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14 JAY-Y ENTERPRISE CO., INC.

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 JAY-Y ENTERPRISE CO., INC.,

Case No. CV08-07600 FMC(RZx)

18 Plaintiff,

**SECOND AMENDED
COMPLAINT FOR
TRADEMARK INFRINGEMENT,
PATENT INFRINGEMENT, AND
RELATED CLAIMS**

19 v.

DEMAND FOR JURY TRIAL

20 TIME PLAZA, INC., AAB
21 ENTERPRISE, INC., TRIO BROTHERS
22 TRADING USA, INC., SOUTH BAY
23 TRADING, INC., SA TRADING, INC.,
24 WWW.SUNSHARKEYEWEAR.COM,
25 MICHAEL QIN, and DOES 1-10,

26 Defendants.

27 Plaintiff JAY-Y ENTERPRISE CO., INC. brings this Complaint against
28 Defendants TIME PLAZA, INC., AAB ENTERPRISE, INC., TRIO BROTHERS
TRADING USA, INC., SOUTH BAY TRADING, INC., SA TRADING, INC.,
WWW.SUNSHARKEYEWEAR.COM, and MICHAEL QIN (collectively,
“Defendants”), to halt Defendants’ ongoing infringement of Plaintiff’s valuable
trademark and patent rights. In support of its Complaint, Plaintiff alleges:

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Parties, Jurisdiction and Venue

1. Plaintiff is a California corporation with its principal place of business within this district, located at 632 New York Dr., Pomona, California 91768. Plaintiff is primarily in the business of designing, developing, marketing, distributing and selling sunglasses.

2. On information and belief, Defendant TIME PLAZA, INC. (“Time Plaza”) is a California corporation with its principal place of business within this district, located at 9329 Klingerman Street, South El Monte, California 91733.

3. On information and belief, Defendant AAB ENTERPRISE CO., INC. (“AAB Enterprise”) is a California corporation with its principal place of business within this district, located at 350 S. Los Angeles St., Los Angeles, CA 90013.

4. On information and belief, Defendant TRIO BROTHERS TRADING USA, INC. (“Trio Brothers Trading”) is a now-dissolved California corporation with its principal place of business within this district, located at 605 S Milliken Avenue Suite E, Ontario, California 91761. Trio Brothers Trading was operating at all times relevant herein and, on information and belief, was dissolved by affirmative action of the corporation pursuant to a Certificate of Dissolution dated June 19, 2008 in an attempt to shield itself and its shareholders from liability for its wrongful conduct. On information and belief, at all times relevant herein, the Chief Executive Officer, Secretary, Chief Financial Officer, sole director, and registered agent of Trio Brothers Trading was defendant Michael Qin.

5. This Complaint is brought against Trio Brothers Trading pursuant to Cal. Corp. Code section 2011 which authorizes this court to enforce causes of action against a dissolved corporation, whether arising before or after the dissolution of the corporation, to the extent of its undistributed assets, including, without limitation, insurance assets held by the corporation that may be available to satisfy claims. This Complaint is further brought against the unidentified

1 shareholders of Trio Brothers Trading, sued in the corporate name pursuant to Cal.
2 Corp. Code section 2011(a)(3), and as DOES 1-10.

3 6. On information and belief, Defendant SOUTH BAY TRADING INC.
4 (“South Bay Trading”) is a California corporation with its principal place of
5 business within this district, located at the same address as Trio Brothers Trading,
6 namely, 605 S Milliken Avenue Suite E, Ontario, California 91761. On
7 information and belief, at all times relevant herein, the Chief Executive Officer,
8 Secretary, Chief Financial Officer, sole director, and registered agent of South Bay
9 Trading is defendant Michael Qin.

10 7. On information and belief, Defendant SA TRADING, INC. (“SA
11 Trading”) is a California corporation with its principal place of business within this
12 district, located at 1523 Big Sur Lane, West Covina, California 91791. On
13 information and belief, at all times relevant herein, the Chief Executive Officer,
14 Secretary, Chief Financial Officer, sole director, and registered agent of SA
15 Trading is defendant Michael Qin. On information and belief, SA Trading
16 imported sunglasses from China in late June 2008, shortly after Trio Brothers
17 Trading was dissolved.

18 8. On information and belief, Defendant
19 WWW.SUNSHARKEYWEAR.COM (“Sun Shark Eyewear”) is an
20 unincorporated business operating within this district, located at the same address
21 as Trio Brothers and South Bay Trading, namely, 605 S Milliken Avenue Suite E,
22 Ontario, California 91761. The www.sunsharkeyewear.com domain name is
23 registered to both Trio Brothers Trading and Defendant Michael Qin. The Sun
24 Shark Eyewear web site home page prominently bears the word “Trio” above a
25 drawing of sunglasses and states in smaller type at the bottom of the page
26 “powered by: Trio Eyewear.”

27 9. On information and belief, Defendant MICHAEL QIN is an
28 individual residing within this district and doing business within this district at 605

1 S Milliken Avenue Suite E, Ontario, California 91761 and at 1523 Big Sur Lane,
2 West Covina, California 91791.

3 10. On information and belief, Sun Shark Eyewear was owned and
4 operated by Trio Brothers Trading until Trio Brothers Trading was dissolved. On
5 information and belief, Sun Shark Eyewear is now owned and operated by one or
6 more of the following: Michael Qin, South Bay Trading, or SA Trading.

7 11. On information and belief, the business that Trio Brothers Trading
8 engaged in prior to its dissolution is now being carried on by one or more of the
9 following successor entities or individuals: South Bay Trading, SA Trading, Sun
10 Shark Eyewear and Michael Qin. On information and belief, Trio Brothers
11 Trading, South Bay Trading, SA Trading, and Sun Shark Eyewear are all alter egos
12 of Michael Qin and of one another.

13 12. On information and belief each of the defendants Trio Brothers
14 Trading, South Bay Trading, SA Trading, Sun Shark Eyewear and Michael Qin
15 (collectively referred to herein as "Qin Defendants") have acted and are acting in
16 concert with each other to directly commit or to assist each other to commit the
17 wrongful activities alleged herein.

18 13. On information and belief, there has existed a unity of interest and
19 ownership between and among the Qin Defendants such that any individuality and
20 separateness between and among the Qin Defendants has ceased, and such that
21 each is the alter ego of the others; in that:

22 A. Each of the Qin Defendants has at certain relevant times
23 completely controlled, led, dominated, managed and operated each of the other Qin
24 Defendants, and has intermingled his, her or its own assets with those of the other
25 Qin Defendants to suit his, her or its convenience.

26 B. Each of the Qin Defendants has used assets of each of the other
27 Qin Defendants for his, her or its own use, and has caused or will cause the assets
28

1 of each of the other Qin Defendants to be transferred to him, her or it without
2 adequate consideration.

3 C. Each of the Qin Defendants is, and at all times herein
4 mentioned was, a mere shell, instrumentality, and conduit through which the other
5 Qin Defendants each has carried on its businesses, exercising complete control and
6 dominance of the Qin Defendants to such an extent that any individuality or
7 separateness of the defendants does not, and at all times herein mentioned did not,
8 exist.

9 D. Each of the Qin Defendants is, and at certain relevant times
10 was, a mere shell and sham without sufficient capital or assets, or that its
11 capitalization was trifling, compared with the business to be done and the risks of
12 loss attendant thereto.

13 E. Each of the Qin Defendants was intended, and was used by
14 each of the other Qin Defendants as a device to avoid the imposition of liability,
15 and for the purpose of substituting a financially insolvent company in his, her, or
16 its place.

17 F. Adherence to the fiction of the separate existence of each of the
18 Qin Defendants as a distinct entity would permit an abuse of the corporate
19 privilege and would sanction fraud and promote injustice in that certain of the Qin
20 Defendants have distributed or will distribute a substantial portion of their assets to
21 certain other Qin Defendants without adequate consideration, all for the purpose of
22 avoiding and preventing attachment and execution by creditors of each of the Qin
23 Defendants, including Plaintiff, thereby rendering each of the Qin Defendants
24 insolvent and unable to meet its obligations.

25 14. Plaintiff is ignorant of the true names and capacities of the Defendants
26 sued herein as Does 1 to 10, and therefore sue these Defendants by their fictitious
27 names. On information and belief, DOES 1-10 (the "Trio Shareholders") are the
28 individuals or entities that owned the shares of Trio Brothers Trading at the time of

1 its dissolution and/or are managing agents of Trio Brothers Trading with direct
2 involvement in the conduct alleged. Plaintiffs will amend this Complaint to allege
3 the true names and capacities of Does 1 to 10 when ascertained.

4 15. This Complaint is brought against the Trio Shareholders pursuant to
5 Cal. Corp. Code section 2011, which provides in pertinent part that, if assets of a
6 dissolved corporation have been distributed to the shareholders, a cause of action
7 against the corporation arising either before or after the dissolution may be
8 enforced against the shareholders to the extent of their pro rata share of the claim
9 or to the extent of the corporate assets distributed to them on dissolution,
10 whichever is less.

11 16. On information and belief, at all times relevant herein, each Defendant
12 was the agent, servant, employee, principal, successor, alter ego, and/or partner of
13 each other Defendant, acting within the course and scope of such capacities and
14 with the permission and consent of each other in doing the acts and engaging in the
15 conduct alleged herein. Wherever in this pleading reference is made to any act of a
16 Defendant, such allegation shall be deemed to mean the acts of the Defendants
17 named in that particular cause of action, and each of them, acting individually,
18 jointly and severally.

19 17. This Complaint arises under the Lanham Act, 15 U.S.C. § 1051, et.
20 seq., the United States Patent Act, 35 U.S.C. § 1, et. seq., California Business and
21 Professions Code Sections 14200 et. seq., and under the common law. This Court
22 has jurisdiction over Plaintiff's federal claims pursuant to 15 U.S.C. § 1121 and 28
23 U.S.C. §§ 1331 and 1338(a). Jurisdiction over Plaintiff's state law claims and
24 common law unfair competition claim lies under 28 U.S.C. §§ 1338(b) and
25 1367(a).

26 18. Venue is proper under 28 U.S.C. § 1391(b).

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1 Plaintiff's Trademark and Patent Rights

2 19. Plaintiff first adopted and began using the LOCS mark no later than
3 September 1, 2005. Plaintiff has used the LOCS mark as a trademark in
4 connection with sunglasses continuously since then.

5 20. Plaintiff applied for United States Trademark Registration No.
6 3,418,299 for the LOCS mark on January 26, 2006. United States Trademark
7 Registration No. 3,418,299 for the LOCS mark issued to Plaintiff on April 29,
8 2008. A copy of this registration is attached as Exhibit A.

9 21. Plaintiff is the owner of United States Patent Registration No.
10 D545,348 for a sunglasses design. A copy of this registration is attached as
11 Exhibit B.

12 Defendant Time Plaza's Wrongful Conduct

13 22. On information and belief, Defendant Time Plaza began using the
14 LOCS mark in connection with sunglasses on February 1, 2007, seventeen (17)
15 months after Plaintiff began selling sunglasses bearing the LOCS mark and more
16 than a year after Plaintiff applied for United States Trademark Registration No.
17 3,418,299 for the LOCS mark. Defendant Time Plaza is not, and never has been,
18 authorized by Plaintiff to use the LOCS mark.

19 23. On information and belief, Defendant Time Plaza applied for
20 California State Trademark Registration No. 0112431 for the LOCS mark for "sun-
21 glasses and eye-glasses" on February 27, 2007. A copy of this registration is
22 attached as Exhibit C.

23 24. On information and belief, Defendant Time Plaza had actual
24 knowledge of Plaintiff's use of the LOCS mark in connection with sunglasses at the
25 time Defendant adopted and began using the LOCS mark.

26 25. On information and belief, Defendant Time Plaza applied for and
27 registered California State Trademark Registration No. 0112431 for the LOCS
28 mark in violation of the Model State Trademark Law as adopted in California.

1 26. On information and belief, Defendant Time Plaza procured California
2 State Trademark Registration No. 0112431 for the LOCS mark by declaring that to
3 its “best knowledge and belief no other person firm, corporation, union or
4 association has the right to use said mark in this state, either in identical form or in
5 such near resemblance thereto as might be calculated to deceive or confuse”
6 knowing such that declaration was false and fraudulent.

7 27. Defendant Time Plaza’s use of the LOCS mark in connection with
8 sunglasses is likely to cause confusion or mistake or to deceive the consuming
9 public into believing that Defendant Time Plaza is affiliated, connected, sponsored,
10 approved, or otherwise associated with Plaintiff.

11 28. On information and belief, Defendant Time Plaza began selling
12 sunglasses that fall within the scope of Plaintiff’s United States Patent Registration
13 No. D545,348 after Plaintiff obtained United States Patent Registration No.
14 D545,348. Defendant Time Plaza is not, and never has been, authorized by
15 Plaintiff to sell sunglasses that fall within the scope of United States Patent
16 Registration No. D545,348.

17 29. Plaintiff requested in several letters and conversations since April
18 2008 that Defendant Time Plaza cease using the LOCS mark, assign California
19 State Trademark Registration No. 0112431 to Plaintiff, and cease selling
20 sunglasses that fall within the scope of Plaintiff’s United States Patent Registration
21 No. D545,348. Defendant Time Plaza has refused to comply with Plaintiff's
22 requests.

23 Defendant AAB Enterprise’s Wrongful Conduct

24 30. On information and belief, on or around March 16, 2009 Defendant
25 AAB Enterprise attempted to import twenty-one-thousand sunglasses bearing the
26 LOCS mark. In May, 2009 Plaintiff received the notice that such shipment was
27 seized by U.S. Customs and Border Protection.

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SECOND CLAIM FOR RELIEF
FALSE DESIGNATION OF ORIGIN
IN VIOLATION OF § 43(a) OF THE LANHAM ACT
(Against All Defendants)

44. Plaintiff repeats and realleges Paragraphs 1 to 41.

45. Defendants' activities, as alleged above, constitute unfair competition and false designation of origin in violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a).

THIRD CLAIM FOR RELIEF
IMPROPER REGISTRATION
IN VIOLATION OF MODEL STATE TRADEMARK LAW
(Against Defendant Time Plaza, Inc.)

46. Plaintiff repeats and realleges Paragraphs 1 to 41.

47. Defendant Time Plaza improperly and fraudulently obtained California State Trademark Registration No. 0112431 in violation of Article 2 Section 14205(f) of the Model State Trademark Law, as adopted in California (Bus & Prof. Code § 14205(f)).

48. Based on the foregoing, Defendant is liable to pay all damages sustained as a consequence of the filing or registration, pursuant to Section 14240 of the Model State Trademark Law, as adopted in California (Bus & Prof. Code § 14240).

49. Based on the foregoing, Plaintiff is entitled to an order canceling Defendant's registration, pursuant to Section 14254 of the Model State Trademark Law, as adopted in California (Bus & Prof. Code § 14254).

FOURTH CLAIM FOR RELIEF
COMMON LAW UNFAIR COMPETITION
(Against All Defendants)

50. Plaintiff repeats and realleges Paragraphs 1 to 41.

51. Defendant Time Plaza's and the Qin Defendants' activities, as alleged above, constitute unfair competition in violation of the common law.

1 (C) Directing Defendant Time Plaza, Defendant AAB Enterprise
2 and each Qin Defendant to file with the Court and serve on Plaintiff within
3 thirty days after entry and service on Defendant of such injunction a report
4 in writing under oath setting forth in detail the manner and form in which
5 Defendant has complied with the injunction;

6 (D) Requiring Defendant Time Plaza, Defendant AAB Enterprise
7 and the Qin Defendants to deliver up to Plaintiff for destruction all labels,
8 signs, prints, business cards, forms, packages, wrappers and all advertising
9 or promotional material in the possession, custody, or control of Defendants
10 bearing the LOCS mark or any other name or mark which is confusingly
11 similar to the LOCS mark, as well as all plates, molds, matrices, and other
12 means of making the same;

13 (E) Canceling California State Trademark Registration No.
14 0112431;

15 (F) Requiring Defendant Time Plaza and the Qin Defendants to
16 deliver up to Plaintiff for destruction all products infringing United States
17 Patent No. D545,348 and all advertising or promotional material for such
18 products in the possession, custody, or control of Defendants, as well as all
19 plates, molds, matrices, and other means of making the same;

20 (G) Awarding Plaintiff compensatory damages for its losses and an
21 accounting of Defendant Time Plaza's, Defendant AAB Enterprise's and the
22 Qin Defendants' profits from its acts of infringement and unfair competition,
23 including interest thereon, and trebling such award of profits and damages
24 because of the deliberateness and willfulness of Defendants' acts;

25 (H) Requiring Defendant Time Plaza, Defendant AAB Entprise and
26 the Qin Defendants to pay Plaintiff's reasonable costs and attorneys' fees
27 incurred in this action;
28

1 (I) With respect to the dissolved corporation Trio Brothers
2 Trading, enforcing the judgment of this Court to the extent of Trio Brothers
3 Trading's undistributed assets, including, without limitation, insurance
4 assets held by Trio Brothers Trading that may be available to satisfy claims;

5 (J) With respect to the dissolved corporation Trio Brothers
6 Trading, enforcing the judgment of this Court against each of the Trio
7 Shareholders to the extent of their pro rata share of the claim or to the extent
8 of the corporate assets distributed to them on dissolution, whichever is less;
9 and

10 (K) Awarding Plaintiff such other and further relief as this Court
11 deems just and proper.

12 Respectfully Submitted,

13 Dated: May 26, 2009

14 OVERHAUSER LAW OFFICES, LLC

15
16 By: s/Paul B. Overhauser
17 Paul B. Overhauser, Esq.

18 Gregg A. Rapoport
19 BUSINESS LEGAL PARTNERS,
20 Attorneys at Law, Law Corp.

21 Attorneys for Plaintiff
22 JAY-Y ENTERPRISE CO., INC.

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

Dated: May 26, 2009

OVERHAUSER LAW OFFICES, LLC

By: s/Paul B. Overhauser
Paul B. Overhauser, Esq.

Gregg A. Rapoport
BUSINESS LEGAL PARTNERS,
Attorneys at Law, Law Corp.

Attorneys for Plaintiff
JAY-Y ENTERPRISE CO., INC.

Exhibit A	Plaintiff's US Trademark Reg. No. 3,418,299 for LOCS
Exhibit B	Plaintiff's US Design Patent Reg. No. D545,348 for eyeglasses
Exhibit C	Defendant Time Plaza's California Trademark Reg. No. 0112431 for LOCS

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 3,418,299

United States Patent and Trademark Office

Registered Apr. 29, 2008

TRADEMARK
PRINCIPAL REGISTER

JAY-Y ENTERPRISE CO., INC. (CALIFORNIA CORPORATION)
632 NEW YORK DRIVE
POMONA, CA 91768

THE MARK CONSISTS OF THE LETTERS L, O, C,
AND S IN SPECIAL STYLIZED FONT.

FOR: SUNGLASSES, IN CLASS 9 (U.S. CLS. 21, 23,
26, 36 AND 38).

SER. NO. 78-800,219, FILED 1-26-2006.

FIRST USE 9-1-2005; IN COMMERCE 9-1-2005.

JOHN WILKE, EXAMINING ATTORNEY



US00D545348S

(12) **United States Design Patent** (10) Patent No.: **US D545,348 S**
Chen (45) Date of Patent: **** Jun. 26, 2007**

(54) **EYEGLASSES**
 (75) Inventor: **Ward Chen, Pomona, CA (US)**
 (73) Assignee: **Jay-Y Enterprises, Inc., Pomona, CA (US)**
 (**) Term: **14 Years**
 (21) Appl. No.: **29/248,345**
 (22) Filed: **Aug. 11, 2006**
 (51) **LOC (8) Cl. 16-06**
 (52) **U.S. Cl. D16/326**
 (58) **Field of Classification Search D16/300-330, D16/101, 332-338; D29/109-110; D24/110.2; 351/41, 44, 51-52, 62, 158, 92, 103-111, 351/156, 61, 114-119, 121-123; 2/426-432, 2/447-449, 441, 436, 434-437**
 See application file for complete search history.

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(Continued)
Primary Examiner—Raphael Barkai
 (74) *Attorney, Agent, or Firm*—Overhauser Law Offices, LLC; Paul B. Overhauser; Dennis S. Schell

(57) **CLAIM**
 I claim the ornamental design of the eyeglasses, as shown.

DESCRIPTION
 FIG. 1 is a perspective view of the eyeglasses.
 FIG. 2 is a front view of the eyeglasses.
 FIG. 3 is a top view of the eyeglasses.
 FIG. 4 is a side view of the eyeglasses; and,
 FIG. 5 is a side view of the eyeglasses.

1 Claim, 3 Drawing Sheets

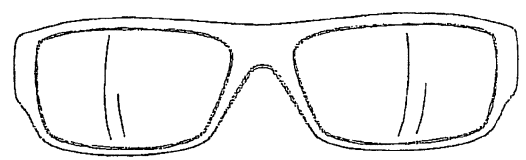
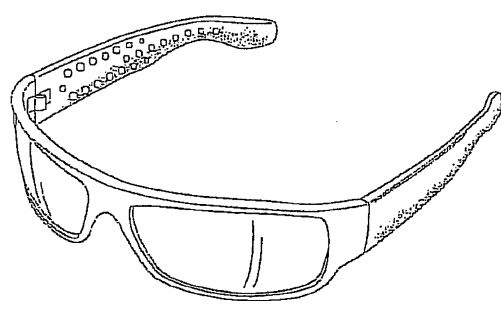


Exhibit B

US D545,348 S

Page 2

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Sheet 1 of 3

US D545,348 S

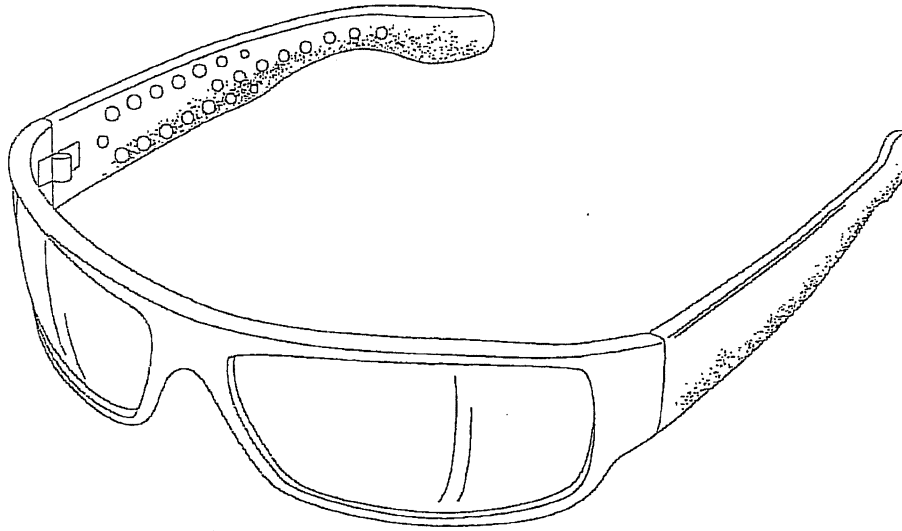


Fig. 1

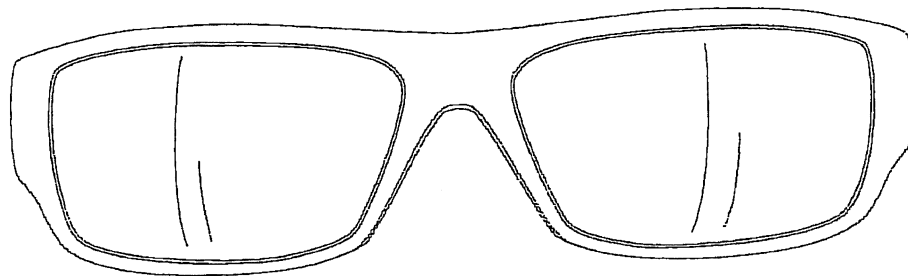


Fig. 2

U.S. Patent

Jun. 26, 2007

Sheet 2 of 3

US D545,348 S

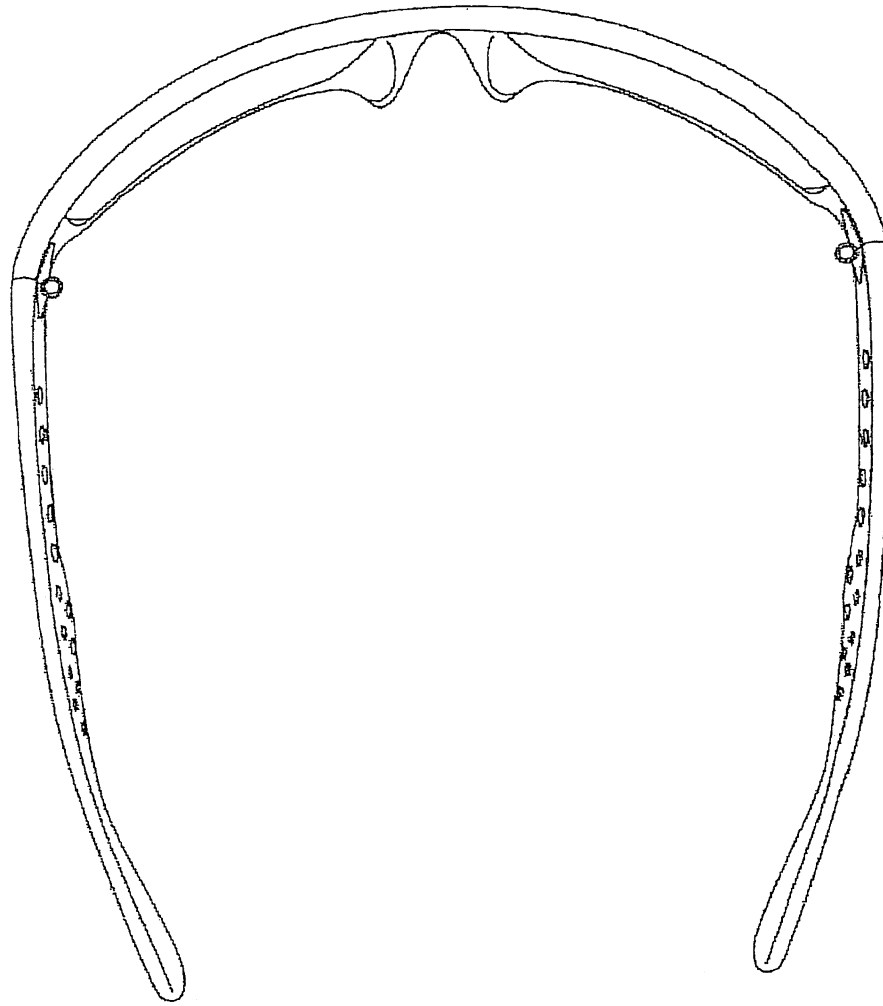


Fig.3

U.S. Patent

Jun. 26, 2007

Sheet 3 of 3

US D545,348 S

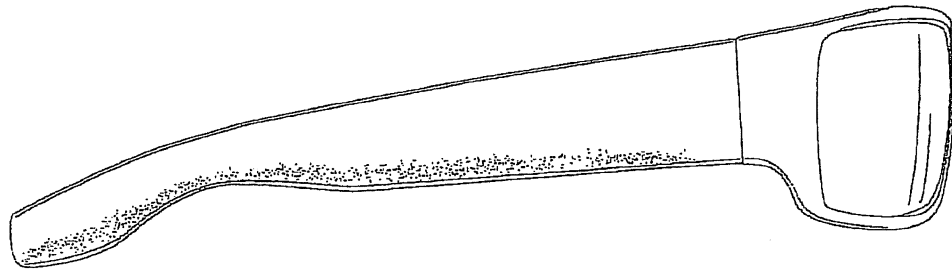


Fig. 4

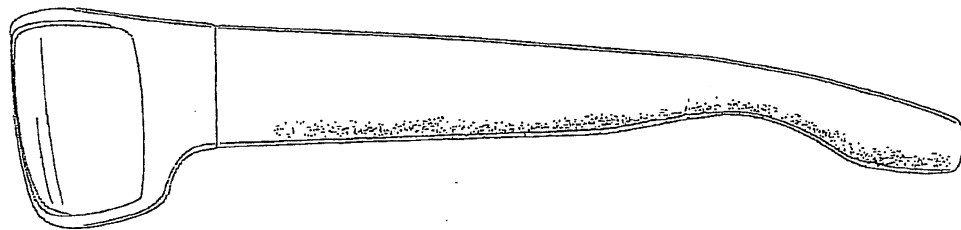


Fig. 5

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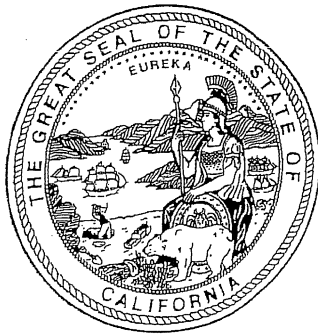
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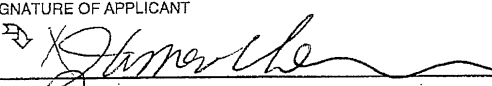
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