

organized and existing under the laws of the State of Delaware.

4. On information and belief, Taylor Made is importing umbrellas into the United States, distributing, selling and offering for sale umbrellas throughout the United States, including the State of New York.

5. The license agreement between the parties from which the breach of contract count arises includes a Governing Law and Venue terms selecting the laws of the State of New York and an irrevocable submission and consent to the jurisdiction and venue of the state or federal courts situated in New York, New York.

JURISDICTION AND VENUE

6. This case arises under the patent laws of the United States, 35 U.S.C. § 100 et. seq., the Lanham Act, 15 U.S.C. § 1051 et. seq., and common law. This Court has subject matter jurisdiction based on 28 U.S.C. §§ 1331 and 1338.

7. This Court has personal jurisdiction over Taylor Made.

8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(b) and the venue selection agreed to by the parties.

BACKGROUND FACTS

9. On July 23, 2002, U.S. Letters Patent No. 6,422,251, entitled "UMBRELLA HAVING A SIMPLIFIED CONFIGURATION," was duly and legally issued by the United States Patent and Trademark Office ("USPTO") to Cheng Yuan Tseng. A true copy of the '251 Patent is annexed hereto as Exhibit A.

10. Windbrella is the owner of all right, title and interest in and to the '251

Patent. The assignment of the '251 Patent to Windbrella is recorded at the USPTO on Reel/Frame 011367/0577.

11. On July 16, 2002, U.S. Letters Patent No. 6,418,950, entitled "UMBRELLA HAVING A ROTATION PREVENTION MECHANISM," was duly and legally issued by the USPTO to Cheng Yuan Tseng. A true copy of the '950 Patent is annexed hereto as Exhibit B.

12. Windbrella is the owner of all right, title and interest in and to the '950 Patent. The assignment of the '950 Patent to Windbrella is recorded at the USPTO on Reel/Frame 011368/0592.

13. The '251 Patent and the '950 Patent are directed to a runner to prevent rotation of an umbrella (the "Pinchless Runner Patents").

14. On April 6, 1999, U.S. Letters Patent No. 5,890,506 ("the '506 Patent"), entitled "UMBRELLA AND UMBRELLA CANOPY," was duly and legally issued by the USPTO to Glenn Kupferman.

15. On April 20, 1999, U.S. Letters Patent No. Des. 408,125 ("the '125 Patent"), entitled "UMBRELLA," was duly and legally issued by the USPTO to Glenn Kupferman.

16. Glenn Kupferman is the president and a member of the Board of Directors of Windbrella and the named inventor of the '506 Patent and the '125 Patent.

17. The '506 Patent and the '125 Patent are directed to a vented mesh system for double canopy umbrellas (the "Windbrella Vented Mesh System Patents").

18. On March 16, 2004, Windbrella licensed Taylor Made to produce and sell vented mesh umbrellas, only displaying the mark "TaylorMade," under the Windbrella Vented

Mesh System Patents (the “Taylor Made License”). The term of the license was one year.

19. On July 1, 2004, Windbrella licensed Taylor Made to sell umbrellas, only displaying an “Adidas” mark, including technology covered by each of the ‘251 Patent, the ‘950 Patent, the ‘506 Patent and the ‘125 Patent (the “Adidas License”).

COUNT ONE: INFRINGEMENT OF THE ‘251 PATENT

20. Windbrella repeats and realleges each and every allegation contained in paragraphs 1 through 19 of this Complaint as though fully set forth herein.

21. On information and belief, Taylor Made is manufacturing and/or having third parties manufacture umbrellas bearing the trade name “Taylor Made” (the “Taylor Made Umbrellas”). These Taylor Made Umbrellas are being manufactured in the United States and/or imported into the United States by Taylor Made and distributed, sold and offered for sale throughout the United States and the State of New York.

22. The Taylor Made Umbrellas infringe one or more claims of the ‘251 Patent.

23. Neither the Taylor Made License nor the Adidas License grants Taylor Made the right to manufacture, import or sell the Taylor Made Umbrellas under the ‘251 Patent.

24. Taylor Made has infringed and continues to infringe the ‘251 Patent directly, contributorily, and/or by inducing others to infringe the ‘251 Patent.

25. Taylor Made has received actual notice of the ‘251 Patent, yet have continued to infringe.

26. Taylor Made’s acts of infringement have caused Windbrella to sustain monetary damage, loss and injury in an amount to be determined at the time of trial.

27. Taylor Made's infringement of the '251 Patent has been and continues to be willful, without license, and carried out with full knowledge of the '251 Patent, so as to justify the assessment of treble damages against them, in an amount to be determined at the time of trial.

28. Taylor Made's acts of infringement, unless enjoined by this Court, will continue to cause Windbrella to sustain irreparable damage, loss and injury, for which Windbrella has no adequate remedy at law.

COUNT TWO: INFRINGEMENT OF THE '950 PATENT

29. Windbrella repeats and realleges each and every allegation contained in paragraphs 1 through 19 and 21 of this Complaint as though fully set forth herein.

30. The Taylor Made Umbrellas infringe one or more claims of the '950 Patent.

31. Neither the Taylor Made License nor the Adidas License grants Taylor Made the right to manufacture, import or sell the Taylor Made Umbrellas under the '950 Patent.

32. Taylor Made has infringed and continues to infringe the '950 Patent directly, contributorily, and/or by inducing others to infringe the '950 Patent.

33. Taylor Made has received actual notice of the '950 Patent, yet have continued to infringe.

34. Taylor Made's acts of infringement have caused Windbrella to sustain monetary damage, loss and injury in an amount to be determined at the time of trial.

35. Taylor Made's infringement of the '950 Patent has been and continues to be willful, without license, and carried out with full knowledge of the '950 Patent, so as to justify the assessment of treble damages against them, in an amount to be determined at the time of trial.

36. Taylor Made's acts of infringement, unless enjoined by this Court, will continue to cause Windbrella to sustain irreparable damage, loss and injury, for which Windbrella has no adequate remedy at law.

COUNT THREE: BREACH OF CONTRACT

37. This count is to remedy breach of contract, as defined by the common law of the State of New York, committed by Taylor Made.

38. Windbrella repeats and realleges each and every allegation contained in paragraphs 1 through 19 and 21 of this Complaint as though fully set forth herein.

39. The Adidas License includes a governing law provision which selects the laws of the State of New York.

40. Paragraph 2.3 of the Adidas License states that "Licensee shall purchase umbrellas containing Licensed Property exclusively from the Jai Hong Umbrella Factory in Guan-Dong, China. Licensee shall not manufacture or use components containing Licensed Property from any other source."

41. The Taylor Made Umbrellas include components containing Licensed Property as that term is defined in the Adidas License.

42. Taylor Made purchased the Taylor Made Umbrellas including Licensed Property from a source other than the Jai Hong Umbrella Factory in Guan-Dong, China.

43. Taylor Made is in breach of the Adidas License.

44. Taylor Made's breach has severely and irreparably damaged Windbrella's business in the amount of \$500,000.

COUNT FOUR: COMMON LAW FRAUD

45. This count is to remedy acts of fraud, as defined by the common law of the State of New York, committed by Taylor Made.

46. Windbrella repeats and realleges each and every allegation contained in paragraphs 1 through 18 and 20 of this Complaint as though fully set forth herein.

47. Prior to the date of the Taylor Made License, Windbrella was supplying umbrellas to Taylor Made including technology claimed by the Windbrella Vented Mesh System Patents and the Pinchless Runner Patents.

48. Windbrella was having these umbrellas made by the Jai Hong Umbrella Factory, importing the umbrellas and selling the umbrellas to Taylor Made.

49. Taylor Made, through its authorized representative Prem Vakharia, in the negotiations with Windbrella for the Taylor Made License stated that Taylor Made could no longer purchase the umbrellas from Windbrella or the Jai Hong Umbrella Factory.

50. Mr. Vakharia stated that Taylor Made could only enter into a license agreement if the umbrellas produced under the license are manufactured by a manufacturer affiliated with Taylor Made.

51. Windbrella agreed to enter into the Taylor Made License under the condition that the license only included the Windbrella Vented Mesh Patents and not the Pinchless Runner Patents.

52. Taylor Made represented an agreement with this condition and induced Windbrella to enter the Taylor Made License allowing Taylor Made to purchase umbrellas manufactured by a manufacturer affiliated with Taylor Made.

53. Windbrella would not have entered the Taylor Made License if Taylor Made required the right to produce umbrellas including the technology claimed by the Pinchless Runner Patents.

54. On information and belief, after the Taylor Made License was executed, the Taylor Made Umbrellas were produced by Szu Mao Co., Ltd (“Szu Mao”) of Shenzhen, China, a manufacturer affiliated with Taylor Made.

55. The Taylor Made License did not grant Taylor Made the right to produce umbrellas using components including the technology claimed by the Pinchless Runner Patents.

56. The Taylor Made Umbrellas have components including the technology claimed by the Pinchless Runner Patents.

57. On information and belief, Taylor Made misrepresented to Windbrella that umbrellas produced by a manufacturer affiliated with Taylor Made would not include technology claimed by the Pinchless Runner Patents.

58. Windbrella, relying on the false representation of Taylor Made, was induced to enter into the Taylor Made License which granted Taylor Made the right to produce umbrellas by a manufacturer affiliated with Taylor Made to its detriment.

59. On information and belief, Szu Mao has copied the molds for the components including the technology of the Pinchless Runner Patents.

60. Taylor Made’s acts constitute common law fraud and have severely and irreparably damaged Windbrella’s business in the amount of \$10,000,000.

61. Taylor Made engaged in this activity knowingly and willfully, so as to justify the assessment of increased and punitive damages, in an amount to be determined at the time of trial.

**COUNT FIVE: UNFAIR COMPETITION AND
MISAPPROPRIATION (COMMON LAW)**

62. This count is to remedy acts of unfair competition and misappropriation under the common law of the State of New York.

63. Windbrella repeats and realleges each and every allegation contained in paragraphs 1 through 19, 21 and 47-61 of this Complaint as though fully set forth herein.

64. On information and belief, Taylor Made gave Szu Mao the production order to produce the Taylor Made Umbrellas with the express purpose of copying the components including the technology of the Pinchless Runner Patents.

65. On information and belief, Szu Mao is making infringing umbrellas and these umbrellas are being imported into the United States in direct competition with the line of Windbrella umbrellas.

66. Taylor Made unlawful activities constitute unfair competition and misappropriation as proscribed by the common law.

67. Taylor Made's acts of unfair competition and misappropriation have caused Windbrella to sustain monetary damage, loss and injury, in the amount of \$10,000,000.

68. Taylor Made engaged in this activity knowingly and willfully, so as to justify the assessment of increased and punitive damages, in an amount to be determined at the time of trial.

WHEREFORE, Plaintiff prays for judgment (an "Order") against the Defendant as follows:

- A. Declaring the '251 Patent and '950 Patent valid, enforceable and willfully infringed by Taylor Made;
 - B. Awarding Windbrella damages, including Taylor Made's profits or other advantages and Windbrella's damages, resulting from Taylor Made's infringement of the '251 Patent and '950 Patent and other unlawful activities, such award to include prejudgement interest;
 - C. Trebling such damages award due to the willful nature of Taylor Made's conduct under 35 U.S.C. § 284;
 - D. Declaring that this is an exceptional case under 35 U.S.C. § 285 and awarding Windbrella its costs, expenses and attorneys fees in this action;
 - E. Awarding Windbrella damages in the amount specified in this complaint to remedy Taylor Made's breach of contract and acts of fraud, unfair competition and misappropriation;
 - F. Awarding Windbrella punitive damages in an amount to be determined at trial for its willful misconduct as alleged in this complaint;
 - G. Permanently enjoining Taylor Made, their officers, directors, agents, servants employees and attorneys, and all those persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, from infringing the '251 Patent and the '950 Patent;
- Any other and further relief as the Court deems just and proper.

Demand for Jury Trial

Plaintiff hereby demand, pursuant to Rule 38(d), Fed. R. Civ. P., trial by jury of all issues so triable.

Dated: June 16, 2005

A handwritten signature in black ink, appearing to read "M. J. Marcin", written over a horizontal line.

Michael J. Marcin (MM7394)
Fay Kaplun & Marcin, LLP
150 Broadway
Suite 702
New York, NY 10038

Phone (212) 619-6000
Facsimile (212) 208-6819

Attorneys for Plaintiffs
Windbrella Products Corp.