



2. Defendant, Dillard's, Inc., upon information and belief, is a corporation organized under the laws of the State of Delaware. Dillard's, Inc. is doing business in Texas, and on information and belief, has a place of business at 4925 Westheimer Road, Houston, Texas 77056. Dillard's, Inc. may be served with process by serving its registered agent C T Corporation System 350 N. St. Paul Street, Dallas, Texas 75201.

3. Defendant, Federated Department Stores, Inc., upon information and belief, is a corporation organized under the laws of the State of Delaware. Federated Department Stores, Inc. is doing business in Texas, and on information and belief, has a place of business at 2727 Sage Road, Houston, Texas 77056. Federated Department Stores, Inc. may be served with process by serving its registered agent Corporation Service Company 2711 Centerville Road Suite 400, Wilmington, Delaware 19808.

4. Defendant, Fortune Dynamic, Inc., upon information and belief, is a corporation organized under the laws of the State of California. Fortune is doing business in Texas, and on information and belief, has an office and place of business at 21923 Ferrero Parkway, City of Industry, California 91789. Fortune may be served with process by serving its registered agent Carol Lee 21923 Ferrero Parkway, City of Industry, California 91789.

5. Defendant, Michael Kors (USA), Inc., upon information and belief, is a corporation organized under the laws of the State of Delaware. Michael Kors (USA), Inc. is doing business in Texas, and on information and belief, has a principal place of business at 11 W. 42<sup>nd</sup> St. FRNT 1 New York, New York 10036-8002. Michael Kors (USA), Inc. may be served with process by serving its registered agent, Capitol Corporate Services, Inc. 800 Brazos Suite 1100, Austin, Texas 78701.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the subject matter of this action pursuant to 35 U.S.C. § 1 et. seq. and jurisdiction is properly based on Title 35 United States Code, particularly § 271, and title 28 United States Code, particularly § 1338(a).

7. Dillard's Inc., upon information and belief, transacts business in this judicial district by selling, and/or offering to sell sandals as described and claimed in United States Patent No. D513,447, a design patent at issue in this lawsuit, and/or by conducting other business in this district.

8. Federated Department Stores, Inc., upon information and belief, transacts business in this judicial district by selling, and/or offering to sell sandals as described and claimed in United States Patent No. D513,447, a design patent at issue in this lawsuit, and/or by conducting other business in this district.

9. Fortune Dynamic, Inc., upon information and belief, transacts business in this judicial district by selling, and/or offering to sell sandals as described and claimed in United States Patent No. D513,447, a design patent at issue in this lawsuit, and/or by conducting other business in this district.

10. Michael Kors (USA), Inc., upon information and belief, transacts business in this judicial district by selling, and/or offering to sell sandals as described and claimed in United States Patent No. D513,447, a design patent at issue in this lawsuit and in a previous litigation involving Michael Kors, and/or by conducting other business in this district. Michael Kors (USA), Inc., upon information and belief, also transacts business in this judicial district by selling, and/or offering to sell sandals as described and claimed

in United States Patent No. D530,489, a design patent at issue in this lawsuit with respect to the Michael Kors entity only.

### **FACTUAL BACKGROUND**

11. Plaintiff, Bernardo, is the owner and assignee of U.S. Patent No. D513,447 (Issued January 10, 2006, hereinafter referred to as “the ‘447 patent”) entitled “Sandal.” A copy of the ‘447 patent is attached as Exhibit A. Bernardo is also the owner and assignee of U.S. Patent No. D530,489 (Issued October 24, 2006, hereinafter referred to as “the ‘489 patent”) entitled “Sandal.” A copy of the ‘489 patent is attached as Exhibit B.

12. Bernardo at all times relevant thereto has had the right to enforce the ‘447 and ‘489 patents.

13. Bernardo was formed in 1947 for the primary purpose of designing and manufacturing women’s footwear and handbags. Bernardo garnered worldwide acclaim by offering high quality classic handmade sandals with a contemporary twist at a friendly price.

14. The “Medieval” Sandal, manufactured and sold by Bernardo, embodies the design claimed in the ‘447 design patent. Attached hereto, as Exhibit C, is a picture of Bernardo’s “Medieval” Sandal.

15. The “Molly” Sandal, also manufactured and sold by Bernardo, embodies the design claimed in the ‘489 design patent. Attached hereto, as Exhibit D, is a picture of Bernardo’s “Molly” Sandal.

16. Bernardo sells its Medieval and Molly Sandals and other women’s footwear to retail stores throughout the United States and through its own website as well as various

resellers' websites. A pair of Medieval Sandals typically retails for \$89. Molly Sandals typically retail for \$89.

17. Plaintiff Bernardo is the owner of the '447 Patent and since its issuance in January 2006 has continually had the right to enforce it against infringers. Plaintiff Bernardo is also the owner of the '489 Patent and since its issuance in October 2006 has continually had the right to enforce it against infringers.

18. The Bernardo "Medieval" Sandal embodies the design claimed in the '447 design patent. The main features of this design include a custom fitted ring, straps and Lark's Head knot. The ring features a brushed finish which adds an elegant sophistication.

19. The Bernardo "Molly" Sandal embodies the design claimed in the '489 design patent. The main features of this design include a draped like upper gathered by a Lark's Head knot and thong toe construction.

20. Bernardo regularly advertises its footwear and handbags. For the 2005 and 2006 Spring Seasons, Bernardo advertised the "Medieval" Sandal in Vogue Magazine and In Style Magazine. The amount spent on advertising the "Medieval" Sandal for the 2005 and 2006 Spring Seasons was \$96,686.34. Attached hereto, as Exhibit E, is the "Medieval" Sandal advertisement that ran in Vogue Magazine in 2005. Attached hereto, as Exhibit F, is the "Medieval" Sandal advertisement featured in In Style in 2006. Attached hereto, as Exhibit G, is a spreadsheet and backup invoices showing expenses relating to the "Medieval" Sandal advertising.

21. Bernardo also advertised the "Medieval" Sandal in Harper's Bazaar Magazine in March 2007. The amount spent on this advertisement was \$23,529.00. Bernardo has spent a total of \$120,215.34 advertising the "Medieval" Sandal since 2005. Attached

hereto, as Exhibit H, is the "Medieval" Sandal advertisement that ran in Harper's Bazaar in March 2007. Attached hereto, as Exhibit I, is an invoice for the purchase of the Harper's Bazaar advertisement.

22. An advertisement for Bernardo's "Molly" Sandal ran in Vogue's March 2006 issue. Bernardo spent \$40,372.00 on the March 2006 Vogue advertisement. Attached hereto, as Exhibit J, is the "Molly" Sandal advertisement featured in Vogue Magazine. Attached hereto, as Exhibit K, is an invoice for the purchase of the advertisement totaling \$40,372.00.

23. Mr. Roy R. Smith, President of Bernardo, bought a pair of "Westbound" Sandals style number D244 manufactured by Dillard's on July 5, 2006, for \$12.99 plus applicable sales tax. The "Westbound" Sandal can be bought at Dillard's department stores nationwide. Attached hereto, as Exhibit L, is a picture of the "Westbound" Sandal.

24. Mr. Roy R. Smith, President of Bernardo, bought a pair of "ESNY" Sandals manufactured by Federated Department Stores, Inc. at Macy's on July 6, 2006, for \$12.99 plus applicable sales tax. The "ESNY" Sandal can be bought at Macy's stores nationwide. Attached hereto, as Exhibit M, is a picture of the "ESNY" Sandal.

25. Mr. Roy R. Smith, President of Bernardo, bought a pair of CLASSIFIED® brand "SOUR-S" style sandals manufactured by Fortune Dynamic, Inc. at Traffic Shoes on July 20, 2006, for \$15.00 plus applicable sales tax. Mr. Roy R. Smith, President of Bernardo, also purchased a pair of CLASSIFIED® brand shoes manufactured by Fortune Dynamic, Inc. at a Houston-area shoe store named Shoe Sale in February 2007. The "SOUR-S" style is equipped with straps and an O-ring accent. Attached hereto, as Exhibit N, is a picture of the CLASSIFIED® brand "SOUR-S" style sandal.

26. Mr. Roy R. Smith, President of Bernardo, bought a pair of Michael Kors “Black Ring ‘Luau’ Strappy Thong” Sandals from Bluefly.com on March 13, 2007. The sandal typically retails for \$350.00 plus applicable sales tax. Mr. Smith also bought a pair of Michael Kors “Alger Thong” Sandals at a Houston-area Saks Fifth Avenue on March 13, 2007 for \$335.00 plus applicable sales tax. Upon information and belief, Michael Kors shoes are available at several retail outlets, including but not limited to Nordstrom, Neiman Marcus and Saks Fifth Avenue. Attached hereto, as Exhibit O, is a picture of the Michael Kors “Black Ring ‘Luau’ Strappy Thongs” Sandal. Attached hereto, as Exhibit P, is a picture of the Michael Kors “Alger Thongs” Sandal

27. Dillard’s, Inc., Federated Department Stores, Inc., Fortune Dynamic, Inc. and Michael Kors (USA), Inc. have wrongfully appropriated the ‘447 design and have been manufacturing virtually identical looking Sandals to those disclosed and claimed. Michael Kors (USA), Inc. has also wrongfully appropriated the ‘489 design and has been selling virtually identical looking Sandals to those disclosed and claimed. An ordinary observer would view the Defendants’ Sandals as substantially the same to the Bernardo designs and as infringing the ‘447 and ‘489 patents.

28. Upon information and belief, Defendants’ infringing activities have caused and, unless enjoined by this Court, will continue to cause, irreparable injury including loss of sales and profits, which Bernardo would have made but for the infringement by Dillard’s, Inc., Federated Department Stores, Inc., Fortuna Dynamic, Inc. and Michael Kors (USA), Inc., unless they are enjoined by this Court.

29. Plaintiff has previously asserted infringement of the ‘447 patent in litigation against Brown Shoe Co., Inc., J&A Shoe Co. Inc., Payless ShoeSource, Inc., Michael

Kors (USA), Inc., New Century Footwear, Inc., and White House/Black Market, Inc, each of whom settled with Plaintiff. The lawsuit was filed August 15, 2006 in the United States District Court for the Southern District of Texas, Houston Division; Cause No. H-06-1613. Plaintiff's Verified Amended Complaint in that litigation is attached as Exhibit Q.

**Count I - PATENT INFRINGEMENT of the '447 Patent against Dillard's Inc.,  
Federated Department Stores, Inc., and Fortune Dynamic, Inc.**

30. Plaintiff hereby realleges and incorporates by reference the allegations of paragraphs 1-29 of this Complaint as if fully set forth herein.

31. On January 10, 2006, the '447 patent entitled "Sandal" was duly and legally issued. A true and correct copy of the '447 patent is attached as Exhibit A.

32. Pursuant to 35 U.S.C. § 282, the '447 patent is presumed valid.

33. Dennis Comeau is the inventor of the '447 patent. The '447 patent has been assigned to Bernardo Footwear, L.L.C.

34. Upon information and belief, Dillard's, Inc., has infringed and continues to infringe the claim of the '447 patent by its manufacture, use, offer for sale and/or sale of the "Westbound" Sandal.

35. Upon information and belief, Federated Department Stores, Inc., has infringed and continues to infringe the claim of the '447 patent by its manufacture, use, offer for sale and/or sale of the "ESNY" Sandal.

36. Upon information and belief, Fortune Dynamic, Inc. has infringed and continues to infringe the claim of the '447 patent by its manufacture, use, offer for sale and/or sale of the CLASSIFIED® "SOUR-S" style Sandal.



37. As a result of Defendants' actions, Bernardo has suffered and continues to suffer substantial injury, including irreparable injury, and will result in damages to Bernardo, including loss of sales and profits, which Bernardo would have made but for the infringement by these defendants, unless these defendants are enjoined by this Court.

**Count II – Patent Infringement and Contempt against Michael Kors (USA), Inc.**

38. Bernardo realleges and incorporates by reference paragraphs 1-37.

39. Bernardo has previously asserted infringement of the '447 patent in litigation against Michael Kors (USA), Inc. ("Michael Kors") filed on August 15, 2006 in the United States District Court for the Southern District of Texas, Houston Division; Cause No. H-06-1613. Bernardo alleged that Michael Kors infringed the claim of the '447 patent by its manufacture, use, offer for sale and/or sale of the Michael Kors "Metallic Thong" Sandal. Attached hereto, as Exhibit R, is a picture of Michael Kors "Metallic Thong" Sandal. Michael Kors settled with Plaintiff.

40. A Consent Judgment and Permanent Injunction was issued by the Court on September 18, 2006 ordering that Michael Kors be permanently enjoined and restrained for the life of the '447 Patent from manufacturing, using, offering for sale and/or selling the "Metallic Thong" Sandal and/or any design that embodies the '447 patent. Attached hereto, as Exhibit S, is the Consent Judgment and Permanent Injunction.

41. Since the Consent Judgment and Permanent Injunction, Michael Kors has introduced to the market a new sandal which embodies and infringes the '447 Patent. The new sandal is called the "Black Ring 'Luau' Strappy Thong" and greatly resembles the previous design and infringes the '447 patent. Attached hereto, as Exhibit O, is a picture of the Michael Kors "Black Ring 'Luau' Strappy Thong" sandal. Both Michael

Kors designs contain the same features as the '447 patent including the custom fitted ring, leather straps and Lark's Head knot.

42. Michael Kors' conduct in connection with selling a modified product after entry of a consent judgment enjoining Michael Kors from further infringement of the patent in question constitutes contempt. As a result of Michael Kors' actions, Bernardo has suffered substantial damages.

**Count III - PATENT INFRINGEMENT of the '489 Patent against Michael Kors  
(USA), Inc.**

43. Plaintiff hereby realleges and incorporates by reference the allegations of paragraphs 1-42 of this Complaint as if fully set forth herein.

44. On October 24, 2006, United States Patent No. D530,489 S (the '489 patent) entitled "Sandal" was duly and legally issued. A true and correct copy of the '489 patent is attached as Exhibit B.

45. Pursuant to 35 U.S.C. § 282, the '489 patent is presumed valid.

46. Dennis Comeau is the inventor of the '489 patent. The '489 patent has been assigned to Bernardo Footwear, L.L.C.

47. Upon information and belief, Michael Kors has infringed and continues to infringe the claim of the '489 Sandal design patent by its manufacture, use, offer for sale and/or sale of the "Alger Thong" Sandal.

48. As a result of Michael Kors' actions, Bernardo has suffered and continues to suffer substantial injury, including irreparable injury, and will result in damages to

Bernardo, including loss of sales and profits, which Bernardo would have been made but for the infringement by Michael Kors, unless Michael Kors is enjoined by this Court.

**DEMAND FOR JURY TRIAL**

49. Plaintiff hereby demands a jury trial on all claims and issues.

**PRAYER FOR RELIEF**

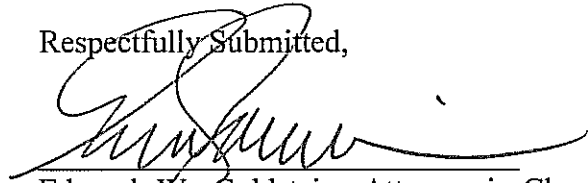
WHEREFORE, Plaintiff prays for judgment that:

- A. All Defendants each be held to have infringed the sole claim of the '447 patent;
- B. Defendant, Michael Kors be held to have infringed the sole claim of the '489 patent;
- C. This Court grant a preliminary and permanent injunction restraining all Defendants, their officers, directors, principals, agents, servants, employees, successors and assigns, and all individuals acting in concert or participation with them from infringing Bernardo's '447 design patent;
- D. The '447 Patent be declared valid and enforceable against all Defendants;
- E. The '489 Patent be declared valid and enforceable against Michael Kors.
- F. Plaintiff be awarded under 35 U.S.C. § 284, damages adequate to compensate them for Defendants' infringement of the '447 and '489 Patents, which in no event can be less than a reasonable royalty;
- G. Bernardo be awarded exemplary damages as a result of Michael Kors (USA), Inc.'s willful and malicious conduct constituting contempt;
- H. Plaintiff be awarded its costs and prejudgment interest on their damages, as provided by 35 U.S.C. § 284;
- I. Defendants be required to pay Bernardo's attorneys' fees and court costs;

- J. That the court finds the Defendants' infringement of the '447 and '489 patents was willful;
- K. That costs be awarded to Plaintiff;
- L. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the current circumstances.

Date: March 22, 2007

Respectfully Submitted,



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S. D. of Texas Bar No. 586  
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**ATTORNEYS FOR PLAINTIFF**

**OF COUNSEL:**

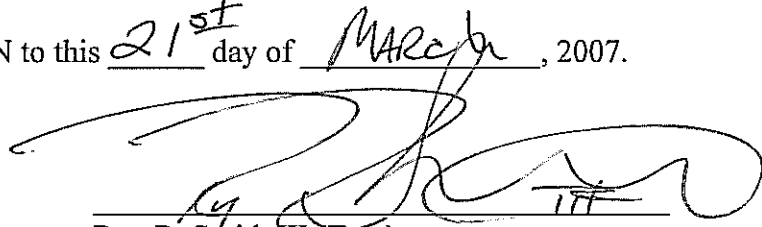
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**Attorney(s) for Plaintiff**

### IX. VERIFICATION

I, Roy R. Smith III (Trae), verify pursuant to 28 U.S.C. § 1746 that I am President of Bernardo Footwear, L.L.C. and that I have read the foregoing Verified Complaint and know the contents thereof to be true based upon my own knowledge, information and belief, except as to such matters therein stated to be on information and belief, and as to those matters, I believe them to be true.

SUBSCRIBED AND SWORN to this 21<sup>st</sup> day of MARCH, 2007.

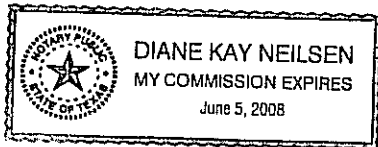
  
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Roy R. Smith III (Trae)

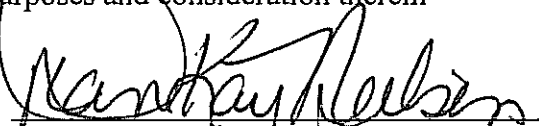
STATE OF TEXAS

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COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this 21<sup>st</sup> day of March, 2007, personally appeared Roy R. Smith, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same of his own free will for the purposes and consideration therein expressed.



  
\_\_\_\_\_  
Notary for the STATE OF TEXAS