

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

COSTCO WHOLESALE  
CORPORATION, a Washington  
corporation,

Plaintiff,

v.

ACUSHNET COMPANY, a Delaware  
corporation,

Defendant.

No. 2:17-cv-00423-RAJ

AMENDED COMPLAINT FOR  
DECLARATORY JUDGMENT OF NON-  
INFRINGEMENT AND INVALIDITY OF  
PATENT RIGHTS AND FOR NO FALSE  
ADVERTISING

DEMAND FOR JURY TRIAL

**I. NATURE OF THE CASE**

1. Costco Wholesale Corporation (“Costco”) seeks a declaratory judgment that it is not infringing any valid patent rights owned by defendant Acushnet Company (“Acushnet” or “defendant”) by its sale of its Kirkland Signature golf balls (“KS golf balls”) and that it has not engaged in false advertising regarding the KS golf balls. The need for such relief exists because Acushnet has wrongfully accused Costco of patent infringement and false advertising.

**II. THE PARTIES**

2. Costco Wholesale Corporation (“Costco”) is a Washington corporation with its principal place of business at 999 Lake Drive, Issaquah, Washington 98027.



1 8. A justiciable controversy exists as to whether Costco is infringing any valid patent  
2 rights owned by Acushnet as a result of Costco's sale of the KS golf ball or has engaged in any  
3 false advertising in connection with such golf ball.

4 9. Costco's sales of the KS golf ball do not infringe any valid patent rights owned by  
5 Acushnet, including any valid patent claims identified by Acushnet in its correspondence.  
6 Accordingly, Costco respectfully requests that the Court issue a declaratory judgment confirming  
7 that Costco is not infringing any Acushnet patent rights as a result of its sale of the KS golf ball,  
8 including any valid patent claims identified by Acushnet. The specific patents identified by  
9 Acushnet are listed below.

10 **V. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
11 **U.S. PATENT NO. 6,994,638**

12 10. Costco re-alleges paragraphs 1 through 9 above as if fully set forth herein.

13 11. Costco is not infringing any valid claims of U.S. Patent No. 6,994,638 ("the '638  
14 patent"). Acushnet has accused Costco of infringing claim 1 of the '638 patent. Costco's sales  
15 of the KS golf ball do not constitute infringement of claim 1 of the '638 patent, however,  
16 because, among other things, the Shore D hardness of the center core of the KS ball is not "at  
17 least about 10 points" less than the Shore D hardness of the outer core.

18 12. The '638 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
19 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Patent No.  
20 6,468,169 and other prior art publications and activities.

21 13. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
22 the '638 patent and that the patent is invalid.

23 **VI. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
24 **U.S. PATENT NO. 8,123,632**

25 14. Costco re-alleges paragraphs 1 through 13 above as if fully set forth herein.

26 15. Costco is not infringing any valid claims of U.S. Patent No. 8,123,632 ("the '632  
patent"). Acushnet has accused Costco of infringing claim 17 of the '632 patent. Costco's sales

1 of the KS ball do not constitute infringement of claim 17, however, because, at the least, the  
2 surface hardness of the outer core of the KS ball is not 75 Shore C or greater.

3 16. The '632 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
4 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Publication No.  
5 2007/0281802 and other prior art publications and activities.

6 17. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
7 the '632 patent and that the patent is invalid.

8 **VII. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
9 **U.S. PATENT NO. 8,444,507**

10 18. Costco re-alleges paragraphs 1 through 17 above as if fully set forth herein.

11 19. Costco is not infringing any valid claims of U.S. Patent No. 8,444,507 ("the '507  
12 patent"). Acushnet has accused Costco of infringing claim 17 of the '507 patent. Costco sales of  
13 the KS golf ball do not constitute infringement of claim 17 of the '507 patent because, at the  
14 least, the KS ball does not have an outer core with a surface hardness of about 75 Shore C or  
15 greater.

16 20. The '507 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
17 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Publication No.  
18 2007/0281802 and other prior art publications and activities.

19 21. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
20 the '507 patent and that the patent is invalid.

21 **VIII. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
22 **U.S. PATENT NO. 9,320,944**

23 22. Costco re-alleges paragraphs 1 through 21 above as if fully set forth herein.

24 23. Costco is not infringing any valid claims of U.S. Patent No. 9,320,944 ("the '944  
25 patent"). Acushnet has accused Costco of infringing claim 1 of the '944 patent. Costco's sales  
26 of the KS golf ball do not constitute infringement of claim 1 of the '944 patent, however,

1 because, at the least, the KS ball does not an have an outer core with a surface hardness of “at  
2 least about 85 Shore C.”

3 24. The '944 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
4 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of WO98/43709 Publication,  
5 U.S. Publication No. 2002/0144466, and other prior art publications and activities.

6 25. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
7 the '944 patent and that the patent is invalid.

8 **IX. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
9 **U.S. PATENT NO. 8,025,593**

10 26. Costco re-alleges paragraphs 1 through 25 above as if fully set forth herein.

11 27. Costco is not infringing any valid claims of U.S. Patent No. 8,025,593 (“the '593  
12 patent”). Acushnet has accused Costco of infringing claim 1 of the '593 patent. Costco’s sales  
13 of the KS golf ball do not constitute infringement of claim 1 of the '593 patent, however,  
14 because at the least, the outer core layer of the golf ball is not comprised of the copolymer  
15 recited in the claim.

16 28. The '593 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
17 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Patent No.  
18 6,468,169 and other prior art publications and activities.

19 29. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
20 the '593 patent and that the patent is invalid.

21 **X. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
22 **U.S. PATENT NO. 8,257,201**

23 30. Costco re-alleges paragraphs 1 through 29 above as if fully set forth herein.

24 31. Costco is not infringing any valid claims of U.S. Patent No. 8,257,201 (“the '201  
25 patent”). Acushnet has accused Costco of infringing claim 1 of the '201 patent. Costco’s sales  
26 of the KS golf ball do not constitute infringement of claim 1 of the '201 patent, however,

1 because, at the least, the outer core of the golf ball is not comprised of the copolymer recited in  
2 the claim.

3 32. The '201 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
4 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Patent No.  
5 6,468,169 and other prior art publications and activities.

6 33. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
7 the '201 patent and that the patent is invalid.

8 **XI. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
9 **U.S. PATENT NO. 7,331,878**

10 34. Costco re-alleges paragraphs 1 through 33 above as if fully set forth herein.

11 35. Costco is not infringing any valid claims of U.S. Patent No. 7,331,878 (“the '878  
12 patent”). Acushnet has accused Costco of infringing the '878 patent but has not identified any  
13 specific claims. Costco’s sales of the KS golf ball do not constitute infringement of any of the  
14 claims of the '878 patent, however, because, at the least, the Coefficient of Restitution (COR) for  
15 the first three layers of the KS ball is not .003 less than the COR for the finished ball.

16 36. The '878 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
17 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of WO00/57963 and other  
18 prior art publications and activities.

19 37. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
20 the '878 patent and that the patent is invalid.

21 **XII. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
22 **U.S. PATENT NO. 6,358,161**

23 38. Costco re-alleges paragraphs 1 through 37 above as if fully set forth herein.

24 39. Costco is not infringing any valid claims of U.S. Patent No. 6,358,161 (“the '161  
25 patent”). Acushnet has accused Costco of infringing claim 7 of the '161 patent. Costco’s sales  
26 of the KS golf ball do not constitute infringement of claim 7 of the '161 patent, however,

1 because, at the least, dimples on the KS golf ball do not cover more than 80% of the outer  
2 surface.

3 40. The '161 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
4 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Patent No.  
5 5,292,132 and other prior art publications and activities.

6 41. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
7 the '161 patent and that the patent is invalid.

8 **XIII. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
9 **U.S. PATENT NO. 7,887,439**

10 42. Costco re-alleges paragraphs 1 through 41 above as if fully set forth herein.

11 43. Costco is not infringing any valid claims of U.S. Patent No. 7,887,439 (“the '439  
12 patent”). Acushnet has accused Costco of infringing claim 1 of the '439 patent. Costco’s sales  
13 of the KS golf ball do not constitute infringement of claim 1 of the '439 patent, however,  
14 because, at the least, no “portion of the plurality of recessed dimples [on the KS ball] have a  
15 profile defined by the revolution of a catenary curve....”

16 44. The '439 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
17 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Patent No.  
18 6,796,912, U.S. Patent No. 5,253,872 and other prior art publications and activities.

19 45. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
20 the '439 patent and that the patent is invalid.

21 **XIV. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
22 **U.S. PATENT NO. 7,641,572**

23 46. Costco re-alleges paragraphs 1 through 45 above as if fully set forth herein.

24 47. Costco is not infringing any valid claims of U.S. Patent No. 7,641,572 (“the '572  
25 patent”). Acushnet has accused Costco of infringing claim 1 of the '572 patent. Costco’s sales  
26 of the KS ball do not constitute infringement of the '572 patent, however, because, at the least,

1 no “portion of the plurality of recessed dimples [on the KS ball] have a profile defined by the  
2 revolution of a catenary curve....”

3 48. The '572 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
4 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Patent No.  
5 6,796,912, U.S. Patent No. 5,575,477, U.S. Patent No. 5,562,552 and other prior art publications  
6 and activities.

7 49. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
8 the '572 patent and that the patent is invalid.

9 **XV. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
10 **U.S. PATENT NO. 7,163,472**

11 50. Costco re-alleges paragraphs 1 through 49 above as if fully set forth herein.

12 51. Costco is not infringing any valid claims of U.S. Patent No. 7,163,472 (“the '472  
13 patent”). Acushnet has accused Costco of infringing claim 5 of the '472 patent. Costco’s sales  
14 of the KS ball do not constitute infringement of the '472 patent, however, because, at the least,  
15 the dimples on the KS ball are not “defined by the revolution of a Catenary Curve.”

16 52. The '472 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
17 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of prior art golf balls,  
18 including at least five prior art Titleist balls sold by Acushnet, and other prior art publications  
19 and activities.

20 53. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
21 the '472 patent and that the patent is invalid.

22 **XVI. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
23 **CLAIM OF FALSE ADVERTISING**

24 54. Costco re-alleges paragraphs 1 through 53 above as if fully set forth herein.

25 55. Acushnet has accused Costco of false advertising based on its Kirkland Signature  
26 guarantee, which is not specific to the KS golf ball, and which states that Kirkland Signature  
products “meet or exceed the quality standards of the leading national brands.”





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6. For such other and further relief that the Court deems just and proper.

DATED: August 29, 2017.

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 29, 2017, I caused copies of the foregoing document to be served via ECF to the following counsel of record:

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