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Attorneys for Plaintiffs
Columbia Sportswear North America, Inc. and Columbia Sportswear Company

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

COLUMBIA SPORTSWEAR NORTH AMERICA, INC., an Oregon corporation, and **COLUMBIA SPORTSWEAR COMPANY**, an Oregon corporation Plaintiffs, v. **VENTEX CO., LTD.**, a foreign company, and **DAN MEYER**, an individual, Defendants.	No. 3:17-cv-00623-SI **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT, UNFAIR COMPETITION, AND BREACH OF CONTRACT** DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiffs Columbia Sportswear North America, Inc. ("CSNA") and Columbia Sportswear Company ("CSC," and collectively with CSNA, "Columbia Sportswear") bring this First Amended Complaint for patent infringement, unfair competition, and breach of contract against Defendants Ventex Co., Ltd. ("Ventex") and Dan Meyer. Columbia Sportswear alleges:

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BACKGROUND

Columbia Sportswear filed the original Complaint in this action on April 20, 2017, asserting that Ventex infringes Columbia Sportswear's U.S. Patent Nos. D657,093 (the "D'093 Design Patent"), 8,424,119 (the "'119 Patent"), and 8,453,270 (the "'270 Patent"). Specifically, Ventex acted jointly with Seirus Innovative Accessories, Inc. ("Seirus"), a California company, to make and have made a fabric known as HEATWAVE and to make, import and sell outdoor gear made from HEATWAVE fabric in and into the United States.

Seirus stipulated to judgment of validity of the D'093 Design Patent, and a district court has found Seirus liable for infringement of that patent for its sales of HEATWAVE products. At a trial in 2017, Seirus was held liable to the extent of its total profits for the sales of its HEATWAVE line of products that incorporate the HEATWAVE fabric in an amount exceeding $3 million.

As explained below, Seirus and Ventex are in privity with each other, which has been so found by the United States Patent Office's Patent Trial and Appeal Board, and have acted jointly to infringe the D'093 Design Patent. Accordingly, Ventex is collaterally estopped to argue that it does not infringe the D'093 Design Patent or that the D'093 Design Patent is invalid.

35 U.S.C. § 289 allows a patent owner to disgorge from an infringer the total profits for the sales of any articles of manufacture to which a patented design has been applied. However, the statute states that the patent owner "shall not twice recover the profit made from the infringement." CSNA is therefore entitled to a judgment for Ventex's total profits made from its infringing sales to Seirus and their joint liability for sales of outdoor gear in the United States bearing the infringing design. Because all alleged infringements of CSNA's utility patents also infringe the D'093 Design Patent, CSNA will not be able to seek judgment for any further damages for the past infringements of the utility patents than CSNA is entitled to in relation to the D'093 Design Patent. Moreover, Seirus formally represents that Seirus and Ventex made changes to the structure of the current fabric bearing the HEATWAVE mark such that it no longer meets the coverage limitations of CSNA's utility patents. CSNA relies on that

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representation. Since CSNA is already entitled to disgorgement of both Seirus's and Ventex's total profits for sales of HEATWAVE products that infringed the D'093 Patent, no further damages can be obtained by CSNA for utility patent infringement. Accordingly, CSNA drops the utility patents from this lawsuit.

NATURE OF THE ACTION

1. This lawsuit arises from the Defendants' infringement of the D'093 Design Patent, breach of a manufacturing contract, and unfair competition.

PARTIES

2. Plaintiff Columbia Sportswear North America, Inc. is a corporation organized and existing under the laws of the State of Oregon, with its principal place of business in Portland, Oregon. CSNA owns the Columbia Patents.

3. Columbia Sportswear Company is a corporation organized and existing under the laws of the State of Oregon, with its principal place of business in Portland, Oregon. Columbia Sportswear Company is the parent of Columbia Sportswear North America, Inc.

4. Defendant Ventex Co., Ltd. is a foreign company with its principal place of business in Seoul, Korea. Upon information and belief, Ventex manufactures and sells textiles, fabrics, and other materials for use in the production of clothing, including outdoor wear.

5. Defendant Dan Meyer is an individual residing and, upon information and belief, domiciled in the State of Oregon. Upon information and belief, at all material times Dan Meyer has been and remains the United States sales representative for Ventex, and in this role he imports, offers to sell, and sells Ventex goods in the United States, including the alleged infringing goods.

JURISDICTION AND VENUE

6. Columbia Sportswear's claims for relief for patent infringement arise under the patent laws of the United States, 35 U.S.C. § 101 *et seq*., including §§ 271, 281–85 and 289.

7. Columbia Sportswear's claim for relief pursuant to the Lanham Act arises under 15 U.S.C. § 1125.

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8. This Court has subject matter jurisdiction over the patent and Lanham Act claims for relief pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. Columbia Sportswear's claims for relief for breach of contract and unfair competition under state law arise under the laws of the State of Oregon. This Court has supplemental jurisdiction over these claims pursuant to 28 U.S.C. § 1367(a) because the claims are so related to the federal questions within the original jurisdiction of this Court that they form part of the same case or controversy under Article III of the United States Constitution.

10. Ventex is subject to personal jurisdiction in Oregon pursuant to Oregon Rule of Civil Procedure 4 because Ventex is a foreign defendant that manufactures materials outside of Oregon and, in the ordinary course of trade, those materials have caused injury to Columbia Sportswear in Oregon by infringing the Columbia Patents, among other injuries. Ventex is also subject to personal jurisdiction in the State of Oregon pursuant to Rule 4(k)(2).

11. Exercising personal jurisdiction over Ventex in Oregon comports with the limits of federal due process. Upon information and belief, Ventex purposefully directs infringing activities at the State of Oregon by: (a) maintaining its United States sales representative in Oregon; (b) soliciting the sale of infringing goods to customers in the United States through its Oregon-based sales agent, Dan Meyer; (c) soliciting the sale of infringing goods through its Oregon-based sales agent, Dan Meyer, knowing that the goods will be further directed to customers in Oregon; (d) transacting sales of infringing goods with customers in the United States from Oregon through its Oregon-based sales agent, Dan Meyer; (e) transacting sales of infringing goods through its Oregon-based sales agent, Dan Meyer, with knowledge that those goods will be further directed to customers in Oregon; (f) upon information and belief, exporting infringing goods into Oregon, and inducing Oregon-based sales agent Dan Meyer to import infringing goods in Oregon; (g) importing infringing goods into Oregon, through its Oregon-based sales agent, Dan Meyer, to be used or exhibited at trade shows or in other marketing efforts in Oregon and elsewhere in the United States; (h) maintaining a sales agent in Oregon, who, upon information and belief, earns commissions in Oregon by selling infringing goods; (i)

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purposefully directing sales of infringing goods throughout the United States, including in Oregon; (j) purposefully directing sales of infringing goods to be incorporated into products that Ventex knows and understands will be sold in Oregon, including at retail stores in Tigard, Hillsboro, Portland, and Corvallis; (k) purposefully directing sales of infringing goods to be incorporated into products that Ventex knows and understands will be sold on the Internet and available to online customers in Oregon; and (l) injecting infringing goods into the stream of commerce for the specific purpose of being sold in Oregon.

12. Ventex is also subject to personal jurisdiction in Oregon because the Material and Component Supply Agreement, described below, was negotiated by CSC in Oregon, is subject to Oregon law, was signed by CSC in Oregon, and the harm to Columbia Sportswear from Ventex's breach of that agreement has occurred in Oregon.

13. Ventex has sufficient minimum contacts with the State of Oregon to warrant the exercise of specific personal jurisdiction in this state, including but not limited to the contacts set forth in Paragraphs 11-12, above.

14. Columbia Sportswear's claims arise out of or relate to Ventex's activities directed in this forum state.

15. Exercising personal jurisdiction over Ventex in Oregon does not offend traditional notions of fair play and substantial justice.

16. Dan Meyer is subject to personal jurisdiction in Oregon pursuant to Oregon Rule of Civil Procedure 4 because, upon information and belief, (a) he is a natural person present within Oregon when served; (b) he is a natural born person residing or domiciled in Oregon; and (c) he is engaged in substantial and not isolated activities within this state.

17. Exercising personal jurisdiction over Dan Meyer in Oregon comports with the limits of federal due process. Upon information and belief, Dan Meyer purposefully directs infringing activities in the State of Oregon by: (a) acting as United States sales representative for Ventex in Oregon; (b) soliciting the sale of infringing goods to customers in the United States from his office in Oregon; (c) soliciting the sale of infringing goods knowing that those goods

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will be sold to customers in Oregon; (d) transacting sales of infringing goods with customers in the United States from his office in Oregon; (e) transacting sales of infringing goods knowing that those goods will be sold to customers in Oregon; (f) upon information and belief, importing infringing goods into Oregon to be used or exhibited at trade shows or in other marketing efforts; (g) earning sales commissions in Oregon on the sales of infringing goods; (h) purposefully directing sales of infringing goods to be incorporated into products that he knows and understands will be sold in Oregon; and (i) upon information and belief, using infringing goods in Oregon as samples for sales and marketing and/or facilitating sales and marketing of infringing goods from his office in Oregon.

18. Venue is proper pursuant to 28 U.S.C. § 1400(b) because a civil action for patent infringement may be brought in any judicial district where the defendant resides or has committed acts of infringement. Dan Meyer resides in Oregon. Ventex is also subject to venue in Oregon under the Alien-Venue Rule. Ventex has also committed acts of infringement within this judicial district as set forth in this Complaint. Venue for the non-patent claims for relief is proper pursuant to 28 U.S.C. § 1391(b).

FACTUAL BACKGROUND

A. The Patent in Suit

19. Columbia Sportswear Company is a leading innovator in the global outdoor apparel, footwear, accessories, and equipment markets. Founded in 1938, its apparel, footwear, accessories, and equipment have earned a reputation for innovation, quality, and performance, serving the needs of outdoor enthusiasts in more than 100 countries.

20. In 2010, Columbia Sportswear launched its Omni-Heat® Reflective line of products that use reflective elements positioned on the fabric in a discontinuous array, only partially covering the base fabric, so as to allow the continued moisture permeability of the base fabric while also providing the advantages of heat reflectivity.

21. CSNA filed patent applications for inventions relating to the Omni-Heat® Reflective line of products, including the D'093 Design Patent.

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22. CSNA owns the D'093 Design Patent, entitled "HEAT REFLECTIVE MATERIAL," which was duly and legally issued to CSNA by the United States Patent and Trademark Office on April 3, 2012, and has the legal right to bring this action for infringement. The D'093 Patent has a single claim that covers the ornamental design for the heat reflective material as shown and described in the figures incorporated into the D'093 Patent. Figures 1 and 2 of the D'093 Patent, which show an elevational view and enlarged view of the heat reflecting material, are shown below:

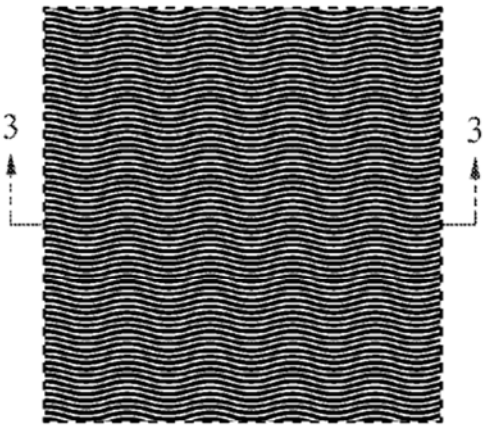

FIG. 1

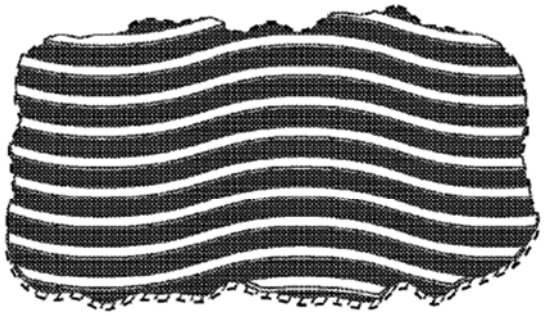

FIG. 2

23. Figure 8 of the D'093 patent shows the heat reflective material as used in hand wear:

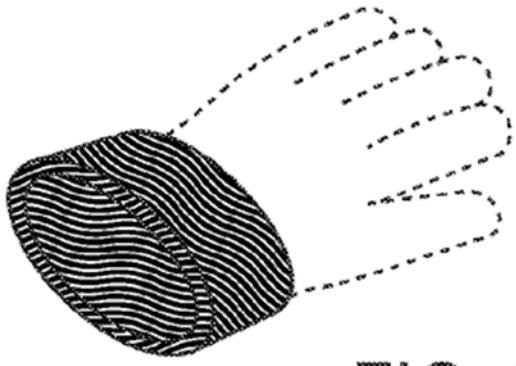

FIG. 8

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B. Facts Concerning Seirus's Relationship with Ventex Concerning the HEATWAVE Fabric

24. By 2012, Seirus became interested in developing a product that would compete with Columbia Sportswear's patented Omni-Heat® Reflective line of products.

25. Ventex sells a material branded as MegaHeat fabric. MegaHeat fabric is a breathable base fabric. Ventex manufactures a version of MegaHeat fabric called MegaHeat RX ("MEGAHEAT RX"), which has reflective elements adhered to one side of the fabric, for purposes of reflecting body heat back to the user. The reflective elements are positioned on the fabric in a discontinuous array, only partially covering the base fabric, so as to allow the continued moisture permeability of the base fabric while also providing the advantages of heat reflectivity.

26. Following communications beginning at least as early as Spring 2012, representatives of Seirus and representatives of Ventex met at the Outdoor Retailer trade show in August 2012. At that show, Ventex offered to make a reflective product based on the MegaHeat RX fabric for Seirus to compete with Columbia Sportswear's Omni-Heat® Reflective products.

27. Seirus provided Ventex a design involving wavy lines and Seirus's logo. Ventex then printed this design as foil on its MegaHeat RX fabric, resulting in HEATWAVE fabric, as shown below:

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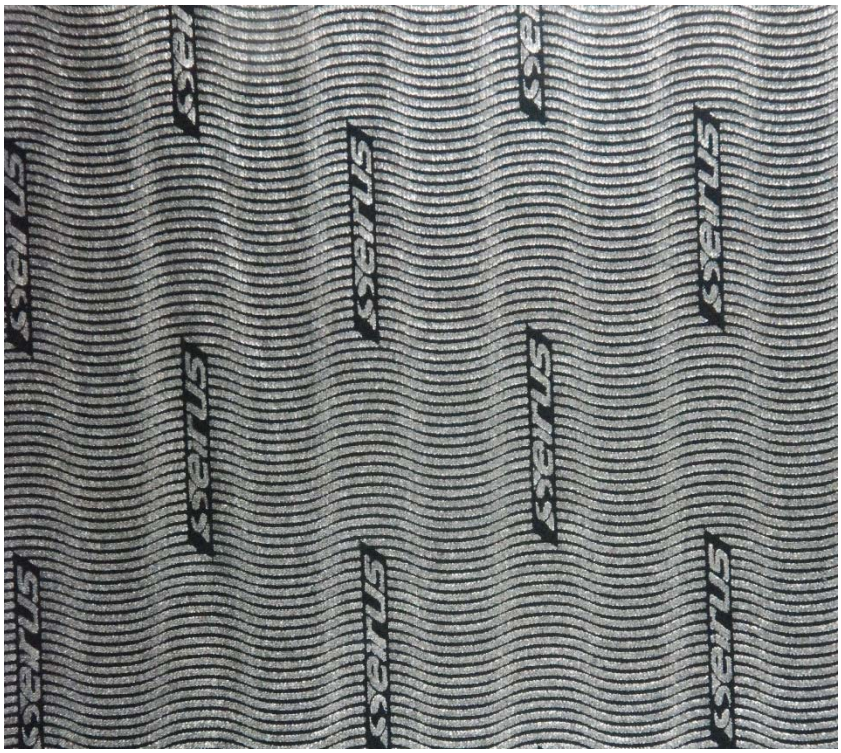

28. Seirus used the custom MEGAHEAT RX fabric in gloves branded as HEATWAVE, which incorporated the Ventex lining with reflective material as shown below:

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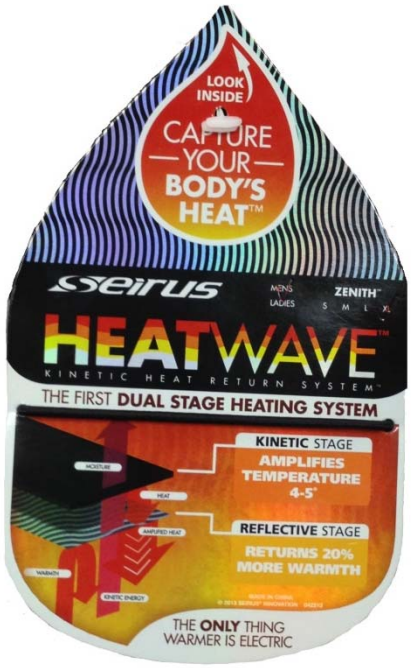
29. The advertising tag included with the Seirus HEATWAVE glove describes the function of the reflective lining material as returning 20 percent more warmth to the user by reflecting the heat emitted from the wearer's body back toward the wearer but while permitting moisture transfer.



30. Seirus also sold glove liners, hats, and socks made of the HEATWAVE fabric.

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The liner, called the HEATWAVE LINER, is shown below:

31. By March 2013, Seirus had placed an order for 3,000 yards of HEATWAVE fabric from Ventex. Seirus used that material to make sample products for testing.

32. Seirus and Ventex entered into a Vendor Agreement on March 8, 2013.

33. In the Vendor Agreement, Ventex agreed to comply with all applicable laws and regulations, including those pertaining to the manufacture, pricing, sale, and distribution of merchandise.

34. The Vendor Agreement required Ventex to indemnify and hold Seirus harmless for Ventex's failure to perform its obligations pursuant to the agreement.

35. Ventex became aware of the D'093 Design Patent prior to April 2013.

36. Upon becoming aware of the D'093 Design Patent, Ventex recognized the similarity between the D'093 Design Patent and the HEATWAVE fabric that Ventex was then manufacturing for Seirus. Ventex also obtained opinions or advice from its attorney concerning the risks of infringing a U.S. design patent.

37. In April 2013, Ventex notified Seirus of the D'093 Design Patent. Specifically,

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Ventex sent an email that stated, "I believe you already considered the similarity with Columbia's Omni-Heat and MegaHeat RX. As we are expanding business to America, we are checking patents. We found a little similar pattern." The email attached a copy of the D'093 Design Patent.

38. Ventex also told Seirus "need to double check for Columbia's patent carefully any special design or factors can be infringed."

C. Facts Concerning the Prior Lawsuit Between CSNA and Seirus

39. CSNA sued Seirus for infringement of the D'093 Design Patent in 2013. *Columbia Sportswear Co. v. Seirus Innovative Accessories, Inc*., Case No. 2:13-cv-2175-RSM (W.D. Wash.).

40. CSNA amended the Complaint in April 2013, adding the '119 Patent and the '270 Patent.

41. Columbia Sportswear purchased Seirus gloves containing Ventex's HEATWAVE fabric in the District of Oregon at Dick's Sporting Goods in Tigard, Oregon; Sports Authority in Hillsboro, Oregon; Sports Authority in Jantzen Beach, Oregon; and Sports Authority in Portland, Oregon. Columbia Sportswear has further confirmed the gloves have been offered for sale at the Sports Authority in Corvallis, Oregon.

42. In January 2015, the case was re-filed in the United States District Court for the District of Oregon.

43. CSNA asserted that Seirus's HEATWAVE line of products, which use the HEATWAVE fabric manufactured by Ventex, infringed each of these three patents.

44. Following CSNA's filing of the Complaint, Seirus's executives and Ventex personnel engaged in numerous email conversations concerning the lawsuit.

45. Seirus's executives and attorneys asked for Ventex's assistance concerning defenses against the asserted patents.

46. Seirus's lawyers communicated with Ventex's lawyers numerous times about facts and theories to avoid liability.

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47. Ventex shared with Seirus prior art it thought might be relevant to asserted claims in the case.

48. On March 17, 2016, Seirus and CSNA filed a Joint Motion for Entry of Judgment RE U.S. Patent D657,093. *See Columbia Sportswear North America, Inc. v. Seirus Innovative Accessories, Inc*., No. 3:15-cv-00064-HZ, Dkt. No. 79 (D. Or.). Attached to the Joint Motion was an Exhibit A, which was captioned, "Judgment of Validity of U.S. Patent D657,093," and which stated as follows:

> Pursuant to the joint motion of the parties,
>
> IT IS HEREBY ORDERED AND ADJUDGED that U.S. Patent D657,093 has not been proved invalid and that Defendant Seirus Innovative Accessories, Inc.'s counterclaim and defense of invalidity associated with that patent are dismissed with prejudice and without costs or attorneys' fees to either party.

49. Judge Hernandez issued the Judgment of Validity on March 17, 2016 as Docket 81.

50. On March 7, 2016, CSNA filed a motion for partial summary judgment that Seirus infringed the D'093 Design Patent. *See Columbia Sportswear North America, Inc. v. Seirus Innovative Accessories, Inc*., No. 3:15-cv-00064-HZ, Dkt. No. 75 (D. Or.). The motion stated as follows:

> Columbia seeks summary judgment that Seirus infringes U.S. Design Patent No. D657,093 (the "D'093 Patent"), entitled Heat Reflective Material, by importing, offering for sale, and selling products that incorporate its HeatWave material ("HeatWave Material"). These accused products are referred to herein as the HeatWave Products.

51. On August 10, 2016, this Court granted CSNA's motion, finding that Seirus infringed the D'093 Design Patent. Dkt. 105. The Court held, "An ordinary observer familiar with the prior art would be likely to confuse Seirus's design with Columbia's patented design. Therefore, Columbia's motion [75] for partial summary judgment of infringement of U.S. Design Patent No. D657,093 is granted."

52. At trial, the jury issued a verdict awarding CSNA $3,019,174 due to Seirus's

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infringement of the D'093 Design Patent.

D. Facts Concerning the Ventex IPRs

53. On January 11, 2017, Ventex filed a petition for *inter partes* review of the '119 Patent with the Patent Trial and Appeal Board ("PTAB"). *See* IPR2017-00651.

54. On January 27, 2017, Ventex filed a petition for *inter partes* review of the '270 Patent with the PTAB. *See* IPR2017-00789.

55. On January 24, 2019, the PTAB issued Orders Dismissing the Petitions, Vacating institution of *Inter Partes* reviews, and terminating *Inter Partes* reviews of the '119 and '270 Patents. *See* IPR2017-00651 Paper 148 and IPR2017-00789 Paper 148. The PTAB issued redacted, public copies, which are on the docket in this case as Dkt. No. 21, Exs. 1 & 2, and are incorporated herein by reference.

56. In its orders, the PTAB found that Seirus was in privity with Ventex.

57. The PTAB also found that Seirus was a real party in interest in the IPRs.

E. Ventex's Acts Concerning Patent Infringement

58. Ventex knows and has known that Seirus's use of the HEATWAVE fabric infringes the D'093 Patent. Ventex actively induced Seirus to use HEATWAVE fabric in garments for sale in the United States, and thus to infringe the D'093 Patent.

59. Ventex offered to sell and sold HEATWAVE fabric to Seirus in the United States.

60. Upon information and belief, Ventex sold HEATWAVE fabric and shipped it directly to Seirus in the United States.

61. Ventex also provided samples of HEATWAVE fabric to Seirus, exporting samples from South Korea, thereby inducing Seirus to import said fabric in the United States.

F. Dan Meyer's Infringing Acts

62. A LinkedIn profile from around the time the suit was filed, and published by Dan Meyer, represented that he holds the position of "US Sales" representative for Ventex. In that role, Dan Meyer, as agent to Ventex and from Oregon offered to sell, and, upon information

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and belief, sold the HEATWAVE/MEGAHEAT RX fabric to Seirus.

63. Dan Meyer attends trade shows on behalf of Ventex, for purposes of selling MEGAHEAT RX fabric in the United States. Upon information and belief, Dan Meyer is shown at left in the photograph below, at a trade show in the Ventex booth under a sign for "MegaHeat®":

64. Dan Meyer is also listed as a representative for Ventex and "booth staff" on the website for the Outdoor Retailer Summer Market Trade Show in 2015, at which Ventex displayed its MEGAHEAT RX fabric. Ventex or Dan Meyer imported MEGAHEAT RX fabric into the United States for purposes of displaying and, upon information and belief, offering to sell at the trade show.

65. Upon information and belief, Dan Meyer knows and has known that Seirus's use of the HEATWAVE fabric infringes the D'093 Patent. As Ventex's agent, Dan Meyer actively induced Seirus to use HEATWAVE fabric in garments for sale in the United States, and thus to infringe the D'093 Patent.

66. Dan Meyer met with Seirus personnel at the Outdoor Retailer trade show in 2012 and offered to sell MegaHeat RX fabric with custom foil printing. Following the trade show, Seirus personnel communicated directly with Mr. Meyer concerning the development of the HEATWAVE fabric. Mr. Meyer provided Seirus with a price quote for its custom

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HEATWAVE fabric on a per-yardage basis, and Seirus placed an order based on that quote.

67. As Ventex's agent, Dan Meyer offered to sell and sold HEATWAVE fabric to Seirus in the United States.

68. Upon information and belief, Dan Meyer has imported samples of infringing goods into Oregon for his use at trade shows or other marketing efforts in the United States.

69. Upon information and belief, Dan Meyer has performed these unlawful acts from his office in Oregon.

G. Ventex's Wrongful Advertising and Breach of Contract

70. On or around September 1, 2010, CSC and Ventex entered into a Material and Component Supply Agreement ("Agreement") for CSC and its subsidiaries and affiliates (collectively, "Columbia"), and their designated agents, whereby Ventex made and sold to Columbia materials or components pursuant to Columbia's specifications.

71. Pursuant to the Agreement, suppliers appointed by Columbia as Finished Goods Vendors are authorized to issue purchase orders for "Materials" from Ventex. (*Id.* §§ 1.1, 2.) "Materials" is defined in the Agreement as "all materials and components for . . . incorporating into, or use in the manufacture of Finished Goods . . . offered by [Ventex]." (*Id.* § 1.8.) "Finished Goods" are "finished and partially-finished apparel, footwear, accessories and equipment from Columbia's current or upcoming product line, solely for supply to Columbia or Columbia's customers." (*Id.* § 1.6.) A 'Material' is thus any material that Ventex "offers" to supply to Columbia for use in Columbia's proprietary product lines for the current and next marketing seasons.

72. In exchange for becoming an authorized Material Supplier for Columbia, Ventex agreed to terms and conditions that protect Columbia's proprietary intellectual property, including its trademarks, copyrights, trade secrets, and patents relating to Columbia's "current or upcoming product line." For example, Ventex agreed that it "will not at any time directly contest . . . the validity of any of the Trademarks." (*Id.* § 4.1.) "Trademarks" is defined broadly in section 1.16 to include a variety of intellectual property rights, and not just trademarks. Thus,

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"Trademarks" includes, in addition to marks, "any other intellectual property associated with Materials or Finished Goods, including but not limited to all . . . patents . . . owned or licensed by Columbia or its affiliates." Accordingly, Ventex agreed that, as a condition of qualifying as a materials supplier or offering to provide a material or component to Columbia's supply participants pursuant to the terms of the Agreement, Ventex would not challenge any of Columbia's patents covering that material. Ventex also agreed that it would not challenge any patents covering any Finished Goods, which includes any of Columbia's proprietary products in its "current or upcoming product line."

73. As of the time when Ventex entered into the Agreement, Columbia had successfully launched its Omni-Heat® Reflective product line, and Omni-Heat® Reflective products were part of its then-current and then-upcoming product lines.

74. After entering into the Agreement with CSC, Ventex supplied Columbia with hundreds of thousands of yards of material for Columbia's proprietary Omni-Freeze® and other products, earning millions of U.S. dollars in revenue under the Agreement. Ventex offered on multiple occasions during its performance to make Omni-Heat® Reflective fabric for Columbia. When Columbia did not expand further its business with Ventex, Ventex secretly opted to breach the Agreement and go into direct competition with Columbia, conspiring with and inducing Seirus and other businesses to copy the Omni-Heat® Reflective technology while knowing full well that Omni-Heat® Reflective was subject to pending or issued patent protections.

75. Then, on January 11, 2017, Ventex filed the first of two petitions for *inter partes* review pursuant to 35 U.S.C. §§ 311 *et seq.*, seeking to have the U.S. Patent Office find various claims in the patents covering Omni-Heat® Reflective invalid.

76. Notably, because Ventex offered to make Omni-Heat® Reflective for Columbia, it is a "Material" and an "Exclusive Material" as defined in the Agreement, and goods using Omni-Heat® Reflective fabric are "Finished Goods" under the Agreement. Accordingly, when it decided to offer to make Omni-Heat® Reflective, and entered into multiple discussions

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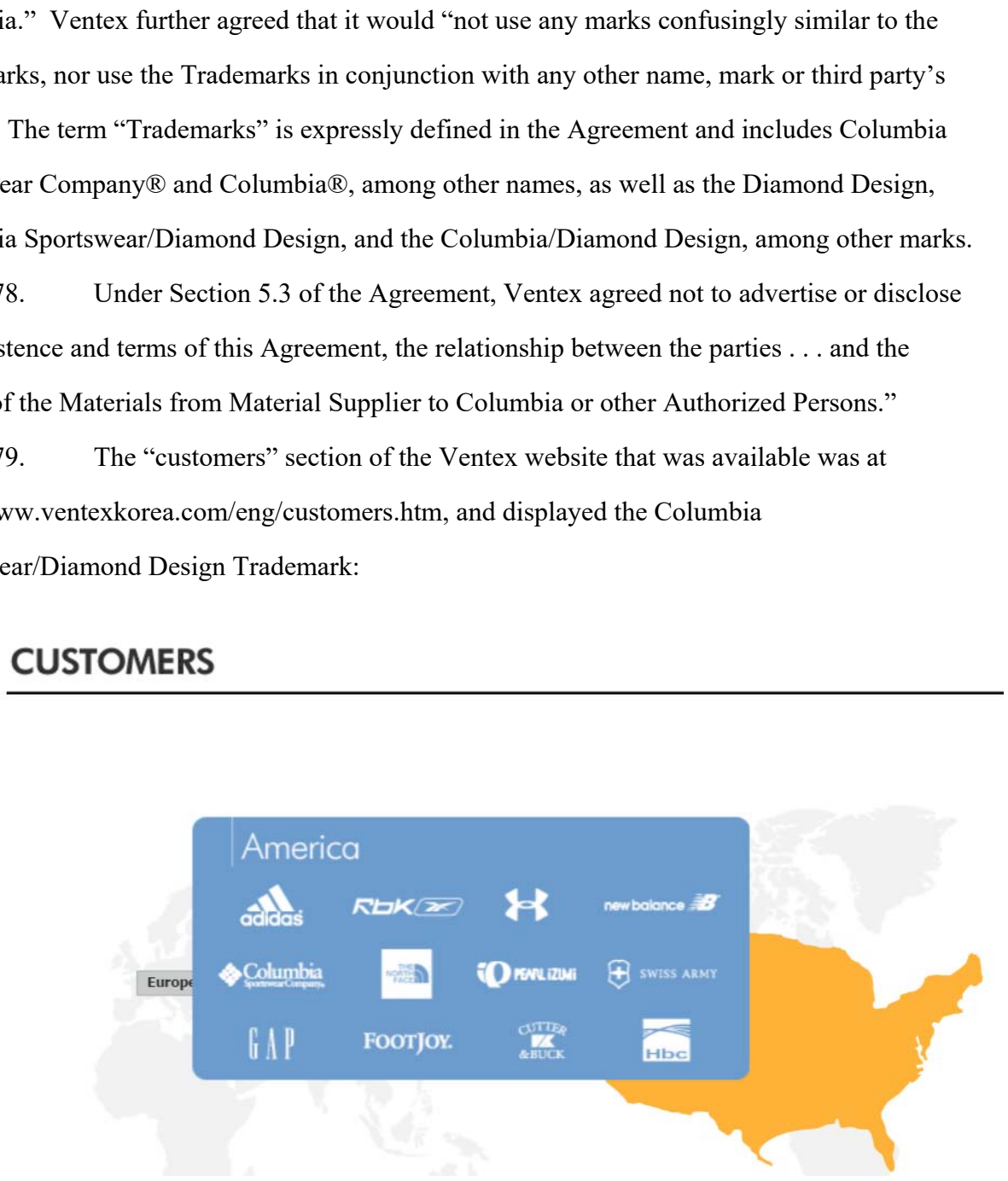
with Columbia to that end, Ventex contractually obligated itself to respect Columbia's intellectual property rights and not to challenge the Omni-Heat® Reflective Patents.

77. The Agreement also includes provisions concerning trademarks and private branding. Under Section 4.1 of the Agreement, Ventex agreed to "only use the Trademarks on or in connection with the Materials and only in the manner expressly set forth in writing by Columbia." Ventex further agreed that it would "not use any marks confusingly similar to the Trademarks, nor use the Trademarks in conjunction with any other name, mark or third party's goods." The term "Trademarks" is expressly defined in the Agreement and includes Columbia Sportswear Company® and Columbia®, among other names, as well as the Diamond Design, Columbia Sportswear/Diamond Design, and the Columbia/Diamond Design, among other marks.

78. Under Section 5.3 of the Agreement, Ventex agreed not to advertise or disclose "the existence and terms of this Agreement, the relationship between the parties . . . and the supply of the Materials from Material Supplier to Columbia or other Authorized Persons."

79. The "customers" section of the Ventex website that was available was at http://www.ventexkorea.com/eng/customers.htm, and displayed the Columbia Sportswear/Diamond Design Trademark:



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80. Columbia Sportswear has not authorized Ventex in writing to use or display the Trademark in this manner.

81. Columbia Sportswear is not a current customer of Ventex.

82. CSNA is listed in Addendum I of the Agreement as an affiliate of CSC, and is therefore an intended beneficiary of the Agreement.

FIRST CLAIM FOR RELIEF

INFRINGEMENT OF UNITED STATES PATENT D657,093

(Against Ventex and Dan Meyer)

83. Columbia Sportswear restates and re-alleges each of the prior allegations, photographs, and figures of this Complaint as if fully set forth herein.

84. Defendants Ventex and Dan Meyer infringed the D'093 Patent by offering to sell and selling HEATWAVE fabric into the United States in violation of 35 U.S.C. § 271(a).

85. Defendants Ventex and Dan Meyer actively induced Seirus's infringement of the D'093 Patent in violation of 35 U.S.C. § 271(b) and are thus liable as infringers for Seirus's conduct. Upon information and belief, Ventex and Dan Meyer knew of the patent, knew that use of the HEATWAVE fabric in garments for sale in the United States would infringe the patent, but knowingly induced Seirus to import the HEATWAVE fabric into the United States and to use it in garments for sale in the United States. Ventex and Dan Meyer knew of the adjudication in early 2016 by this district court that Ventex's HEATWAVE fabric supplied exclusively to Seirus for application to outdoor gear infringes the D'093 patent.

86. Ventex's and Dan Meyer's infringement of the D'093 Patent is, in every instance, willful and without CSNA's consent. Ventex's willful infringement renders this case exceptional and entitles CSNA to enhanced damages and attorneys' fees pursuant to 35 U.S.C. § 285.

87. Due to Ventex's and Dan Meyer's inducement of Seirus's infringement of the D'093 Patent, CSNA is entitled to recover from Ventex and Dan Meyer damages adequate to compensate for the infringement in an amount subject to proof at trial, but in no event less than a

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reasonable royalty for the use made of the design.

88. As an additional remedy for infringement of the D'093 Patent, CSNA is entitled to recover Ventex's total profits from its infringing acts, as well as all sales commissions Dan Meyer earned in selling HEATWAVE fabric, under 35 U.S.C. § 289.

89. CSNA is also entitled to recover $3,019,174 in joint and several liability from Ventex as a joint tortfeasor to Seirus's infringement.

SECOND CLAIM FOR RELIEF

UNFAIR COMPETITION UNDER § 43(a) THE LANHAM ACT

(Against Ventex)

90. Columbia Sportswear restates and re-alleges each of the prior allegations, photographs, and figures of this Complaint as if fully set forth herein.

91. Defendant Ventex has used in commerce the words, terms, names, and symbol of Columbia Sportswear on the public Ventex website at www.ventexkorea.com/customers.htm to designate Columbia Sportswear as one of Ventex's "customers."

92. Ventex's website is directed to potential customers, including clothing manufacturers based in Oregon, and was intended to unlawfully associate Ventex with Columbia Sportswear in the active pursuit of those Oregon-based customers. In so doing, Ventex unlawfully capitalized on Columbia's goodwill and established brand recognition in the clothing manufacturers' market.

93. Columbia Sportswear is not a "customer" of Ventex, nor was it at the time this suit was filed.

94. This designation and/or representation was false and likely to cause confusion, mistake, or deception as to the affiliation, connection, or association between Ventex and Columbia Sportswear in violation of 15 U.S.C. § 1125.

95. Columbia Sportswear was damaged by such act.

96. Columbia Sportswear is entitled to injunctive relief in accordance with 15 U.S.C. §§ 1125(a) and 1116, as well as all available monetary damages in an amount to be

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proven at trial in accordance with 15 U.S.C. §§ 1125(a), 1117(a), and 1118.

THIRD CLAIM FOR RELIEF

UNFAIR COMPETITION UNDER OREGON STATE LAW

(Against Ventex)

97. Columbia Sportswear restates and re-alleges each of the prior allegations, photographs, and figures of this Complaint as if fully set forth herein.

98. Defendant Ventex has used in commerce the words, terms, names, and symbol of Columbia Sportswear on the public Ventex website at www.ventexkorea.com/customers.htm to designate Columbia Sportswear as one of Ventex's "customers."

99. Ventex's website is directed to potential customers, including clothing manufacturers based in Oregon, and was intended to unlawfully associate Ventex with Columbia Sportswear in the active pursuit of those Oregon-based customers. In so doing, Ventex unlawfully capitalized on Columbia's goodwill and established brand recognition in the clothing manufacturers' market.

100. Columbia Sportswear is not a "customer" of Ventex, nor was it at the time the suit was filed.

101. This designation and/or representation causes or caused likelihood of confusion or misunderstanding as to the sponsorship, approval, or certification of Ventex goods in violation of Or. Rev. Stat. § 646.608.

102. This designation and/or representation causes or has caused likelihood of confusion or misunderstanding as to the affiliation, connection, or association between Columbia Sportswear and Ventex in violation of Or. Rev. Stat. § 646.608.

103. Columbia Sportswear was injured, or will suffer injury, as a result of Ventex's deceptive use of the Columbia Sportswear trademarks on the Ventex website.

104. Columbia Sportswear is entitled to an award of monetary damages to be proven at trial, punitive damages in an amount to be proven at trial, as well as an award of reasonable attorneys' fees in accordance with Or. Rev. Stat. §§ 646.140 and 646.150.

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FOURTH CLAIM FOR RELIEF

BREACH OF CONTRACT

(Against Ventex)

105. Columbia Sportswear restates and re-alleges each of the prior allegations, photographs, and figures of this Complaint as if fully set forth herein.

106. CSC and Ventex entered into a valid, enforceable contract, *i.e.*, the Material and Component Supply Agreement, supported by adequate consideration. CSNA is an intended beneficiary of the Agreement.

107. Ventex manifested assent to all the written terms in the Agreement by signing the Agreement via signature stamp.

108. Ventex has breached Section 4.1 of the Agreement by filing petitions for *inter partes* review against the '119 and '270 Patents; displaying Columbia Sportswear's trademarks on the Ventex website in a manner that is not authorized by Columbia Sportswear in writing and/or in conjunction with third-party goods; and by failing to maintain the confidentiality of the existence of the Agreement, the relationship between Ventex and CSC, and/or the supply of materials from Ventex to CSC or other Authorized Purchasers.

109. Columbia Sportswear is entitled to preliminary and permanent injunctive relief to enjoin any and all of Ventex's acts or omissions that constitute continuing breaches of the Agreement.

PRAYER FOR RELIEF

WHEREFORE, Columbia Sportswear respectfully requests that the Court enter judgment in its favor and against Defendants Ventex Co., Ltd. and Dan Meyer, granting the following relief:

A. A permanent injunction against Ventex's use of Columbia Sportswear's trademarks in any manner inconsistent with the Material and Component Supply Agreement;

B. A monetary award in favor of CSNA and against Ventex and Dan Meyer in an amount to be proven at trial, pursuant to 35 U.S.C. §§ 284 and 289, and, to the extent damages

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are awarded pursuant to § 284, enhancement of the damage award pursuant to 35 U.S.C. § 284;

C. An award finding Ventex jointly and severally liable with Seirus for infringement of the D'093 Patent, and awarding CSNA $3,019,174 together with prejudgment interest as against Ventex;

D. An award finding that Ventex is collaterally estopped from pursuing defenses of noninfringement or invalidity of the D'093 Design Patent;

E. An award of costs and attorneys' fees to the fullest extent permitted by law, including pursuant to 35 U.S.C. § 285, 15 U.S.C. §§ 1125 and 1117, and Or. Rev. Stat. §§ 646.140 and 646.150; Pre-judgment interest at the highest rate of interest allowed by law from the earliest point of liquidation of any monetary damages until the date of entry of judgment;

F. Post-judgment interest at the highest rate of interest allowed by law from the date of entry of judgment until paid in full;

G. Any other relief that this Court deems to be just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Columbia Sportswear respectfully requests a trial by jury of all issues so triable.

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Dated this 20th day of May, 2019.

Respectfully submitted,

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Of Attorneys for Plaintiffs
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