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Taylor Made Golf Company, Inc.

12 UNITED STATES DISTRICT COURT  
13 SOUTHERN DISTRICT OF CALIFORNIA  
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15 TAYLOR MADE GOLF COMPANY,  
16 INC.,

17 Plaintiff,

18 v.

19 COSTCO WHOLESALE CORP.,  
20 SOUTHERN CALIFORNIA DESIGN  
COMPANY d/b/a INDI GOLF, and SM  
21 GLOBAL, LLC,

22 Defendants.

CASE NO. 3:24-cv-00212-AGS-VET

Judge: Hon. Andrew G. Schopler

**FIRST AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT  
AND FALSE ADVERTISING**

**JURY TRIAL DEMANDED**

Filed: May 31, 2024

23 Plaintiff, Taylor Made Golf Company, Inc. (“Taylor Made” or “Plaintiff”)  
24 brings this Complaint against Defendants Costco Wholesale Corporation  
25 (“Costco”), Southern California Design Company d/b/a Indi Golf (“SCDC”), and  
26 SM Global, LLC (“SM Global”) (collectively “Defendants”). In support of this  
27 Complaint, Taylor Made alleges as follows:  
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1 **NATURE OF THIS ACTION**

2 1. This is an action for patent infringement brought by Taylor Made  
3 against Defendants pursuant to 35 U.S.C. §§ 271 and 281–285 for Defendants’  
4 infringement of U.S. Patent Nos. RE47,653 (“the ’653 patent”); 10,953,293 (“the  
5 ’293 patent”); 11,351,426 (“the ’426 patent”); 11,420,097 (“the ’097 patent”); and  
6 11,559,727 (“the ’727 patent”) (collectively “the asserted patents”), and for false  
7 advertising for Defendants’ false and misleading statements in violation of the  
8 Lanham Act (15 U.S.C. § 1125(a)).

9 **PARTIES**

10 2. Taylor Made is a Delaware corporation with its principal place of  
11 business at 5545 Fermi Court, Carlsbad, California 92008.

12 3. Costco is a Washington corporation, with a principal place of business  
13 located at 999 Lake Dr., Issaquah, WA 98027. On information and belief, Costco  
14 operates one or more physical stores in this District, including at least stores at 650  
15 Gateway Center Dr., San Diego, CA 92102, and 951 Palomar Airport Road,  
16 Carlsbad, CA 92011.

17 4. Costco has sold and offered to sell infringing products at least through  
18 its website, Costco.com, to consumers in this District, throughout the State of  
19 California, and throughout the United States.

20 5. SCDC is a California corporation with a principal place of business  
21 located at 2205 Faraday Avenue, Suite A, Carlsbad, California 92008. SCDC has  
22 registered “Indi Golf” as a tradename and has in fact done business as Indi Golf. On  
23 information and belief, SCDC has used and manufactured infringing products in, or  
24 imported infringing products into, the United States and has sold infringing  
25 products to Costco.

26 6. SM Global is a California corporation with a principal place of  
27 business located at 9461 Charleville Boulevard, #326, Beverly Hills, California  
28 90212. On information and belief, SM Global has used and manufactured infringing

1 products in, or imported infringing products into, the United States and has sold  
2 infringing products to Costco.

3 **JURISDICTION AND VENUE**

4 7. These claims arise under the patent laws of the United States of  
5 America, 35 U.S.C. §§ 1 *et seq.* and the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*  
6 This Court has subject matter jurisdiction over the subject matter of this action  
7 pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8 8. This Court has personal jurisdiction over Defendant Costco because,  
9 among other things, Costco’s conduct of business in this District; its purposeful  
10 availment of the rights and benefits of California law; and its substantial,  
11 continuous, and systematic contacts with the state of California and this District.

12 9. On information and belief, Costco: (1) intentionally markets and sells  
13 the infringing products to residents in this District; (2) enjoys substantial income  
14 from this District; and (3) owns and operates several stores in this District and  
15 throughout California.

16 10. Venue is proper in this District as to Costco pursuant to 28 U.S.C.  
17 §§ 1391(b), 1391(c), and 1400(b) because (i) Costco has committed acts of  
18 infringement in this District at least by selling and offering to sell the infringing  
19 products within the District, (ii) Costco has made false and misleading statements in  
20 this District and to consumers residing in this District, and (iii) Costco maintains a  
21 regular and established place of business in this District.

22 11. This Court has personal jurisdiction over Defendant SCDC because,  
23 among other things, SCDC is incorporated in the State of California and has its  
24 principal place of business in this District. SCDC also conducts business in this  
25 District; purposefully avails itself to the rights and benefits of California law; and  
26 has substantial, continuous, and systematic contacts with the state of California and  
27 this District.

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1           12. On information and belief, SCDC regularly and continuously transacts  
2 business in the District, including by designing, using, making, importing, and  
3 selling the infringing products. On information and belief, SCDC designs,  
4 manufactures, or imports the infringing products on behalf of Costco and directly or  
5 indirectly sells the infringing products to Costco, which then sells the infringing  
6 products to customers in this District through Costco’s retail locations.

7           13. Venue is proper in this District as to SCDC pursuant to 28 U.S.C.  
8 §§ 1391(b), 1391(c), and 1400(b) because SCDC is incorporated in California and  
9 has a principal place of business in this District.

10           14. This Court has personal jurisdiction over Defendant SM Global  
11 because, among other things, SM Global is incorporated and has its principal place  
12 of business in the State of California. SM Global also conducts business in this  
13 District; purposefully avails itself to the rights and benefits of California law; and  
14 has substantial, continuous, and systematic contacts with the state of California and  
15 this District.

16           15. On information and belief, SM Global regularly and continuously  
17 transacts business in the District, including by making, importing, and selling the  
18 infringing products. On information and belief, SM Global manufactures or  
19 imports the infringing products on behalf of Costco and directly or indirectly sells  
20 the infringing products to Costco, which then sells the infringing products to  
21 customers in this District through Costco’s retail locations.

22           16. Venue is proper in this District as to SM Global pursuant to 28 U.S.C.  
23 §§ 1391(b), 1391(c), 1391(d), and 1400(b) because (i) SM Global has committed  
24 acts of infringement in this District at least by making, using, importing, offering to  
25 sell, or selling the infringing products within the District; and (ii) SM Global is  
26 incorporated in California and subject to this Court’s personal jurisdiction.

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**BACKGROUND**

1  
2 17. Taylor Made is the world’s leading designer and innovator of golf  
3 clubs and has been at the forefront of innovation and technology in the golf industry  
4 for over 40 years. Taylor Made’s history of innovation includes the P790 irons.  
5 These innovative golf clubs were developed by Taylor Made and revolutionized the  
6 filled-iron category upon their 2017 launch.



16 18. The P790 irons incorporated a host of technologies that aided golf  
17 players in improving distance, feel, forgiveness, and playability. These technologies  
18 included a body comprised of specifically chosen alloys and shaped to distribute  
19 weight; an internal cavity filled with a proprietary SpeedFoam™ polymer; and  
20 tungsten weights to further optimize the weight distribution. Each of these features  
21 were innovative and designed to help golfers improve their distance, consistency,  
22 and accuracy. An exploded view of the P790 irons is shown below.

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19. Taylor Made has continued to innovate and refine its P790 irons since their launch in 2017 and further improve performance for golfers the world over. As a result the P790 irons have been both critically acclaimed and in high demand from golf consumers.

20. Included in the features of the P790 irons are a number of breakthrough inventions created by Taylor Made employees that are covered by issued U.S. patents.

21. Taylor Made marks each P790 iron with “Pat. at [taylormadegolf.com/pat](http://taylormadegolf.com/pat).” The URL appears on a label affixed to the shaft of the 7-iron in each set of P790 clubs. The website states “[i]n accordance with Section 287(a) of Title 35 of the United States Code, the reader is hereby placed on notice of Taylor Made Golf Company's rights in the United States Patents listed on this site and associated with the following products.” The website lists the patents that are encompassed by the P790 irons, which includes each of the asserted patents.

**The Asserted Patents**

**I. The '653 Patent**

22. On October 22, 2019, the United States Patent and Trademark Office (“USPTO”) duly and legally issued the '653 patent, entitled “Golf Club Head.” A

1 true and correct copy of the '653 patent is attached as Exhibit 1. The inventors of  
2 the '653 patent are Bret H. Wahl, Peter L. Larsen, and Loren Stowe.

3 23. The '653 patent is a reissue of U.S. Patent No. 9,265,995, which issued  
4 from a continuation application of Application No. 13/960,554. The Application  
5 No. 13/960,554, including continuations, divisions, and reissues, was assigned from  
6 the inventors to Taylor Made Golf Company, Inc. on August 22, 2013. Taylor Made  
7 thus owns all rights and title to the '653 patent and has standing to assert this patent.

8 24. The '653 patent is valid and enforceable.

9 **II. The '293 Patent**

10 25. On March 23, 2021, the USPTO duly and legally issued the '293  
11 patent, entitled "Golf Club Head." A true and correct copy of the '293 patent is  
12 attached as Exhibit 2. The inventors of the '293 patent are Paul M. Demkowski,  
13 Bret H. Wahl, Scott Taylor, and Sanjay Kuttappa.

14 26. The '293 patent is a continuation of Application No. 15/706,632.  
15 Application No. 15/706,632, including continuations, divisions, and reissues, was  
16 assigned from the inventors to Taylor Made Golf Company, Inc. by March 7, 2019.  
17 Taylor Made thus owns all rights and title to the '293 patent and has standing to  
18 assert this patent.

19 27. The '293 patent is valid and enforceable.

20 **III. The '426 Patent**

21 28. On June 7, 2022, the USPTO duly and legally issued the '426 patent,  
22 entitled "Golf Club Head." A true and correct copy of the '426 patent is attached as  
23 Exhibit 3. The inventors of the '426 patent are Paul M. Demkowski, Bret H. Wahl,  
24 Scott Taylor, and Sanjay Kuttappa.

25 29. The '426 patent is a continuation of Application No. 16/800,811,  
26 which itself is a continuation of Application No. 15/706,632. Application No.  
27 15/706,632, including continuations, divisions, and reissues, was assigned from the  
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1 inventors to Taylor Made Golf Company, Inc. by March 7, 2019. Taylor Made thus  
2 owns all rights and title to the '426 patent and has standing to assert this patent.

3 30. The '426 patent is valid and enforceable.

4 **IV. The '097 Patent**

5 31. On August 23, 2022, the USPTO duly and legally issued the '097  
6 patent, entitled "Golf Club Head." A true and correct copy of the '097 patent is  
7 attached as Exhibit 4. The inventors of the '097 patent are Paul M. Demkowski,  
8 Bret H. Wahl, and Scott Taylor.

9 32. The '097 patent is a continuation of Application No. 16/720,678,  
10 which itself is a continuation of Application No. 15/394,549. Application No.  
11 15/394,549, including continuations, divisions, and reissues, was assigned from the  
12 inventors to Taylor Made Golf Company, Inc. by September 26, 2017. Taylor Made  
13 thus owns all rights and title to the '097 patent and has standing to assert this patent.

14 33. The '097 patent is valid and enforceable.

15 **V. The '727 Patent**

16 34. On January 24, 2023, the USPTO duly and legally issued the '727  
17 patent, entitled "Golf Club Head." A true and correct copy of the '727 patent is  
18 attached as Exhibit 5. The inventors of the '727 patent are Paul M. Demkowski,  
19 Matt Bovee, Mike Walker, Boo Ohashi, and Connor Halberg.

20 35. The '727 patent issued from Application No. 17/087,596. Application  
21 No. 17/087,596, including continuations, divisions, and reissues, was assigned from  
22 the inventors to Taylor Made Golf Company, Inc. by November 25, 2020. Taylor  
23 Made thus owns all rights and title to the '727 patent and has standing to assert this  
24 patent.

25 36. The '727 patent is valid and enforceable.

26 **Defendants' Acts of Infringement**

27 37. Taylor Made restates and incorporates by reference the allegations in  
28 paragraphs 1 through 36 of this Complaint as if fully set forth herein.



1           38. Costco is a large multi-national retail corporation known for its chain  
2 of warehouse stores. Costco sells a variety of products including food, electronics,  
3 clothing, and sporting goods. In addition to selling products from third-party  
4 brands, Costco also offers its own “house” brand of products under the Kirkland  
5 Signature™ name.

6           39. Among the products sold under the Kirkland Signature™ brand are golf  
7 clubs, including a Kirkland Signature™ Players Iron set (the “accused products”),  
8 pictured below. Costco began selling and offering for sale the accused products  
9 through its website by December 2023. *See* [https://www.costco.com/kirkland-](https://www.costco.com/kirkland-signature-7-piece-players-iron-set%2C-right-handed.product.4000236767.html)  
10 [signature-7-piece-players-iron-set%2C-right-handed.product.4000236767.html](https://www.costco.com/kirkland-signature-7-piece-players-iron-set%2C-right-handed.product.4000236767.html) (last  
11 visited April 16, 2024).



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20           40. The accused products copy many features and technologies from  
21 Taylor Made’s P790 irons and the asserted patents. Costco’s website stated that the  
22 accused products “are built for distance and forgiveness with a stainless steel body,  
23 injected urethane insert, and an internal tungsten weight for optimal launch,  
24 forgiveness, and playability.” *Id.* The website also provided a diagram of its irons  
25 showing the body of the club, the internal cavity, urethane insert, and tungsten  
26 weight.

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41. Costco engaged one or both of SCDC or SM Global to design, manufacture, or import the accused products.

42. By at least December 31, 2022, the accused products were listed on the United States Golf Association (“USGA”) conforming clubs list, which identifies clubs that USGA certifies as meeting the rules of golf and identifies the manufacturer of the club, and listed that the manufacturer was “Indi Golf.” To be listed on the USGA conforming clubs list, a mock-up, prototype, first article, or production golf club head would need to be submitted to USGA to obtain its approval. It is routine, and in most cases necessary, that a club maker first use a club before seeking USGA approval for inclusion of that club on the conforming clubs list.

43. SCDC offered its product development services to Costco. SCDC’s website states that it “is a full-service product development consulting firm with expertise in sustainable product design, user experience, engineering, branding, marketing, sourcing, production, logistics, eco-friendly manufacturing, and global supply chain management.” <https://scdesignco.com/> (last visited April 16, 2024). SCDC identifies Kirkland Signature™, Costco’s brand under which the accused products are identified and sold, as a client. *Id.*

1           44. SM Global offered its services to Costco and Taylor Made. SM  
2 Global’s website states that its “services encompass planning, sourcing,  
3 distribution, packaging, and logistics for a wide range of products.”  
4 <https://www.smglobalkorea.com/?lang=en> (last visited April 16, 2024). SM Global  
5 identifies Costco Wholesale and Kirkland Signature as partners. *Id.*

6           45. Import records show that three shipments were imported into the  
7 United States on May 11, 2023, and May 15, 2023, from China to the ports of Long  
8 Beach and Los Angeles in California. These shipments were labeled “Golf Clubs  
9 Complete,” and the consignee of record was Defendant SM Global. On information  
10 and belief, these shipments contained sets of the accused products. On information  
11 and belief, the imported accused products were sold or offered for sale by SM  
12 Global to Costco.

13           46. On December 9, 2023, Costco began selling the accused products and  
14 at least through its website to customers in the United States. On information and  
15 belief the accused products offered for sale in December 2023 were imported into  
16 the United States in the May 2023 shipments.

17           47. On December 12, 2023, counsel for Taylor Made sent a letter to  
18 Costco’s general counsel advising Costco that Taylor Made is the owner of certain  
19 patents directed to golf clubs and specifically identified each of the asserted patents.  
20 A copy of the letter is attached as Exhibit 6. The letter further requested that Costco  
21 contact Taylor Made’s counsel were Costco to have any questions regarding Taylor  
22 Made’s patent portfolio.

23           48. Following receipt of the December 12th letter, by at least December  
24 28, 2023, the listing for the accused products on Costco’s website was taken down.  
25 *See*  
26 [https://www.reddit.com/r/golf/comments/18tstp7/kirkland\\_iron\\_and\\_driver\\_now\\_](https://www.reddit.com/r/golf/comments/18tstp7/kirkland_iron_and_driver_now_no_longer_listed_on/?rdt=33271)  
27 [no\\_longer\\_listed\\_on/?rdt=33271](https://www.reddit.com/r/golf/comments/18tstp7/kirkland_iron_and_driver_now_no_longer_listed_on/?rdt=33271) (last visited April 16, 2024) (post-dated December  
28 28, 2023, noting the website listing for the accused products was inaccessible);

1 [https://web.archive.org/web/20231230043021/https://www.costco.com/kirkland-  
3 signature-7-piece-players-iron-set%2C-right-handed.product.4000236767.html](https://web.archive.org/web/20231230043021/https://www.costco.com/kirkland-<br/>2 signature-7-piece-players-iron-set%2C-right-handed.product.4000236767.html) (last  
4 visited April 16, 2024) (showing the listing for the accused products on Costco’s  
5 website was inaccessible on December 30, 2023).

6 49. Costco was aware of Taylor Made’s patents covering golf clubs at least  
7 as of the December 12th letter. Costco removed the listing for the accused products  
8 from its website because it knew of Taylor Made’s patents covering the accused  
9 products and was aware or willfully blind to the fact that the accused products  
10 infringed the asserted patents.

11 50. According to import records, on December 22, 2023, and December  
12 28, 2023, an additional four shipments labeled as “Golf Clubs Complete” were  
13 imported from China into the United States through the port of Long Beach,  
14 California. The consignee was identified as a related entity to Defendant SM  
15 Global—SM Global Korea Co., Ltd. On information and belief, each of these  
16 shipments contained sets of the accused products. On information and belief, the  
17 imported accused products were sold or offered for sale by SM Global to Costco.

18 51. In January 2024, the webpage for the accused products was again made  
19 accessible and Costco resumed selling the accused products. Social media postings  
20 showed that the accused products were available for sale from Costco again via its  
21 website on or around January 10, 2024. *See*

22 <https://www.instagram.com/p/C18ZXKruBpn/> (last visited April 16, 2024);  
23 [https://slickdeals.net/f/17225779-kirkland-signature-irons-back-in-stock-499-  
24 99#commentsBox](https://slickdeals.net/f/17225779-kirkland-signature-irons-back-in-stock-499-99#commentsBox) (last visited April 16, 2024). On information and belief, the  
25 accused products offered for sale in January 2024 were imported into the United  
26 States in the May 2023 or December 2023 shipments.

27 52. On January 31, 2024, Taylor Made filed suit against Costco and SCDC  
28 by filing its original Complaint in this action (Dkt. No. 1).

1           53. By at least March 21, 2024, the listing of the accused products on the  
2 USGA conforming list had been changed and now states that the manufacturer is  
3 “SM Global, LLC.” Again, to be listed on the USGA conforming clubs list, a mock-  
4 up, prototype, first article, or production golf club head would need to be submitted  
5 to USGA to obtain its approval. And it is routine, and in most cases necessary, that  
6 a club maker first use a club before seeking USGA approval for inclusion of that  
7 club on the conforming clubs list.

8           54. On February 9, 2024, a representative of SM Global contacted Taylor  
9 Made requesting a meeting to discuss Taylor Made’s lawsuit against Costco and  
10 SCDC.

11           55. Importation records show that two additional shipments of “Golf Clubs  
12 Complete” were imported from China into the United States on March 27, 2024  
13 through the port of Los Angeles, California. Defendant SM Global was listed as the  
14 consignee. On information and belief, these shipments contain sets of the accused  
15 products. SM Global imported the accused products in March 2024 and sold, or  
16 offered to sell, the accused products to Costco despite knowing of Taylor Made’s  
17 lawsuit, the asserted patents, and that the accused products infringed the asserted  
18 patents.

19           56. On information and belief, SCDC, SM Global, or both in concert with  
20 one another use, manufacture, or import the accused products for Costco and sells  
21 the accused products to Costco. On information and belief, the accused products are  
22 made by or at the direction of SCDC, SM Global, Costco, or a combination of  
23 SCDC, SM Global, and Costco in concert with one another in the United States or  
24 are imported into the United States by or at the direction of SCDC, SM Global,  
25 Costco, or a combination of SCDC, SM Global, and Costco in concert with one  
26 another.

27           57. On information and belief, the accused products directly copy the  
28 patented features of the P790 irons, including features covered by the asserted

1 patents. The president of SCDC, Travis Downing, previously worked at Taylor  
2 Made headquarters alongside Taylor Made engineers in the Research and  
3 Development department during the development of the P790 irons and the  
4 prosecution of the asserted patents. As a result, Travis Downing knew or should  
5 have known of the P790 irons and of Taylor Made's patents covering the P790  
6 irons. On information and belief, Travis Downing was President of SCDC during  
7 the entirety of the design, manufacture, importation, use, and sale of the accused  
8 products and was involved in those activities. As a result, SCDC designed,  
9 manufactured, imported, used, or sold the accused products despite having  
10 knowledge of the asserted patents and knowing or being willfully blind to the fact  
11 that the accused products infringe the asserted patents.

12 58. On information and belief, SCDC and SM Global continue to design,  
13 make, use, sell, offer for sale, or import into the United States the accused products  
14 for, or at the direction of, Costco.

15 59. On information and belief, Costco continues to sell, offer for sale, or  
16 import into the United States the accused products, or directs and induces SM  
17 Global to import into the United States and sell the accused products.

18 60. On information and belief, Costco intends to make future sales of the  
19 accused products, as shown by Costco's maintenance of the website listing of its  
20 accused products. *See* [https://www.costco.com/kirkland-signature-7-piece-players-  
21 iron-set%2C-right-handed.product.4000236767.html](https://www.costco.com/kirkland-signature-7-piece-players-iron-set%2C-right-handed.product.4000236767.html) (last visited April 16, 2024).

22 61. As set forth below and more fully in the claim charts appended to this  
23 Complaint, the accused products incorporate, without permission or license from  
24 Taylor Made, the inventions claimed in the asserted patents. Taylor Made  
25 respectfully seeks relief from this Court for Defendants' infringement.

26 62. Costco, SCDC, and SM Global have each directly infringed and  
27 continue to directly infringe the asserted patents under 35 U.S.C. § 271(a) by  
28 making, using, selling, or offering to sell, in this District and elsewhere in the

1 United States, or importing into this District and elsewhere in the United States, the  
2 accused products, that is the Kirkland Signature™ irons.

3 63. SCDC, SM Global, or both in concert with one another have indirectly  
4 infringed and continue to indirectly infringe the asserted patents under 35 U.S.C.  
5 § 271(b) by actively inducing Costco to directly infringe the asserted patents under  
6 35 U.S.C. § 271(a) in this District and elsewhere in the United States.

7 64. SCDC has indirectly infringed and continues to indirectly infringe the  
8 asserted patents under 35 U.S.C. § 271(b) by actively inducing SM Global to  
9 directly infringe the asserted patents under 35 U.S.C. § 271(a) by making, selling,  
10 or importing into the United States the accused products in this District or  
11 elsewhere in the United States.

12 65. SCDC knew that the accused products it designed or made would be  
13 made, used, or imported into the United States by Costco or SM Global, and SCDC  
14 intended for Costco and SM Global to commit those infringing acts. SCDC's use of  
15 the technology claimed in the asserted patents to design the accused products  
16 encouraged SM Global, or Costco, or both to infringe the asserted patents.

17 66. As described above, SCDC, through its President, Travis Downing,  
18 knew of the P790 irons, Taylor Made's patents covering the P790 irons, including  
19 the asserted patents, and knew generally of Taylor Made's status as an innovator  
20 and its marking of its patents on its products, including the P790 irons. SCDC  
21 further knew that its designs would result in the manufacture, sale, or importation of  
22 the accused products by Costco or SM Global and that these acts constituted direct  
23 infringement of the asserted patents. SCDC also knew of the asserted patents and  
24 the acts of direct infringement by Costco as of January 31, 2024 when Taylor Made  
25 filed its Complaint, or at the latest by February 6, 2024 when the Complaint was  
26 served upon SCDC. Dkt. No. 10.

27 67. Alternatively, SCDC knew that its designs would result in the  
28 manufacture, sale, or importation of the accused products by Costco or SM Global

1 and was willfully blind by deliberately disregarding the likelihood that these acts  
2 directly infringed the asserted patents. Namely, given Travis Downing’s past work  
3 experience and familiarity with the P790 irons and Taylor Made’s patents, and the  
4 marking of the P790 irons with the asserted patents, SCDC had or should have had  
5 a subjective belief that making, using, selling, or importing the accused products  
6 constituted infringement of the asserted patents. Further, if SCDC did not have  
7 actual knowledge of the acts of infringement, it was as a result of Travis Downing  
8 deliberately choosing not to compare the accused products he was involved in  
9 designing to the asserted patents, which he knew of or should have known of.

10 68. SM Global has indirectly infringed and continues to indirectly infringe  
11 the asserted patents under 35 U.S.C. § 271(b) by actively inducing Costco to  
12 directly infringe the asserted patents under 35 U.S.C. § 271(a) by offering to sell  
13 and selling the accused products.

14 69. SM Global knew that the accused products it made, sold, or imported  
15 would be made, used, or imported into the United States, and offered for sale and  
16 sold by Costco, and SM Global intended for Costco to commit those infringing acts.  
17 SM Global encouraged Costco to infringe the asserted patents by selling or  
18 importing the accused products.

19 70. SM Global had business discussions with Taylor Made in the past and  
20 was therefore aware of Taylor Made’s products—including the P790 irons—and  
21 Taylor Made’s patents and marking of its patents on the P790 irons. On information  
22 and belief, Costco or SCDC either provided a copy of the original Complaint or  
23 relayed the allegations contained therein to SM Global on or before February 9,  
24 2024. A representative of SM Global contacted Taylor Made on February 9, 2024  
25 requesting a discussion regarding the allegations in the original Complaint. SM  
26 Global’s knowledge of the allegations in the Complaint is also supported by  
27 Defendants’ intentional modification of the statements regarding the purported  
28 “injected urethane insert” made by Defendants, including SM Global, on Costco’s



1 website for the accused products following service of the allegations in Taylor  
2 Made's January 31, 2024 original Complaint, which identified this statement as  
3 false. *See infra* ¶¶ 81–87. Therefore, SM Global was at least aware of the asserted  
4 patents and that making, selling, or importing the accused products constituted  
5 infringement by no later than February 9, 2024. SM Global further knew of the sale  
6 of the accused products by Costco and that these acts constituted direct  
7 infringement of the asserted patents.

8 71. Alternatively, SM Global was willfully blind to the infringing acts of  
9 offering to sell and selling of the accused products by deliberately disregarding the  
10 likelihood that these acts directly infringed the asserted patents. Namely, given SM  
11 Global's past relationship with Taylor Made and familiarity with the P790 irons and  
12 Taylor Made's patents, and the marking of the P790 irons with the asserted patents,  
13 SM Global had or should have had a subjective belief that making, using, selling, or  
14 importing the accused products in the course of its relationship with client Costco  
15 Wholesale or Kirkland Signature constituted infringement of the asserted patents.  
16 Further, if SM Global did not have actual knowledge of the acts of infringement, it  
17 was as a result of its deliberate action to not review the detailed infringement  
18 allegations in the original Complaint.

19 72. Costco had actual notice of its infringement of the asserted patents by  
20 importing or selling the accused products by December 28, 2023 after it had  
21 received notice of Taylor Made's patents in the December 12, 2023 notice letter.  
22 This is evidenced by Costco's actions to remove the website listing for the accused  
23 products on or around December 28, 2023. At the latest, Costco had actual notice of  
24 the asserted patents and its infringement of the asserted patents via the accused  
25 products by no later than February 6, 2024; the date when the original Complaint  
26 was served on Costco. Dkt. No. 9.

27 73. SCDC had actual notice of its infringement throughout the design and  
28 manufacture of the accused products as a result of Travis Downing's former work at

1 Taylor Made during the development of the P790. The accused products were  
2 designed and made no later than December 2022 when they were listed on the  
3 USGA conforming list and therefore, SCDC would have had actual knowledge of  
4 both the asserted patents and that making, using, importing or selling, the accused  
5 products constituted infringement of the asserted patents by that date. At the latest,  
6 SCDC had actual notice of the asserted patents and its infringement of the asserted  
7 patents via the accused products by no later than February 6, 2024; the date when  
8 the original Complaint was served on SCDC. Dkt. No. 10.

9 74. SM Global had actual notice of its infringement by February 9, 2024.  
10 On information and belief, SM Global either received a copy of the original  
11 Complaint, or was informed of the allegations of infringement by the accused  
12 products contained therein by Costco or SCDC by no later than February 9, 2024.  
13 SM Global's knowledge of the asserted patents and the infringement allegations  
14 against the accused products is confirmed by SM Global's message to Taylor Made  
15 on February 9, 2024 seeking to discuss the allegations.

16 75. At the very latest, Defendants received actual notice of their  
17 infringement as of the date of service of this First Amended Complaint. Therefore,  
18 each Defendant was or is now aware of the asserted patents and the accused  
19 products' infringement thereof.

20 76. On information and belief, Defendants have made, used, sold, offered  
21 to sell, or imported or encouraged the making, using, selling, offering to sell, or  
22 importing of the accused products, despite knowing of an objectively high  
23 likelihood that their actions constituted infringement of the asserted patents at all  
24 times relevant to this suit.

25 77. On information and belief, SCDC and SM Global encouraged Costco  
26 to make, use, sell, offer to sell, or import the accused products, knowing that Costco  
27 would sell or offer to sell the accused products in the United States and knowing  
28 that those acts would constitute infringement of the asserted patents.

1 78. For the reasons described above, Defendants’ direct infringement of  
2 the asserted patents has also been willful.

3 79. Defendants’ acts of infringement have caused damage to Taylor Made.  
4 Taylor Made is entitled to recover from Defendants the damages incurred by Taylor  
5 Made as a result of Defendants’ wrongful acts.

6 **Defendants’ Acts of False Advertisement**

7 80. Taylor Made restates and incorporates by reference the allegations in  
8 paragraphs 1 through 79 of this Complaint as if fully set forth herein.

9 81. Defendants have advertised the accused products to the public via  
10 Costco’s web store. Costco’s website listing the accused products for sale stated  
11 that “[t]he Kirkland Signature Players Distance Irons are built for distance and  
12 forgiveness with a[n] . . . injected urethane insert.”

13 [https://www.costco.com/kirkland-signature-7-piece-players-iron-set%2C-right-  
14 handed.product.4000236767.html](https://www.costco.com/kirkland-signature-7-piece-players-iron-set%2C-right-<br/>14 handed.product.4000236767.html) (last visited January 29, 2024).

15 Product details have been supplied by the manufacturer and are hosted by a third party.



23 **Multi-Material Construction**

24 The Kirkland Signature Players Distance Irons are built for  
25 distance and forgiveness with a stainless steel body, injected  
26 urethane insert, and an internal tungsten weight for optimal  
27 launch, forgiveness, and playability.

28 82. The accused products, however, do not contain an “injected urethane  
insert.”

83. Costco’s website for the accused products stated that these statements  
are provided “by the manufacturer.” *Id.* Thus, on information and belief, Costco,  
SM Global, and SCDC have each committed acts of direct false advertisement by

1 making false statements of fact in a commercial advertisement about their own  
2 product. Defendants’ false advertising is available on Costco’s website, which is  
3 available to consumers throughout the United States and offers the accused products  
4 for sale throughout the United States. Defendants have caused their false statements  
5 regarding the accused products to enter interstate commerce.

6 84. Alternatively, SCDC and SM Global have each committed acts of  
7 contributory false advertisement by knowingly inducing, causing, or materially  
8 participating in the direct act of false advertisement on Costco’s website. Costco’s  
9 website stated that the information contained in the false advertisement was  
10 provided “by the manufacturer,” so SCDC and SM Global each contributed to the  
11 making and distribution of the false advertisement by providing false information  
12 regarding the construction of the accused products that they knew Costco would  
13 include in its advertisement for the accused products to customers.

14 85. The statement by Defendants that the accused products contain an  
15 “injected urethane insert” is literally false, or in the alternative, is misleading and,  
16 on information and belief, has actually deceived or has a tendency to deceive  
17 consumers in a way that influences purchasing decisions. Defendants’ false  
18 statements are material to purchasing decisions because they falsely or misleadingly  
19 suggest that the accused products have features found on premium clubs, such as  
20 the Taylor Made P790.

21 86. Defendants’ false advertising has misled golf journalists and customers  
22 to believe the accused products are similar to or equivalent to the Taylor Made  
23 P790 irons. *See* [https://mygolfspey.com/we-tried-it/we-tried-it-kirkland-signature-  
24 players-irons-review/](https://mygolfspey.com/we-tried-it/we-tried-it-kirkland-signature-players-irons-review/) (December 26, 2023) (last visited April 16, 2024) (“Costco’s  
25 iron bears a striking resemblance to TaylorMade’s P790.”);  
26 [https://golf.com/gear/costcos-499-kirkland-signature-irons-sold-out-in-just-hours/  
27](https://golf.com/gear/costcos-499-kirkland-signature-irons-sold-out-in-just-hours/) (December 10, 2023) (last visited April 16, 2024) (“[The] hollow foam/urethane-  
28 filled construction [of the accused products] is similar to many other irons in the

1 player’s distance category, including the TaylorMade P790 . . . .”);  
2 [https://old.reddit.com/r/golf/comments/18evsni/so\\_costcos\\_kirkland\\_iron\\_are\\_basi](https://old.reddit.com/r/golf/comments/18evsni/so_costcos_kirkland_iron_are_basi)  
3 [cally\\_rebranded/](https://old.reddit.com/r/golf/comments/18evsni/so_costcos_kirkland_iron_are_basi) (last visited April 16, 2024) (“So Costco’s Kirkland irons are  
4 basically rebranded 2019 P790’s?”); *id.* (“I read on Golf Spy that the manufacturer  
5 is a company named Indi Golf. Could it be possible that they bought Taylor Made’s  
6 design/machinery?”);  
7 [https://www.reddit.com/r/golf/comments/17fnmwd/so\\_the\\_costco\\_clubs\\_are\\_theor](https://www.reddit.com/r/golf/comments/17fnmwd/so_the_costco_clubs_are_theor)  
8 [etically\\_dropping\\_in/](https://www.reddit.com/r/golf/comments/17fnmwd/so_the_costco_clubs_are_theor) (last visited April 16, 2024) (“I’m obviously really interested  
9 in [the Costco Kirkland Signature] irons, especially if they are P790 knock offs.”).

10 87. Following the January 31, 2024 filing of the original Complaint,  
11 Defendants modified the advertisement on Costco’s website to modify the “injected  
12 urethane insert” statement to instead read “injected polymer insert.”

13 [https://www.costco.com/kirkland-signature-7-piece-players-iron-set%2C-right-](https://www.costco.com/kirkland-signature-7-piece-players-iron-set%2C-right-handed.product.4000236767.html)  
14 [handed.product.4000236767.html](https://www.costco.com/kirkland-signature-7-piece-players-iron-set%2C-right-handed.product.4000236767.html) (last visited April 16, 2024).

15 **COUNT I: INFRINGEMENT OF U.S. PATENT NO. RE47,653**

16 88. Taylor Made restates and incorporates by reference the allegations in  
17 paragraphs 1 through 87 of this Complaint as if fully set forth herein.

18 89. As described above, each Defendant has directly infringed and  
19 continues to directly infringe, literally or under the doctrine of equivalents, one or  
20 more of the claims of the ’653 patent by, among other things, making, using,  
21 selling, offering to sell, or importing the accused products that practice the ’653  
22 patent claims without permission in violation of 35 U.S.C. § 271(a).

23 90. Each of Defendants’ accused products satisfy, literally or under the  
24 doctrine of equivalents, at least claim 1 of the ’653 patent. *See* Exhibit 7.

25 91. Defendants’ accused products therefore infringe at least one claim of  
26 the ’653 patent.

27 92. Defendants’ direct infringement has been and is willful.  
28

1           93. As described above, SCDC, SM Global, or both in concert with one  
2 another have indirectly infringed and continue to indirectly infringe one or more  
3 claims of the '653 patent by, among other things, inducing Costco or each other to  
4 directly infringe the '653 patent claims without permission in violation of 35 U.S.C.  
5 § 271(b).

6           94. Taylor Made has been damaged and continues to be damaged by  
7 Defendants' infringement of the '653 patent. As a result, Taylor Made is entitled to  
8 an award of damages adequate to compensate it for the infringement in an amount  
9 that is in no event less than a reasonable royalty pursuant to 35 U.S.C. § 284.

10           95. As a result of Defendants' infringement of the '653 patent, Taylor  
11 Made has suffered irreparable harm and impairment of the value of its patent rights,  
12 and Taylor Made will continue to suffer irreparable harm and impairment of the  
13 value of its patent rights, unless and until Defendants are permanently enjoined by  
14 this Court from infringing the '653 patent under 35 U.S.C. § 283. Taylor Made has  
15 no adequate remedy at law and is entitled to a permanent injunction against  
16 Defendants.

17           **COUNT II: INFRINGEMENT OF U.S. PATENT NO. 10,953,293**

18           96. Taylor Made restates and incorporates by reference the allegations in  
19 paragraphs 1 through 95 of this Complaint as if fully set forth herein.

20           97. As described above, each Defendant has directly infringed and  
21 continues to directly infringe, literally or under the doctrine of equivalents, one or  
22 more of the claims of the '293 patent by, among other things, making, using,  
23 selling, offering to sell, or importing the accused products that practice the '293  
24 patent claims without permission in violation of 35 U.S.C. § 271(a).

25           98. Each of Defendants' accused products satisfy, literally or under the  
26 doctrine of equivalents, at least claim 1 of the '293 patent. *See* Exhibit 8.

27           99. Defendants' accused products therefore infringe at least one claim of  
28 the '293 patent.

1 100. Defendants' direct infringement has been and is willful.

2 101. As described above, SCDC, SM Global, or both in concert with one  
3 another have indirectly infringed and continue to indirectly infringe one or more  
4 claims of the '293 patent by, among other things, inducing Costco or each other to  
5 directly infringe the '293 patent claims without permission in violation of 35 U.S.C.  
6 § 271(b).

7 102. Taylor Made has been damaged and continues to be damaged by  
8 Defendants' infringement of the '293 patent. As a result, Taylor Made is entitled to  
9 an award of damages adequate to compensate it for the infringement in an amount  
10 that is in no event less than a reasonable royalty pursuant to 35 U.S.C. § 284.

11 103. As a result of Defendants' infringement of the '293 patent, Taylor  
12 Made has suffered irreparable harm and impairment of the value of its patent rights,  
13 and Taylor Made will continue to suffer irreparable harm and impairment of the  
14 value of its patent rights, unless and until Defendants are permanently enjoined by  
15 this Court from infringing the '293 patent under 35 U.S.C. § 283. Taylor Made has  
16 no adequate remedy at law and is entitled to a permanent injunction against  
17 Defendants.

18 **COUNT III: INFRINGEMENT OF U.S. PATENT NO. 11,351,426**

19 104. Taylor Made restates and incorporates by reference the allegations in  
20 paragraphs 1 through 103 of this Complaint as if fully set forth herein.

21 105. As described above, each Defendant has directly infringed and  
22 continues to directly infringe, literally or under the doctrine of equivalents, one or  
23 more of the claims of the '426 patent by, among other things, making, using,  
24 selling, offering to sell, or importing the accused products that practice the '426  
25 patent claims without permission in violation of 35 U.S.C. § 271(a).

26 106. Each of Defendants' accused products satisfy, literally or under the  
27 doctrine of equivalents, at least claim 17 of the '426 patent. *See* Exhibit 9.

28

1 107. Defendants' accused products therefore infringe at least one claim of  
2 the '426 patent.

3 108. Defendants' direct infringement has been and is willful.

4 109. As described above, SCDC, SM Global, or both in concert with one  
5 another have indirectly infringed and continue to indirectly infringe one or more  
6 claims of the '426 patent by, among other things, inducing Costco or each other to  
7 directly infringe the '426 patent claims without permission in violation of 35 U.S.C.  
8 § 271(b).

9 110. Taylor Made has been damaged and continues to be damaged by  
10 Defendants' infringement of the '426 patent. As a result, Taylor Made is entitled to  
11 an award of damages adequate to compensate it for the infringement in an amount  
12 that is in no event less than a reasonable royalty pursuant to 35 U.S.C. § 284.

13 111. As a result of Defendants' infringement of the '426 patent, Taylor  
14 Made has suffered irreparable harm and impairment of the value of its patent rights,  
15 and Taylor Made will continue to suffer irreparable harm and impairment of the  
16 value of its patent rights, unless and until Defendants are permanently enjoined by  
17 this Court from infringing the '426 patent under 35 U.S.C. § 283. Taylor Made has  
18 no adequate remedy at law and is entitled to a permanent injunction against  
19 Defendants.

20 **COUNT IV: INFRINGEMENT OF U.S. PATENT NO. 11,420,097**

21 112. Taylor Made restates and incorporates by reference the allegations in  
22 paragraphs 1 through 111 of this Complaint as if fully set forth herein.

23 113. As described above, each Defendant has directly infringed and  
24 continues to directly infringe, literally or under the doctrine of equivalents, one or  
25 more of the claims of the '097 patent by, among other things, making, using,  
26 selling, offering to sell, or importing the accused products that practice the '097  
27 patent claims without permission in violation of 35 U.S.C. § 271(a).

28



1           114. Each of Defendants' accused products satisfy, literally or under the  
2 doctrine of equivalents, at least claim 13 of the '097 patent. *See* Exhibit 10.

3           115. Defendants' accused products therefore infringe at least one claim of  
4 the '097 patent.

5           116. Defendants' direct infringement has been and is willful.

6           117. As described above, SCDC, SM Global, or both in concert with one  
7 another have indirectly infringed and continue to indirectly infringe one or more  
8 claims of the '097 patent by, among other things, inducing Costco or each other to  
9 directly infringe the '097 patent claims without permission in violation of 35 U.S.C.  
10 § 271(b).

11           118. Taylor Made has been damaged and continues to be damaged by  
12 Defendants' infringement of the '097 patent. As a result, Taylor Made is entitled to  
13 an award of damages adequate to compensate it for the infringement in an amount  
14 that is in no event less than a reasonable royalty pursuant to 35 U.S.C. § 284.

15           119. As a result of Defendants' infringement of the '097 patent, Taylor  
16 Made has suffered irreparable harm and impairment of the value of its patent rights,  
17 and Taylor Made will continue to suffer irreparable harm and impairment of the  
18 value of its patent rights, unless and until Defendants are permanently enjoined by  
19 this Court from infringing the '097 patent under 35 U.S.C. § 283. Taylor Made has  
20 no adequate remedy at law and is entitled to a permanent injunction against  
21 Defendants.

22           **COUNT V: INFRINGEMENT OF U.S. PATENT NO. 11,559,727**

23           120. Taylor Made restates and incorporates by reference the allegations in  
24 paragraphs 1 through 119 of this Complaint as if fully set forth herein.

25           121. As described above, each Defendant has directly infringed and  
26 continues to directly infringe, literally or under the doctrine of equivalents, one or  
27 more of the claims of the '727 patent by, among other things, making, using,  
28

1 selling, offering to sell, or importing the accused products that practice the '727  
2 patent claims without permission in violation of 35 U.S.C. § 271(a).

3 122. Each of Defendants' accused products satisfy, literally or under the  
4 doctrine of equivalents, at least claim 13 of the '727 patent. *See* Exhibit 11.

5 123. Defendants' accused products therefore infringe at least one claim of  
6 the '727 patent.

7 124. Defendants' direct infringement has been and is willful.

8 125. As described above, SCDC, SM Global, or both in concert with one  
9 another have indirectly infringed and continue to indirectly infringe one or more  
10 claims of the '727 patent by, among other things, inducing Costco or each other to  
11 directly infringe the '727 patent claims without permission in violation of 35 U.S.C.  
12 § 271(b).

13 126. Taylor Made has been damaged and continues to be damaged by  
14 Defendants' infringement of the '727 patent. As a result, Taylor Made is entitled to  
15 an award of damages adequate to compensate it for the infringement in an amount  
16 that is in no event less than a reasonable royalty pursuant to 35 U.S.C. § 284.

17 127. As a result of Defendants' infringement of the '727 patent, Taylor  
18 Made has suffered irreparable harm and impairment of the value of its patent rights,  
19 and Taylor Made will continue to suffer irreparable harm and impairment of the  
20 value of its patent rights, unless and until Defendants are permanently enjoined by  
21 this Court from infringing the '727 patent under 35 U.S.C. § 283. Taylor Made has  
22 no adequate remedy at law and is entitled to a permanent injunction against  
23 Defendants.

24 **COUNT VI: FALSE ADVERTISING (15 U.S.C. § 1125)**

25 128. Taylor Made restates and incorporates by reference the allegations in  
26 paragraphs 1 through 127 of this Complaint as if fully set forth herein.

27 129. Defendants' statements regarding the construction and performance of  
28 the accused products on Costco's website are literally false, or in the alternative, are

1 misleading and, on information and belief, have actually deceived or have a  
2 tendency to deceive consumers.

3 130. Defendants' statements are likely to materially influence customer  
4 purchasing decisions.

5 131. Defendants caused their false statements to enter into interstate  
6 commerce by publishing them on Costco's website, which is available nationwide  
7 and offers the accused products for sale nationwide.

8 132. Defendants' actions are likely to harm Taylor Made's sales or  
9 goodwill. Defendants' false statements that the accused products contain features  
10 that they do not have, may lead customers to purchase the accused products over  
11 Taylor Made's competing products, including the P790 irons. Taylor Made's  
12 goodwill is also likely to be harmed among consumers that have been misled to  
13 believe the accused products are equivalent in design or performance to the P790  
14 irons. Defendants' statements have harmed and will continue to harm Taylor Made.

15 133. Taylor Made has suffered direct and consequential damages, and is  
16 entitled to recover compensatory damages, including opportunity costs and  
17 enhanced damages in an amount to be proven at trial.

18 134. As a result of Defendants' false statements, Taylor Made has suffered  
19 irreparable harm, and Taylor Made will continue to suffer irreparable harm, unless  
20 and until Defendants are permanently enjoined by this Court from continuing to  
21 make or making future false statements regarding the accused products. Taylor  
22 Made has no adequate remedy at law and is entitled to a permanent injunction  
23 against Defendants.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Taylor Made respectfully requests judgment against  
26 Defendants as follows:

27  
28

- 1           A.    a judgment that Defendants have infringed, either literally or under the
- 2                    doctrine of equivalents, one or more claims of the asserted patents
- 3                    under 35 U.S.C. § 271(a);
- 4           B.    a judgment that Defendants’ infringement has been and is willful;
- 5           C.    a judgment that SCDC or SM Global have indirectly infringed one or
- 6                    more claims of the asserted patents under 35 U.S.C. § 271(b);
- 7           D.    a judgment and order requiring Defendants to pay Taylor Made its
- 8                    damages, costs, expenses, and any enhanced damages to which Taylor
- 9                    Made is entitled for Defendants’ infringement;
- 10          E.    a permanent injunction enjoining Defendants as well as their
- 11                    subsidiaries, agents, directors, officers, employees, and those in active
- 12                    concert or participation with Defendants from infringing the asserted
- 13                    patents;
- 14          F.    a judgment and order finding that this is an exceptional case within the
- 15                    meaning of 35 U.S.C. § 285 and awarding Taylor Made its reasonable
- 16                    attorneys’ fees against Defendants;
- 17          G.    a judgment that Defendants have violated the Lanham Act, 15 U.S.C.
- 18                    §1125(a), by committing acts of false advertisement either directly or
- 19                    contributorily;
- 20          H.    a judgment and order requiring Defendants’ to pay Taylor Made its
- 21                    damages, costs, expenses, and any punitive or enhanced damages to
- 22                    which Taylor Made is entitled for Defendants’ false advertisement;
- 23          I.    a permanent injunction enjoining Defendants as well as their
- 24                    subsidiaries, agents, directors, officers, employees, and those in active
- 25                    concert or participation with Defendants from making further false and
- 26                    misleading statements regarding the accused products;
- 27
- 28

- 1 J. a judgment and order requiring Defendants to provide an accounting
- 2 and to pay supplemental damages to Taylor Made, including without
- 3 limitation, pre-judgment and post-judgment interest; and
- 4 K. any and all other relief as the Court may deem appropriate and just
- 5 under the circumstances.

6  
7 DATED: April 18, 2024

Respectfully Submitted,

8 JOHN CHRISTOPHER (J.C.) ROZENDAAL  
9 BYRON L. PICKARD  
10 ROBERT NIEMEIER  
STERNE, KESSLER, GOLDSTEIN & FOX  
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11 KARIN G. PAGNANELLI  
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13  
14 By: /s/ Karin G. Pagnanelli  
15 Karin G. Pagnanelli (SBN 174763)  
16 Attorneys for Plaintiff  
17 Taylor Made Golf Company, Inc.  
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**JURY DEMAND**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Taylor Made respectfully demands a trial by jury on all claims and issues so triable.

DATED: April 18, 2024

Respectfully Submitted,

JOHN CHRISTOPHER (J.C.) ROZENDAAL  
BYRON L. PICKARD  
ROBERT NIEMEIER  
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