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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

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SEIRUS INNOVATIVE ACCESSORIES, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SEIRUS INNOVATIVE ACCESSORIES,
INC., a Utah corporation,
Plaintiff,

v.

ASIA DIRECT INTERNATIONAL, INC.,
a Canadian corporation; ASIA DIRECT, a
Canadian entity; NEWMAN AGENCY
LTD., a Canadian corporation; NICOLE
NEWMAN, an individual; MARK
HULME, an individual; and MURRAY
MERKLEY, an individual,

Defendants.

Case No. 09 CV 0170 W JMA

FIRST AMENDED COMPLAINT FOR:

1. PATENT INFRINGEMENT
2. INDUCING PATENT INFRINGEMENT
3. FEDERAL TRADEMARK INFRINGEMENT [15 U.S.C. § 1114]
4. FALSE DESIGNATION OF ORIGIN [15 U.S.C. § 1125(a)]
5. FEDERAL UNFAIR COMPETITION [15 U.S.C. § 1125(a)(1)]
6. STATE UNFAIR COMPETITION [Cal. Bus. & Prof. Code § 17200 *et seq.*]

DEMAND FOR JURY TRIAL

For its claims against defendants ASIA DIRECT INTERNATIONAL, INC. ("ASIA INTERNATIONAL"); ASIA DIRECT; NEWMAN AGENCY LTD. ("NEWMAN AGENCY");

1 NICOLE NEWMAN ("NEWMAN"); MARK HULME ("HULME"); and MURRAY
 2 MERKLEY ("MERKLEY"), plaintiff SEIRUS INNOVATIVE ACCESSORIES, INC.
 3 ("SEIRUS"), hereby alleges as follows:

4 **PARTIES**

5 1. SEIRUS is a Utah corporation with its principal place of business at 13975
 6 Danielson Street, Poway, California 92064. SEIRUS is engaged in the business of selling men's,
 7 women's, and children's action and outdoor apparel and accessories, including face masks.

8 2. Upon information and belief, ASIA INTERNATIONAL is a Canadian
 9 corporation with a principal place of business at Suite 33, 1158 Shea Road, Utterson, Ontario
 10 POB 1M0. Upon information and belief, ASIA INTERNATIONAL is engaged in the business
 11 of selling men's, women's, and children's action and outdoor apparel and accessories, including
 12 face masks.

13 3. Upon information and belief, ASIA DIRECT is a Canadian entity with a principal
 14 place of business at 8 Steelcase Road West, Markham, Ontario, L3R 1B2. Upon information and
 15 belief, ASIA DIRECT is engaged in the business of selling men's, women's, and children's
 16 action and outdoor apparel and accessories, including face masks.

17 4. Upon information and belief, NEWMAN AGENCY is a Canadian corporation
 18 with a principal place of business at 7457 Ambassador Crescent RR7, Whistler BC VON 1B7.
 19 Upon information and belief, NEWMAN AGENCY is engaged in the business of selling men's,
 20 women's, and children's action and outdoor apparel and accessories, including face masks.

21 5. Upon information and belief, NEWMAN is an individual who resides in British
 22 Columbia, Canada. Upon information and belief, NEWMAN is employed by or associated with
 23 NEWMAN AGENCY.

24 6. Upon information and belief, HULME is an individual who resides in Ontario,
 25 Canada. Upon information and belief, HULME is employed by or associated with ASIA
 26 DIRECT and/or ASIA INTERNATIONAL.

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8. ASIA INTERNATIONAL, ASIA DIRECT, NEWMAN AGENCY, NEWMAN, HULME and MERKLEY are hereinafter referred to collectively as "DEFENDANTS."

9. This civil action for infringement arises under the patent laws of the United States, 35 U.S.C. §§ 271, *et seq.*, under the provisions of the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and for unfair competition, palming off and passing off and arises under the Lanham Act, and, more specifically, under the provisions of 15 U.S.C. § 1125(a). This action also arises under California state law governing unfair competition, specifically California Business and Professions Code § 17200 *et seq.*

11. Upon information and belief, DEFENDANTS have either directly or through their agents transacted business in the State of California and within this judicial district, and expected or reasonably should have expected their acts to have consequence in the State of California and within this judicial district, thus subjecting DEFENDANTS to the personal jurisdiction of this Court.

12. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(b) as DEFENDANTS are doing business in this judicial district and therefore may be found in this district, and/or a substantial part of the events giving rise to the claims alleged herein occurred within this district.

(A) DEFENDANTS' INFRINGEMENT OF SEIRUS' PATENTS

13. SEIRUS is the owner of United States Letters Patent No. 5,214,804 (the “804 PATENT”) which issued on June 1, 1993 and is titled “PROTECTIVE MASK WITH SCARF”

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1 and United States Letters Patent No. 6,272,690 (the "690 PATENT") which issued on August 14,
2 2001 and is titled "HEAD COVERING." DEFENDANTS are offering for sale and, upon
3 information and belief, have sold in this judicial district and elsewhere throughout the United
4 States, the following products, that fall within the scope of at least one claim of the '804
5 PATENT: HOLD UP FLEECE LINED FACE MASK; and BUTCH CASSIDY
6 MICROFLEECE BALACLAVA MASK ("804 PATENT ACCUSED PRODUCTS"); and
7 DEFENDANTS have induced at least one other company to infringe the claim of the '690
8 PATENT.

9 **(B) DEFENDANTS' INFRINGEMENT OF SEIRUS' TRADEMARKS**

10 14. SEIRUS is the owner of the registered trademark for the word mark
11 COMBOCLAVA® for use in connection with apparel in International Class 025, United States
12 Trademark Registration No. 1,991,780. SEIRUS has used the COMBOCLAVA® mark for
13 nearly fifteen years. A true and correct copy of the trademark registration for the
14 COMBOCLAVA® mark is attached hereto as EXHIBIT A. SEIRUS has also used the mark
15 COMFORT MASQUE™ for nearly thirty years in connection with apparel. The
16 COMBOCLAVA® and COMFORT MASQUE™ marks are hereinafter collectively referred to
17 as the "SEIRUS Marks."

18 15. The SEIRUS Marks are famous, arbitrary, fanciful, highly distinctive and are
19 recognized by the public as identifying SEIRUS' goods and/or services.

20 16. SEIRUS has used the SEIRUS Marks throughout the United States and has
21 heavily advertised and promoted them. These marks have developed and represent valuable,
22 substantial and exclusive goodwill and reputation inuring to SEIRUS' benefit.

23 17. SEIRUS has always exercised great care, skill and diligence in maintaining
24 uniform standards of high quality for its products bearing the SEIRUS Marks.

25 18. The reputation associated with and the goodwill developed in the SEIRUS Marks
26 in the United States are of very high value to SEIRUS.

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19. DEFENDANTS have and continue to market, distribute and sell apparel bearing the word marks COMBO CLAVA and COMFORT MASK (hereafter referred to as the "ACCUSED Marks") in United States commerce and in this district.

20. SEIRUS' goodwill and reputation are or will be harmed by DEFENDANTS' use of the ACCUSED Marks.

21. DEFENDANTS' use of the ACCUSED Marks so resemble SEIRUS' Marks as to be likely to cause confusion, mistake or to deceive as to the source or origin of DEFENDANTS' goods and/or services by creating the erroneous impression that DEFENDANTS' goods and/or services originate with, are sponsored, approved, endorsed or licensed by, affiliated or associated with, or in some way legitimately connected to SEIRUS, SEIRUS's Marks or SEIRUS' goods and/or services. Such confusion, mistake or deception by DEFENDANTS' use of the ACCUSED Marks have and will continue to damage SEIRUS.

(C) **DEFENDANTS' INFRINGEMENT OF SEIRUS' TRADE DRESS IN PRODUCTS AND PACKAGING**

(i) **SEIRUS' PRODUCT TRADE DRESS**

22. By virtue of the extensive use, sale and advertising by SEIRUS and others on behalf of SEIRUS, the shape, form and appearance of SEIRUS products including the SEIRUS MASQUE™ line of products (hereinafter the "SEIRUS PRODUCT TRADE DRESS"), are inherently distinctive and have acquired distinctiveness and secondary meaning to signify SEIRUS as the manufacturer and the source of these goods.

(ii) **SEIRUS' PACKAGING TRADE DRESS**

23. By virtue of the extensive use, sale and advertising by SEIRUS and others on behalf of SEIRUS, the shape, form and appearance in use of the packaging for the SEIRUS MASQUE™ line of products (hereinafter the "SEIRUS PACKAGING TRADE DRESS"), has acquired secondary meaning in the market for cold-weather headgear.

24. DEFENDANTS are offering for sale and, upon information and belief, have sold in this judicial district and elsewhere throughout the United States, the following products, that copy, imitate, palm off as, and pass off their products as members of the family of products that

1 contain the SEIRUS PRODUCT TRADE DRESS and SEIRUS PACKAGING TRADE DRESS:
 2 BANDIT FLEECE LINED FACE MASK; HOLD UP FLEECE LINED FACE MASK; and
 3 BUTCH CASSIDY MICROFLEECE BALACLAVA MASK (the "ACCUSED TRADE DRESS
 4 PRODUCTS").

5 **CLAIMS FOR RELIEF**

6 **FIRST CLAIM FOR RELIEF**
 7 **(Patent Infringement)**

8 25. SEIRUS refers to, re-alleges, and incorporates herein by this reference, each and
 9 every allegation in the foregoing paragraphs, as though fully set forth herein.

10 26. As alleged herein, DEFENDANTS are infringing at least one claim of the '804
 11 PATENT literally and/or under the doctrine of equivalents.

12 27. As a direct and proximate result of DEFENDANTS' infringement of the '804
 13 PATENT, SEIRUS has been damaged in an amount to be proved at trial, but in an amount not
 14 less than a reasonable royalty, and includes lost sales, and/or lost profits.

15 28. Based upon their prior knowledge of SEIRUS' patent rights, and other facts to be
 16 proved at trial, DEFENDANTS know and have known of their infringement of the '804
 17 PATENT. Based on these facts and those to be proved at trial, DEFENDANTS' infringement is
 18 willful and done with intentional disregard of SEIRUS' rights in the '804 PATENT, so as to
 19 render this case exceptional within the purview of 35 U.S.C. §§ 284, and 285, such that SEIRUS
 20 is entitled to enhanced damages, costs, and an award of attorneys' fees.

21 29. SEIRUS has been and continues to be damaged by the unlawful infringing
 22 activities of DEFENDANTS and will be irreparably harmed unless the unlawful infringing
 23 activities are preliminarily and permanently enjoined by this Court as provided by 35 U.S.C. §
 24 283.

25 **SECOND CLAIM FOR RELIEF**
 26 **(Inducing Patent Infringement)**

27 30. SEIRUS refers to, re-alleges, and incorporates herein by this reference, each and
 28 every all allegation in the foregoing paragraphs, as though fully set forth herein.

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1 31. Upon information and belief, DEFENDANTS have been and are now unlawfully
2 inducing others to infringe and/or contributorily infringe, literally or under the doctrine of
3 equivalents, the claim of the '690 PATENT by using, offering to sell, advertising for sale and
4 selling DEFENDANTS' products in this judicial district and throughout the United States as
5 follows: BUTCH CASSIDY COMBO CLAVA MASK and SELKIRK COMBO CLAVA
6 MASK.

7 32. SEIRUS is marking its products that fall within the scope of the '690 PATENT as
8 required by 35 U.S.C. § 287; DEFENDANTS have otherwise had knowledge and notice of the
9 '690 PATENT and that their activities constitute knowing and willful patent infringement.
10 SEIRUS has been and continues to be damaged by the unlawful infringing activities of
11 DEFENDANTS and will be irreparably harmed unless the unlawful infringing activities are
12 preliminarily and permanently enjoined by this Court as provided by 35 U.S.C. § 271(b).

13 33. Upon information and belief, SEIRUS has suffered and continues to suffer lost
14 sales and in turn damages as a direct result of the unlawful infringement of the '690 PATENT by
15 DEFENDANTS. Under 35 U.S.C. § 284, SEIRUS is entitled to damages to be established at
16 trial or upon an accounting adequate to compensate for the infringement, including lost profits,
17 but not less than a reasonable royalty.

18 34. Upon information and belief, DEFENDANTS' infringement of the '690
19 PATENT is willful and done with an intent to harm SEIRUS or in reckless disregard for the
20 rights of SEIRUS. Therefore, this is an exceptional case and SEIRUS is entitled to enhanced
21 damages under 35 U.S.C. § 284.

22 35. This is an exceptional case under 35 U.S.C. § 285 entitling SEIRUS to its
23 reasonable attorneys' fees.

24 36. SEIRUS has been and continues to be damaged by the unlawful infringing
25 activities of the DEFENDANTS and will be irreparably harmed unless the unlawful infringing
26 activities are preliminarily and permanently enjoined by this Court as provided by 35 U.S.C. §
27 283.

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THIRD CLAIM FOR RELIEF
(Federal Trademark Infringement)
[15 U.S.C. § 1114]

37. SEIRUS refers to, re-alleges, and incorporates herein by this reference, each and every allegation in the foregoing paragraphs, as though fully set forth herein.

38. DEFENDANTS' actions in connection with the sale, offering for sale, distribution or advertising of its goods and/or services bearing ACCUSED Marks in interstate commerce, without the consent of SEIRUS, constitute willful, deliberate and intentional infringement of the SEIRUS Marks, and have caused and continue to cause a likelihood of confusion, in violation of 15 U.S.C. § 1114.

39. By reason of the foregoing, SEIRUS has been injured in an amount to be proven. In addition, as a result of DEFENDANTS' unlawful acts, SEIRUS has suffered and will continue to suffer irreparable harm, and SEIRUS has no adequate remedy at law with respect to this injury. Unless the acts of trademark infringement are enjoined by this Court, SEIRUS will continue to suffer a risk of irreparable harm. DEFENDANTS' actions have been knowing, intentional, wanton, and willful, entitling SEIRUS to damages, treble damages, profits, attorneys' fees, statutory damages, and the costs of this action.

FOURTH CLAIM FOR RELIEF
False Designation of Origin
[15 U.S.C. § 1125(a)]

40. SEIRUS refers to, re-alleges, and incorporates herein by this reference, each and every allegation in the foregoing paragraphs, as though fully set forth herein.

41. DEFENDANTS' actions of using the ACCUSED Marks in connection with designing, manufacturing or having manufactured, selling, and/or distributing products and/or services in interstate commerce, without SEIRUS' consent, is a false designation of origin, and have caused and continue to cause a likelihood of confusion, mistake, and deception as to source, sponsorship, affiliation, and/or connection in the minds of the public.

42. DEFENDANTS' false designation of origin is in violation of §43(a) of the Lanham Act, 15 U.S.C. §1125(a)(1).

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1 43. By reason of the foregoing, SEIRUS has been injured in an amount not yet fully
 2 determined, but believed to be in excess of \$75,000. In addition, as a result of DEFENDANTS'
 3 acts of infringement, SEIRUS has suffered and will continue to suffer irreparable harm, and
 4 SEIRUS has no adequate remedy at law with respect to this injury. Unless DEFENDANTS' acts
 5 of infringement are further enjoined by this Court, SEIRUS will continue to suffer a risk of
 6 irreparable harm.

7 44. DEFENDANTS' actions have been knowing, intentional, wanton, and willful,
 8 entitling SEIRUS to damages, treble damages, profits, attorney's fees, and the costs of this action
 9 pursuant to 15 U.S.C. § 1117 in this Court's discretion.

10 **FIFTH CLAIM FOR RELIEF**
 11 **(Unfair Competition)**
 [15 U.S.C. § 1125(a)(1)]

12 45. SEIRUS refers to, re-alleges, and incorporates herein by this reference, each and
 13 every allegation in the foregoing paragraphs, as though fully set forth herein.

14 46. SEIRUS manufactures and sells products including the SEIRUS MASQUE™ line
 15 of products, and by virtue of the extensive, use, sale and advertising by SEIRUS, the associated
 16 SEIRUS PRODUCT TRADE DRESS and SEIRUS PACKAGING TRADE DRESS have
 17 become inherently distinctive and have acquired distinctiveness, secondary meaning, and
 18 sufficient fame to signify SEIRUS as the manufacturer and source.

19 47. Upon information and belief, DEFENDANTS have unlawfully and without
 20 license or right, copied, imitated, and otherwise created a collection of products including the
 21 ACCUSED TRADE DRESS PRODUCTS, all of which emulate, imitate, palm off as, pass off as
 22 and copy the SEIRUS PRODUCT TRADE DRESS and SEIRUS PACKAGING TRADE
 23 DRESS to thereby emulate, imitate, palm off as, and pass off their products as SEIRUS products.

24 48. The activities of DEFENDANTS in advertising, selling and offering to sell each
 25 of the ACCUSED TRADE DRESS PRODUCTS, separately and together, is likely to cause
 26 confusion, mistake, and deception as to the source and origin thereof so that purchasers thereof
 27 and others will likely be confused and believe the ACCUSED TRADE DRESS PRODUCTS
 28 emanate from SEIRUS. In turn, DEFENDANTS are unfairly competing and misrepresenting

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1 their products to be those of SEIRUS in violation of 15 U.S.C. § 1125(a).

2 49. The activities of DEFENDANTS in advertising for sale, offering for sale, and
3 selling the ACCUSED TRADE DRESS PRODUCTS constitute unlawful and tortious unfair
4 competition, palming off and passing off, and misrepresentation as to the source of goods in
5 violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1).

6 50. SEIRUS believes it has suffered and continues to suffer lost sales and, in turn,
7 damages as a direct result of the unlawful and unfair competition of DEFENDANTS. Under 15
8 U.S.C. § 1117, SEIRUS is entitled to damages, including lost profits and the costs of this action,
9 to be shown at trial or upon an accounting.

10 51. On information and belief, DEFENDANTS' unfair competition in violation of 15
11 U.S.C. § 1125(a)(1) is willful and done with an intent to harm SEIRUS or in reckless disregard
12 for the rights of SEIRUS such that SEIRUS is entitled to triple damages under 15 U.S.C. §
13 1117(b).

14 52. Under 15 U.S.C. § 1117(b), this is an exceptional case and SEIRUS is entitled to
15 recover its attorneys' fees.

16 53. SEIRUS has been and continues to be damaged by the unlawful unfair
17 competition of DEFENDANTS and will be irreparably harmed unless the unlawful infringing
18 activities are permanently enjoined by this Court under the provisions of 15 U.S.C. § 1116.
19 SEIRUS is entitled to an injunction enjoining and restraining DEFENDANTS from further acts
20 of unfair competition.

21 **SIXTH CLAIM FOR RELIEF**

22 **Unfair Competition**

23 **[Cal. Bus. & Prof. Code § 17200 *et seq.*]**

24 54. SEIRUS refers to, re-alleges, and incorporates herein by this reference, each and
25 every allegation in the foregoing paragraphs, as though fully set forth herein.

26 55. California Business & Professions Code § 17200 *et seq.* provides that unfair
27 competition means and includes "any unlawful, unfair or fraudulent business act or practice and
28 unfair, deceptive, untrue or misleading advertising."

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56. By and through DEFENDANTS' conduct, including the conduct detailed above, DEFENDANTS have engaged in activities that constitute unlawful, unfair, and fraudulent business practices prohibited by Business & Professions Code § 17200 *et seq.*

57. DEFENDANTS' acts of intentional and willful trade dress infringement as alleged above constitute unfair competition actionable under the laws of the State of California as unlawful business acts or practices in that, *inter alia*, said acts violate the federal Lanham Act. Specifically, and without limitation, DEFENDANTS' actions of designing, manufacturing, packaging, selling, distributing, and/or offering for sale in interstate commerce products bearing the SEIRUS PRODUCT TRADE DRESS and SEIRUS PACKAGING TRADE DRESS, without consent of SEIRUS, have caused and continue to cause a likelihood of confusion, mistake, and deception in the minds of the public. Furthermore, said actions have a significant negative impact on the commercial value of and market for SEIRUS' products under the SEIRUS PRODUCT TRADE DRESS and SEIRUS PACKAGING TRADE DRESS, as well as the value of and market for other products bearing the SEIRUS name.

58. DEFENDANTS' acts of infringement as alleged above constitute unfair competition actionable under the laws of the State of California as fraudulent business acts or practices, in that, *inter alia*, said acts are likely to confuse the public as to the origin of the products.

59. DEFENDANTS' acts of infringement as alleged above constitute unfair competition actionable under the laws of the State of California as deceptive and false advertising, in that, *inter alia*, said acts are likely to cause confusion, mistake, and deception.

60. Such acts and omissions described above are unlawful, unfair, fraudulent, deceptive, misleading, and untrue and constitute a violation of Business & Professions Code § 17200 *et seq.* SEIRUS reserves the right to identify additional violations by DEFENDANTS as may be established through discovery.

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1 61. As a result of DEFENDANTS' said acts of unfair competition, SEIRUS has
2 suffered and will continue to suffer irreparable harm, and SEIRUS has no adequate remedy at
3 law with respect to this injury. Unless the acts of unfair competition are enjoined by this Court,
4 SEIRUS will continue to suffer irreparable harm.

5 62. As a direct and legal result of DEFENDANTS' unlawful, unfair, and fraudulent
6 conduct described above, DEFENDANTS have been and will continue to be unjustly enriched
7 with ill-gotten gains.

8 **WHEREFORE**, SEIRUS requests that this Court enter judgment in its favor, and against
9 DEFENDANTS as follows:

10 1. For judgment that DEFENDANTS have infringed, contributorily infringed and/or
11 induced the infringement of, at least one claim of the '804 PATENT and '690 PATENT;

12 2. That SEIRUS recover damages against DEFENDANTS under 35 U.S.C.
13 § 284 in an amount to be determined at trial or by accounting for the lost profits, but no less than
14 a reasonable royalty, on all sales of each of the infringing products alleged above and any others
15 that are subsequently discovered in the course of this proceeding, plus pre-judgment and post-
16 judgment interest;

17 3. That the damages awarded pursuant to the preceding paragraph 2 be increased to
18 three times the amount awarded because this is an exceptional case under 35 U.S.C. § 284;

19 4. That the Court declare this is an exceptional case and SEIRUS be awarded all of
20 its attorneys' fees in connection with this matter under 35 U.S.C. § 285;

21 5. That the Court preliminarily and/or permanently enjoin and restrain
22 DEFENDANTS, their officers, agents, servants, employees and those persons in active concert
23 or participation with them, from further acts of infringement for the remaining life of the '804
24 PATENT and '690 PATENT under 35 U.S.C. § 283;

25 6. That the Court preliminarily and permanently enjoin DEFENDANTS and their
26 employees, servants, agents, affiliates, distributors, dealers, attorneys, successors and/or assigns,
27 and all persons in active concert or participation with any of them, from manufacturing, using,
28 selling, offering to sell, importing for sale, advertising, displaying, or using any goods and/or

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1 services in the United States containing the SEIRUS Marks or any derivative thereof, or any
2 mark likely to cause confusion, mistake, and deception, or to misappropriate SEIRUS's
3 intellectual property;

4 7. That the Court direct the destruction of DEFENDANTS' current advertising,
5 promotional and related materials and products, as they relate to such activity in the United
6 States, that bear the infringing SEIRUS Marks and/or any other confusingly similar mark to the
7 SEIRUS Marks;

8 8. That the Court award SEIRUS damages for lost profits, loss of goodwill or other
9 damages as appropriate;

10 9. That the Court direct the seizure and forfeiture of all goods bearing infringing
11 marks, upon delivery into the United States pursuant to 19 U.S.C. § 1526(e);

12 10. For judgment that SEIRUS be awarded damages under U.S.C. § 1117 for all of its
13 lost profits, the profits of DEFENDANTS, and the costs of this action;

14 11. That the damages awarded under the preceding paragraph 6 are to be increased to
15 three times the amount awarded under 15 U.S.C. § 1117(b);

16 12. That DEFENDANTS, their officers, agents, servants, employees and those
17 persons in active concert of participation with any of them, be permanently enjoined from further
18 acts of unfair competition in violation of 15 U.S.C. § 1125(a)(1);

19 13. That the Court direct the destruction of DEFENDANTS' current advertising,
20 promotional and related materials and products, as they relate to such activity in the United
21 States, that bear the SEIRUS PRODUCT TRADE DRESS and/or SEIRUS PACKAGING
22 TRADE DRESS and/or any other confusingly similar trade dress, and DEFENDANTS' current
23 inventory of products pursuant to 15 U.S.C. § 1118 and other applicable laws;

24 14. That the Court award of punitive damages for intentional and willful acts;

25 15. That the Court award SEIRUS its costs, expenses, and attorneys' fees in this
26 action pursuant to 15 U.S.C. § 1117 and other applicable laws; and

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1 16. Such other and further relief as the Court deems proper.

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3 Dated: February 19, 2009

GORDON & REES LLP

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5 By: _____

Matthew D. Murphey

Kimberly D. Howatt

Attorneys for Plaintiff

SEIRUS INNOVATIVE ACCESSORIES, INC.

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Demand for Jury Trial

Plaintiff SEIRUS hereby demands a jury trial on all issues as to which a jury is available,
as provided by Rule 38 the Federal Rules of Civil Procedure.

Dated: February 19, 2009

GORDON & REES LLP

By: _____

Matthew D. Murphey

Kimberly D. Howatt

Attorneys for Plaintiff

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Typed Drawing

Word Mark	COMBOCLAVA
Goods and Services	IC 025. US 022 039. G & S: head wear. FIRST USE: 19940200. FIRST USE IN COMMERCE: 19940200
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	74539765
Filing Date	June 20, 1994
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	May 16, 1995
Registration Number	1991780
Registration Date	August 6, 1996
Owner	(REGISTRANT) Seirus Innovative Accessories, Inc. CORPORATION UTAH 2200 West Alexander Street Salt Lake City UTAH 84119
Attorney of Record	Thomas J. Rossa
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20061013.
Renewal	1ST RENEWAL 20061013
Live/Dead Indicator	LIVE

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