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11 **UNITED STATES DISTRICT COURT FOR THE**
12 **EASTERN DISTRICT OF CALIFORNIA**

13 SHARIDAN STILES, an individual, STILES 4
14 U, INC, a California Corporation,

15 Plaintiff,

16 v.

17 WAL-MART STORES, INC.; AMERICAN
18 INTERNATIONAL INDUSTRIES, and DOES
19 1-100,

20 Defendants.

21) CASE NO.:

22) 2:14-cv-2234-MCE-CMK

23) **FOURTH AMENDED**
24) **COMPLAINT FOR:**

25) **(1) VIOLATION OF SECTION**
26) **1 OF THE SHERMAN ACT, 15**
27) **U.S.C. §1**

28) **(2) VIOLATION OF THE**
) **CALIFORNIA CARTWRIGHT**
) **ANTITRUST ACT, BUS. &**
) **PROF. CODE §16700, et seq.**

) **(3) PATENT INFRINGEMENT**
) **- '468 PATENT**

) **(4) PATENT**
) **INFRINGEMENT, '329**
) **PATENT**

) **(5) TRADE DRESS**
) **INFRINGEMENT, LANHAM**
) **ACT §43(a), 15 U.S.C. §1125(a)**

) **(6) FALSE**
) **ADVERTISING/FALSE**
) **ASSOCIATION, LANHAM**
) **ACT §43(a), 15 U.S.C. §1125(a)**

) **(7) INTENTIONAL**
) **INTERFERENCE WITH**
) **PROSPECTIVE ECONOMIC**
) **ADVANTAGE**

) **JURY TRIAL DEMANDED**

1
2 Plaintiff Sharidan Stiles and Stiles 4 U, Inc. (collectively “Stiles”) for its Fourth
3 Amended Complaint (“FAC”) against defendants Wal-Mart Stores, Inc. (hereinafter
4 “Walmart”) and American International Industries (“American Industries”), (collectively
5 “Defendants”), demanding trial by jury, complain and allege as follows:

6 **INTRODUCTION**

7
8 Plaintiff Stiles is the creator, designer, and inventor of the patented Stiles Razor. The
9 Stiles Razor is a unique, narrow width-blade razor for safe, detailed shaving applications for
10 eyebrow, bikini, scalp art, mustache, ear, goatee, beard, sideburns, bikini, and nose hair
11 removal. Stiles was the first to create and invent the concept of detailed shaving with unique
12 narrow blade width disposable razors.

13 Defendants Walmart and American Industries have harmed Stiles by copying the
14 Stiles’ Razor, and manufacturing, distributing, offering for sale, and selling a virtually
15 identical razor, infringing Stiles’ patents. Walmart sells personal styling razors that compete
16 with Stiles under its exclusive store brand, Salon Perfect. American Industries is a supplier
17 and competitor of Stiles through its brand, Ardell. Defendants’ plan to copy Stiles Razor and
18 eliminate her as a competitor is a combination and conspiracy by Walmart and American
19 Industries, to have retailer, Walmart, refuse to deal with their competitor, Stiles. It is also an
20 agreement to divide customers and a group boycott. Defendants have combined, conspired,
21 and entered into an unlawful agreement to restrain trade and lessen competition in the market
22 for Disposable Personal Styling Razors. In addition, Defendants have deliberately and
23 willfully attempted to create a profit from creating a false association between themselves and
24 the Stiles Razor and by copying the Stiles’ razor trade dress causing confusion among
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consumers.¹

NATURE OF THE ACTION

1. Stiles’ patented personal styling razor, the “Stiles Razor,” is unique in that it is the only patented razor for detailed shaving with a 1/8” blade and an ergonomic grip, allowing for safe and precise shaving. A true and correct color image of the Stiles Razor is below:



2. Walmart is the largest retailer in the United States. Walmart sells razors, including razors for detailed shaving applications, directly to consumers nationwide under the Walmart store-brand name, Salon Perfect (hereinafter “Salon Perfect”). Walmart, through its store brand, Salon Perfect, sells products that compete with Stiles in the market for Disposable

¹ In this Fourth Amended Complaint, Stiles does not re-allege the § 2 Sherman Antitrust Act claims or the Intentional Interference with Contractual Relations claims that were alleged in the Third Amended Complaint because they were ordered stricken by the Court in its June 20, 2018, Order. Dkt. No. 141 at p. 15. Plaintiff does re-allege and amend the § 1 Sherman Act and California Cartwright Act rule of reason claims as permitted by the Court in its June 20, 2018, Order. The omission of the § 2 Sherman Act claims and the Intentional Interference with Contractual Relations claim from this Fourth Amended Complaint is not a waiver of the right to appeal the dismissal of any of those claims, and Plaintiff has preserved and continues to preserve those claims for appeal, if necessary.

1 Personal Styling Razors.

2 3. American Industries is a supplier and manufacturer of beauty supplies
3 headquartered in Los Angeles, California. American Industries is the manufacturer of
4 personal styling razors for the Walmart brand, Salon Perfect. American Industries is also a
5 competitor in the market for Disposable Personal Styling Razors through its Ardell brand of
6 personal styling razors.

7 4. Walmart and American Industries entered into an unlawful agreement to copy
8 the Stiles Razor, and to manufacture, offer for sale, and sell infringing knock-offs under the
9 Salon Perfect brand, called the Salon Perfect Micro Razor. A true and correct image of the
10 infringing product, the Salon Perfect Micro Razor, is below:
11



23 5. Defendants are using a combination of intentional, unlawful methods,
24 including patent infringement, trade dress infringement, false association, false advertising,
25 and anticompetitive, exclusionary behavior to suppress Stiles' success in the market, including
26 entering into an agreement to eliminate a competitor from the market, engaging in a group
27 boycott, and agreeing to divide customers.
28

1 the Ardell Brand.

2 12. On information and belief, there are other individuals who make, obtain,
3 distribute and supply and sell products in violation of the law and violate Plaintiffs' rights.
4 Plaintiff is ignorant of their true identity or complete role in the alleged conduct and therefore
5 sues them by the fictitious names DOES 1 to 100. Plaintiff is informed and believes that each
6 of the Defendants designated as DOE is liable in some manner for the acts and omissions,
7 damages and injuries alleged in this FAC.

8
9 **JURISDICTION**

10 13. This Court has subject matter jurisdiction under the patent laws set forth in
11 Title 35 of the United States Code and in Title 28 of the United States Code, particularly 28
12 U.S.C. §§ 1331 and 1338(a); Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); the
13 Sherman Act, 15 U.S.C. §§ 1, *et seq.*, Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 14,
14 15, and 26; and 28 U.S.C. §§ 1331 and 1337.

15
16 14. This Court has jurisdiction over Stiles' state law claims pursuant to 28 U.S.C. §
17 1367 because those claims are so related to Stiles patent infringement, Lanham Act claims and
18 antitrust claims, over which this Court has original jurisdiction, that they form part of the same
19 case or controversy under Article III of the United States Constitution.

20 15. On information and belief, Defendants have transacted business in, contracted
21 to supply goods or services and caused injury within the State of California (and this judicial
22 district) and have otherwise purposely availed themselves of the privileges and benefits of the
23 laws of the State of California, and are therefore subject to this Court's exercise of personal
24 jurisdiction over them pursuant to Rule 4(k)(1)(A) of the Federal Rules of Civil Procedure.

25
26 **VENUE**

27 16. In light of the matters set forth in paragraphs 1 through 15, inclusive, above,
28 venue of this Action is proper in this judicial district pursuant to 28 U.S.C. §§ 1391, 1400(b)

1 and 15 U.S.C. § 22.

2 **FACTUAL ALLEGATIONS**

3 **Stiles' Patents and Trademarks**

4 17. Stiles is the inventor, designer, and owner of the Stiles Razor, a patented,
5 disposable, personal styling razor with a very narrow blade width of 1/8 inch. The Stiles
6 Razor's innovative and proprietary design addresses the shaving needs of consumers for
7 unique areas of the body such as eyebrows, scalp art, mustache, goatee, beard, sideburns,
8 bikini, and nose hair removal. Stiles design is characterized by the very narrow-width, honed
9 razor blade, a tubular body, and an ergonomically designed grip handle, making personal razor
10 styling safe and easy.
11

12 18. Stiles has spent considerable time and resources to protect its intellectual
13 property rights for its razor products and designs. The fruits of Stiles' expenditures of
14 resources to protect its intellectual property are a number of issued and pending patents. Stiles
15 is the owner of United States Patent No D542,468, U.S. Patent Pending No. 11/775,688, and
16 foreign country patents in Brazil (Certificado de Registro de Desenho Industrial No. DI
17 6700151-3); Mexico (Instituto Mexicano de la Propiedad Industrial /tutyki de /registri de
18 /dusebo Ubdystruak BI, 24665); Europe (Office for Harmonization in the Internal Market,
19 Certificate of Registration No. 000650288-0001); and Canada (Canadian Intellectual Property
20 Office, Industrial Design Certificate of Registration No. 119003).
21

22 19. On May 8, 2007, United States Design Patent No. D542,468 was duly and
23 legally issued to Sharidan Stiles as inventor. A true and correct copy of the '468 patent is
24 attached hereto as **Exhibit A**.
25

26 20. On August 18, 2015, United States Utility Patent No. US 9,108,329 B2 was
27 duly and legally issued to Sharidan Stiles as inventor. A true and correct copy of the United
28 States '329 patent is attached hereto as **Exhibit B**.

1 21. In addition, Stiles is the owner of the STILES™ registered trademark.

2 Stiles' Relationship with Walmart

3 22. In 2003, Stiles first contacted Walmart to discuss selling the Stiles
4 Razor. She was directed to Michael Grimm, the Buyer in Divisional New Products in the Wet
5 Shave Department. Grimm suggested to Stiles that in order to work with Walmart, she would
6 need to be able to replenish her razors quickly. From 2003 to 2005, Stiles established
7 manufacturing relationships that would enable her to replenish her product quickly and
8 redesigned her product to make it more cost-effective to produce.

9
10 23. In 2005, Norm Nelson, the then Buyer in the Wet Shave Department at
11 Walmart, in Bentonville, Arkansas met with Stiles. Stiles presented the Stiles Razor
12 prototypes to Nelson.

13 24. The following year, in 2006, Nelson agreed to a test run of Stiles' products.
14 Walmart agreed that Stiles' Two-Pack Women's Razor and the Two-Pack Men's Metro Razor
15 would be placed in sidekick displays in the Wet Shave department in 500 Walmart stores for
16 three and a half weeks.

17
18 25. Sidekick displays attach to the sides of an aisle end-cap or are placed in various
19 locations in-store and are typically used for smaller products, as in this instance for razors.

20 26. Stiles' Razors performed well during the 2006-sidekick test run, selling 83% in
21 Men's and 87% in Women's.

22 27. Following the successful test run, Stiles' razors were placed in the Wet Shave
23 Department in 1,500 to 2,000 Walmart stores in 2007. Stiles was informed by Walmart that if
24 she was selling 2 units per store/per week, the razors would continue to be sold by Walmart; in
25 other words, she was "safe," and that if she was selling 4 units per store per week, that that
26 was "great" product performance.

27
28 28. Stiles Razor sales exceeded expectations. In 2007, Stiles averaged 4 units per

1 week/per store per week in the Wet Shave Department in Walmart stores.

2 29. Stiles began working with a new Buyer in the Wet Shave department at
3 Walmart, Shannon Petree, in 2007. Walmart then placed Stiles' products in approximately
4 3,600 Walmart stores in 2008. Stiles' products continued to perform well and sales were
5 growing. Stiles' products were selling approximately six units per store/per week in 2008.

6 30. In June 2008, Walmart assigned a new Buyer to begin working with Stiles in
7 the Wet Shave Department, Heather Ronchetto.

8 31. Later that year, Ronchetto met with Stiles for a line review in Arkansas. At
9 the height of the Stiles' Razor performance and growth at Walmart, Ronchetto informed Stiles
10 that Walmart wanted to "sell other products" and that her razors "weren't a big seller," despite
11 significantly exceeding the minimum expectation of 2 units per store/per week.
12

13 32. Walmart then began actively suppressing the growth of Stiles Razor.

14 33. In 2009, Stiles sent a request to buyer Heather Ronchetto at Walmart
15 to "rollback" the retail price of her razor to below \$3.00 to increase sales. Ronchetto refused
16 to rollback the price unless Walmart was able to maintain its "penny profit."
17

18 34. In 2009, Walmart removed Stiles products from 1,144 stores where the Stiles
19 Razor was performing well. In 631 of the deleted stores, Stiles was selling more than 6 units
20 per store/per week. In 327 of the deleted stores, Stiles was selling between 5 and 5.9 units per
21 store/per week. In 186 of the deleted stores, Stiles was selling between 4 and 4.9 units per
22 store/per week. There was no legitimate business reason for removing Stiles Razor from
23 stores where the product was performing well.
24

25 35. At the same time, Walmart kept the Stiles Razor at stores that were selling
26 fewer units per store/per week. Walmart kept the Stiles Razor at 888 stores where the product
27 was selling less than 4 units per store/per week; it kept the razor at 179 stores where the
28 product was selling between 4 and 4.9 units per store/per week; it kept the razor at 115 stores

1 between 5 and 5.9 units per store/per week; and it kept the Stiles razor at just 110 stores
2 selling over 6 units per store/per week (while removing the Stiles Razor from 631 where it
3 was selling over 6 units per store/per week).

4 36. As Walmart removed Stiles' product from stores where the product was the
5 most successful, it then substantially increased the sales requirements three-fold—from 2 units
6 per store/per week to 6 units per store/per week.

7 37. In 2009, at the recommendation of Ronchetto at Walmart, Stiles hired a leading
8 sales and marketing company, CrossMark to work with Walmart on her behalf.

9 38. After being retained by Stiles, CrossMark discovered that Walmart
10 was not properly replenishing her razors. Walmart was not ordering enough of Stiles'
11 product, early enough to keep units on the shelves.

12 39. Walmart's failure to properly replenish Stiles' Razor stunted sales.

13 Walmart Terminates its Contract with Stiles

14 40. After removing Stiles from the stores where her product was most successful,
15 failing to properly replenish her product and tripling the minimum units per store/per week
16 required to 6 units, in May of 2009, Ronchetto informed Stiles that her product was not
17 meeting expectations. Ronchetto informed Stiles that the Stiles Razor would be discontinued
18 from the Walmart Wet Shave department.

19 41. In an effort to keep her product on Walmart shelves, later in 2009, Stiles
20 contacted Theresa Barrera in Supplier Diversity at Walmart who directed her to Carmen
21 Bauza, Ronchetto's supervisor. Carmen Bauza was the then Vice President of Beauty and
22 Personal Care at Walmart.

23 42. In August 2010, Stiles spoke with Bauza. Bauza informed Stiles of a new
24 "Lash and Brow Category" in the Beauty Department. Bauza suggested that Stiles send her a
25 presentation of a product line for the new "Lash and Brow Category" in the Beauty
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1 Department at Walmart.

2 43. Stiles developed a new product line of clippers, tweezers, and mirrors, in
3 addition to 2, and 6-packs of the Men and Women's Stiles' Razor.

4 44. In 2011, Stiles presented her new product line to Bauza. Walmart agreed to
5 sell 2-packs and 6-packs of the Stiles Razor in the Beauty Department but rejected the rest of
6 Stiles' product line. In 2011, Stiles' product sold 2 units per store/per week in the Beauty
7 Department.

8 45. In a 2011 line review for the year 2012, Walmart agreed to sell Stiles' 2 and 6-
9 count Razor packs, but again rejected the rest of Stiles' line.

10 46. The following year, in 2012, Esther Gifford, the then Walmart Buyer for the
11 Beauty Department, informed Stiles that the Stiles Razors were not selling well enough to be
12 placed in sidekick displays. At the time, Stiles' Razors were selling an average 3 units per
13 store/per week and exceeding Walmart's minimum expectations of 2.5 units per store/per
14 week.
15

16 47. In February 2012, Stiles met with Carmen Bauza and Caroline Day in
17 Bentonville, Arkansas to go over the annual product line and review. Bauza represented to
18 Stiles that her product was performing well and that Walmart would continue selling Stiles'
19 Razor. Walmart also suggested that Stiles add a new bikini razor to her line. Stiles agreed
20 and promised to produce the products in time for the 2013 year.
21

22 48. Just a few months later, in May 2012, in a teleconference between Stiles
23 and Theresa Barrera, Carmen Bauza, and Caroline Day, Stiles was notified that Walmart was
24 terminating her contract and that Walmart would not continue to purchase Stiles' products
25 after December 1, 2012.
26

27 49. There was no legitimate business reason for termination of Stiles' contract.

28 Walmart and American Industries Conspiracy and Unlawful Agreement

1 50. American Industries manufactures and sells personal styling razors that
2 infringe Stiles' patents and compete with the Stiles Razor under the Ardell brand name. For
3 example, American Industries manufactures and sells a product named the Ardell Brow
4 Precision Shaper. A true and correct color image of the Ardell Brow Precision Shaper is
5 below:



20 51. American Industries manufactures for Walmart, under the Salon Perfect store
21 Brand, a razor that competes with the Stiles Razor called the Salon Perfect Precision Shaper.
22 The Salon Perfect Precision Shaper sold in the Salon Perfect, Perfect Precision Shaping
23 Combo is identical to the Ardell razor. A true and correct color image of the Salon Perfect,
24 Perfect Precision Shaping Combo is below:
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14 Walmart Sells Infringing Razors Made by American Industries

15 52. On or about 2008, American Industries began manufacturing, offering for sale,
16 and selling the infringing Ardell Razor.

17 53. In 2011, Walmart entered into an agreement with American
18 Industries and began selling the infringing Ardell Razor under the Salon Perfect Brand.

19 54. In 2012, Walmart approached Terri Cooper, Executive Vice President of
20 American Industries with Stiles Razors and asked American Industries to copy and
21 manufacture the patented Stiles Razor so that Walmart could sell a knock-off of the Stiles'
22 Razor under the Salon Perfect brand.

23 55. In 2012, representatives of Walmart and American Industries met, combined
24 and conspired to eliminate the Stiles Razor from the market for Disposable Personal Styling
25 Razors and entered into an unlawful agreement to do so.

26
27 56. American Industries agreed to produce the knock-off of the Stiles Razor for
28

1 Walmart and did begin manufacturing a nearly identical copy of the Stiles Razor and Walmart
2 began selling it in May 2013. In September 2013, Stiles discovered that Walmart was selling
3 the infringing product.

4 57. On or about September 2013, Stiles contacted Walmart and informed Walmart
5 that the Salon Perfect Micro Razor infringed her patent. In a telephone conversation with
6 Mark Kremer, counsel herein, following Stiles' notification, Kremer advised Stiles that the
7 Micro Razor had been pulled from the shelves and the molds destroyed.

8
9 58. On August 19, 2014, Terri Cooper, Vice President of American Industries,
10 called Plaintiff Sharidan Stiles, unprompted and unplanned, and admitted to Stiles that
11 Walmart had approached her, had given her the Stiles Razor, and asked American Industries
12 to copy it. American Industries agreed.

13 **Patent Infringement**

14 **The Salon Perfect Micro Razor**

15
16 59. Walmart and American Industries copied the Stiles Razor during
17 the course of developing the Salon Perfect Micro Razor. Walmart has a well-publicized and
18 documented pattern and practice of copying products, including patented products, for sale in
19 its retail stores. In the retail industry, these copies are known as “knock-offs.”

20
21 60. For Walmart, actions for patent infringement are a cost of doing business.
22 Walmart has a pattern and practice of selling and offering for sale “knock-offs” by copying
23 existing patented products. Walmart has been accused of copying patented products in
24 numerous other actions, including the following: *Reel Grip, Ltd v. Wal-Mart Stores, Inc.*,
25 United States District Court for the Northern District of Ohio, Case No. 1:14-cv-02290-DCN;
26 *Solar Sun Rings, Inc. v. Wal-Mart Stores, Inc.*, et al., United States District Court for the
27 Central District of California, Case No. 2:11-cv-06990-PSG-SP; *Nike, Inc., v. Wal-Mart*
28 *Stores, Inc.*, United States District Court for the Northern District of Illinois, Case No. 1:08-

1 cv-05840; and *Golight, Inc., v. Wal-Mart Stores, Inc.*, United States District Court for the
2 District of Colorado, Case No. 1:00-cv-00331-ZLW-MJW.

3 61. Once Walmart and American Industries had made a personal styling razor
4 incorporating much of the design disclosed in Stiles' patents, Walmart began selling the Salon
5 Perfect Micro Razor in 2013.

6 62. The Salon Perfect Micro Razor infringes Stiles' patents. Like the Stiles' Razor,
7 the Salon Perfect Micro Razor has a very narrow, approximately 1/8" blade. The narrow
8 blade allows for safe, detailed and precise shaving that other grooming razors do not offer.
9 Also like the Stiles Razor, the narrow blade is positioned horizontally and is non-removable
10 and covered by a protective plastic covering. The Salon Perfect Micro Razor utilizes an
11 ergonomically designed grip like the Stiles Razor with a long shaft and the grip positioned
12 near the center. These features are disclosed and claimed in Stiles' patents.

13
14 The Salon Perfect Precision Shaper

15 63. The Salon Perfect "Precision Shaper" also infringes Stiles' patents. Like the
16 Stiles' Razor, the Precision Shaper has a narrow blade. Also like the Stiles Razor, the narrow
17 blade is positioned horizontally and is non-removable and covered by a protective plastic
18 covering. The Salon Perfect Precision Shaper utilizes a grip and a long shaft, like the Stiles
19 Razor. These features are disclosed and claimed in Stiles patents.

20
21 The Ardell Brow Precision Shaper

22 64. The Ardell Brow Precision Shaper also infringes Stiles' patents. Like the
23 Stiles' Razor, the Precision Shaper has a narrow blade. Also like the Stiles Razor, the narrow
24 blade is positioned horizontally and is non-removable and covered by a protective plastic
25 covering. The Ardell Precision Shaper utilizes a grip and a long shaft, like the Stiles Razor.
26 These features are disclosed and claimed in Stiles patents.

27
28 65. As Defendants sell infringing razors and engage in other illegal activities, Stiles

1 is losing the value of its asset, which is the remaining term of its patents. Stiles' patents are
2 assets with definite expiration dates. Once Stiles' patents expire, its lost opportunity in the
3 marketplace cannot be fully reclaimed.

4 66. Defendants' infringement of Stiles' patents, together with their unlawful
5 exclusion of Stiles from the markets is greatly damaging Stiles and consumers. Through
6 Defendants' infringing manufacture and sale of its Salon Perfect Micro Razor, the Salon
7 Perfect Precision Shaper, and the Ardell Precision Shaper, Defendants can control the demand
8 for personal styling razors, by eliminating their competition, the Stiles Razor, from the market.
9 Defendants' actions have caused and will continue to cause irreparable harm to Stiles and to
10 consumers.
11

12 **Trade Dress Infringement**

13 67. The distinctive trade dress of the Stiles Razor product includes, but is not
14 limited to a razor with a tube shaped body with the razor blade on top, a grip in the center of
15 the handle, packaging with each product individually viewable encased in clear plastic, and
16 similar colorations and decorations of the product, including the Stiles' signature pink-colored
17 razor, pink packaging, packaging that displays the curvature of a woman's left eye, and
18 vertically packaged razors, packaged at progressively uneven heights.
19

20 68. The Stiles Razor Trade Dress is not functional and is not essential to the use or
21 purpose of the Stiles Razor product and it does not affect the cost of quality of the product.
22 The Stiles Razor Trade Dress is not essential to the use or purpose of the Stiles Razor product.
23 Stiles' use of the Stiles Razor Trade Dress does not put its competitors at a significant non-
24 reputation-related disadvantage
25

26 69. The Stiles Razor Trade Dress has acquired a secondary meaning. Plaintiff
27 exclusively used the design from 2006 to 2008 when the Ardell Razor was first introduced.
28 The nearly identical knock-off product was not sold until May 2013, when Walmart first

1 began selling the Salon Perfect Micro Razor. In addition, the Stiles Razor was copied by
2 American Industries at Walmart's request in 2012. The resulting product, the Salon Perfect
3 Micro Razor, is a nearly identical knock off that was first sold in Walmart stores in May 2013.

4 70. Stiles has discovered that Defendants have copied the Stiles Razor product and
5 are using in commerce a confusingly similar trade dress in connection with the sale of the
6 Salon Perfect Micro Razor, the Salon Perfect Precision Shaper, and the Ardell Precision
7 Shaper.

8
9 71. In the manufacture and sale of the Salon Perfect Micro Razor, the Salon Perfect
10 Precision Shaper, and the Ardell Precision Shaper, Defendants copy distinctive and non-
11 functional elements of the Stiles Razor Trade Dress, including but not limited to the tube
12 shape with a grip in the middle and packaging with the woman's left eye, the same decorative
13 razor colors, including the same Stiles Razor signature pink color, and vertically packaged
14 razors at progressively uneven heights.

15
16 72. Defendants' adoption of Stiles trade dress is greatly damaging Stiles and
17 consumers. By reason of Defendants' adoption of Stiles' trade dress, Stiles' continues to
18 suffer damage to its operation, reputation, and goodwill and will suffer loss of sales and profits
19 that Stiles would have made but for Defendants' acts.

20 **False Association /False Advertising**

21 73. Defendants' Salon Perfect Micro Razor infringes Stiles' patent and utilizes
22 Stiles Trade Dress in such a way as to draw a false association between Defendants' product
23 and the Stiles Razor.

24
25 74. Defendants' misleadingly advertised the Salon Perfect Micro Razor on the
26 Walmart.com website. When a search was conducted on the Walmart.com website for "Stiles
27 Razor," the "Salon Perfect Micro Razor" showed up in the search results. In addition, the
28 Stiles Razor is listed on the Walmart.com website and was listed as "out of stock." This

1 advertising is both false and misleading because it leads a consumer to believe that Walmart
2 will replenish the supply of the Stiles Razor, when in fact, it terminated Stiles contract in bad
3 faith and then illegally copied her patented product. After the filing FAC alleging false
4 association/false advertising, Walmart modified its website to say, “The item is no longer
5 available.”

6 75. Following Stiles’ exclusion from Walmart, numerous consumers have
7 contacted and emailed her and expressing frustration that they can no longer find her product
8 in Walmart stores. By way of example, an email to Stiles dated January 14, 2014, stated:
9 “Hello, I was wondering if you knew when more of your eyebrow shapers were going to be
10 shipped to the Macedon Walmart in Macedon, NY I Love these razors these are the
11 ABSOLUTE BEST for having perfectly shaped eyebrows and they have been out of stock for
12 sometime now... I miss them SO SO SO MUCH!!! Thank you!!!”

13 76. Defendants have made false or misleading descriptions or representations of
14 fact in commercial advertising and promotion which represent the nature, characteristics, or
15 qualities of another person’s goods, services or commercial activities in violation of 15 U.S.C.
16 § 1125(a).

17 77. Defendants’ false association/false advertising of Stiles Razor is greatly
18 damaging Stiles and consumers. By reason of Defendants’ false advertising/false association,
19 Stiles’ continues to suffer damage to its operation, reputation, and goodwill and will suffer
20 loss of sales and profits that Stiles would have made but for Defendants’ acts.

21 **Antitrust Violations**

22 A. **Relevant Market and Market Power**

23 78. Defendants’ conduct alleged in this Complaint affects interstate
24 trade and commerce. Walmart’s annual revenues are measured in billions of dollars.
25 Defendants’ products are manufactured and sold throughout the United States, including in
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1 California. Defendants' conduct was intended to maintain and extend its market power in the
2 nationwide market for Disposable Personal Styling Razors.

3 79. The relevant product market impacted by Defendants' antitrust violations is
4 the nationwide markets for the manufacture and sale of Disposable Personal Styling Razors.
5 A monopolist in this market would be able to maintain the price of Disposable Personal
6 Styling Razors above a competitive level without losing so many customers as to make the
7 maintenance unprofitable. Defendants' violations of the antitrust laws have foreclosed and
8 continue to foreclose Stiles from the market for Disposable Personal Styling Razors.
9

10 80. Disposable Personal Styling Razors constitute a distinct market from the
11 general disposable razor market or from battery-operated razors or from a single type use
12 razor, such as an eyebrow only, side shaving razor. The relevant market for the manufacture
13 and sale of Disposable Personal Styling Razors is a distinct market because both suppliers and
14 purchasers view Disposable Personal Styling Razors as distinct products. Consumers
15 distinguish between Disposable Personal Styling Razors and their counterpart larger
16 disposable razors (or battery-operated razors) because of user preference for a smaller blade to
17 avoid the risk of injury when performing detailed shaving applications for bikini, eyebrow,
18 hair, goatee, ear, and others. Thus, end users do not consider conventional disposable razor
19 products and battery-operated razors to be substitutes for Disposable Personal Styling Razors
20 because they cannot perform the same detailed shaving functions.
21

22 81. Furthermore, manufacturers of conventional razor products cannot easily
23 switch to manufacturing Disposable Personal Styling Razors because the two products require
24 different patents and capital equipment, including molds and assembly unique to each product.
25 Thus, a manufacturer of conventional razor products would not be in a position to manufacture
26 Disposable Personal Styling Razors without additional significant expense and resources.
27

28 82. Disposable razors for conventional uses and Disposable Personal Styling

1 Razors each constitute a distinct relevant market because each product cannot properly be
2 substituted for another for the same uses. A consumer cannot use a full-sized disposable razor
3 to perform detailed eyebrow shaving, for example. Consumers do not consider these razor
4 products to be substitutes for one another. Further, there are substantial barriers to entry
5 facing any potential manufacturer of Disposable Personal Styling Razors. A potential entrant
6 must have a patent of its own technology or license to use someone else's. In addition, there
7 are high capital costs involved in designing a manufacturing a new product that present
8 barriers to entry.
9

10 83. The relevant geographic market for the commerce at issue here is the United
11 States. Patent laws vary from country to country, making the United States a distinct
12 geographic market.

13 84. Walmart is the largest retailer in the world with unmatched scale of operations
14 and strong market power over suppliers and competitors. It is the largest company in the
15 world by revenue. It is also the world's largest private employer, with 2.3 million staff. The
16 company is a retail market leader in the U.S. and is a major competitor in all geographic
17 markets in which it operates. In fiscal year 2016, its revenue reached \$482 billion, more than
18 the three next largest retailers in the world combined. As of 2016, Walmart employed twice
19 as many people and owned about five times more retail space than its top 3 rivals. Forbes
20 listed Walmart as the 20th most valuable brand in the world in 2016, worth U.S. \$24.7 billion.
21 No other direct competitor, except Amazon, has made it to the Forbes list of the most valuable
22 brands. Walmart's market power is such that if a product has declined in sales or is
23 considered to have "failed" at Walmart, no other retailer will sell the product. Defendants
24 have market power by virtue of Walmart's position as the largest retailer in the United States
25 and in the world.
26
27

28 85. Walmart has the power to set prices and exclude competitors in the Disposable

1 Personal Styling Razor market.

2 86. Walmart's market power over suppliers is so well-known throughout the retail
3 industry, it has been called "one of the best illustrations of monopsony pricing power in
4 economic history."

5 87. While "Walmart has been touted as an innovator in supply-chain management
6 [some] think it's more accurate to say it uses its sheer size and market power to manipulate the
7 supply chain."

8 88. Walmart has been described as having the power to "bend everyone else to its
9 will."

10 89. In the case of Walmart, "no one can deny that every single firm that supplies
11 the retailer is, technically, free not to" buy from or sell to a variety of actors.

12 90. On Walmart's market power, a 2009 study of Walmart found that, "Initial
13 results indicate that gross margin is significantly less for Wal-Mart suppliers than non-
14 suppliers indicating pricing concessions [by suppliers] and a dependency model of market
15 power."
16

17 91. Walmart's market power is such that it can not only extract any concession
18 from a supplier, but also, if a product fails at Walmart, no other retailer will sell the product.
19

20 92. Walmart's market power over suppliers extends to suppliers in the Disposable
21 Personal Styling Razor market in which it participates and is a dominant buyer.

22 93. For a number of years, Defendants have maintained dominance in the market
23 for Disposable Personal Styling Razors.
24

25 94. Defendants control the Disposable Personal Styling Razor market with overall
26 monopoly power.

27 95. Defendants have monopoly power in the market for Disposable Personal
28 Styling Razors. Walmart, through its Salon Perfect store brand, controls approximately 25%

1 of the Disposable Personal Styling Razor market in the United States. American Industries
2 controls approximately 73% of the Disposable Personal Styling Razor market in the United
3 States through its Ardell brand. Together, Defendants control 98% of the Disposable Personal
4 Styling Razor market in the United States. As a result, Defendants have a strong economic
5 incentive to keep Stiles out of the market for Disposable Personal Styling Razors so it can
6 maintain its monopoly power.

7
8 96. Walmart and American Industries violations of the antitrust laws have
9 foreclosed and continue to foreclose Stiles from the market for Disposable Personal Styling
10 razors.

11 97. Stiles has attempted to sell her razors to numerous other retailers. From 2011
12 through the beginning of 2014, Stiles or sales representatives working on its behalf made
13 efforts to get Stiles into many retailers, including, but not limited to the following: Dollar
14 General, Kroger, Ulta, Target, Walgreens, CVS, Rite Aid, Bed Bath and Beyond, Stop&Shop,
15 Raleys, Costco, Publix, Ahold USA/Royal, HEB, Dollar Tree, Family Dollar, Meijer, Ace
16 Hardware, Whole Foods, QVC, Winco Foods, and Save Mart. Stiles was turned away each
17 time.
18

19 98. The application process to become a supplier at other retailers requires
20 potential suppliers to provide sales data, often by retailer. Stiles submitted this information,
21 including the information of her decreased sales and termination from Walmart each time she
22 applied to supply another retailer. She was rejected each time.
23

24 99. In a 2008 conversation with her then Crossmark sales representative working
25 with Walmart, Kristi Glass, Ms. Glass informed Stiles that if she lost the Walmart account that
26 it would be impossible to explain that to other future retailers.

27 100. In a March 23, 2012, email from the Walmart Vice President of the Beauty and
28 Personal Care Department, Carmen Bauza, Bauza asked about Stiles' "progress" in getting

1 appointments with “Ulta, Target, Walgreens, CVS, Rite Aid, Bed Bath and Beyond.” On the
2 same date, Stiles responded to Bauza: “In our meeting I mentioned that the other retailers have
3 declined, until I at least regain my prior position in sales to make a better presentation. Their
4 concerns were why we were deleted and moved [at Walmart]....”

5 101. In a March 28, 2012, email follow up from Stiles to Bauza, Stiles informed
6 Bauza that, “DG [Dollar General] has declined. Reasons are...our situation has not improved
7 with Wal-Mart.”

8 102. In an October 2012 conversation with Kroger Corporate Supplier Diversity
9 Manager, Elizabeth Drake, Ms. Drake informed Stiles that she did not understand why
10 Walmart had referred her to Kroger if Walmart knew Stiles was going to be terminated from
11 Walmart.

12 103. Based upon Stiles’ knowledge, experience and understanding of the industry, it
13 was clear to her that Kroger would never take a product that had been terminated at Walmart
14 and that Walmart knew this.

15 104. In 2013, Nancy Poltz, a sales representative from merchandiser Acosta (a
16 merchandiser for Walmart and other stores) approached Stiles following a meeting with
17 Kroger and expressed interest in Stiles Razor. When Stiles followed up with Poltz per her
18 request, Poltz informed Stiles that if they were in contact again, that she (Poltz) would be
19 fired.

20 105. Based upon Stiles’ knowledge, experience and understanding of the industry, it
21 was clear that because of her termination from Walmart, that Stiles had been blacklisted, and
22 for that reason, Acosta would not do business with her.

23 106. In a conversation held on August 19, 2014, between Defendant American
24 International Industries’ Executive Vice President Terri Cooper and Plaintiff Sharidan Stiles,
25 Ms. Cooper asked, “Don’t you want to move on with your life and save your business so you
26
27
28

1 won't get blacklisted [by other retailers]?" Ms. Stiles replied, "I already am."

2 B. Defendants Unlawful Agreement and Anticompetitive, Exclusionary Behavior

3 107. Prior to 2009, Stiles' personal styling razor business was growing rapidly. In
4 2008, sales of the Stiles' Razor totaled approximately \$1.7 million.

5 108. Defendants named herein combined and conspired together and entered into a
6 combination, agreement, illegal trust and understanding, the terms of which are as follows:

7 a. That the Defendants, both competitors in the market for Disposable
8 Personal Styling Razors, Walmart through its store brand, Salon Perfect, and American
9 Industries through its brand, Ardell, would eliminate Stiles as a competitor in the market;

10 b. No other razor existed that could perform the multiple detailed shaving
11 functions of the patented Stiles Razor. Thus, Walmart would create a new, infringing knock-
12 off to be sold exclusively at Walmart under the "Salon Perfect" brand. The product was called
13 the Salon Perfect Micro Razor. American Industries agreed to copy and manufacture the
14 "knock off" of the Stiles Razor for Walmart. The Salon Perfect Micro Razor did not exist
15 before the unlawful agreement;

16 c. That the Defendants would sell infringing American Industries manufactured
17 Disposable Personal Styling Razors, including the Salon Perfect Precision Shaper, the Ardell
18 Precision Shaper, and the Walmart-branded Salon Perfect Micro Razor;

19 d. Walmart agreed to sell infringing Disposable Personal Styling Razors
20 manufactured by American Industries, including the Salon Perfect Micro Razor and the Salon
21 Perfect Precision Shaper;

22 e. That Walmart would suppress the growth of the Stiles Razor and eventually
23 terminate its relationship with Stiles' in order to buy time to switch the market from Stiles'
24 Razors to the lower quality Salon Perfect Micro Razor and the Salon Perfect Precision Shaper;

25 f. That Walmart and American Industries would divide customers in that the
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1 American Industries' Ardell Product would be sold in Target and other retailers, but not
2 Walmart, and that the identical product would be sold at Walmart under the exclusive
3 Walmart brand, Salon Perfect; and

4 g. That as sales of the Salon Perfect Micro Razor increased, Defendants agreed
5 that the Salon Perfect Precision Brow Shaper manufactured by American Industries for
6 Walmart would be phased out. Defendants sought to monopolize the market, fix prices,
7 boycott, and eliminate Stiles from the Disposable Personal Styling Razor market.
8

9 109. Beginning in 2012, in order to maintain their illegal trust and maintain their
10 monopoly power and illegal pricing power over the Disposable Personal Styling Razor
11 market, to maintain their ability to exclude actual and future competition and in order to enjoy
12 the monopoly profits derived therefrom, Defendants and each of them, combined and
13 conspired to eliminate Stiles products, the Stiles Razor from the relevant market.
14

15 110. Defendants' unlawful agreement is an agreement to restrain trade in the market
16 for Disposable Personal Styling Razors.

17 111. Defendants' agreement is an unlawful group boycott.

18 112. Defendants' agreement is unlawful agreement to divide customers.

19 113. Defendants exert monopoly power and control over the Disposable Personal
20 Styling Razor marketplace in the United States and have a direct effect on the Disposable
21 Personal Styling Razor market. Defendants are able to exercise monopoly power over the
22 Disposable Personal Styling Razor by reason of the fact that Walmart is the largest retailer in
23 the United States and the world. Walmart, through sale of its store-branded "Salon Perfect"
24 products also competes in the market for Disposable Personal Styling Razors. American
25 Industries is the largest manufacturer of personal styling razors, manufacturing Ardell-branded
26 personal styling razors and manufacturing the Salon Perfect razors for Walmart. Defendants,
27 by virtue of said power, are able to fix prices and eliminate competition in the Disposable
28

1 Personal Styling Razor marketplace.

2 114. Defendants and Walmart have engaged in product suppression of the Stiles
3 Razor, by removing it from successful stores at the height of its growth, by failing to replenish
4 it, and then by ultimately, terminating Stiles' contract in order to conspire with American
5 Industries to sell a knock-off of Stiles' patented product.

6 115. As part of its role in the combination and conspiracy, Defendant American
7 Industries agreed to copy and manufacture the knock-off of the patented Stiles Razor.
8

9 116. In turn, Walmart agreed to sell only Walmart-branded Disposable Personal
10 Styling Razors, foreclosing any competition from Stiles or any other competitors in the market
11 for Disposable Personal Styling Razors.

12 117. American Industries agreed to sell its competing product, the Ardell Precision
13 Shaper, at Target and other retailers, but not at Walmart.

14 118. In addition, Defendants agreed to begin phasing out the Salon Perfect Precision
15 Shaper product manufactured by American Industries while sales of the knock-off product, the
16 Salon Perfect Micro Razor, grew.
17

18 119. As part of the unlawful combination and conspiracy, Defendant Walmart
19 removed the Stiles Razor for sale at Walmart in order to replace it with the Salon Perfect store
20 brand. Such conduct is directly injurious to Stiles not only in terms of loss of sales by
21 Walmart's exclusion of Stiles from the market, but in that other retailers refuse to sell any
22 product which has allegedly "failed" at Walmart.
23

24 120. Stiles must have access to retailers in order to grow and sell its products.

25 121. Defendants' ongoing unlawful combination and conspiracy is directed at Stiles
26 and eliminating competition in the market for Disposable Personal Styling Razors. Such
27 anticompetitive behavior has the purpose and effect of excluding and preventing Stiles from
28 doing business in the Disposable Personal Styling Razor business in the United States. Such

1 an agreement was perpetrated without any stated reason or cause and was unlawful,
2 anticompetitive.

3 122. Stiles further alleges that in furtherance of their combination and conspiracy,
4 Defendants undertook a plan to suppress Plaintiffs' products, including removing Stiles'
5 products from stores where the product was performing well, failing to replenish products, and
6 moving Stiles to a less-frequently trafficked department. Having suppressed the growth and
7 success of the Stiles Razor in order to buy time to switch the market to its own store-branded
8 razor, Defendant relied on the wholly bogus, made-up claim that Stiles Razor was not
9 performing well enough for Walmart.
10

11 123. On May 30, 2012, Defendant Walmart sent written notification to Stiles of
12 Walmart's decision to terminate its Supplier Agreement with Stiles. There was no legitimate
13 business reason for the termination. The purpose and effect of the actions of Defendants was
14 to injure, damage and ultimately force Stiles from the Disposable Personal Styling Razor
15 marketplace and drive Stiles out of business as a viable competitor in the market for
16 Disposable Personal Styling Razors.
17

18 124. Defendants did in fact accomplish what they combined and conspired to do.

19 125. Defendants knew and intended that the direct result of the combination and
20 conspiracy would be to force Stiles out of business. As the direct and proximate cause and as
21 a result of the combination and conspiracy, Stiles did in fact suffer lost profits, lost value of its
22 business and goodwill, incur expenses and debts, none of which would have occurred in the
23 absence of the unlawful conduct on the part of the Defendants.
24

25 126. Defendants employed various forms of exclusionary practices in order to
26 frustrate, impair, and substantially foreclose competition from Stiles, including suppressing
27 the success of Stiles products at Walmart: by removing the Stiles Razor from stores where the
28 product was performing successfully at the height of the Stiles' razor's growth and sales, by

1 moving the Stiles Razor to a less-frequently trafficked department, by failing to adequately
2 replenish the product, and then by terminating the contract in bad faith with Stiles in order to
3 sell an infringing knock-off product in combination with American Industries.

4 **Intentional Interference with Prospective Economic Advantage**

5 127. Stiles began entering into supplier agreements with Walmart in 2006 to supply
6 the Stiles Razor to Walmart retail stores. The last Supplier Agreement between Stiles and
7 Walmart was entered into on or about September 30, 2011, for a term of one year, but the
8 supplier agreement could be “renewed or extended” as many of their other agreements had
9 been in the past.
10

11 128. American Industries was aware of Stiles’ existing contractual relationship with
12 Walmart in that American Industries was a supplier of the Salon Perfect Precision Shaper and
13 other products to Walmart in the same department as Stiles, the beauty department. Stiles and
14 American Industries products were generally sold in close proximity to one another in
15 Walmart stores and were visible on store layouts presented to American Industries or by
16 physically viewing any in-store display. In addition, American Industries knew of Stiles
17 relationship with Walmart because Stiles and American Industries are competitors. A true and
18 correct color photo of an in-store Walmart display is below:
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13 129. Upon information and belief, beginning in 2012, but before May 30, 2012,
14 American Industries began discussing the creation of the Salon Perfect Micro Razor with
15 Walmart.

16 130. Following initial discussions, Walmart handed American Industries Terri
17 Cooper a copy of the Stiles Razor and asked AI to make an infringing knock off to be sold
18 under the Walmart store brand, Salon Perfect. American Industries agreed and began
19 developing the Salon Perfect Micro Razor.
20

21 131. American Industries' conduct in agreeing to create, manufacture, and distribute
22 a knock off of Stiles patented product for Walmart is wrongful.

23 132. American Industries is and was a member of various industry trade
24 associations, including the Professional Beauty Association ("PAB") and the Independent
25 Cosmetic Manufacturers and Distributors Association ("ICMAD").
26

27 133. PAB and ICMAD promulgate certain rules as a condition of membership in
28 their trade associations.

1 134. In its Code of Ethics, PAB requires its member distributors and manufacturers,
2 like American Industries, to “Subscribe to and follow fair and ethical business practices in
3 dealings with customers and other members of the professional beauty industry.”

4 135. In its Code of Ethics, ICMAD requires its members to, “Use only legal and
5 ethical means in all business activities.” ICMAD’s membership application requires
6 applicants to “agree to abide” by its Code of Ethics.

7 136. ICMAD membership is terminated if the board of directors concludes that a
8 ICMAD member has violated its Code of Ethics or its bylaws.

9 137. Upon information and belief, if a member of PAB violates its Code of Ethics or
10 bylaws its membership may be terminated by the PAB board of directors or other committee.

11 138. By accepting Walmart’s invitation to create the infringing knock off of the
12 Stiles Razor and manufacturing the product, American Industries knew, or was substantially
13 certain, that Stiles would be eliminated as a Walmart supplier and that it was interfering with
14 Stiles’ future economic relations with Walmart.

15 139. By accepting Walmart’s invitation to create the infringing knock off of the
16 Stiles Razor and by manufacturing the product, American Industries’ conduct was wrongful in
17 that it violated PAB’s and ICMAD’s Code of Ethics.

18 140. Upon information and belief, on May 30, 2012, American Industries’
19 agreement to create the infringing knock off for Walmart caused Walmart to notify Stiles that
20 it was terminating its existing Supplier Agreement with Stiles, effective December 2012, and
21 that the supplier agreement would not be renewed or extended in the future.

22 141. Stiles was eliminated from Walmart stores in December 2012.

23 142. Stiles was injured and continues to be injured by American Industries’
24 interference with Stiles’ prospective economic relations with Walmart, suffering damage to its
25 operation, reputation, and goodwill, suffering the loss of sales and profits that Stiles would
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1 have made but for American Industries' acts, in an amount to be proven at trial.

2 143. Further, American Industries' interference with Stiles' prospective economic
3 relations with Walmart caused Stiles damage in that Stiles was charged to buy back substantial
4 amounts of the product and charged associated fees for the return and transportation of the
5 merchandise, which were returned to Stiles in damaged condition. Stiles would not otherwise
6 have incurred these charges but for American Industries' interference with Stiles' relationship
7 with Walmart.

8
9 **FIRST CLAIM FOR RELIEF**

10 **(Violation of the Sherman Act, 15 U.S.C. § 1 against Walmart and American Industries)**

11 144. All preceding paragraphs of this Complaint are incorporated herein by
12 reference as if fully set forth at length.

13 145. The relevant geographic market is the United States. As pleaded above, the
14 relevant product market is the market for Disposable Personal Styling Razors. Defendants
15 have market power in these relevant markets.

16 146. The exact date being unknowing to Plaintiff and continuing to today,
17 Defendants have specifically intended and continue to intend, through its conduct alleged in
18 this Complaint to willfully to maintain its market power, control prices, exclude competitors,
19 boycott Stiles, harm consumers, and destroy competition in the relevant market.

20 147. There is no legitimate business justification for Defendants' anticompetitive,
21 exclusionary conduct.

22 148. As a direct and proximate result of Defendants' unlawful actions alleged
23 herein, Stiles has suffered injury to its business and property. If Defendants' unlawful conduct
24 is not enjoined, Stiles will suffer irreparable harm, and the market for Disposable Personal
25 Styling Razors will remain distorted and substantially foreclosed to the detriment of
26 consumers in the market.
27
28

1 149. Defendants' unlawful agreement violates Section 1 of the Sherman Act because
2 it has foreclosed Stiles and other competitors from substantial portions of the market for
3 Disposable Personal Styling Razors.

4 150. Defendants' willful taking of Stiles' patented design, resulting in the tort of
5 patent infringement, constitutes an illegal act that substantially lessens competition and tends
6 to maintain Defendants' dominance in the market for Personal Styling Razors.

7 151. Defendants' infringement of Stiles' patents constitutes an act in furtherance of
8 Defendants' combination or conspiracy in violation of § 1 of the Sherman Act.

9 152. Defendants' false association and false advertising of its Salon Perfect Micro
10 Razor constitute illegal acts that substantially lessen competition and tend to maintain
11 Defendant's dominance over the market for Disposable Personal Styling Razors.

12 153. Stiles has been directly and proximately damaged by the losses of sales and
13 profits resulting from Defendants' boycott, patent infringement, false association, and other
14 unlawful anticompetitive practices. Stiles seeks damages, treble damages, and all other relief
15 available to it under the antitrust laws. Stiles will be irreparably harmed if Defendants'
16 exclusive dealing, group boycott, patent infringement, and false association/false advertising
17 and other anticompetitive activities are not enjoined.

18 154. Defendants have specifically intended and continue to intend, for its conduct
19 alleged in this Complaint to control prices, exclude competitors, and destroy competition in
20 the relevant markets for Disposable Personal Styling Razors. Defendants already have
21 market power in the relevant market, which contains high barriers to entry in the form of
22 capital costs, intellectual property requirements and costs, and other burdens as a direct and
23 proximate result of Defendants anticompetitive conduct alleged herein, Stiles has been injured
24 in its business and property and suffered substantial lost profits and will suffer irreparable
25 harm if Defendants are not enjoined from continuing its illegal course of conduct.
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SECOND CLAIM FOR RELIEF

(California Cartwright Antitrust Act against Walmart and American Industries)

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2
3 155. All preceding paragraphs of this Complaint are incorporated herein by
4 reference as if fully set forth at length.

5 156. By reason of the facts alleged, Defendants have combined to form an illegal
6 trust and conspired among themselves to restrain trade and eliminate competition in the
7 market for Disposable Personal Styling Razors by taking overt acts to suppress Stiles' Razor
8 product and by prohibiting Stiles from participating in the Disposable Personal Styling Razor
9 market, all in violation of California Business and Professions Code Section 16700, et seq.
10 (The Cartwright Act).
11

12 157. In furtherance of aforesaid conspiracy, Defendants have combined and
13 conspired to boycott Stiles, to suppress the growth of the Stiles Razor, and to eliminate Stiles
14 from the market for Disposable Personal Styling Razors.
15

16 158. In furtherance of the aforesaid conspiracy, Defendants have engaged in various
17 unlawful acts to injure Stiles all for the purpose of eliminating Stiles from the market for
18 Disposable Personal Styling Razors, including infringement Stiles' patents. Such an
19 agreement restraining trade continues in order to perpetrate Defendants' continuing illegal and
20 anticompetitive monopoly over the Disposable Personal Styling Razor market in California.
21

22 159. Stiles has suffered and continues to suffer direct monetary injury to her
23 business and property by reason of the illegal acts of Defendants in an amount to be
24 determined at trial.

THIRD CLAIM FOR RELIEF

(Patent Infringement of the '468 Patent against Walmart and American Industries)

25
26
27 160. All the preceding paragraphs are incorporated herein by reference as if fully set
28 forth herein.

1 161. Plaintiff Stiles is the owner of and has the right to sue in its own name on
2 United States Patent No. US Patent No D542,468, issued, May 8, 2007, a copy of which is
3 attached as **Exhibit A**. The maintenance fees for the '468 patent have been timely paid, and
4 the '468 patent has not been invalidated or found to be unenforceable in any prior litigation.

5 162. At all times relevant to this action, Stiles has complied with the notice
6 provisions of 35 U.S.C. §287 as it concerns the '468 patent.

7 163. Defendants have directly, indirectly and/or contributorily infringed the '468
8 Patent by manufacturing, using, selling, offering for sale and/or importing into the United
9 States disposable personal styling razors covered by the '468 patent, and has induced and/or
10 contributed to the infringement of the '468 Patent by others in the United States and within
11 this District, and will continue to do so unless enjoined by this Court.

12 164. No right or license to practice the invention claimed in the '468 patent has been
13 granted to Defendants.

14 165. Stiles has been damaged by Defendants infringement and will be irreparably
15 injured unless the infringement is enjoined by this Court as provided by 35 U.S. §283.

16
17
18 **FOURTH CLAIM FOR RELIEF**

19 **(Patent Infringement of the '329 Patent against Walmart and American Industries)**

20 166. All the preceding paragraphs are incorporated herein by reference as if fully set
21 forth herein.

22 167. Plaintiff Stiles is the owner of and has the right to sue in its own name on
23 United States Patent No. US Patent No U.S. 9,108,329 B2, issued, August 18, 2015, a copy of
24 which is attached as **Exhibit B**. The maintenance fees for the '329 patent have been timely
25 paid, and the '329 patent has not been invalidated or found to be unenforceable in any prior
26 litigation
27

28 168. At all times relevant to this action, Stiles has complied with the notice

1 provisions of 35 U.S.C. §287 as it concerns the '329 patent.

2 169. Defendants have directly, indirectly and/or contributorily infringed the '329
3 Patent by manufacturing, using, selling, offering for sale and/or importing into the United
4 States disposable personal styling razors covered by the '329 patent, and has induced and/or
5 contributed to the infringement of the '329 Patent by others in the United States and within
6 this District, and will continue to do so unless enjoined by this Court.

7 170. No right or license to practice the invention claimed in the '329 patent has been
8 granted to Defendants.

9 171. Stiles has been damaged by Defendants infringement and will be irreparably
10 injured unless the infringement is enjoined by this Court as provided by 35 U.S. §283.

11 **WILLFUL INFRINGEMENT**

12 172. Defendants acts of infringement have been willful and in deliberate disregard
13 of the '468 Patent, and this is an exceptional case under 35 U.S.C. §285.

14 173. Defendant Walmart's sale of the patented Stiles Razor for six years before it
15 terminated Stiles' contract and then copied her product for sale under the store brand Salon
16 Perfect name evidences Defendant's willful intent, namely, to copy and use Stiles' technology
17 for itself.

18 174. Defendant American Industries copying of the Stiles Razor evidences
19 Defendant's willful intent.

20 175. Defendants had full knowledge of the patent-in-suit and decided to copy Stiles'
21 Razor to replace Stiles' patented personal styling razor with Walmart's nearly identical,
22 infringing, store-branded product, the Salon Perfect Micro Razor.

23 **FIFTH CLAIM FOR RELIEF**

24 **(Trade Dress Infringement in**
25 **Violation of Section 43(a) of the Lanham Act against Walmart and American Industries)**

1 176. All preceding paragraphs of this Complaint are incorporated herein by
2 reference as if fully set forth at length.

3 177. Upon information and belief, Defendants adopted the trade dress for their
4 Salon Perfect Micro Razor with knowledge of Stiles Trade Dress.

5 178. Defendants misleadingly use a confusingly similar trade dress to the Stiles
6 Razor that is likely to cause confusion, to cause mistake, and to deceive as to Defendants'
7 affiliation, connection, association or sponsorship with Stiles.

8 179. Defendants' acts are calculated to deceive, or are likely to deceive, the public,
9 which recognizes and associates the Stiles Razor Trade Dress with the Stiles Razor.
10 Moreover, Defendants' conduct is likely to cause confusion, to cause mistake, or to deceive
11 the public as to the source of Defendants' products, or as to a possible affiliation, connection
12 with, or sponsorship by Stiles.
13

14 180. Defendants' acts have caused, and continue to cause, irreparable harm to Stiles.
15 Unless this Court enjoins Defendants from continuing their unauthorized acts, Stiles will
16 continue to suffer irreparable harm. As a result of Defendants' wrongful conduct, Stiles is
17 entitled to injunctive, Defendants' profits, damages, and attorneys' fees and costs.
18

19 **SIXTH CLAIM FOR RELIEF**

20 **(False Advertising and False Association**
21 **in Violation of Section 43(a) of the Lanham Act against Walmart)**

22 181. All preceding paragraphs of this Complaint are incorporated herein by
23 reference as if fully set forth at length.

24 182. Defendants copied Stiles' patented razor in such a way as to unfairly compete
25 in the marketplace by drawing a false association between Defendants' product and Stiles.

26 183. Defendants falsely and misleadingly advertised on the Walmart.com website,
27 having the "Salon Perfect Micro Razor" appear in search results when the Stiles Razor was
28

1 searched for on the website. In addition, Defendants falsely advertised that the Stiles Razor is
2 “out of stock,” leading consumers to believe it will be replenished, when in fact, Walmart
3 terminated her contract in order to copy the Stiles Razor and market and sell their own store-
4 branded product.

5 184. Defendants have made false associations and false or misleading descriptions
6 or representations of fact in commercial advertising or promotion which represent the nature,
7 characteristics, qualities, sponsorship or association with another person’s goods, services, or
8 commercial activities in violation of 15 U.S.C. §1125(a).

9
10 185. Defendants have violated and, upon information and belief, intend to continue
11 to willfully, knowingly, and intentionally violation 15 U.S.C. § 1125(a) by their unlawful acts
12 in a manner that is likely to cause confusion, mistake, or deceive as to the nature,
13 characteristics, or qualities of their goods, services, or commercial activities.

14 186. Defendants conduct has caused Stiles to suffer irreparable harm and, unless
15 enjoined by the Court, will cause Stiles to continue to suffer damage to its operation,
16 reputation, and goodwill, and will suffer the loss of sales and profits that Stiles would have
17 made but for Defendants’ acts. Defendants have been, and will continue to be, unjustly
18 enriched by their unlawful acts.
19

20 **SEVENTH CLAIM FOR RELIEF**

21 **(Intentional Interference with Prospective Economic Advantage**
22 **against American Industries)**

23 187. All preceding paragraphs of this Complaint are incorporated herein by
24 reference as if fully set forth at length.

25 188. This claim is filed against Defendant American Industries to recover damages
26 sustained by Stiles by reason of American Industries’ tortious interference with Stiles’
27 prospective business relationship with Walmart and to obtain injunctive relief to prevent
28

1 threatened loss or damage from further interference and disruption. Stiles had, during the
2 period covered by this Complaint, reasonable and valuable expectations of a prospective
3 business relationship with Walmart. American Industries was fully aware of the existence of
4 that prospective relationship.

5 189. Defendant American Industries' conduct is not privileged or excused and is
6 without any legitimate business justification. American Industries has knowingly engaged in
7 such conduct for the purpose of excluding competition and to deprive consumers of the
8 benefits of free and open competition.

9
10 190. Defendant American Industries with the full intention to do so, disrupted and
11 interfered with Stiles' prospective business and economic relationships with Walmart as
12 alleged above. As a proximate result of Defendant's wrongful conduct, Plaintiff Stiles has
13 been prevented from consummating prospective business transactions with Walmart and will
14 be similarly precluded in future years.

15
16 191. Accordingly, Stiles has been and will continue to be deprived of substantial
17 profit and the enhancement and maintenance of its going concern value. As a proximate result
18 of the above-described wrongful conduct, Stiles has suffered actual damages in an amount to
19 be proven at trial.

20 192. In intentionally disrupting and interfering with Plaintiff's prospective business
21 and economic relationships as alleged herein, Defendant's conduct has been willful,
22 oppressive, malicious, and despicable. By reason thereof, Stiles is entitled to exemplary
23 punitive damages in an amount sufficient to punish or deter American Industries.
24

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff Stiles prays that Defendants Walmart and American
27 Industries will be cited to appear and answer herein and for Judgment of this Honorable Court
28 as follows:

1 (a) Judge and decree that Defendants have violated Section 1 of the Sherman Act,
2 (Count One) and the Cartwright Act (Count Two), Bus. § Prof. Code § 16700, *et seq.*, and that
3 judgment be entered against Defendants for treble the amount of actual damages suffered by
4 Stiles and that it be awarded reasonable attorneys' fees and recover its costs of suit, as
5 required by Section 4 of the Clayton Act (15 U.S.C. §16) and by Section 16720 of the Bus. &
6 Prof. Code;

7 (b) Defendants be adjudged and decreed to have willfully and knowingly, directly,
8 indirectly, and/or contributorily infringed the '468 Patent (Count Three);

9 (c) Defendants be ordered to pay actual damages to Stiles, but not less than a
10 reasonable royalty, by reason of Defendants infringement of the '468 Patent together with
11 prejudgment interest, costs, and increased damages pursuant to 35 U.S.C. §284;

12 (d) A permanent injunction be entered against Defendants, their officers, agents,
13 servants, and employees, and all entities and individuals acting in concert with them to
14 permanently restrain any further infringement of the '468 Patent;

15 (e) Defendants be adjudged and decreed to have willfully and knowingly, directly,
16 indirectly, and/or contributorily infringed the '329 Patent (Count Four);

17 (f) Defendants be ordered to pay actual damages to Stiles, but not less than a
18 reasonable royalty, by reason of Defendants infringement of the '329 Patent together with
19 prejudgment interest, costs, and increased damages pursuant to 35 U.S.C. §284;

20 (g) A permanent injunction be entered against Defendants, their officers, agents,
21 servants, and employees, and all entities and individuals acting in concert with them to
22 permanently restrain any further infringement of the '329 Patent;

23 (h) This case be declared an "exceptional case" within the meaning of 35 U.S.C.
24 §285 and reasonable attorneys' fees, costs and treble damages be awarded to Stiles;

25 (i) Judge and decree that Defendants willfully and knowingly infringed the Stiles
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1 Razor Trade Dress (Count Five);

2 (j) Order injunctive relief prohibiting Defendants from using any trade dress
3 which is likely to be confused with the Stiles Razor and award Stiles damages for trade dress
4 infringement, including prejudgment interest and costs against Defendants under 15 U.S.C.
5 §1117;

6 (k) Judge and decree that Defendants have falsely advertised and falsely associated
7 their products with Stiles in violation of Lanham Act §43(a) (Count Six);

8 (l) Award Stiles three times its damages, reasonable attorneys' fees, and statutory
9 damages under 25 U.S.C. §1117;

10 (m) Judge and decree that American Industries has tortuously interfered with Stiles'
11 prospective economic relationships as set forth in Count Seven and that judgment be entered
12 against American Industries for tortious interference with prospective business relationships
13 for actual damages suffered and for exemplary and punitive damages for such tortious
14 interference;
15

16 (n) Awarding Stiles all reasonable attorneys' fees allowed by statute, expert fees,
17 costs, pre-judgment interest, and post-judgment interest; and

18 (o) Granting such other and further relief, at law and equity, to which Stiles is
19 entitled.
20

21 **JURY TRIAL DEMANDED**

22 Stiles demands a trial by jury as its right under the Seventh Amendment to the
23 Constitution of the United States or as given by statute. Fed. R. Civ. P. 38.

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Respectfully submitted:

Dated: July 10, 2018

/s/ Jamie L. Miller
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