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9 Attorneys for Plaintiff

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 **OAKLEY, INC.**, a Washington
13 corporation,

14 Plaintiff,

15 vs.

16 **T H SUNGLASS CORPORATION**,
17 an unknown corporate entity,

18 Defendant.

Case No.: 09 CV 1120 L (BLM)

SECOND AMENDED COMPLAINT
FOR PATENT INFRINGEMENT

JURY TRIAL

19 Plaintiff Oakley, Inc. (hereinafter referred to as "Oakley") hereby complains
20 of Defendant T H Sunglass Corporation (hereinafter referred to as "THS"), and
21 alleges as follows:

22 **JURISDICTION AND VENUE**

23 1. Jurisdiction over this action is founded upon 15 U.S.C. § 1121, and 28
24 U.S.C. §§ 1331 and 1338.

25 2. Venue is proper under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. §
26 1400(b). The Defendant has sold infringing products in this district, attempted to
27 pass off infringing products in this district, and/or directed sales and marketing
28 efforts toward this district.

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THE PARTIES

3. Plaintiff Oakley is a corporation organized and existing under the laws of the State of Washington, having its principal place of business at One Icon, Foothill Ranch, California 92610 and doing business within this judicial district.

4. Oakley is informed and believes, and thereupon alleges that Defendant T H Sunglass Corporation is an unknown corporate entity doing business at 1775 Curtiss Court, La Verne, California 91750, and also doing business within this judicial district and on the internet at www.thsunglass.com.

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FACTUAL BACKGROUND

5. As early as 1985, Oakley has been and continues to be actively engaged in the manufacture and sale of high quality sunglasses and goggles. Oakley is the manufacturer and retailer of several lines of sunglasses and goggles, including its "A Frame"® goggle line, and its "Half Jacket"®, "Flak Jacket"®, "Radar"®, and "e Wire"® lines of sunglasses. These sunglasses and goggles have enjoyed substantial success.

6. Oakley is the owner by assignment of U.S. Design Patent No. D405,102, duly and lawfully issued on February 2, 1999, describing and claiming the invention entitled "Goggle," which is embodied by the A Frame goggle, made and sold by Oakley. A true and correct copy of U.S. Design Patent No. D405,102 is attached hereto as Exhibit 1.

7. Oakley is informed and believes, and thereupon alleges that the Defendant THS is selling goggles that copy the ornamental design and configuration claimed in Oakley's U.S. Patent No. D405,102. The infringing goggle is marked as Model No. 55560PBLKC/M, or similar numbers. This A Frame copy goggle sold by Defendant THS embodies the subject matter claimed in Oakley's design patent referred to above without any license thereunder and is thereby infringing U.S. Patent No. D405,102. Oakley is informed and believes, and based thereon alleges, that Defendant THS makes, imports, uses, offers to sell

1 and/or sells this goggle directly and to third parties for resale, including at retail
2 and on the internet.

3 8. Oakley is the owner by assignment of U.S. Patent No. 5,387,949 duly
4 and lawfully issued on February 7, 1995, disclosing and claiming technology for
5 an eyeglass connection device entitled "Eyeglass Connection Device," which is
6 embodied by its *Half Jacket* and *Flak Jacket* sunglasses. A true and correct copy
7 of U.S. Patent No. 5,387,949 is attached hereto as Exhibit 2.

8 9. Oakley is informed and believes, and thereupon alleges that the
9 Defendant THS is selling sunglasses that incorporate the technology for an
10 eyeglass connection device claimed in Oakley's U.S. Patent No. 5,387,949. The
11 infringing sunglasses marked as Model Nos. X54909, X540117, X540064, 5511,
12 540199 and 540156M. These sunglasses, sold by Defendant THS, embody the
13 subject matter claimed in Oakley's utility patent referred to above without any
14 license thereunder and thereby infringe U.S. Patent No. 5,387,949. Oakley is
15 informed and believes, and based thereon alleges, that Defendant THS makes,
16 imports, uses, offers to sell and/or sells these sunglasses directly and to third
17 parties for resale, including at retail and on the internet.

18 10. Oakley is the owner by assignment of U.S. Patent No. 7,347,545, duly
19 and lawfully issued on March 25, 2008, describing and claiming the technology for
20 a sport specific shield invention entitled "Sports-Specific Shield," which is
21 embodied in Oakley's *Radar* sunglass, made and sold by Oakley. A true and
22 correct copy of U.S. Patent No. 7,347,545 is attached hereto as Exhibit 3.

23 11. Oakley is informed and believes, and thereupon alleges that the
24 Defendant THS is selling sunglasses that incorporate the technology claimed in
25 Oakley's U.S. Patent No. 7,347,545. The infringing sunglasses are marked as
26 Model Nos. 55554 and 55476. These sunglasses, sold by Defendant THS, embody
27 the subject matter claimed in Oakley's utility patent referred to above without any
28 license thereunder and is thereby infringing U.S. Patent No. 7,347,545. Oakley is

1 informed and believes, and based thereon alleges, that Defendant THS makes,
2 imports, uses, offers to sell and/or sells these sunglasses directly and to third
3 parties for resale, including at retail and on the internet.

4 12. Oakley is the owner by assignment of U.S. Design Patent No.
5 D376,381, duly and lawfully issued on December 10, 1996, describing and
6 claiming the invention entitled "Pair of Spectacles Without Earstems," which is
7 embodied by the *e Wire* sunglass, made and sold by Oakley. A true and correct
8 copy of U.S. Design Patent No. D376,381 is attached hereto as Exhibit 4.

9 13. Oakley is informed and believes, and thereupon alleges that the
10 Defendant THS is selling sunglasses that copy the ornamental design and
11 configuration claimed in Oakley's U.S. Patent No. D376,381. The infringing
12 sunglass is marked as Model No. 2240S. This *e Wire* copy sunglass sold by
13 Defendant THS embodies the subject matter claimed in Oakley's design patent
14 referred to above without any license thereunder and is thereby infringing U.S.
15 Patent No. D376,381. Oakley is informed and believes, and based thereon alleges,
16 that Defendant THS makes, imports, uses, offers to sell and/or sells this sunglass
17 directly and to third parties for resale, including at retail and on the internet.

18 14. Defendant has received written notice of Oakley's proprietary rights in
19 its patents by way of letters caused to be delivered on Oakley's behalf of the
20 Defendant. Further, Defendant has received constructive notice of Oakley's
21 patents, as Oakley caused its patents to be placed plainly on the product and/or
22 packaging. Despite actual and constructive knowledge, Defendant continues to
23 infringe Oakley's patent rights. On information and belief, such infringement by
24 Defendant must have been willful and wanton.

25 15. Oakley is informed and believes and thereupon alleges that the sale of
26 the unauthorized, infringing goggles and sunglasses has resulted in lost sales,
27 reduced the business and profit of Oakley, and greatly injured the general

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1 reputation of Oakley due to the inferior quality of the copies, all to Oakley's
2 damage in an amount not yet fully determined.

3 16. The exact amount of profits realized by Defendant as a result of its
4 infringing activities is presently unknown to Oakley, as are the exact amount of
5 damages suffered by Oakley as a result of said activities. These profits and
6 damages cannot be accurately ascertained without an accounting.

7 **FIRST CLAIM FOR RELIEF**
8 **Patent Infringement**

9 17. The allegations of paragraphs 1 through 16 are repled and realleged as
10 though fully set forth herein.

11 18. This is a claim for patent infringement, and arises under 35 U.S.C.
12 Sections 271 and 281.

13 19. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

14 20. Oakley is the owner of U.S. Design Patent No. D405,102, which
15 protects the ornamental design of an goggle embodied by Oakley's *A Frame*
16 goggle. A true and correct copy of U.S. Design Patent No. D405,102 is attached
17 hereto as Exhibit 1. By statute, the patent is presumed to be valid and enforceable
18 under 35 U.S.C. § 282.

19 21. Defendant, through its agents, employees and servants, makes, uses,
20 imports, offers to sell and/or sells, without any rights or license, goggles that fall
21 within the scope and claim contained in U.S. Design Patent No. D405,102.

22 22. Oakley is informed and believes and thereupon alleges that Defendant
23 willfully infringed upon Oakley's exclusive rights under this patent, with full notice
24 and knowledge thereof.

25 23. Oakley is informed and believes and thereupon alleges that Defendant
26 has derived, received and will continue to derive and receive from their respective
27 acts of infringement, gains, profits and advantages in an amount not presently
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1 known to Oakley. By reason of these acts of infringement, Oakley has been, and
2 will continue to be, greatly damaged.

3 24. Defendant may continue to infringe U.S. Design Patent No. D405,102
4 to the great and irreparable injury of Oakley, for which Oakley has no adequate
5 remedy at law unless the Defendant is enjoined by this court.

6 **SECOND CLAIM FOR RELIEF**
7 **Patent Infringement**

8 25. The allegations of paragraphs 1 through 16 are repled and realleged as
9 though fully set forth herein.

10 26. This is a claim for patent infringement, and arises under 35 U.S.C.
11 Sections 271 and 281.

12 27. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

13 28. Oakley is the owner of U.S. Patent No. 5,387,949, which protects the
14 technology for an eyeglass connection device embodied by Oakley's *Half Jacket*
15 and *Flak Jacket* sunglasses. A true and correct copy of U.S. Patent No. 5,387,949
16 is attached hereto as Exhibit 2. By statute, the patent is presumed to be valid and
17 enforceable under 35 U.S.C. § 282.

18 29. Defendant, through its agents, employees and servants, makes, uses,
19 imports, offers to sell and/or sell, without any rights or license, sunglasses that fall
20 within the scope and claim contained in U.S. Patent No. 5,387,949.

21 30. Oakley is informed and believes and thereupon alleges that Defendant
22 willfully infringed upon Oakley's exclusive rights under this patent, with full notice
23 and knowledge thereof.

24 31. Oakley is informed and believes and thereupon alleges that Defendant
25 has derived, received and will continue to derive and receive from their respective
26 acts of infringement, gains, profits and advantages in an amount not presently
27 known to Oakley. By reason of these acts of infringement, Oakley has been, and
28 will continue to be, greatly damaged.

1 48. Defendant may continue to infringe U.S. Design Patent No. D376,381
2 to the great and irreparable injury of Oakley, for which Oakley has no adequate
3 remedy at law unless the Defendant is enjoined by this court.

4 WHEREFORE, Plaintiff Oakley, Inc. prays as follows:

5 1. That Defendant be adjudicated to have infringed Oakley’s U.S. Patent
6 No. D405,102, and that the patent is valid, enforceable, and owned by Oakley;

7 2. That Defendant be adjudicated to have infringed Oakley’s U.S. Patent
8 No. 5,387,949, and that the patent is valid, enforceable, and owned by Oakley;

9 3. That Defendant be adjudicated to have infringed Oakley’s U.S. Patent
10 No.7,347,545, and that the patent is valid, enforceable, and owned by Oakley;

11 4. That Defendant be adjudicated to have infringed Oakley’s U.S. Patent
12 No.D376,381, and that the patent is valid, enforceable, and owned by Oakley;

13 5. That Defendant, its agents, servants, employees, and attorneys and all
14 persons in active concert and participation with them, be forthwith preliminarily
15 and thereafter permanently enjoined from making, using offering to sell, or selling
16 any sunglass and/or goggle that infringes United States Patent Nos. D405,102,
17 5,387,949, 7,347,545 and D376,381;

18 6. For an assessment and award of damages against Defendant, based on
19 its acts of infringement, in an amount no less than lost profits, reasonable royalty,
20 or Defendant’s profits derived from their infringement of Plaintiff’s patent rights,
21 pursuant to 35 U.S.C. §§ 284 and 289 at Oakley’s election;

22 7. For an order requiring Defendant to deliver up and destroy all
23 infringing sunglasses and goggles;

24 8. That an award of reasonable costs, expenses, and attorney's fees be
25 awarded against Defendant pursuant to 35 U.S.C. § 285; and

26 9. That Defendant be directed to file with this court and serve upon
27 Oakley within 30 days after the service of the injunction, a report in writing under

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1 oath, setting forth in detail the manner and form in which Defendant has
2 respectively complied with the injunction; and

3 10. For such and other relief as the Court deems appropriate.

4 DATED: 8/27/09

WEEKS, KAUFMAN, NELSON & JOHNSON

5
6 s/Gregory K. Nelson

7 GREGORY K. NELSON

8 Attorney for Plaintiff, Oakley, Inc.

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10 JURY DEMAND

11 Plaintiff Oakley, Inc. hereby requests a trial by jury in this matter.

12 DATED: 8/27/09

WEEKS, KAUFMAN, NELSON & JOHNSON

13
14 s/Gregory K. Nelson

15 GREGORY K. NELSON

16 Attorney for Plaintiff, Oakley, Inc.