

1 Marshall A. Lerner (State Bar No. 55,224)

2 *mlerner@kleinberglerner.com*

3 Vivian Z. Wang (State Bar No. 289,870)

4 *vwang@kleinberglerner.com*

5 KLEINBERG & LERNER, LLP

6 1875 Century Park East, Suite 1150

7 Los Angeles, California 90067-2501

8 Telephone: (310) 557-1511

9 Facsimile: (310) 557-1540

10 Attorneys for Plaintiffs Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 SKECHERS U.S.A., INC., a Delaware
14 Corporation, and SKECHERS U.S.A.,
15 INC. II, a Delaware Corporation

16 Plaintiffs,

17 v.

18 STEVEN MADDEN, LTD., a Delaware
19 Corporation, and Does 1 – 10 inclusive,

20 Defendants.

21) Case No.: 2:15-cv-05123-JAK-FFM

22)

23) **FIRST AMENDED COMPLAINT FOR**
24) **DAMAGES AND INJUNCTIVE RELIEF**
25) **ARISING OUT OF PATENT**
26) **INFRINGEMENT [35 U.S.C. § 271];**

27) **DEMAND FOR JURY TRIAL**

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1 Plaintiffs Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II (collectively
2 "Skechers"), file this First Amended Complaint against defendant Steven Madden, Ltd.
3 (hereinafter "Steve Madden" or "Defendant"). Pursuant to ¶ 13 of the Initial Standing
4 Order for Civil Cases Assigned to Judge John A. Kronstadt, a "redline" version of the
5 amended complaint is attached as Appendix A.

6 Skechers complains and alleges as follows:
7

8 **PARTIES**

9 1. Plaintiff Skechers U.S.A., Inc. is a corporation duly organized and existing
10 under the laws of the State of Delaware with a principal place of business located at 228
11 Manhattan Beach Blvd., Manhattan Beach, California 90266.

12 2. Plaintiff Skechers U.S.A., Inc. II is a corporation duly organized and
13 existing under the laws of the State of Delaware with a principal place of business
14 located at 228 Manhattan Beach Blvd., Manhattan Beach, California 90266. Skechers
15 U.S.A., Inc. II is a wholly-owned subsidiary of Skechers U.S.A., Inc.

16 3. On information and belief, Defendant Steven Madden, Ltd. is a Delaware
17 corporation having an office and place of business at 52-16 Barnett Avenue, Long Island
18 City, New York 11104.

19 4. Defendants Does 1 – 10, inclusive, are sued herein under fictitious names.
20 Their true names and capacities are unknown to Skechers. When their true names and
21 capacities are ascertained, Skechers will amend this complaint by inserting their true
22 names and capacities. Skechers is informed and believes and thereon alleges, that Does
23 1 – 10, and each of them are responsible in some manner for the occurrences alleged
24 herein and that Skechers' damages were proximately caused by such defendants.

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1 **JURISDICTION AND VENUE**

2 5. Jurisdiction in this Court arises under the patent laws of the United States,
3 35 U.S.C. §§271 and 289. This Court has jurisdiction over these claims pursuant to 28
4 U.S.C. §§ 1331.

5 6. This Court has personal jurisdiction over Defendant because Steve Madden
6 committed one or more of the infringing acts complained of herein in California and in
7 this district, Steve Madden has multiple sales outlets in California and in this district,
8 and Steve Madden regularly conducts business or solicits business in California and in
9 this district.

10 7. Venue in this Court is proper under the provisions of 28 U.S.C. §§ 1391(b)
11 and (c) because a substantial part of the claims arose in this district.

12 **FACTUAL BACKGROUND**

13 8. From its humble beginnings as a small business in Manhattan Beach,
14 California, Skechers has grown to become a multi-billion-dollar global leader in the
15 lifestyle footwear industry. Over the years, Skechers has earned its reputation as a high-
16 performance footwear brand and a world leader in designing cutting-edge footwear.
17

18 9. Skechers' commitment to innovation is evident in the tens of millions of
19 dollars spent in researching and developing its proprietary line of shoe designs. These
20 ornamental designs are embodied in the highly successful SKECHERS GO series of
21 footwear.

22 10. Skechers' commitment to innovation and investment in research and
23 development is also evident in its intellectual property portfolio. The United States
24 Patent and Trademark Office (USPTO) has acknowledged the novel, non-obvious, and
25 ornamental designs embodied in various styles within the SKECHERS GO series by
26 issuing U.S. Patent Nos. D661,880 S (the " '880 patent", Exhibit 1), D680,309 S (the
27 " '309 patent", Exhibit 2), D 651,788 S (the " '788 patent", Exhibit 3), D652,613 S (the

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1 " '613 patent", Exhibit 4), D652,614 (the " '614 patent", Exhibit 5), and D680,312 S (the
2 " '312 patent", Exhibit 6) (collectively the "patents-in-suit") therefore to Skechers.

3 11. The innovative designs of the SKECHERS GO series have significantly
4 contributed to the company's recent successes which culminated in multiple top industry
5 awards in the United States including Company of the Year awards from both *Footwear*
6 *News* and *Footwear Plus* in late 2014, as well as Footwear Brand of the Year and
7 Fashion Footwear Brand of the Year awards at The Footwear Industry Awards in the
8 United Kingdom in 2015. The fame and popularity of various styles of shoes within the
9 SKECHERS GO series is evident in the fact that millions of pairs of SKECHERS GO
10 series shoes have been sold since their introduction on the market.

11 12. Defendant has overtly copied many of Skechers' design innovations,
12 infringing the '880 patent, the '309 patent, the '788 patent, the '613 patent, the '614 patent
13 and the '312 patent by making, using, selling, offering for sale, and/or importing for sale
14 shoes that embody the patented invention disclosed in these patents, or by enabling
15 and/or inducing others to commit such acts.

16 13. Defendant's infringing shoes include, at least, the models identified by
17 Steve Madden under its STEVEN BY STEVE MADDEN line as the SETTA shoe.
18 Defendant has profited and is profiting from such design patent infringement and unfair
19 competition.

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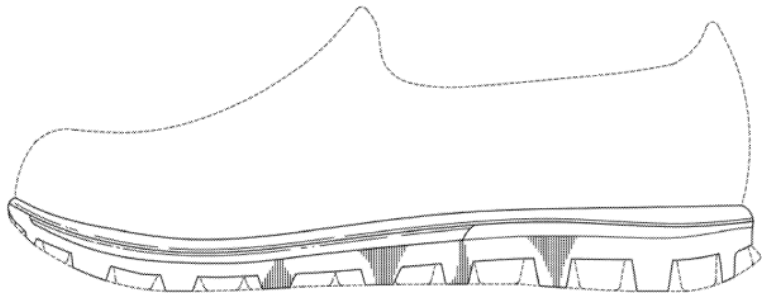
1 **SKECHERS' DESIGN PATENTS**

2 14. The USPTO has acknowledged the novel, non-obvious, and ornamental
3 appearances of various aspects of several styles of footwear within the SKECHERS GO
4 series by issuing the patents-in-suit therefore to Skechers.

5 15. Defendant's infringement of the '880 patent can be seen in the comparison
6 below which shows a sample figure of the shoe outsole and periphery from the '880
7 patent next to Defendant's SETTA shoe.

8


9 **SKECHERS**
10 **U.S. DESIGN**
11 **PATENT D661,880 S**
12 **Exhibit 1**



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15 **Defendant's SETTA**
16 **Shoe**



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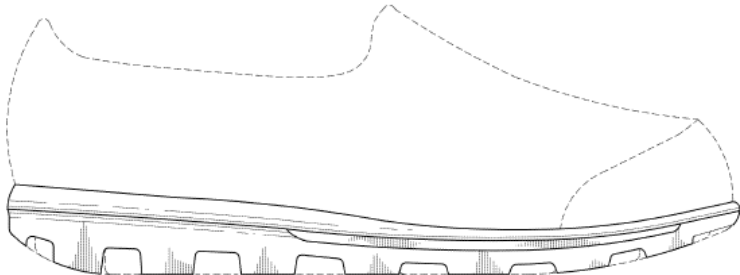

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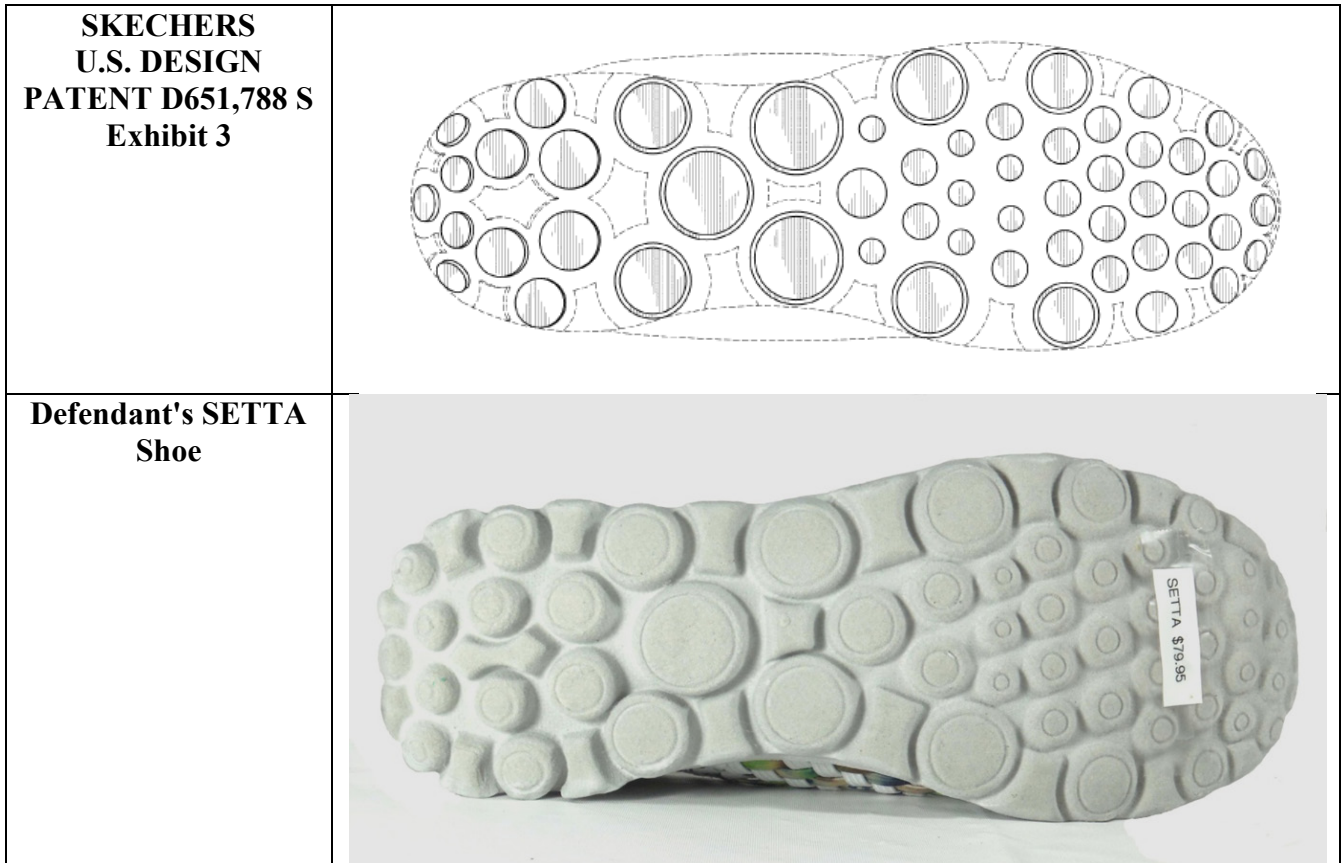
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1 16. Defendant's infringement of the '309 patent can be seen in the comparison
2 below which shows a sample figure of the shoe outsole and periphery from the '309
3 patent next to Defendant's SETTA shoe.

<p>5 SKECHERS 6 U.S. DESIGN PATENT 7 D680,309 S 8 Exhibit 2</p>	
<p>11 Defendant's SETTA Shoe</p>	

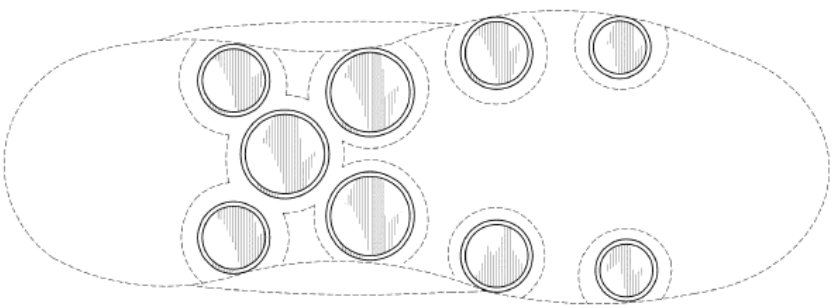

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1 17. Defendant's infringement of the '788 patent can be seen in the comparison
2 below which shows a sample figure of the shoe bottom from the '788 patent next to
3 Defendant's SETTA shoe.
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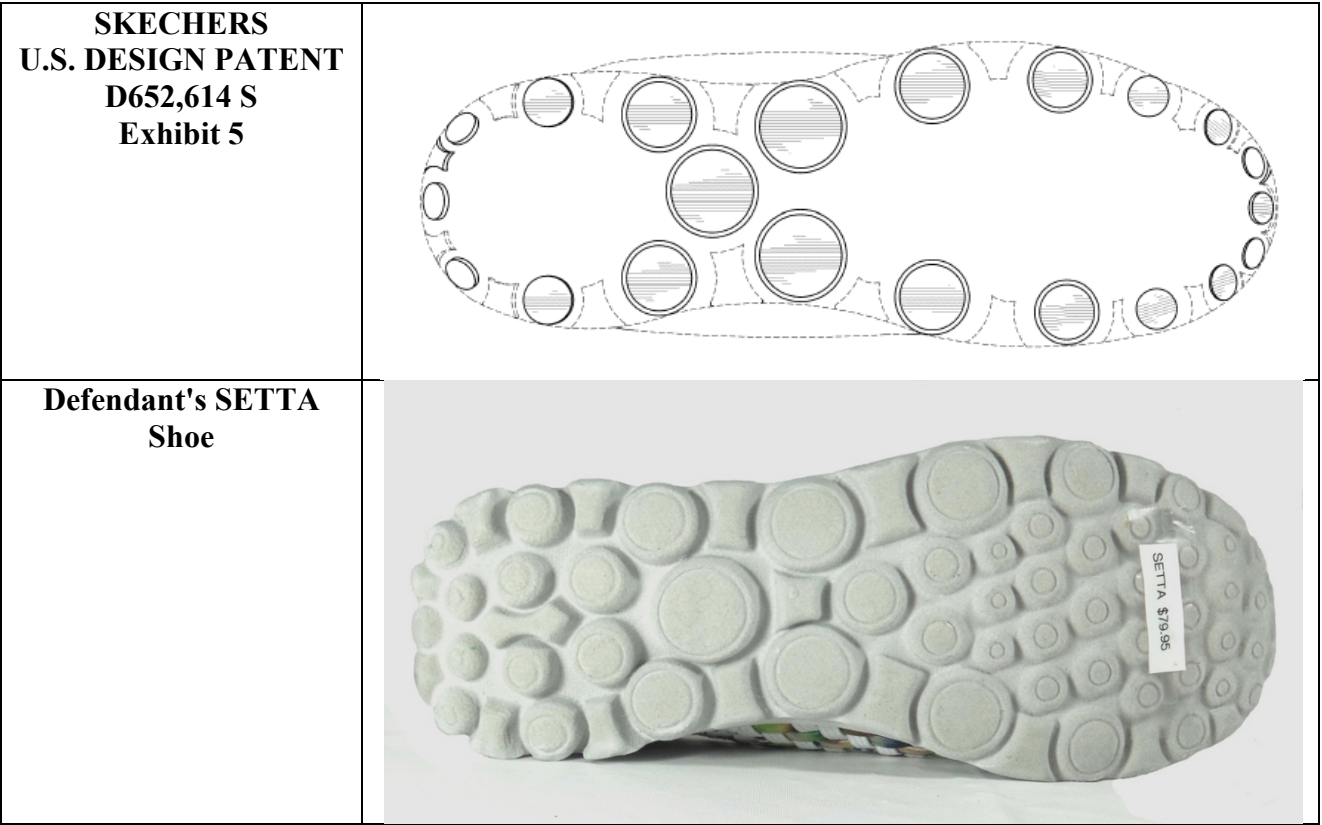
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1 18. Defendant's infringement of the '613 patent can be seen in the comparison
2 below which shows a sample figure of the shoe bottom from the '613 patent next to
3 Defendant's SETTA shoe.

<p>4 5 SKECHERS 6 U.S. DESIGN 7 PATENT D652,613 S 8 Exhibit 4</p>	
<p>9 10 11 Defendant's SETTA 12 Shoe</p>	

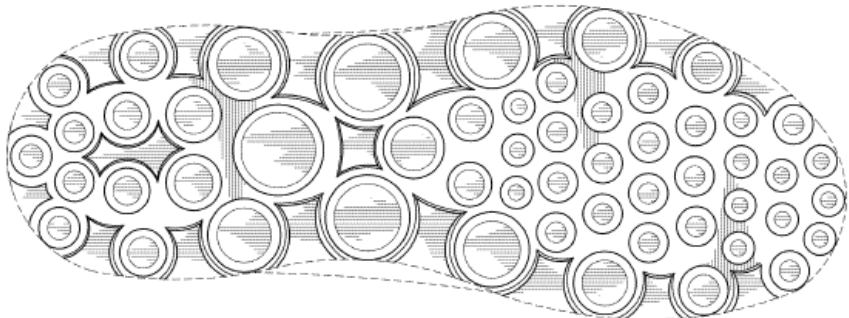

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1 19. Defendant's infringement of the '614 patent can be seen in the comparison
2 below which shows a sample figure of the shoe bottom from the '614 patent next to
3 Defendant's SETTA shoe.



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1 20. Defendant's infringement of the '312 patent can be seen in the comparison
2 below which shows a sample figure of the shoe bottom from the '312 patent next to
3 Defendant's SETTA shoe.

<p>4 5 SKECHERS 6 U.S. DESIGN PATENT 7 D680,312 S 8 Exhibit 6</p>	
<p>9 10 11 Defendant's SETTA 12 Shoe</p>	

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1 **FIRST CAUSE OF ACTION**

2 [Design Patent Infringement, Patent No. US D661,880 S]

3 21. Skechers realleges and incorporates by reference, the full text of all of the
4 foregoing numbered paragraphs and photographs as though each such paragraph and
5 photograph has been fully set forth hereat.

6 22. On June 19, 2012, the USPTO issued United States Patent No. US
7 D661,880 S (Exhibit 1) therefore to Skechers. At all times since the date of issue of the
8 '880 patent, Skechers has been, and currently is, the exclusive owner of the entire right,
9 title and interest in and to the '880 patent. Skechers' ownership of the '880 patent
10 includes, without limitation, the exclusive right to enforce the '880 patent, the exclusive
11 right to file actions based on infringement of the '880 patent, and the exclusive right to
12 recover damages or other monetary amounts for infringement of the '880 patent and to
13 be awarded injunctive relief pertaining to the '880 patent. Skechers has owned the '880
14 patent at all times during Defendant's infringement of the '880 patent.

15 23. Defendant has been, and presently is, directly infringing, contributing to the
16 infringement of, and/or inducing others to infringe the '880 patent within this judicial
17 district and elsewhere by making, using, selling, offering for sale, and/or importing into
18 the United States, products that embody the patented invention disclosed in the '880
19 patent. Defendant's infringement of the '880 patent include, at least, the models
20 identified by Defendant as the STEVEN BY STEVE MADDEN SETTA shoe.

21 24. The shoe outsole and periphery of Defendant's SETTA shoe so closely
22 resembles the invention disclosed in the '880 patent that an ordinary observer would be
23 deceived into purchasing the SETTA shoe in the mistaken belief that it includes the
24 invention disclosed in the '880 patent. Defendant's SETTA shoe infringes the '880
25 patent in violation of 35 U.S.C. §§271 and 289.

26 25. Due to Defendant's infringement of the '880 patent, Skechers has suffered,
27 is suffering, and will continue to suffer irreparable injury for which Skechers has no

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1 adequate remedy at law. Skechers is therefore entitled to a permanent injunction against
2 defendant's further infringing conduct.

3 26. Defendant has profited and is profiting from its infringement of the '880
4 patent and Skechers has been and is being damaged and losing profit by such
5 infringement. Skechers is therefore entitled to recover damages from the defendant and
6 the total profit derived from such infringement, all in an amount to be proven at trial.

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8 **SECOND CAUSE OF ACTION**

9 [Design Patent Infringement, Patent No. US D680,309 S]

10 27. Skechers realleges and incorporates by reference, the full text of all of the
11 foregoing numbered paragraphs and photographs as though each such paragraph and
12 photograph has been fully set forth hereat.

13 28. On April 23, 2013, the USPTO issued United States Patent No. US
14 D680,309 S (Exhibit 2) therefore to Skechers. At all times since the date of issue of the
15 '309 patent, Skechers has been, and currently is, the exclusive owner of the entire right,
16 title and interest in and to the '309 patent. Skechers' ownership of the '309 patent
17 includes, without limitation, the exclusive right to enforce the '309 patent, the exclusive
18 right to file actions based on infringement of the '309 patent, and the exclusive right to
19 recover damages or other monetary amounts for infringement of the '309 patent and to
20 be awarded injunctive relief pertaining to the '309 patent. Skechers has owned the '309
21 patent at all times during Defendant's infringement of the '309 patent.

22 29. Defendant has been, and presently is, directly infringing, contributing to the
23 infringement of, and/or inducing others to infringe the '309 patent within this judicial
24 district and elsewhere by making, using, selling, offering for sale, and/or importing into
25 the United States, products that embody the patented invention disclosed in the '309
26 patent. Defendant's infringement of the '309 patent include, at least, the models
27 identified by Defendant as the STEVEN BY STEVE MADDEN SETTA shoe.
28 The shoe outsole and periphery of Defendant's SETTA shoe so closely resembles the

1 invention disclosed in the '309 patent that an ordinary observer would be deceived into
2 purchasing the SETTA shoe in the mistaken belief that it includes the invention
3 disclosed in the '309 patent. Defendant's SETTA shoe infringes the '309 patent in
4 violation of 35 U.S.C. §§271 and 289.

5 30. Due to Defendant's infringement of the '309 patent, Skechers has suffered,
6 is suffering, and will continue to suffer irreparable injury for which Skechers has no
7 adequate remedy at law. Skechers is therefore entitled to a permanent injunction against
8 defendant's further infringing conduct.

9 31. Defendant has profited and is profiting from its infringement of the '309
10 patent and Skechers has been and is being damaged and losing profit by such
11 infringement. Skechers is therefore entitled to recover damages from the defendant and
12 the total profit derived from such infringement, all in an amount to be proven at trial.

13 14 **THIRD CAUSE OF ACTION**

15 [Design Patent Infringement, Patent No. US D651,788 S]

16 32. Skechers realleges and incorporates by reference, the full text of all of the
17 foregoing numbered paragraphs and photographs as though each such paragraph and
18 photograph has been fully set forth hereat.

19 33. On January 10, 2012, the USPTO issued United States Patent No. US
20 D651,788 S (Exhibit 3) therefore to Skechers. At all times since the date of issue of the
21 '788 patent, Skechers has been, and currently is, the exclusive owner of the entire right,
22 title and interest in and to the '788 patent. Skechers' ownership of the '788 patent
23 includes, without limitation, the exclusive right to enforce the '788 patent, the exclusive
24 right to file actions based on infringement of the '788 patent, and the exclusive right to
25 recover damages or other monetary amounts for infringement of the '788 patent and to
26 be awarded injunctive relief pertaining to the '788 patent. Skechers has owned the '788
27 patent at all times during Defendant's infringement of the '788 patent.

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1 34. Defendant has been, and presently is, directly infringing, contributing to the
2 infringement of, and/or inducing others to infringe the '788 patent within this judicial
3 district and elsewhere by making, using, selling, offering for sale, and/or importing into
4 the United States, products that embody the patented invention disclosed in the '788
5 patent. Defendant's infringement of the '788 patent include, at least, the models
6 identified by Defendant as the STEVEN BY STEVE MADDEN SETTA shoe.

7 35. The shoe bottom of Defendant's SETTA shoe so closely resembles the
8 invention disclosed in the '788 patent that an ordinary observer would be deceived into
9 purchasing the SETTA shoe in the mistaken belief that it includes the invention
10 disclosed in the '788 patent. Defendant's SETTA shoe infringes the '788 patent in
11 violation of 35 U.S.C. §§271 and 289.

12 36. Due to Defendant's infringement of the '788 patent, Skechers has suffered,
13 is suffering, and will continue to suffer irreparable injury for which Skechers has no
14 adequate remedy at law. Skechers is therefore entitled to a permanent injunction against
15 defendant's further infringing conduct.

16 37. Defendant has profited and is profiting from its infringement of the '788
17 patent and Skechers has been and is being damaged and losing profit by such
18 infringement. Skechers is therefore entitled to recover damages from the defendant and
19 the total profit derived from such infringement, all in an amount to be proven at trial.

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21 **FOURTH CAUSE OF ACTION**

22 [Design Patent Infringement, Patent No. US D652,613 S]

23 38. Skechers realleges and incorporates by reference, the full text of all of the
24 foregoing numbered paragraphs and photographs as though each such paragraph and
25 photograph has been fully set forth hereat.

26 39. On January 24, 2012, the USPTO issued United States Patent No. US
27 D652,613 S (Exhibit 4) therefore to Skechers. At all times since the date of issue of the
28 '613 patent, Skechers has been, and currently is, the exclusive owner of the entire right,

1 title and interest in and to the '613 patent. Skechers' ownership of the '613 patent
2 includes, without limitation, the exclusive right to enforce the '613 patent, the exclusive
3 right to file actions based on infringement of the '613 patent, and the exclusive right to
4 recover damages or other monetary amounts for infringement of the '613 patent and to
5 be awarded injunctive relief pertaining to the '613 patent. Skechers has owned the '613
6 patent at all times during Defendant's infringement of the '613 patent.

7 40. Defendant has been, and presently is, directly infringing, contributing to the
8 infringement of, and/or inducing others to infringe the '613 patent within this judicial
9 district and elsewhere by making, using, selling, offering for sale, and/or importing into
10 the United States, products that embody the patented invention disclosed in the '613
11 patent. Defendant's infringement of the '613 patent include, at least, the models
12 identified by Defendant as the STEVEN BY STEVE MADDEN SETTA shoe.

13 41. The shoe bottom of Defendant's SETTA shoe so closely resembles the
14 invention disclosed in the '613 patent that an ordinary observer would be deceived into
15 purchasing the SETTA shoe in the mistaken belief that it includes the invention
16 disclosed in the '613 patent. Defendant's SETTA shoe infringes the '613 patent in
17 violation of 35 U.S.C. §§271 and 289.

18 42. Due to Defendant's infringement of the '613 patent, Skechers has suffered,
19 is suffering, and will continue to suffer irreparable injury for which Skechers has no
20 adequate remedy at law. Skechers is therefore entitled to a permanent injunction against
21 defendant's further infringing conduct.

22 43. Defendant has profited and is profiting from its infringement of the '613
23 patent and Skechers has been and is being damaged and losing profit by such
24 infringement. Skechers is therefore entitled to recover damages from the defendant and
25 the total profit derived from such infringement, all in an amount to be proven at trial.

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1 **FIFTH CAUSE OF ACTION**

2 [Design Patent Infringement, Patent No. US D652,614 S]

3 44. Skechers realleges and incorporates by reference, the full text of all of the
4 foregoing numbered paragraphs and photographs as though each such paragraph and
5 photograph has been fully set forth hereat.

6 45. On January 24, 2012, the USPTO issued United States Patent No. US
7 D652,614 S (Exhibit 5) therefore to Skechers. At all times since the date of issue of the
8 '614 patent, Skechers has been, and currently is, the exclusive owner of the entire right,
9 title and interest in and to the '614 patent. Skechers' ownership of the '614 patent
10 includes, without limitation, the exclusive right to enforce the '614 patent, the exclusive
11 right to file actions based on infringement of the '614 patent, and the exclusive right to
12 recover damages or other monetary amounts for infringement of the '614 patent and to
13 be awarded injunctive relief pertaining to the '614 patent. Skechers has owned the '614
14 patent at all times during Defendant's infringement of the '614 patent.

15 46. Defendant has been, and presently is, directly infringing, contributing to the
16 infringement of, and/or inducing others to infringe the '614 patent within this judicial
17 district and elsewhere by making, using, selling, offering for sale, and/or importing into
18 the United States, products that embody the patented invention disclosed in the '614
19 patent. Defendant's infringement of the '614 patent include, at least, the models
20 identified by Defendant as the STEVEN BY STEVE MADDEN SETTA shoe.

21 47. The shoe bottom of Defendant's SETTA shoe so closely resembles the
22 invention disclosed in the '614 patent that an ordinary observer would be deceived into
23 purchasing the SETTA shoe in the mistaken belief that it includes the invention
24 disclosed in the '614 patent. Defendant's SETTA shoe infringes the '614 patent in
25 violation of 35 U.S.C. §§271 and 289.

26 48. Due to Defendant's infringement of the '614 patent, Skechers has suffered,
27 is suffering, and will continue to suffer irreparable injury for which Skechers has no

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1 adequate remedy at law. Skechers is therefore entitled to a permanent injunction against
2 defendant's further infringing conduct.

3 49. Defendant has profited and is profiting from its infringement of the '614
4 patent and Skechers has been and is being damaged and losing profit by such
5 infringement. Skechers is therefore entitled to recover damages from the Defendant and
6 the total profit derived from such infringement, all in an amount to be proven at trial.

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8 **SIXTH CAUSE OF ACTION**

9 [Design Patent Infringement, Patent No. US D680,312 S]

10 50. Skechers realleges and incorporates by reference, the full text of all of the
11 foregoing numbered paragraphs and photographs as though each such paragraph and
12 photograph has been fully set forth hereat.

13 51. On April 23, 2013, the USPTO issued United States Patent No. US
14 D680,312 S (Exhibit 6) therefore to Skechers. At all times since the date of issue of the
15 '312 patent, Skechers has been, and currently is, the exclusive owner of the entire right,
16 title and interest in and to the '312 patent. Skechers' ownership of the '312 patent
17 includes, without limitation, the exclusive right to enforce the '312 patent, the exclusive
18 right to file actions based on infringement of the '312 patent, and the exclusive right to
19 recover damages or other monetary amounts for infringement of the '312 patent and to
20 be awarded injunctive relief pertaining to the '312 patent. Skechers has owned the '312
21 patent at all times during Defendant's infringement of the '312 patent.

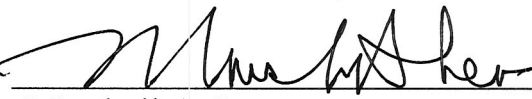
22 52. Defendant has been, and presently is, directly infringing, contributing to the
23 infringement of, and/or inducing others to infringe the '312 patent within this judicial
24 district and elsewhere by making, using, selling, offering for sale, and/or importing into
25 the United States, products that embody the patented invention disclosed in the '312
26 patent. Defendant's infringement of the '312 patent include, at least, the models
27 identified by Defendant as the STEVEN BY STEVE MADDEN SETTA shoe.

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- 1 F. An award for Skechers' costs and attorneys' fees; and
2 G. Any other additional and further relief that the Court may deem just and proper
3 under the circumstances.
4

5 KLEINBERG & LERNER, LLP

6 September 16, 2015

7 By:  _____

8 Marshall A. Lerner

9 Vivian Z. Wang

10 Attorneys for Plaintiffs Skechers U.S.A., Inc.

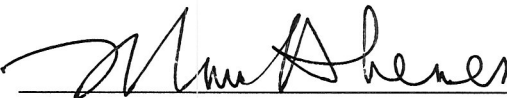
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1 **DEMAND FOR JURY TRIAL**

2 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Local Rule 38-
3 1, plaintiffs Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II demand a trial by jury of
4 any and all issues triable of right by a jury pursuant to the Seventh Amendment to the
5 United States Constitution or as given by a statute of the United States.

6
7 KLEINBERG & LERNER, LLP

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10 September 16, 2015

11 By: 
12 Marshall A. Lerner
13 Vivian Z. Wang

14 Attorney for Plaintiffs Skechers U.S.A., Inc.
15 and Skechers U.S.A., Inc. II
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