

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 09-61468-CIV-ZLOCH/ROSENBAUM

ASPEX EYEWEAR, INC. and  
CONTOUR OPTIK, INC.,

Plaintiffs,

vs.

ZENNI OPTICAL, LLC.

Defendant.

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**FIRST AMENDED COMPLAINT**

The Plaintiffs, Aspex Eyewear, Inc. (“Aspex”), and Contour Optik, Inc. (“Contour”), (collectively referred to as “Plaintiffs”), by their attorneys, as and for their First Amended Complaint herein against Zenni Optical, LLC (“Defendant”), allege the following:

**JURISDICTION AND VENUE**

1. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.*
2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1338 (a), as this action arises under an Act of Congress relating to patents.
3. Venue is properly established in this Court pursuant to 28 U.S.C. §§1391(b) and (c) and/or §1400, as, upon information and belief, the Defendant has engaged in acts of infringement within this Judicial District.

**PARTIES**

4. Aspex is a corporation duly organized and existing under the laws of the state of

Delaware having its principal place of business at: 2755 S.W. 32nd Avenue, Pembroke Park, Florida 33023.

5. Contour is a corporation of Taiwan, whose post office address is 6 Industrial Fifth Road, Tou Chiau Industrial Park, Chiayi 621, Taiwan.

6. Upon information and belief, Defendant is a Oregon Corporation having its place of business at 27 Sunny Oaks Dr., San Rafael, CA. 94903

**COUNT I – INFRINGEMENT OF THE ‘054 PATENT**

7. Upon information and belief, Defendant owns and/or maintains a website at [www.zennioptical.com](http://www.zennioptical.com) for selling and distributing eyewear including eyeglasses and clip-ons that are attached magnetically and are the subject of this action.

8. On April 7, 1998, the United States Patent and Trademark Office issued United States Patent No. 5,737,054 entitled “Auxiliary Lenses for Eyeglasses” attached hereto as Exhibit A (the “‘054 Patent”). Contour is the record owner of the ‘054 Patent.

9. Aspex is the exclusive licensee of the ‘054 Patent within the United States.

10. As the exclusive licensee of the ‘054 Patent, Aspex has the exclusive right to make, use and sell products including eyeglass primary frames and auxiliary frames, according to the ‘054 Patent. Aspex also holds the right to sue for infringement of the ‘054.

11. The invention described and claimed in the ‘054 Patent has been accepted by the eyewear and fashion eyewear industries and is of great utility and value.

12. Defendant, well knowing of the ‘054 Patent, has infringed thereon by offering for sale, and on information and belief, selling magnetic eyeglass frames and clip-on attachments as claimed in said patent, within this district and on information and belief, elsewhere as well.

13. These infringing articles, as alleged above, have not been manufactured or

authorized in any manner by Aspex or Contour, nor has Defendant ever been authorized or otherwise granted the right to manufacture, offer for sale, sell or otherwise distribute devices made according to the '054 Patent.

14. Defendant has notice of its infringement, as prescribed in 35 U.S.C. § 287. Defendant's infringement of the '054 Patent has been willful and deliberate.

15. Upon information and belief, Defendant will continue to infringe upon the '054 Patent to the irreparable damage of Plaintiffs, unless enjoined by the Court. Plaintiffs have no adequate remedy at law.

### **COUNT II – INFRINGEMENT OF THE '811 PATENT**

16. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 18, inclusive, as if fully repeated herein.

17. On January 11, 2000, the United States Patent and Trademark Office issued United States Patent No. 6,012,811 entitled "Eyeglass Frames with Magnets at Bridges for Attachment" and attached hereto as Exhibit B (the "'811 Patent"). Contour is the record owner of the '811 Patent.

18. Aspex is the exclusive licensee of the '811 Patent within the United States.

19. As the exclusive licensee of the '811 Patent, Aspex has the exclusive right to make, use and sell products including eyeglass primary frames and auxiliary frames, according to the '054 Patent. Aspex also holds the right to sue for infringement of the '811.

20. The invention described and claimed in the '811 Patent has been accepted by the eyewear and fashion eyewear industries and is of great utility and value.

21. Defendant, well knowing of the '811 Patent, has infringed thereon by offering for sale, and on information and belief, selling magnetic eyeglass frames and clip-on attachments as

claimed in said patent, within this district and on information and belief, elsewhere as well.

22. These infringing articles, as alleged above, have not been manufactured or authorized in any manner by Aspex or Contour, nor has Defendant ever been authorized or otherwise granted the right to manufacture, offer for sale, sell or otherwise distribute devices made according to the '811 Patent.

23. Defendant has notice of its infringement, as prescribed in 35 U.S.C. § 287. Defendant's infringement of the '811 Patent has been willful and deliberate.

24. Upon information and belief, Defendant will continue to infringe upon the '811 Patent to the irreparable damage of Plaintiffs, unless enjoined by the Court. Plaintiffs have no adequate remedy at law.

### **COUNT III – INFRINGEMENT OF THE '896 PATENT**

25. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 27, inclusive, as if fully repeated herein.

26. On July 25, 2000, the United States Patent and Trademark Office issued United States Patent No. 6,092,896 entitled "Eye-wear with magnets" and attached hereto as Exhibit C (the "'896 Patent"). Contour is the owner of the '896 Patent.

27. Aspex is the exclusive licensee of the '896 Patent within the United States.

28. As the exclusive licensee of the '896 Patent, Aspex has the exclusive right to make, use and sell products including eyeglass primary frames and auxiliary frames, according to the '054 Patent. Aspex also holds the right to sue for infringement of the '896.

29. The invention described and claimed in the '896 Patent has been accepted by the eyewear and fashion eyewear industries and is of great utility and value.

30. Defendant, well knowing of the '896 Patent, has infringed thereon by offering for

sale, and on information and belief, selling magnetic eyeglass frames and clip-on attachments as claimed in said patent, within this district and on information and belief, elsewhere as well.

31. These infringing articles, as alleged above, have not been manufactured or authorized in any manner by Aspex or Contour, nor has Defendant ever been authorized or otherwise granted the right to manufacture, offer for sale, sell or otherwise distribute devices made according to the '896 Patent.

32. Defendant has notice of its infringement, as prescribed in 35 U.S.C. § 287. Defendant's infringement of the '896 Patent has been willful and deliberate.

33. Upon information and belief, Defendant will continue to infringe upon the '896 Patent to the irreparable damage of Plaintiffs, unless enjoined by the Court. Plaintiffs have no adequate remedy at law.

**WHEREFORE**, Plaintiffs request that this Court grant Judgment in their favor, and award them the following relief:

1. Declare that Defendant's acts and conduct infringe the '054, '811 and '896 Patents and the exclusive rights in said patents held by the Plaintiffs;

2. Declare that such infringements are willful;

3. Enter a permanent injunction which:

a. Enjoins the Defendant, its agents, employees, privies, successors, and assigns and all holding by, through or under it, and all those acting for it or in its behalf, from infringing upon U.S. Patent Nos. 5,737,054, 6,012,811, and 6,092,896; and

b. Enjoins the Defendant, its agents, employees, representatives, and all other persons in active participation with it, to recall from all distributors, wholesalers, retailers and all others known to Defendant, all products which infringe upon U. S. Patent Nos. 5,737,054,

6,012,811, and 6,092,896, and requires Defendant to file with this Court and to serve upon the Plaintiffs, within 30 days after service of the Court's Order as herein prayed, a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the Court's Order;

4. Require the Defendant to account to Plaintiffs for all profits and expenses realized by Defendant;

5. Award the Plaintiffs their actual damages suffered as a result of the Defendant's infringement of the '054, '811 and '896 Patents and the rights held by Plaintiffs in said patents, and, pursuant to a finding of willful infringement, order that such damages be trebled;

6. Award the Plaintiffs any profits realized by Defendant as a result of his infringement of the '054, '811 and '896 Patents and the rights held by Plaintiffs in said patents; and

7. Grant such other and further relief as the equity of the case may require and as this Court may deem just and proper, together with costs and disbursements of this action, including Attorneys' fees.

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**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs demand a jury trial as to all issues triable at law, and respectfully request an early trial.

Dated: November \_\_, 2009

Respectfully Submitted,  
The Plaintiffs,

By: \_\_\_\_\_

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