

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

_____	)	
REACH THE BEACH, INC. and RIO BRANDS	)	
LLC,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 1:14-cv-11883-MLW
v.	)	
	)	JURY TRIAL DEMANDED
SAM'S EAST, INC., SAM'S WEST, INC., and	)	
WESTFIELD OUTDOOR, INC.,	)	
	)	
Defendants.	)	
_____	)	

**AMENDED COMPLAINT**

Reach the Beach, Inc. (“RTB”) and Rio Brands LLC (“Rio”) (collectively, “Plaintiffs”), for their amended complaint against defendants Sam’s East, Inc. (“Sam’s East”), Sam’s West, Inc. (“Sam’s West”), and Westfield Outdoor, Inc. (“Westfield”) hereby demand a jury trial and allege as follows:

**THE PARTIES**

1. RTB is a corporation organized and existing under the laws of the Commonwealth of Massachusetts with its principal place of business at 200 Chauncy Street, Suite 112, Mansfield, Massachusetts 02048. RTB manufactures, designs, and sells distinctive and patented collapsible carts for use as a means of transporting items, for example, at the beach.

2. Rio is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business at 1 Tower Bridge, 100 Front Street, Suite 1350, West Conshohocken, Pennsylvania 19428. Rio manufactures, designs, and sells beach and

backyard products, such as Wonder Wheeler® carts, backpack chairs, umbrellas, and the Integrated Sand Anchor for beach umbrellas.

3. Upon information and belief, Sam's East is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 702 SW 8<sup>th</sup> Street, Bentonville, Arkansas 72716. Upon information and belief, Sam's East owns and operates membership-only retail warehouse clubs throughout the United States, including, but not limited to, stores in Worcester, Massachusetts; Fall River, Massachusetts; and Seekonk, Massachusetts.

4. Upon information and belief, Sam's West is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 702 SW 8<sup>th</sup> Street, Bentonville, Arkansas 72716. Upon information and belief, Sam's West owns and operates the e-commerce website [www.samsclub.com](http://www.samsclub.com) and stores within the United States.

5. Upon information and belief, Westfield is a corporation organized and existing under the laws of the State of Nevada with its principal place of business at 8675 Purdue Road, Indianapolis, Indiana 46268. Upon information and belief, Westfield owns and operates the website [www.westfieldoutdoor.com](http://www.westfieldoutdoor.com).

6. Joinder of Sam's East, Sam's West, and Westfield is proper under 35 U.S.C. § 299, because Sam's East, Sam's West, and Westfield are making, using, importing into the United States, offering for sale, and/or selling the same infringing product, and questions of fact common to all of the defendants will arise in this action.

#### **NATURE OF THE ACTION**

7. This is an action for infringement of U.S. Patent No. 5,988,671 ("the '671 patent"), arising under the United States patent laws, Title 35, United States Code, §1 *et seq.*, including 35 U.S.C. §§271 and 281.

8. This is also an action for trade dress infringement, trade dress dilution, and unfair competition under Sections 32(1), 43(c), and 43(a) of the Trademark Act of 1946 (“the Lanham Act”), 15 U.S.C. §§ 1114(1), 1125(c), and 1125(a), and for substantial and related claims for unfair and deceptive acts under the laws of the Commonwealth of Massachusetts.

9. This action relates to Sam’s East’s, Sam’s West’s, and Westfield’s sale of infringing folding carts.

### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction over RTB’s and Rio’s patent infringement claims, trade dress dilution and infringement claims, and federal unfair competition actions pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1338(b) and under Section 39 of the Lanham Act, 15 U.S.C. § 1121. This Court has supplemental jurisdiction over RTB’s and Rio’s remaining claims pursuant to 28 U.S.C. § 1367(a).

11. This Court has jurisdiction over Sam’s East. Sam’s East is in the business of importing, marketing, selling, and offering for sale a variety of goods, including collapsible carts. Upon information and belief, Sam’s East, directly and/or indirectly, markets, imports, sells, and/or offers for sale goods in this judicial district, is doing business in this judicial district through agents and representatives, and/or otherwise has substantial contacts with this judicial district, including, but not limited to, its Sam’s Club warehouses located in Fall River, Massachusetts; Worcester, Massachusetts; and Seekonk, Massachusetts. Upon information and belief, Sam’s East has sold infringing folding carts in the Commonwealth of Massachusetts. Upon information and belief, Sam’s East purposefully has conducted and continues to conduct business directly in this judicial district. Upon information and belief, Sam’s East has previously submitted to the jurisdiction of this Court.

12. This Court has jurisdiction over Sam's West. Sam's West is in the business of importing, marketing, selling, and offering for sale a variety of goods, including collapsible carts. Upon information and belief, Sam's West, directly or indirectly, markets, imports, sells, and/or offers for sale goods in this judicial district, is doing business in this judicial district through agents and representatives, and/or otherwise has substantial contacts with this judicial district, including, but not limited to, through its e-commerce website [www.samsclub.com](http://www.samsclub.com). Upon information and belief, Sam's West has sold and purposely shipped goods, including infringing folding carts, in and to the Commonwealth of Massachusetts and has collected Massachusetts sales tax on such purchases. Upon information and belief, Sam's West purposefully has conducted and continues to conduct business, directly or indirectly, in this judicial district.

13. This Court has jurisdiction over Westfield. Westfield is in the business of manufacturing, importing, marketing, selling, and offering for sale a variety of outdoor and sporting goods and luggage, including collapsible carts. Upon information and belief, Westfield, directly or indirectly, markets, imports, sells, and/or offers for sale goods in this judicial district, is doing business in this judicial district through agents and representatives, and/or otherwise has substantial contacts with this judicial district, including, but not limited to, through its website [www.westfieldoutdoors.com](http://www.westfieldoutdoors.com) and through third-party websites or distributors, including, but not limited to, Sam's East and Sam's West. Upon information and belief, Westfield purposefully has conducted and continues to conduct business, directly or indirectly, in this judicial district, and this judicial district is a destination of Westfield's infringing folding carts, which have been sold in this judicial district by Sam's East and Sam's West as described above. Upon information and belief, Westfield's infringing folding carts have been sold and purposely shipped in and to the Commonwealth of Massachusetts.

14. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b).

## **BACKGROUND**

### **The '671 Patent**

15. The '671 patent, entitled "Collapsible Cart," was duly and lawfully issued on November 23, 1999 to inventors Kevin G. Abelbeck, Paul C. Dickie, James D. Thrasher, and Perry M. DiMascio. A true and correct copy of the '671 patent is attached as Exhibit A.

16. RTB is the sole owner of all right, title, and interest in and to the '671 patent, including the right to sue for and collect fees, costs, and damages for infringement, including past damages for past infringement of the patent-in-suit.

17. Rio is RTB's exclusive distributor and licensee for the purpose of marketing, distributing, and selling Wonder Wheeler® carts and modified versions thereof in the United States.

18. The '671 patent generally relates to means of transporting items, such as those commonly taken to the beach, on a picnic, or camping. The device comprises a wheeled, collapsible frame, including a bottom frame for supporting larger objects, and an upper frame for supporting a receptacle for miscellaneous items.

### **The Wonder Wheeler® Cart**

19. The Wonder Wheeler® cart is a unique collapsible cart that, in one motion of pulling up on the handle, pops from a compactly folded cart to its open position by spreading the legs and locking the frame and fabric base in place. The Wonder Wheeler® cart has a broad appeal in the beach-going, boating, camping, and field sports areas.

20. The Wonder Wheeler® cart has been continuously sold and advertised, and continues to be sold and advertised, in interstate commerce throughout the United States since at least 1998. The famous Wonder Wheeler® trademark and trade dress have consistently and

continuously appeared on product packaging, advertising, promotional materials, displays, and the like.

21. Wonder Wheeler® carts are currently available and sold to consumers throughout this district and the United States.

22. Mr. Thrasher had the initial idea to build a cart that would roll all of his family's gear over the sand and make it easier and more fun to spend a day at the beach. Subsequently, Mr. Thrasher worked with his co-inventors to design a cart that would connect and collapse in a unique way. Mr. Thrasher and Mr. DiMascio called the endeavor "Reach The Beach," and Mr. Thrasher filed an application to register that name as a trademark.

23. On February 26, 1997, a patent application was filed for the "Reach the Beach" collapsible cart, which later issued as U.S. Patent No. 5,915,722 ("the '722 patent"). A continuation-in-part application claiming priority to the '722 patent was filed on November 12, 1997, reflecting further design enhancements, and that application ultimately issued as the '671 patent. Wonder Wheeler® carts have been marked pursuant to 35 U.S.C. § 287.

24. In March 1998, Mr. Thrasher and Mr. DiMascio incorporated RTB and began promoting the Wonder Wheeler® on Massachusetts beaches so that people would become accustomed to seeing it. There was nothing like this product on the market, and by late June of 1998, RTB had signs of consumer acceptance.

25. Mr. Thrasher and Mr. DiMascio continued demonstrating the product, putting thousands of single page advertising flyers on cars in beach parking lots, running advertisements in beach area newspapers, and spending countless hours approaching families as they arrived at the beach offering to load their gear onto the Wonder Wheeler® cart and roll it for them down to the shoreline.

26. After that summer, RTB hired a production company from Providence, Rhode Island to produce a marketing video that would demonstrate the product and show the Wonder Wheeler® cart in action and developed a bright, full size poster for affixing to the Wonder Wheeler® cart's packaging.

27. By 1999, RTB had established an internet site and had an employee who managed its direct and retail sales. Mr. Thrasher and Mr. DiMascio continued to travel to trade shows where they made a connection with the Home Shopping Network, and Mr. DiMascio demonstrated the Wonder Wheeler® cart on that television channel.

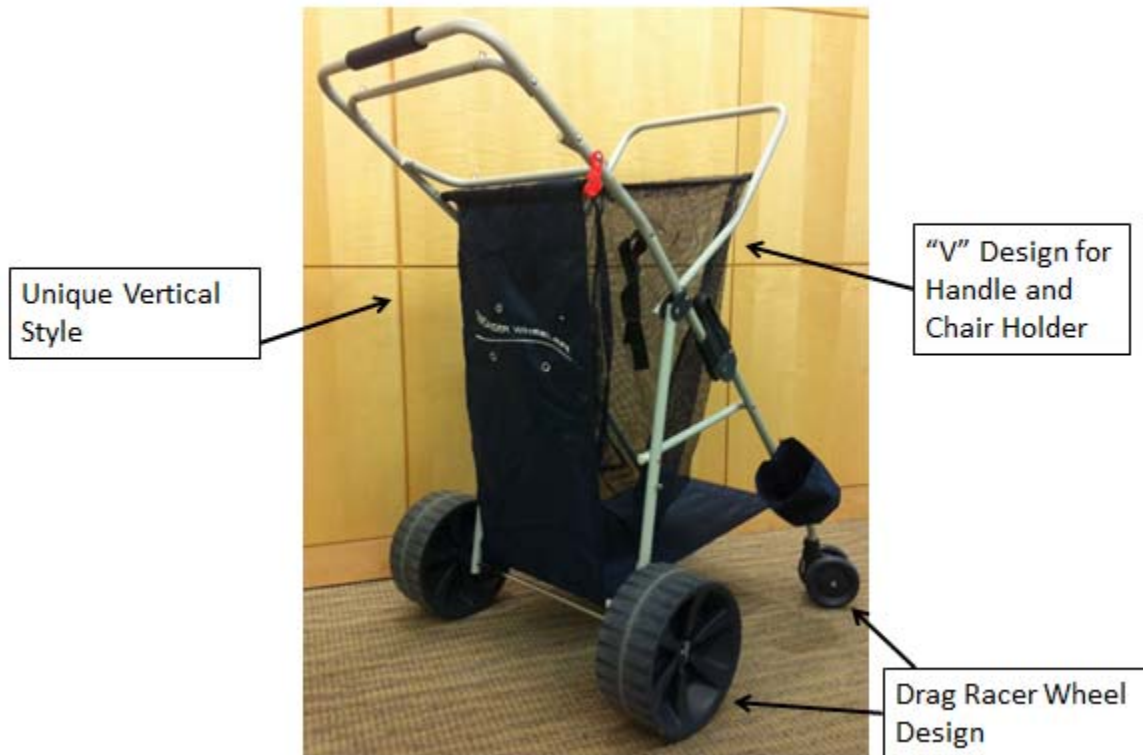
28. In 1999, RTB brought out model L-10, introducing the single piece, full fabric base-back. RTB followed the L-10 with the XL, introducing wider wheels and a storage pocket. In addition, a unique umbrella holder was added to the design that was not previously in use by any competitor.

29. On October 5, 2005, RTB entered into an exclusive distribution agreement with Rio for marketing, distribution, and selling of the Wonder Wheeler® cart and modified versions thereof in the United States, while reserving to RTB the right to sell direct to consumers via the internet and in the marine and team sports markets.

#### **Wonder Wheeler® Trade Dress**

30. The Wonder Wheeler® cart has an inherently distinctive design (“Wonder Wheeler® Trade Dress”) that is comprised of the following original and distinctive elements: (a) “drag racer” wheel design employing tall, wide wheels in the rear, with alternating groove treads, and small, narrow wheels in the front; (b) unique “V” design for the handle and chair holder; and (c) a unique vertical style. These elements of the Wonder Wheeler® Trade Dress, depicted

below, are distinctive for a push cart and have acquired secondary meaning and are protectable trade dress.



31. In particular, the drag racer wheel design coupling tall, wide rear wheels with the small, narrow front wheels is distinct to the Wonder Wheeler® Trade Dress. Indeed, the rear wheels are not sold to the public for use, in or with, any product other than the Wonder Wheeler® cart. The rear wheels are blow molded using a proprietary mold created by RTB and Rio. The wheels measure 10 inches in diameter by 4 inches in width. The proprietary mold is used to create the distinct pattern of alternating grooves that are molded into the plastic.

32. The famous and inherently distinctive Wonder Wheeler® Trade Dress is not functional and serves to readily distinguish the Wonder Wheeler® carts from those of its competitors.



33. The Wonder Wheeler® Trade Dress is not essential to the use or purpose of the Wonder Wheeler® cart.

34. The Wonder Wheeler® cart has been sold with substantially the same Wonder Wheeler® Trade Dress and providing consumers with the same commercial impression for many years.

35. The longstanding success of the Wonder Wheeler® cart sold in connection the Wonder Wheeler® Trade Dress has fostered wide renown and fame with the trade and the public. Indeed, Wonder Wheeler® Trade Dress is well known among consumers throughout the United States. The Wonder Wheeler® cart and Trade Dress have been featured in the national media. For example, in May 2014, The Wonder Wheeler® cart and Trade Dress were featured on NBC's nationally-televised *Today* show. As a result of such success, and the long, continuous use of the Wonder Wheeler® Trade Dress in connection with the marketing and sale of collapsible carts, consumers have come to recognize the Wonder Wheeler® cart, associate it solely with the Wonder Wheeler® brand, and know that the Wonder Wheeler® cart product will be of the highest quality. *See* Exhibit B for product testimonials from consumers posted on hayneedle.com, one of the largest beach websites.

36. RTB and Rio have invested enormous amounts of time, effort, and dollars developing and marketing their Wonder Wheeler® Trade Dress to promote the Wonder Wheeler® cart and Wonder Wheeler® Trade Dress in connection therewith.

37. RTB and Rio continuously advertise and promote the Wonder Wheeler® cart in connection with the Wonder Wheeler® Trade Dress in a wide variety of media, including, but not limited to, the internet, Rio's marketing materials, and through individual retailers. As a consequence of their continuous and extensive advertising of the Wonder Wheeler® cart in

connection with the Wonder Wheeler® Trade Dress, the Wonder Wheeler® brand has developed into a master brand franchise. *See e.g.* the screenshot from [www.beachstore.com](http://www.beachstore.com) at Exhibit C.

38. RTB operates a website at the domain name address [www.wonderwheeler.com](http://www.wonderwheeler.com), which serves to provide product information and regularly advertise and promote the Wonder Wheeler® carts in connection with the Wonder Wheeler® Trade Dress. *See* the screenshot of RTB's website at Exhibit D.

39. Rio also operates a website at the domain name address [www.riobrand.com](http://www.riobrand.com), which serves to provide product information and regularly advertise and promote the Wonder Wheeler® carts and Trade Dress. *See* the screenshot of Rio's website at Exhibit E.

40. As a result of RTB's and Rio's time, effort, widespread promotion and advertising, and the enormous amount of money spent by RTB and Rio developing, marketing, advertising, and promoting the Wonder Wheeler® carts in connection with Wonder Wheeler® Trade Dress, the Wonder Wheeler® Trade Dress has acquired and maintains an outstanding fame symbolizing tremendous and material goodwill throughout the United States.

41. The Wonder Wheeler® Trade Dress has acquired enormous value and has become famous to the consuming public and trade as identifying and distinguishing the Wonder Wheeler® carts from those of its competitors.

42. The Wonder Wheeler® Trade Dress, therefore, has acquired secondary meaning. The secondary meaning of the Wonder Wheeler® Trade Dress is established by the length and manner of use of the Trade Dress. Specifically, for sixteen years, as detailed above, the Wonder Wheeler® Trade Dress has been exclusively and continuously used by RTB and Rio to market, distribute, and sell Wonder Wheeler® carts. As a result of this long and continuous use, the

primary significance of the Wonder Wheeler® Trade Dress in the minds of the consuming public, as detailed above, is to identify the unique source of the Wonder Wheeler® carts.

43. Moreover, the Wonder Wheeler® Trade Dress has established secondary meaning through the nature and extent of advertising and promotion of the Wonder Wheeler® Trade Dress. As a result of the significant investment in the marketing and promotion of the Wonder Wheeler® carts in connection with the Wonder Wheeler® Trade Dress, as detailed above, RTB and Rio have established a conscious connection in the minds of the consuming public between the Wonder Wheeler® Trade Dress and the source of the Wonder Wheeler® carts.

44. In addition, the secondary meaning of the Wonder Wheeler® Trade Dress is demonstrated by the fact that the Wonder Wheeler® cart is the premier cart in the outdoor accessories industry.

45. Finally, the secondary meaning of the Wonder Wheeler® Trade Dress is demonstrated by the fact that, upon information and belief, Defendants have intentionally copied the distinctive Wonder Wheeler® Trade Dress in an effort to misappropriate the hard-earned good will associated with the Wonder Wheeler® Trade Dress.

#### **Infringing Folding Beach Cart**

46. Upon information and belief, Westfield manufactures, imports, sells, and offers for sale outdoor and sporting goods.

47. Upon information and belief, Westfield manufactures, imports, sells, and offers for sale, without permission or authorization from RTB or Rio, a “Folding Beach Cart with Cooler” (hereinafter, the “infringing cart”).

48. The packaging states that the infringing cart is:

Manufactured and Distributed by Westfield Outdoors

8675 Purdue Rd. Indianapolis, IN 46268

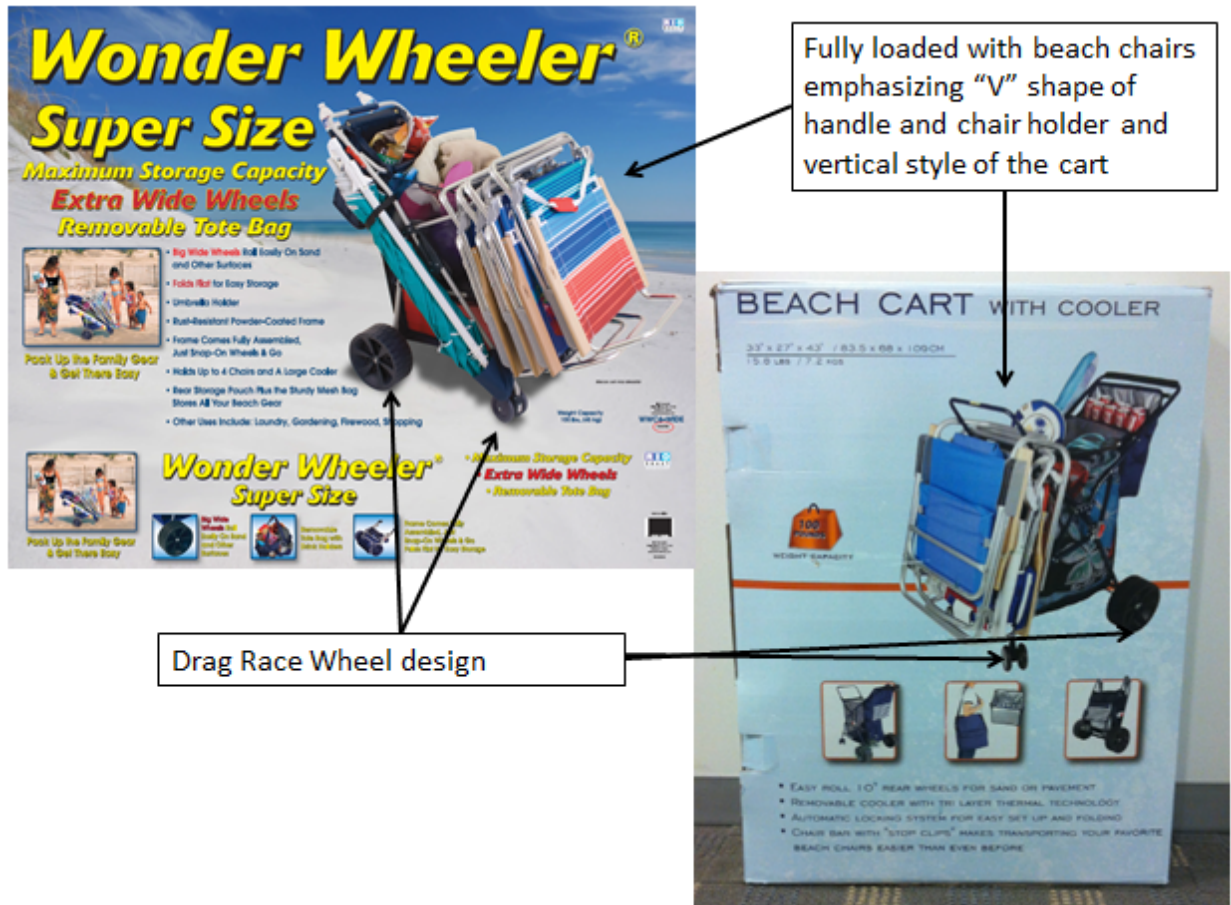
1-877-579-1550

49. Westfield's infringing cart willfully infringes the '671 patent, either literally or under the doctrine of equivalents.

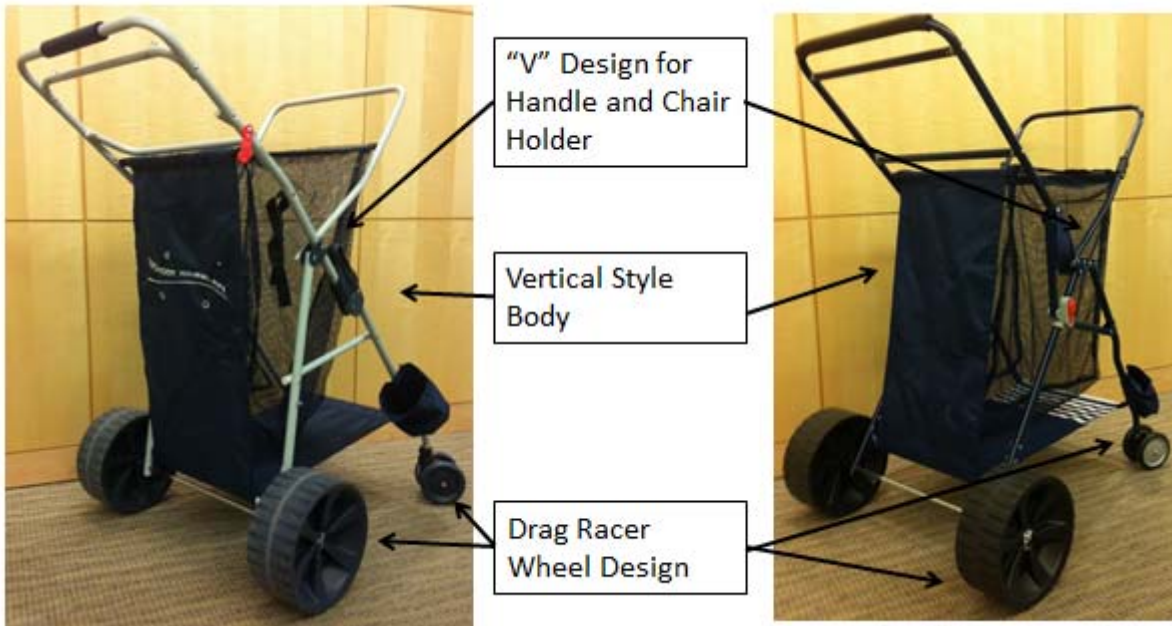
50. The infringing cart mimics and imitates the Wonder Wheeler® Trade Dress.

51. The infringing cart is marketed in packaging that features simulations, confusingly similar variations, or colorable imitations of the Wonder Wheeler® cart packaging, and includes distinctive and protectable elements of the Wonder Wheeler® Trade Dress.

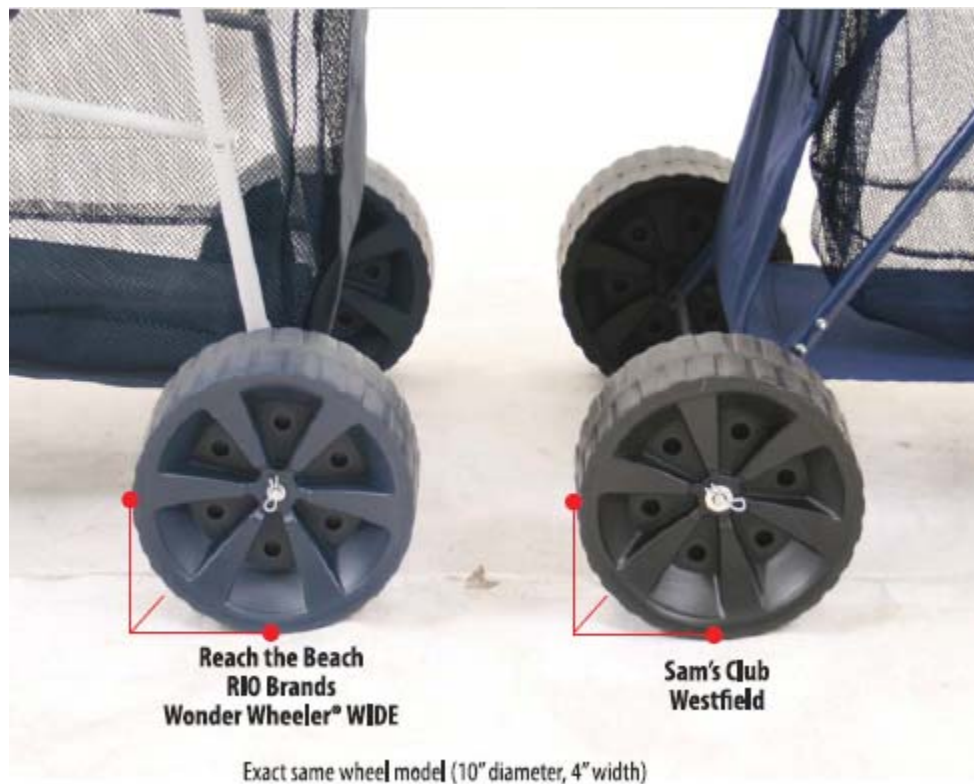
52. In particular, both the Wonder Wheeler® packaging and the infringing cart packaging emphasize the following elements: (1) fully-loaded cart showing off the "V"-shaped handle/chair holder design and towering vertical style of the body of the cart and (2) drag racer wheel design. Depicted below is a comparison of these elements on the Wonder Wheeler® packaging on the left and the infringing cart packaging on the right.



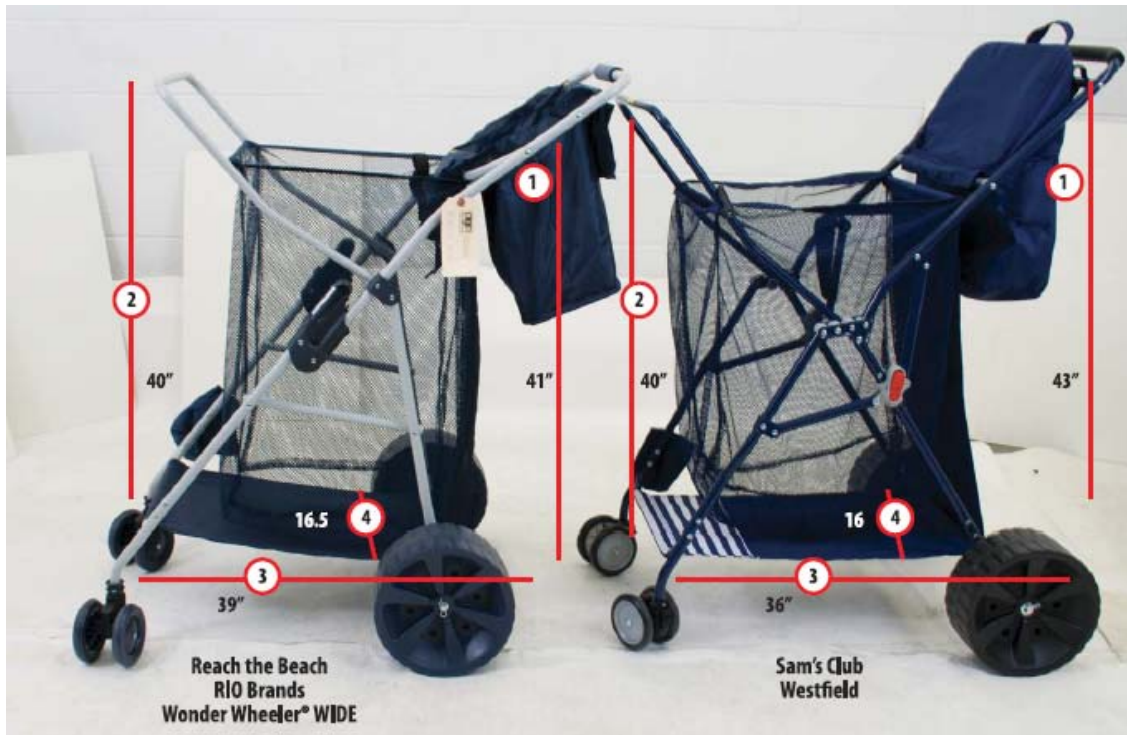
53. The infringing cart itself is designed to feature simulations, confusingly similar variations, or colorable imitations of the Wonder Wheeler® Trade Dress, as shown below. For example, the infringing cart includes simulations, confusingly similar variations, or colorable imitations of the Wonder Wheeler® cart’s “drag racer” wheel design having tall, wide wheels in the back and narrow, small wheels in the front, “V” design of the handle and chair holder, and unique vertical style.



54. In particular, the infringing cart includes wide wheels that willfully duplicate (a) the exact measurements of the Wonder Wheeler® cart's wheels (10 inches in diameter by 4 inches wide) and (b) the exact same design, including the alternating groove tread pattern.



55. In addition, the size of the infringing cart is substantially similar to the Wonder Wheeler® cart.



**Reach the Beach  
RIO Brands  
Wonder Wheeler® WIDE  
Dimensions:**

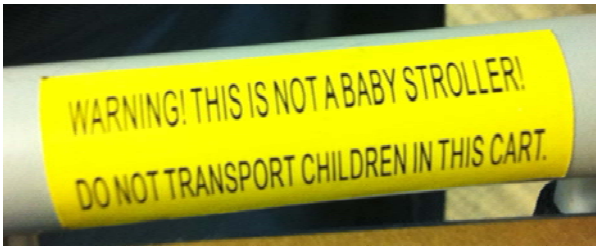
- 1. 41" Handle Height 1
- 2. 40" Front Height 2
- 3. 39" Length
- 4. 16.5" Width
- 5. 27" Wheel base

**Sam's Club  
Westfield  
Dimensions:**

- 1. 43" Handle Height 1
- 2. 39" Front Height 2
- 3. 36" Length
- 4. 16" Width
- 5. 27" Wheel base

56. Moreover, as shown below, the infringing cart affixes a warning sticker with identical wording and punctuation to that found on the Wonder Wheeler® cart's warning label. Both warning labels are also provided in a bright yellow color.

**Wonder Wheeler® Cart**



**Infringing Beach Cart**



57. Upon information and belief, Westfield has sold and is selling its infringing cart to Sam's East and Sam's West.

58. Upon information and belief, Sam's East has sold Westfield's infringing carts in the Commonwealth of Massachusetts. Upon information and belief, Sam's West has sold Westfield's infringing cart in the Commonwealth of Massachusetts and has collected Massachusetts sales tax on such purchases.

59. Sam's West promotes and sells the infringing cart via its e-commerce website [www.samsclub.com](http://www.samsclub.com). On that website, Sam's West states as follows with respect to the infringing cart, which it calls the "Folding Beach Cart with Cooler": "For additional questions or concerns regarding this product, please contact the Manufacturer's Customer Service Department



at 1.877.579.1550.” This is the phone number for Westfield’s customer service department and matches the phone number referenced on the packaging for the infringing cart.

60. Defendants have willfully diluted and infringed, and continue to willfully dilute and infringe, the Wonder Wheeler® Trade Dress by using variations, simulations, or colorable imitations of such dress for their infringing cart in violation of RTB’s and Rio’s rights.

61. Upon information and belief, Defendants have adopted, commenced use of, and are planning to use the infringing cart with the intent and purpose of commercially exploiting and trading upon the fame, recognition, reputation, and extensive goodwill built up by RTB and Rio in the Wonder Wheeler® Trade Dress and to reap the benefits of years of effort and investment by RTB and Rio to create public recognition of the Wonder Wheeler® Trade Dress. Defendants’ conduct is intentionally fraudulent, malicious, willful, and wanton.

62. Defendants’ acts complained of herein have been committed with knowledge that such acts are intended to cause confusion, cause mistake, or to deceive.

**COUNT I**  
**PATENT INFRINGEMENT**

63. The allegations of paragraphs 1–63 are incorporated by reference as if fully stated herein.

64. By manufacturing, importing, selling, or offering for sale the infringing cart, Sam’s East, Sam’s West, and Westfield are each directly and/or indirectly infringing the ’671 patent, either literally or under the doctrine of equivalents.

65. Upon information and belief, at all times Sam’s East’s, Sam’s West’s, and Westfield’s infringement of the ’671 patent has been willful and deliberate.

66. RTB and its distributor and licensee Rio have suffered and will continue to suffer damages as a result of Sam’s East’s, Sam’s West’s, and Westfield’s infringing activities.

**COUNT II**  
**FEDERAL TRADE DRESS DILUTION**

67. The allegations of paragraphs 1–67 are incorporated by reference as if fully stated herein.

68. By reason of RTB’s and its distributor and licensee Rio’s continuous and extensive use and advertising of the Wonder Wheeler® Trade Dress and the products sold in connection therewith, the Wonder Wheeler® Trade Dress has become famous and highly distinctive of, and uniquely associated with Wonder Wheeler® brand products.

69. The famous and inherently distinctive Wonder Wheeler® Trade Dress is not functional and not essential to the use or purpose of the Wonder Wheeler® carts, serving to readily distinguish the Wonder Wheeler® carts from those of competitors.

70. The Wonder Wheeler® Trade Dress, as detailed above, has acquired secondary meaning and distinctiveness as an exclusive indicator of source for Wonder Wheeler® brand carts through the length and manner of the use of the Wonder Wheeler® Trade Dress and through the nature and extent of advertising and promotion of the trade dress.

71. The primary significance of the Wonder Wheeler® Trade Dress in the minds of the consuming public is to identify the unique source of the Wonder Wheeler® carts.

72. As a result of the efforts of RTB, and its distributor and licensee Rio, the Wonder Wheeler® carts have become the premier cart and the consuming public has a conscious connection between the Wonder Wheeler® Trade Dress and the source of the Wonder Wheeler® carts.

73. Defendants’ actions, which occurred after the Wonder Wheeler® trade dress acquired fame, have diluted and will, unless restrained, continue to dilute and are likely to dilute, the distinctive quality of the famous Wonder Wheeler® Trade Dress by destroying the exclusive

association between such trade dress and Wonder Wheeler® carts, and/or otherwise lessening the capacity of the Wonder Wheeler® Trade Dress to identify the Wonder Wheeler® brand as the unique source of the Wonder Wheeler® cart.

74. Defendants' actions, which occurred after the Wonder Wheeler® Trade Dress acquired fame, has tarnished and will, unless enjoined, continue to tarnish, and are likely to tarnish, the valuable Wonder Wheeler® Trade Dress by undermining and damaging the valuable goodwill and reputation associated therewith.

75. Defendants' actions are intentional and in violation of Section 43(c)(1) of the Lanham Act, 15 U.S.C. § 1125(c)(1), and have already caused RTB, and, by extension, its distributor and licensee Rio, irreparable damage and will, unless restrained, continue to so damage RTB, and, by extension, its distributor and licensee Rio, RTB and Rio have no adequate remedy at law.

**COUNT III**  
**FEDERAL TRADE DRESS INFRINGEMENT**

76. The allegations of paragraphs 1–76 are incorporated by reference as if fully stated herein.

77. The famous and inherently distinctive Wonder Wheeler® Trade Dress is not functional and not essential to the use or purpose of the Wonder Wheeler® carts, serving to readily distinguish the Wonder Wheeler® carts from those of competitors.

78. The Wonder Wheeler® Trade Dress, as detailed above, has acquired secondary meaning and distinctiveness as an exclusive indicator of source for the Wonder Wheeler® carts through the length and manner of the use of the Trade Dress and through the nature and extent of advertising and promotion of the Trade Dress.

79. The primary significance of the Wonder Wheeler® Trade Dress in the minds of the consuming public is to identify the unique source of the Wonder Wheeler® carts.

80. As a result of the efforts of RTB, and its distributor and licensee Rio, the Wonder Wheeler® cart has become the premier cart and the consuming public has a conscious connection between the Wonder Wheeler® Trade Dress and the Wonder Wheeler® carts.

81. Defendant's use of a copy, variation, simulation, or colorable imitation of the Wonder Wheeler® Trade Dress in connection with their infringing cart and/or other products infringed RTB's and its distributor and licensee Rio's exclusive rights in the Wonder Wheeler® Trade Dress, is likely to cause confusion, mistake, or deception, and constitutes trade dress infringement in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a)(1).

82. Defendants' selection, incorporation, and use of protected elements of the Wonder Wheeler® Trade Dress, and/or copies, variations, simulations, or colorable imitations thereof, on the product packaging and design were made with full knowledge of RTB's and its distributor and Rio's longstanding and extensive prior use of the Wonder Wheeler® Trade Dress.

83. Defendants' conduct is causing immediate and irreparable injury to RTB, and its distributor and licensee Rio, and to the goodwill and reputation belonging to RTB and, by extension, its distributor and licensee Rio, and will continue to both damage RTB, and its distributor and licensee Rio, and to confuse the public unless enjoined by this Court. RTB and Rio have no adequate remedy at law.

**COUNT IV**  
**FEDERAL UNFAIR COMPETITION (15 U.S.C. § 1125(A)(1))**

84. The allegations of paragraphs 1–84 are incorporated by reference as if fully stated herein.

85. Defendants' use of copies, variations, simulations, or colorable imitation of the Wonder Wheeler® cart's trade dress in connection with their sale of the infringing cart and/or related products and services constitutes false designation of origin, a false description and representation of Defendants' goods, and a false representation that Defendants' products and/or services are sponsored, endorsed, licensed, or authorized by, or otherwise affiliated or connected Wonder Wheeler® brand of products.

86. Defendants' use of copies, variations, simulations, or colorable imitations of the Wonder Wheeler® Trade Dress in connection with their sale of the infringing cart and/or related products and services is likely to cause confusion, mistake, or deceptions, and constitutes unfair competition, in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a)(1).

87. Upon information and belief, Defendants used copies, variations, simulations, or colorable imitations of the Wonder Wheeler® Trade Dress with full knowledge of RTB's and its distributor and licensee Rio's longstanding and extensive prior use of the Wonder Wheeler® Trade Dress.

88. Upon information and belief, Defendants knowingly adopted and used copies, variations, simulations, or colorable imitations of the Wonder Wheeler® Trade Dress with full knowledge of RTB's and its distributor and licensee Rio's extensive prior use of the Wonder Wheeler® Trade Dress.

89. Defendants' acts are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

90. Defendants' conduct is causing immediate and irreparable injury to RTB and Rio and to the valuable goodwill and reputation belonging RTB and, by extension, its distributor and

licensee Rio, and will continue both to damage RTB and Rio and to confuse the public unless enjoined by this Court. RTB and Rio have no adequate remedy at law.

**COUNT V**  
**COMMON LAW UNFAIR COMPETITION**

91. The allegations of paragraphs 1–91 are incorporated by reference as if fully stated herein.

92. Upon information and belief, Defendants were aware of RTB’s and its distributor and licensee Rio’s prior use of the Wonder Wheeler®’s trade dress and adopted and designed copies, variations, simulations, or colorable imitations of protected elements of the Wonder Wheeler® Trade Dress in disregard of RTB’s and its distributor and licensee Rio’s rights in their valuable intellectual property.

93. Upon information and belief, Defendants design of the infringing cart has resulted in the misappropriation of and trading upon RTB’s and, by extension, its distributor and licensee Rio’s valuable goodwill and business reputation at RTB’s and Rio’s expense and to no expense to Defendants. The effect of Defendants’ misappropriation of the goodwill symbolized by the Wonder Wheeler® Trade Dress is likely to unjustly enrich Defendants, damage RTB and Rio, and confuse and/or deceive the public.

94. Defendants’ conduct constitutes unfair competition with RTB and, by extension, its distributor and licensee Rio, which has caused and will continue to cause irreparable injury to RTB’s and, by extension, its distributor and licensee Rio’s goodwill and reputation unless enjoined by this Court. RTB and Rio have no adequate remedy at law.

**COUNT VII**  
**VIOLATION OF M.G.L. c. 93A**

95. The allegations of paragraphs 1–95 are incorporated by reference as if fully stated herein.

96. RTB, Rio, and Defendants at all times relevant hereto have been engaged in trade or commerce substantially within the Commonwealth of Massachusetts.

97. Defendants' acts and methods of competition, as set forth above, constitute unfair and deceptive acts or practices declared unlawful by M.G.L. c. 93A, §§ 1 *et seq.*

98. Defendants' unfair and deceptive acts or practices have occurred primarily and substantially within the Commonwealth of Massachusetts.

99. Defendants' use and employment of the above acts or practices have been willful and knowing violations of M.G.L. c. 93A, §§ 1 *et seq.*

100. As a direct and proximate result of Defendants' wrongdoing, RTB and Rio have suffered monetary damages and is entitled to recover up to three, but not less than two, times the amount of its actual damages, together with interest, costs, and its reasonable attorneys' fees.

#### **PRAYERS FOR RELIEF**

WHEREFORE, RTB and Rio respectfully requests the following relief:

A. A judgment that Defendants have infringed, directly or indirectly, U.S. Patent No. 5,988,671;

B. Preliminary and permanent relief enjoining and restraining Defendants and their officers, director, agents, servants, employees, attorneys, and all others acting under, by, or through them, directly or indirectly, from:

1. infringing, directly or indirectly, U.S. Patent No. 5,988,671;
2. manufacturing selling distributing, advertising, promoting, or authorizing any third party to manufacture, sell, distribute, or promote the infringing cart or any other materials that violate RTB's and, by extension, its distributor and licensee Rio's intellectual property rights;
3. importing the infringing cart into the United States;

4. using or authorizing any third party to use any counterfeit, copy, simulation, confusingly similar variation, or colorable imitation of any of the Wonder Wheeler® Trade Dress in any manner or form, on or in connection with any business, products, or services, or in the marketing, advertising and promotion of the same;
5. imitating, copying, or making any unauthorized use of the Wonder Wheeler® Trade Dress or any copy, simulation, variation, or colorable imitation thereof;
6. making or displaying any statement or representation that is likely to lead the public or the trade to believe that Defendants' products or services are in any manner associated or affiliated with or approved, endorsed, licensed, sponsored, authorized, or franchised by or are otherwise connected with RTB or Rio;
7. making false and/or misleading claims and/or statements;
8. using or authorizing any third party to use in connection with the rendering, offering, advertising, or promotion of any business, goods, or services, any false description, false representation, or false designation of origin, or any marks, names, words, symbols, devices, or trade dress that falsely associate such business, goods, and/or services with RTB or Rio or tend to do so;
9. diluting the distinctive quality of the marks, items, or elements comprising the Wonder Wheeler® trademark and/or trade dress;



10. registering or applying to register as a trademark, service mark, domain name, trade name, or other source identified or symbol of origin any mark, trade name, trade dress, or name incorporating the marks, items or elements comprising the Wonder Wheeler® trademarks or trade dress that infringes on or is likely to be confused with the Wonder Wheeler® trademark, trade dress, RTB, Rio, or any products or services of RTB or Rio;
11. engaging in any other activity constituting unfair competition with RTB or Rio, or constituting an infringement of the Wonder Wheeler® trademark or trade dress or of RTB's or Rio's rights therein; and/or
12. aiding, assisting, or abetting any other party in doing any act prohibited by sub-paragraphs (2) through (11);

C. A judgment ordering that the United States Department of Homeland Security, Customs and Border Protection ("Customs") take all appropriate measures to exclude all offending merchandise from entry into the commerce of the United States and that all merchandise previously entered be returned to Customs' custody and said merchandise be subject to seizure and forfeiture in accordance with statute and applicable regulations;

D. A judgment requiring Defendants to immediately cease all distribution, marketing, sale, and/or use of any and all products, packaging, labels, catalogs, advertisements, signs, displays, or other related materials that feature or bear any designation or resemblance to the Wonder Wheeler® trademark or trade dress or any infringing product or counterfeit, copy, simulation, confusingly similar variation, or colorable imitation thereof, and to direct all of their distributors, retail establishments, and/or wholesale establishments wherever located in the

United States to cease forthwith the distribution and/or sale of any and all products, packaging, labels, catalogues, advertisements, signs, displays, and/or other related materials featuring or bearing any designation including or incorporating any of the Wonder Wheeler® trademark and/or trade dress, the infringing product or packaging, or any counterfeit, copy, simulation, confusingly similar variation, or colorable imitation thereof, and to immediately remove them from public access;

E. A judgment directing that Defendants deliver for destruction all products, packaging, advertisements, sign, displays, and/or other related materials incorporating or bearing any of the Wonder Wheeler® trademarks, trade dress, any infringing product or packaging, or any counterfeit, copy, simulation, confusingly similar variation, or colorable imitation thereof;

F. A judgment directing that Defendants recall all products, packaging labels, catalogues, advertisements, signs, displays and/or other related materials in their possession, or under their control, incorporating ore bearing any of the Wonder Wheeler® trademarks, trade dress, infringing product or packaging, or any counterfeit, copy, simulation, confusingly similar variation, or colorable imitation thereof;

G. A judgment directing such other relief as the Court may deem appropriate to protect the trade and public from deriving the erroneous impression that any products or services manufactured, sold, distributed, licensed, or otherwise offered, circulated, or promoted by Defendants are authorized by RTB or Rio or related in any way to RTB's or Rio's products and services;

H. A judgment directing Defendants file with the Court and serve upon RTB and Rio's counsel within thirty (30) days after entry of such judgment, a report in writing under oath, setting forth in detail the manner and form in which Defendants have complied therewith;

- I. A judgment requiring Defendants to pay damages under 35 U.S.C. § 284, with prejudgment interest;
- J. A declaration that this is an exceptional case under 35 U.S.C. § 285;
- K. A judgment awarding RTB and Rio such damages as they have sustained or will sustain by reason of Defendants' trade dress infringement, dilution, and unfair competition;
- L. A judgment awarding RTB and Rio all gains, profits, property, and advantages derived by Defendants from such conduct;
- M. A judgment awarding RTB and Rio multiple damages pursuant to 35 U.S.C. § 285, 15 U.S.C. § 1107, and/or M.G.L. c. 93A, § 11;
- N. A judgment awarding RTB and Rio their reasonable attorneys' fees under 35 U.S.C. § 285, 15 U.S.C. § 1117, and/or M.G.L. c. 93A, § 11;
- O. A judgment awarding RTB and Rio interest, including pre-judgment interest, on the foregoing sums; and
- P. Any and all such additional and further relief as this court may deem just and equitable.

**JURY DEMAND**

RTB and Rio demand a trial by jury as to all issues in the above matter.

Dated: June 23, 2014

Respectfully submitted,

REACH THE BEACH, INC. and  
RIO BRANDS LLC,  
By their attorneys,

*/s/ Anthony J. Fitzpatrick*

\_\_\_\_\_  
Anthony J. Fitzpatrick (BBO No. 564324)

Carolyn A. Alenci (BBO No. 675744)

**DUANE MORRIS LLP**

100 High Street, Suite 2400

Boston, MA 02110-1724

Telephone: +1 857 488 4200

Fax: +1 857 488 4201

E-mail: [ajfitzpatrick@duanemorris.com](mailto:ajfitzpatrick@duanemorris.com)  
[caalenci@duanemorris.com](mailto:caalenci@duanemorris.com)

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been filed through the Electronic Case Filing System of the United States District Court for the District of Massachusetts and will be served electronically by the court to the Registered Participants identified in the Notice of Electronic filing for this case.

Dated: June 23, 2014

/s/ Anthony J. Fitzpatrick

Anthony J. Fitzpatrick