ring Sales. Plaintiff examined the CTR Ring Sales website, CTRRingSales.com, and discovered that Defendant CTR Sales was advertising for sale a "CTR Ring Stainless Steel "Gear"" for Thirty-Four Dollars and Ninety-Five Cents (\$34.95). This ring was also an exact duplicate of Plaintiff's patented Gear Ring® and was using a copyrighted image from Plaintiff's website. Once again, the only difference between Plaintiff's patented Gear Ring® and the counterfeit ring being sold on CTRRingSales.com was the engraving of the letters "CTR" on the ring. The advertisement also stated that the rings were available in sizes 8-13, indicating that CTR Ring Sales had numerous rings in many different sizes available for sale. A copy of the screen print of this advertisement

is attached hereto as “**Exhibit G.**” The advertisement on CTRRingSales.com was also “pinned” on Pinterest.com as a means of promoting the advertisement.

47. In or about late October/November 2012, Plaintiff discovered another website, known as Booksandthings.com, offering a “Top Gear-Stainless Steel-Ring” for sale for Thirty-Four Dollars and Ninety-Five Cents (\$34.95). Again, the ring was an exact duplicate of Plaintiff’s patented Gear Ring®, and the image included in the advertisement was a copyrighted image from Plaintiff’s website. This ring likewise contained the “CTR” engraving and, while the advertisement did not state that it was a “One Moment In Time brand” ring, the ring was in all respects identical to the One Moment In Time brand rings being offered for sale on the other websites. The advertisement stated that the ring was available in sizes eight (8) to thirteen (13). A copy of the screen print of this advertisement is attached hereto as “**Exhibit H.**”

48. A search of Booksandthings.com revealed that the website was owned by Defendant B&T, which was owned by the Mortimer Defendants.

49. Based on the fact that several websites owned by various individuals were selling “One Moment In Time” brand “gear rings”, Defendant OMT appeared to be the “wholesale” distributor of counterfeit “gear ring” products and was supplying these counterfeit products to at least four (4) separate “retailers”, all of which had many different websites offering the counterfeit gear ring products for sale. More specifically, CTRRingSales.com, CTRRingShop.com, Booksandthings.com, Amazon.com and another third party website were all offering “One Moment In Time” brand “gear rings” for sale.

50. There appeared to be a significant number of counterfeit rings being manufactured and/or distributed by Defendant OMT since CTRRingShop.com, Amazon.com,

CTRRingSales.com and Booksandthings.com all had many rings available for purchase in all different sizes.

51. Upon encountering this infringement enterprise, as Plaintiff does in all such circumstances, Plaintiff instituted an infringement complaint with Amazon.com, Paypal.com and Pinterest.com. As a result of its infringement complaint, the advertisements were removed by these websites.

52. Also, on or about October 6, 2012, Plaintiff's attorney sent a letter to Defendants Halterman, Young and Lamb demanding that they immediately cease and desist their infringing activities, provide Plaintiff with an accounting of any and all sales of the counterfeit "gear rings", provide Plaintiff with all the "gear rings" in their possession, remove all postings advertising any "gear ring" products, confirm that they would never again market, advertise, offer for sale or otherwise commercially promote any "gear ring" products and provide Plaintiff with the name and contact information of the individual or entity from whom they were purchasing the counterfeit products.

53. Defendant Halterman responded by stating that they got the idea to make a "gear ring" with the CTR logo from the website known as Aliexpress.com and thereafter "went ahead with the purchase and production making sizes 8-13 50 pc each." Defendant Halterman stated that he was then informed by Paypal that they were infringing upon Plaintiff's patent and, upon receiving this information, they recalled the rings from all their vendors and removed all advertisements. Defendant Halterman also claimed that no rings were ever sold, that all remaining rings had been destroyed and that CTRringshop.com, Mormon Giftshop, One Moment In Time and all affiliate websites had permanently removed the advertisements. Finally, Defendant Halterman advised that the rings had been purchased from Aliexpress.com.

54. Defendant Young provided a similar response, stating that all advertisements had been removed and no rings were ever sold. In addition, Defendant Young stated that the counterfeit rings had been purchased from Defendant OMT.

55. Defendant Lamb never responded to the cease and desist letter.

56. On or about October 26, 2012, similar cease and desist letters were sent to the Mortimer Defendants. No response was ever received by those Defendants.

57. Defendant Halterman's claims that OMT had not sold any rings and that all advertisements had been removed are completely false. There are at least four (4) separate retailers that sell, or have sold, One Moment In Time brand counterfeit rings and, therefore, Defendant OMT must have sold them these counterfeit rings. These are the retailers that Plaintiff has proof of, and there is no telling how many other retailers One Moment In Time supplies and/or has supplied with the counterfeit gear rings. Each of these retailers operates one (1) or more websites, each of which offers the counterfeit gear rings for sale in many different sizes.

58. In addition, at least one of these retailers also advertise the counterfeit One Moment In Time "gear rings" on Amazon.com, as well as promote the counterfeit gear rings through a blog that then directs purchasers to the website where the rings are offered for sale.

59. Many of the websites indicate that the rings went into circulation and were available for purchase as of September 1, 2012. It is difficult to believe that with such a large enterprise and hundreds of rings being advertised for sale, not one (1) single ring was ever sold.

60. More importantly, one (1) of Plaintiff's secret shoppers actually purchased one of the counterfeit One Moment In Time "gear rings" from Amazon.com, so at least one ring was, in

fact, sold. It seems apparent that this was not the only ring ever purchased, and in any case, evidences the fact that Defendant Halterman's claim that no rings were ever sold is false.

61. In addition, as of November 26, 2012, Booksandthings.com was still offering the counterfeit One Moment In Time gear rings for sale.

62. Furthermore, as of November 26, 2012, the counterfeit One Moment in Time gear ring image was being hosted on the Ctringshop.com website, which means that any potential customers could e-mail the website to purchase the ring, as opposed to simply clicking on the advertisement to purchase the ring.

63. Defendant Halterman's and Defendant Young's assurances that no rings had ever been sold, that all rings had been recalled and that all advertisements had been removed were simply not true. Upon information and belief, Defendants made these assurances in an effort to avoid providing Plaintiff with an accounting of all sales as requested in the cease and desist letter, and to prevent Plaintiff from taking further action.

64. Defendant OMT has therefore been infringing upon Plaintiff's Patent by purchasing counterfeit "gear ring" products from China through Aliexpress.com, engraving them with the "CTR" mark and then re-selling them at wholesale to the other Defendants named in this suit, as well as other retailers.

65. The remaining Defendants, individually and/or collectively, have also been infringing upon Plaintiff's Patent by purchasing the counterfeit gear ring products from One Moment in Time at "wholesale" cost and then marketing, advertising, offering for sale, selling and distributing these counterfeit products through their websites and other various shopping or online marketplace websites to customers throughout the United States and in this judicial district. These counterfeit products are exact duplicates of Plaintiff's patented Gear Ring®, and

are being manufactured, advertised, marketed, sold and distributed without Plaintiff's authorization or consent.

66. The Defendants have also been infringing upon Plaintiff's Trademark by selling, offering for sale, distributing, marketing and/or advertising "gear ring" products using the registered "Gear Ring®" name.

67. Defendants have also been infringing upon Plaintiff's Copyright by selling, offering for sale, distributing, marketing and/or advertising "gear ring" products using copyrighted images taken from Plaintiff's website.

68. Defendants have engaged in these infringing activities willfully, intentionally and with knowledge of the existence of Plaintiff's Patent, Trademark and Copyright, and the fact that they were committing wrongful acts.

69. Defendants' infringement of the Patent is in violation of 35 U.S.C. §271, is willful and deliberate, and upon information and belief, Defendants will continue to infringe on said Patent and continue to cause Plaintiff immediate, continuing and irreparable harm unless permanently enjoined by this Court.

70. Defendants' infringement of the Trademark is in violation of 15 U.S.C. §1114, is willful and deliberate, and upon information and belief, Defendants will continue to infringe on said Trademark and continue to cause Plaintiff immediate, continuing and irreparable harm unless permanently enjoined by this Court.

71. Defendants' infringement of the Copyright is in violation of 17 U.S.C. §501, is willful and deliberate, and upon information and belief, Defendants will continue to infringe on said Copyright and continue to cause Plaintiff immediate, continuing and irreparable harm unless permanently enjoined by this Court.

72. Plaintiff has suffered injury and damages that have been directly and proximately caused by Defendants' wrongful sale, offer of sale, distribution, marketing and advertisement of goods that infringe upon Plaintiff's Patent, Trademark and Copyright.

73. Plaintiff has retained undersigned counsel to represent it in this matter and is obligated to pay said counsel a reasonable fee for such representation.

COUNT I

Patent Infringement

74. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 73 above and incorporates them as if fully set forth at length herein.

75. Defendants have marketed, advertised, used, offered to sell and sold Plaintiff's patented invention within the United States during the term of the Patent without Plaintiff's authority or consent in violation of 35 U.S.C. §271.

76. Defendant OMT has purchased counterfeit "gear rings" from China through the Aliexpress.com website, which are exact duplicates of Plaintiff's patented invention, and then re-sold these counterfeit products to various retailers for sale on their websites and elsewhere. Defendant OMT has been made aware of its infringement by written notice and despite maintaining that no products were sold, all products have been recalled and all advertisements removed, the counterfeit products were sold to and by the various Defendant retailers and others. It is not clear whether Defendant OMT continues to purchase the counterfeit products from China and/or sell the counterfeit products to retailers.

77. The remaining Defendants have infringed, and possibly continue to infringe, upon Plaintiff's Patent by marketing, advertising, using, offering for sale and selling the counterfeit

“gear ring” products, which are exact duplicates of Plaintiff’s patented design, in the United States and in this judicial district.

78. Defendants’ repeated and continuous violation of Plaintiff’s Patent, despite notice of the infringement, is willful and intentional and, therefore, this constitutes an exceptional case.

79. Defendants’ unlawful actions have caused and are continuing to cause unquantifiable damages to Plaintiff.

80. Plaintiff has suffered and will continue to suffer irreparable injury due to Defendants’ infringement of Plaintiff’s Patent if the Defendants are not permanently enjoined from such conduct.

COUNT II

Trademark Infringement

81. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 80 above and incorporates them as if fully set forth at length herein.

82. Plaintiff’s Trademark is a federally registered mark.

83. Defendants have used the name Gear Ring® to designate their products in connection with the sale, offer for sale, distribution, marketing and advertising of counterfeit goods for their own financial gain.

84. Plaintiff has not authorized Defendants’ use of Plaintiff’s Trademark.

85. Defendants’ unauthorized use of Plaintiff’s Trademark in connection with the sale, offer for sale, distribution, marketing and advertising of counterfeit goods constitutes Defendants’ use of Plaintiff’s registered trademark in commerce.

86. Defendants’ unauthorized use of Plaintiff’s Trademark is likely to cause and actually is causing confusion, mistake and deception among consumers and/or is causing consumers to

believe that Defendants' counterfeit goods originate from Plaintiff or that Plaintiff has authorized, approved or otherwise associated itself with Defendants' counterfeit goods that bear Plaintiff's Trademark.

87. Defendants' unauthorized use of Plaintiff's Trademark has resulted in Defendants unfairly, illegally and improperly benefitting from Plaintiff's name and goodwill.

88. Defendants have therefore infringed Plaintiff's Trademark in violation of 15 U.S.C. §1114.

89. Defendants' repeated and continuous violation of Plaintiff's Trademark, despite notice of the infringement, is willful and intentional and therefore, this constitutes an exceptional case.

90. Defendants' unlawful actions have caused and are continuing to cause unquantifiable damages to Plaintiff.

91. Plaintiff has suffered and will continue to suffer irreparable injury due to Defendants' infringement of Plaintiff's Trademark if Defendants are not permanently enjoined from such conduct.

COUNT III

Copyright Infringement

92. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 91 above and incorporates them as if fully set forth at length herein.

93. Plaintiff's Copyright is a federally registered mark.

94. Defendants have taken a copyrighted image from Plaintiff's website and used it to advertise, market and promote their counterfeit products. Defendants have misappropriated this

copyrighted content and interfered with Plaintiff's exclusive right to use the copyrighted content for their own commercial advantage and financial gain.

95. Plaintiff has not authorized or consented to Defendants' use of Plaintiff's Copyright.

96. Defendants have therefore infringed Plaintiff's Copyright in violation of 17 U.S.C. §501, et. seq.

97. Defendants' repeated and continuous violation of Plaintiff's Copyright, despite notice of the infringement, is willful and intentional.

98. Defendants' unlawful actions have caused and are continuing to cause unquantifiable damages to Plaintiff.

99. Plaintiff has suffered and will continue to suffer irreparable injury due to Defendants' infringement of Plaintiff's Copyright if Defendants are not permanently enjoined from such conduct.

COUNT IV

False Designation of Origin

100. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 99 above and incorporates them as if fully set forth at length herein.

101. Defendants' unauthorized use in interstate commerce of Plaintiff's Trademark constitutes infringement, as well as the use of false descriptions and representations and false designation of origin in violation of 15 U.S.C. §1125(a).

102. Defendants' use in commerce of such false designations of origin and false or misleading descriptions and representations is likely to cause confusion in consumers, and actually is causing such confusion among consumers, as to the connection of Defendants with

Plaintiff and regarding the origin, sponsorship and/or association of Defendants' products with Plaintiff's.

103. Defendants' use in commerce of such false designations of origin and false or misleading descriptions and representations is also confusing and misleading consumer as to whether Defendants are authorized to sell or actually do sell Plaintiff's products, and whether the counterfeit products on Defendants' websites are manufactured, affiliated with or endorsed by Plaintiff.

104. Defendants, therefore, without authorization and in connection with the promotion and sale of goods in commerce, have made false and misleading representations of fact, false and misleading descriptions of fact and false designations of origin, which are likely to cause, and actually are causing, confusion or mistake among customers as to the origin, sponsorship and/or approval of goods in violation of 15 U.S.C. §1125.

105. Defendants' false representations, descriptions and designations have resulted in Defendants unfairly, illegally and improperly benefitting from Plaintiff's name and goodwill.

106. Defendants' false representations, descriptions and designations have caused damage to Plaintiff's business, reputation, goodwill and trademark rights, interfered and damaged Plaintiff's existing and potential business relations, and caused Plaintiff to lose profits and sales it would have made but for Defendants' conduct.

107. Defendants' repeated and continuous posting of false and misleading advertisements and false designations of origin, is willful and intentional and, therefore, this constitutes an exceptional case.

108. Defendants' unlawful actions have caused and are continuing to cause unquantifiable damages to Plaintiff.

109. Plaintiff has suffered and will continue to suffer irreparable injury due to the Defendants' false designation of origin and their false descriptions and representations if Defendants are not preliminarily and permanently enjoined from such conduct.

COUNT V

Deceptive Trade Practices

110. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 109 above and incorporates them as if fully set forth at length herein.

111. Defendants' use of the "Gear Ring®" name in connection with the sale, offer for sale, distribution, marketing and advertising of their infringing and counterfeit products is fraudulent, misleading and deceptive, and made with the intention that consumers rely on such misrepresentation and believe that the product being offered for sale is a true "Gear Ring®" product.

112. Defendants' use of the "Gear Ring®" name in connection with the sale, offer for sale, distribution, marketing and advertising of their infringing and counterfeit products constitutes a deceptive trade practice in violation of §13-11a-1, et seq. of the Utah Code.

113. In particular, Defendants' use of the Gear Ring name in the course of their respective businesses constitutes an attempt to pass goods off as those of Plaintiff, causes a likelihood of confusion as to the source, sponsorship, approval or certification of goods, causes a likelihood of confusion as to an affiliation, connection, association with or certification by another and/or otherwise denotes a representation that the goods have the sponsorship, approval, characteristics or qualities that they do not have or that Defendants have a sponsorship, approval, affiliation or connection that they do not have.

114. Defendants' unlawful deception has caused and is continuing to cause unquantifiable damages to Plaintiff.

115. Plaintiff has suffered and will continue to suffer irreparable injury due to the Defendants' deceptive trade practices if Defendants are not permanently enjoined from such conduct.

COUNT VI

Unfair Competition

116. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 115 above and incorporates them as if fully set forth at length herein.

117. Defendants have engaged in fraudulent, misleading and unlawful conduct in attempting to pass off their counterfeit gear ring products as Plaintiff's products.

118. Defendants have committed these acts willfully and with conscious disregard of Plaintiff's rights.

119. Defendants have therefore engaged in unfair competition in violation of the common law of the State of Utah.

120. Defendants' unlawful deception has caused and is continuing to cause unquantifiable damages to Plaintiff.

121. Plaintiff has suffered and will continue to suffer irreparable injury due to the Defendants' unfair competition if Defendants are not permanently enjoined from such conduct.

COUNT VII

Interference With Prospective Economic Advantage

122. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 121 above and incorporates them as if fully set forth at length herein.

123. Plaintiff has expended a significant amount of time, money and other resources in developing, patenting, trademarking, copyrighting, advertising and marketing the Gear Ring® and expects to gain a significant economic advantage from its efforts.

124. Defendants have interfered with this economic advantage by selling, offering to sell, distributing, marketing and advertising counterfeit gear ring products that have purchased from China and Defendant OMT.

125. Defendants' sale and advertising of counterfeit gear ring products and their interference with Plaintiff's prospective economic advantage has been done without justification or excuse.

126. If Defendants were not selling counterfeit gear ring products, all consumers wishing to purchase a Gear Ring® would do so from Plaintiff, the rightful and true owner of the Gear Ring® Patent and Trademark, and Plaintiff would thereby gain all these customers and an economic advantage.

127. As a result of Defendants' interference with Plaintiff's prospective economic advantage, Plaintiff has suffered and will continue to suffer unquantifiable damages.

128. Plaintiff has suffered and will continue to suffer irreparable injury due to the Defendants' interference with prospective economic advantage if Defendants are not permanently enjoined from such conduct.

COUNT VIII

Unjust Enrichment

129. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 128 above and incorporates them as if fully set forth at length herein.

130. Defendants profit from the sale, offer for sale, distribution, marketing and advertising of counterfeit gear ring products that are exact duplicates of Plaintiff's patented Gear Ring® and that are marketed using the Gear Ring name and Gear Ring images.

131. Defendants therefore receive a benefit from the duplication and sale of Plaintiff's patented product, use of the trademarked "Gear Ring®" name and misappropriation of Plaintiff's copyrighted images.

132. Defendants have been unjustly enriched by their sale of counterfeit products, use of the Gear Ring® name and use of Plaintiff's images, all to the detriment of Plaintiff.

133. It would be unjust for Defendants to retain this benefit and Defendants should not be permitted to reap the benefits of this wrongful conduct.

134. As a result of Defendants' conduct, Plaintiff has suffered and will continue to suffer unquantifiable damages.

PRAYER FOR RELIEF ON ALL COUNTS

WHEREFORE, Plaintiff prays for judgment and relief against Defendants as follows:

- a. Adjudging the Plaintiff's Patent, Trademark and Copyright to be valid and enforceable;
- b. Adjudging that the Defendants have infringed Plaintiff's Patent, Trademark and Copyright and engaged in the other wrongful conduct set forth above;
- c. Adjudging that Defendants' conduct was willful and intentional;
- d. That Defendants, and all persons or entities acting in concert or participation with Defendants, either directly or indirectly, be permanently enjoined from infringing, contributing to the infringement of, and/or inducing the infringement of the Patent, Trademark and/or Copyright, and specifically from directly or indirectly manufacturing, making, using, marketing, distributing, selling or offering for sale in the United States or in any other country or

jurisdiction, any product embodying the design of the Patent during the life of the Patent, regardless of the name being used for such product, without the express written authority of the Plaintiff and from using the name “Gear Ring” or any similar name, or any of Plaintiff’s copyrighted images in connection with the manufacture, sale, offer for sale, marketing and/or advertising;

e. That Defendants, and all persons or entities acting in concert or participation with Defendants, either directly or indirectly, be required to immediately remove all uses of, references to, depictions of, offers for sale and advertising of the Gear Ring® product, regardless of the name by which it is called, and all uses of the Gear Ring® name or Plaintiff’s copyrighted images, from any and all websites and/or URLs where such may appear including, but not limited to, Mormongifts.com, Mormongiftshop.com, eBay.com, Amazon.com, CTRRingshop.com, CTRRingSales.com, iOffer.com, Google.com, Booksandthings.com, LDSJewelry.com and LDSProducts.com;

f. That any Internet service providers, merchant account providers, online marketplace and shopping search engines and websites, as well as third-party processors and search engines, including, but not limited to, Aliexpress.com, Alibaba.com, Amazon.com, Craigslist.com, eBay.com, Google.com and Yahoo.com, as well as any social media websites including, but not limited to, Facebook, Twitter, Google+, Digg, Reddit, Pinterest, Youtube and Myspace, must, upon request of Plaintiff, immediately remove any and all listings by Defendants and/or links to their listings where counterfeit “gear ring” products and/or use of the Gear Ring® name are being used, offered for sale, marketed and/or advertised and that all such listings be de-indexed so that they no longer appear on any search and/or removed from any search results page; and that all such Internet service providers, merchant account providers, online marketplace and

shopping search engines and websites, as well as third-party processors and search engines, must, upon request of Plaintiff, immediately remove any and all listings by future infringers and/or links to their sites where counterfeit “gear ring” products and/or use of the Gear Ring® name are being used, offered for sale, marketed and/or advertised, upon proof by Plaintiff that the future infringer is using, offering for sale, marketing and/or advertising a product that is an exact duplicate of Plaintiff’s Gear Ring® and/or using the Gear Ring® name;

g. That Defendants, individually, provide an accounting of all profits derived from their patent, trademark and/or copyright infringement and all sales of gear ring jewelry, and that Defendants pay such profits to Plaintiff, along with actual damages suffered by Plaintiff, trebled;

h. Alternatively, that Plaintiff be awarded statutory damages in the amount of Five Hundred Thousand Dollars (\$500,000.00) from the Defendants, jointly and severally;

i. That Defendants be prohibited from destroying, altering, removing, hiding or otherwise tampering with any books or records that contain any information relating to the importation, distribution, sale, marketing and/or advertising of all products that infringe on Plaintiff’s Patent, Trademark and/or Copyright;

j. That any third party providing payment and related services for Defendants’ online sale of infringing “gear ring” products, including merchant account providers, credit card companies, payment providers and/or third party payment processors whose identity(ies) is discovered during the course of the proceedings in this matter, immediately cease rendering such services to Defendants for purchase or sales of gear ring products and shall, upon receiving notice of an applicable Order, deliver to Plaintiff, or its representative, copies of all documents and records relating to Defendants’ purchase or sale of “gear ring” products;

k. That Defendants pay Plaintiff its reasonable attorneys' fees and costs pursuant to 15 U.S.C. §1117(a), 35 U.S.C. §285, 17 U.S.C. §505 and Utah Code §13-11a-4;

l. Adjudging that Defendants be ordered to deliver to Plaintiff, for destruction at Plaintiff's option, all products that infringe the Patent; and,

m. Such other relief as the court deems just and proper.

Dated: March 11, 2014

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