

ORIGINAL

FILED

08 AUG 18 AM 10:04

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

BY: *Ece* DEPUTY

1 Kit M. Stetina (SBN 82,977)
2 Stephen Z. Vegh (SBN 174,713)
3 STETINA BRUNDA GARRED & BRUCKER
4 75 Enterprise, Suite 250
5 Aliso Viejo, CA 92656
6 Email: litigate@stetinalaw.com
7 Tel: (949) 855-1246
8 Fax: (949) 855-6371

9 Attorneys for Plaintiff
10 SPY OPTIC, INC.

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

STETINA BRUNDA GARRED & BRUCKER
75 ENTERPRISE, SUITE 250
ALISO VIEJO, CALIFORNIA 92656
PHONE: (949) 855-1246; FACSIMILE: (949) 855-6371

13 SPY OPTIC, INC., a California corporation,
14 Plaintiff

15 vs.

16 JAY-Y ENTERPRISE CO., INC., a
17 California corporation; 7-ELEVEN, INC., a
18 Texas corporation; and DOES 1 through 5,
19 inclusive

20 Defendants

Case No. **U8 CV 1508 BEN LSP**

**COMPLAINT FOR PATENT
INFRINGEMENT OF U.S.
PATENT NOS.**

- 1. **D534,573**
- 2. **D564,570**
- 3. **D557,730**

DEMAND FOR JURY TRIAL

21 COMPLAINT

22
23 Plaintiff, Spy Optic, Inc., for its Complaint against Jay-Y Enterprise Co., Inc.
24 and 7-Eleven, Inc. states and alleges as follows:

25 PARTIES

26 1. Plaintiff, Spy Optic, Inc. (hereinafter "Spy Optic" or "Plaintiff") is a
27 corporation organized and existing under the laws of the state of California, and
28

CR

STEFINA BRUNDA GARRED & BRUCKER
75 ENTERPRISE, SUITE 250
ALISO VIEJO, CALIFORNIA 92656
PHONE: (949) 855-1246; FACSIMILE: (949) 855-6371

1 having a principal place of business at 2070 Las Palmas Drive, Carlsbad, California
2 92009.

3 2. Upon information and belief, Defendant Jay-Y Enterprise Co., Inc. is a
4 corporation organized and existing under the laws of the state of California
5 (hereinafter "Jay-Y"), and having a principal place of business at 632 New York
6 Drive, Pomona, California 91768.

7 3. Upon information and belief, Defendant 7-Eleven, Inc. is a corporation
8 organized and existing under the laws of the state of Texas (hereinafter "7-11"), and
9 having a principal place of business at 1722 Routh Street, Suite 1000, Dallas, Texas
10 75201.

11 4. The true names and capacities of the Defendants named herein as DOES
12 1 through 5, whether individual, corporate, associate, or otherwise, are unknown to
13 Plaintiff, who therefore sues said Defendants by said fictitious names. Plaintiff is
14 informed and believes, and thereon alleges, that each of the Defendants designated
15 herein as DOE is legally responsible for the events and happenings hereinafter
16 alleged and legally caused injury and damages proximately thereby to Plaintiff as
17 herein alleged. Plaintiff will seek leave to amend the Complaint when the true names
18 and capacities of said DOE Defendants have been ascertained. Jay-Y, 7-11 and
19 DOES 1 through 10 are hereinafter collectively referred to as "Defendants."

20 5. Plaintiff is informed and believes, and on that basis alleges, that each of
21 the Defendants participated in and is in some manner responsible for the acts
22 described in this Complaint and any damages resulting therefrom.

23 6. Plaintiff is informed and believes, and on that basis alleges, that each of
24 the Defendants has acted in concert and participation with each other concerning each
25 of the claims in this Complaint.

26 7. Plaintiff is informed and believes, and on that basis alleges, that each of
27 the Defendants were empowered to act as the agent, servant and/or employees of each
28 of the other Defendants, and that all the acts alleged to have been done by each of

1 them were authorized, approved, and/or ratified by each of the other Defendants.

2 **JURISDICTION AND VENUE**

3 8. This action, as hereinafter more fully appears, arises under the patent
4 laws of the United States of America (35 U.S.C. §§ 101 *et seq.*), and is for patent
5 infringement. Jurisdiction for all counts is based upon 28 U.S.C. §§1331, 1338(a).

6 9. Venue is proper under 28 U.S.C. §§1391(b) and (c) as Defendants reside
7 in this judicial district and have committed acts of infringement in this judicial
8 district.

9 **BACKGROUND OF THE CONTROVERSY**

10 10. Plaintiff is the owner of all right, title and interest in and to United States
11 Design Patent No. D534,573 entitled "Sunglass" (hereinafter "the '573 patent"). A
12 true and correct copy of the '573 patent is attached hereto as Exhibit 1. The '573
13 patent was duly and lawfully issued on January 2, 2007 and is presently valid and in
14 full effect.

15 11. Plaintiff is the owner of all right, title and interest in and to United States
16 Design Patent No. D564,570 entitled "Sunglass" (hereinafter "the '570 patent"). A
17 true and correct copy of the '570 patent is attached hereto as Exhibit 2. The '570
18 patent was duly and lawfully issued on March 18, 2008 and is presently valid and in
19 full effect.

20 12. Plaintiff is the owner of all right, title and interest in and to United States
21 Design Patent No. D557,730 entitled "Sunglass" (hereinafter "the '730 patent"). A
22 true and correct copy of the '730 patent is attached hereto as Exhibit 3. The '730
23 patent was duly and lawfully issued on December 18, 2007 and is presently valid and
24 in full effect. (The '573, '570 and '730 patents hereinafter collectively referred to as
25 the "patents-in-suit").

26 13. Upon information and belief, Defendants have been and are infringing
27 the patents-in-suit within this district and elsewhere in the United States by making,
28 using, selling, importing, distributing and/or offering for sale products that infringe

STETINA BRUNDA GARRED & BRUCKER
75 ENTERPRISE, SUITE 250
ALISO VIEJO, CALIFORNIA 92656
PHONE: (949) 855-1246; FACSIMILE: (949) 855-6371

1 the claims of the patents-in-suit.

2 14. On June 2, 2008, Plaintiff put Defendants Jay-Y and 7-11 on formal
3 notice of the infringing products and one of Plaintiff's patents. A true and correct
4 copy of this letter is attached hereto as Exhibit "4".

5 15. After such notice, it is believed that Defendants still continue to infringe
6 the patents-in-suit within this district and elsewhere in the United States by making,
7 using, selling, importing, distributing and/or offering for sale products that infringe
8 the claims of the patents-in-suit.

9 16. Defendants infringing products are identified as the Biohazard 6656,
10 Biohazard 6645, LOCS 9018, and Biohazard 6636. A copy of Defendants products
11 are attached hereto as Exhibit "5", respectively.

12 **FIRST CLAIM FOR RELIEF**

13 **(Patent Infringement of U.S. Patent No. D534,573)**

14 17. Plaintiff realleges and repeats the allegations of paragraphs 1-16 above.

15 18. Plaintiff is the owner of all right, title and interest in and to United States
16 Design Patent No. D534,573 entitled "Sunglass" (hereinafter "the '573 patent"). A
17 true and correct copy of the '573 patent is attached hereto as Exhibit 1. The '573
18 patent was duly and lawfully issued on January 2, 2007 and is presently valid and in
19 full effect.

20 19. Upon information and belief, Defendants have been and are infringing
21 the '573 patent within this district and elsewhere in the United States by making,
22 using, selling, importing, distributing and/or offering for sale products that infringe
23 the claims of the '573 patent.

24 20. Upon information and belief, by the acts of patent infringement herein
25 complained of, the Defendants have made substantial profits to which they are not
26 equitably entitled.

27 21. By reason of the aforementioned acts of the Defendants, the Plaintiff has
28 suffered great detriment in a sum which exceeds this Court's jurisdictional amount,

STETINA BRUNDA GARRED & BRUCKER
75 ENTERPRISE, SUITE 250
ALISO VIEJO, CALIFORNIA 92656
PHONE: (949) 855-1246; FACSIMILE: (949) 855-6371

1 but which cannot be ascertained at this time.

2 22. Upon information and belief, Defendants continue to infringe Plaintiff's
3 '573 patent, and will continue to infringe Plaintiff's '573 patent, and will continue to
4 infringe Plaintiff's patents-in-suit to Plaintiff's irreparable harm, unless enjoined by
5 this Court.

6 23. Upon information and belief, Defendants' were aware of the patents-in-
7 suit and the past and continuing infringement of the '573 patent by Defendants are
8 willful, entitling Plaintiff to enhanced damages.

9 **SECOND CLAIM FOR RELIEF**

10 **(Patent Infringement of U.S. Patent No. D564,570)**

11 24. Plaintiff realleges and repeats the allegations of paragraphs 1-23 above.

12 25. Plaintiff is the owner of all right, title and interest in and to United States
13 Design Patent No. D564,570 entitled "Sunglass" (hereinafter "the '570 patent"). A
14 true and correct copy of the '570 patent is attached hereto as Exhibit 2. The '570
15 patent was duly and lawfully issued on March 18, 2008 and is presently valid and in
16 full effect.

17 26. Upon information and belief, Defendants have been and are infringing
18 the '570 patent within this district and elsewhere in the United States by making,
19 using, selling, importing, distributing and/or offering for sale products that infringe
20 the claims of the '570 patent.

21 27. Upon information and belief, by the acts of patent infringement herein
22 complained of, the Defendants have made substantial profits to which they are not
23 equitably entitled.

24 28. By reason of the aforementioned acts of the Defendants, the Plaintiff has
25 suffered great detriment in a sum which exceeds this Court's jurisdictional amount,
26 but which cannot be ascertained at this time.

27 29. Upon information and belief, Defendants continue to infringe Plaintiff's
28 '570 patent, and will continue to infringe Plaintiff's '570 patent, and will continue to

STETINA BRUNDA GARRED & BRUCKER
75 ENTERPRISE, SUITE 250
ALISO VIEJO, CALIFORNIA 92656
PHONE: (949) 855-1246; FACSIMILE: (949) 855-6371

1 infringe Plaintiff's patents-in-suit to Plaintiff's irreparable harm, unless enjoined by
2 this Court.

3 30. Upon information and belief, Defendants' were aware of the patents-in-
4 suit and the past and continuing infringement of the '570 patent by Defendants are
5 willful, entitling Plaintiff to enhanced damages.

6 **THIRD CLAIM FOR RELIEF**

7 **(Patent Infringement of U.S. Patent No. D557,731)**

8 31. Plaintiff realleges and repeats the allegations of paragraphs 1-30 above.

9 32. Plaintiff is the owner of all right, title and interest in and to United States
10 Design Patent No. D557,730 entitled "Sunglass" (hereinafter "the '730 patent"). A
11 true and correct copy of the '730 patent is attached hereto as Exhibit 3. The '730
12 patent was duly and lawfully issued on December 18, 2007 and is presently valid and
13 in full effect.

14 33. Upon information and belief, Defendants have been and are infringing
15 the '730 patent within this district and elsewhere in the United States by making,
16 using, selling, importing, distributing and/or offering for sale products that infringe
17 the claims of the '730 patent.

18 34. Upon information and belief, by the acts of patent infringement herein
19 complained of, the Defendants have made substantial profits to which they are not
20 equitably entitled.

21 35. By reason of the aforementioned acts of the Defendants, the Plaintiff has
22 suffered great detriment in a sum which exceeds this Court's jurisdictional amount,
23 but which cannot be ascertained at this time.

24 36. Upon information and belief, Defendants continue to infringe Plaintiff's
25 '730 patent, and will continue to infringe Plaintiff's '730 patent, and will continue to
26 infringe Plaintiff's patents-in-suit to Plaintiff's irreparable harm, unless enjoined by
27 this Court.

28 37. Upon information and belief, Defendants' were aware of the patents-in-

STETINA BRUNDA GARRED & BRUCKER
75 ENTERPRISE, SUITE 250
ALISO VIEJO, CALIFORNIA 92656
PHONE: (949) 855-1246; FACSIMILE: (949) 855-6371

1 suit and the past and continuing infringement of the '730 patent by Defendants are
2 willful, entitling Plaintiff to enhanced damages.

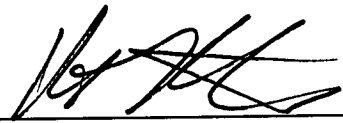
3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- 5 A. A judgment that Defendants have infringed the patents-in-suit.
- 6 B. A judgment that Defendants' infringement of the patents-in-suit have
7 been willful.
- 8 C. A preliminary and permanent injunction, pursuant to 35 U.S.C. §283,
9 enjoining Defendants, and all persons in active concert or participation
10 with them, from any further acts of infringement of the patents-in-suit.
- 11 D. An order, pursuant to 35 U.S.C. §284, awarding Plaintiff damages
12 adequate to compensate Plaintiff for Defendants' infringement of the
13 patents-in-suit, in an amount to be determined at trial, but in no event
14 less than a reasonable royalty.
- 15 E. An order, pursuant to 35 U.S.C. §284, trebling all damages awarded to
16 Plaintiff based on Defendants' willful infringement of the patents-in-suit.
- 17 F. An order, pursuant to 35 U.S.C. §285, finding that this is an exceptional
18 case and awarding to Plaintiff its reasonable attorneys' fees incurred in
19 this action.
- 20 G. That Plaintiff have such other and further relief that the court may deem
21 just and proper.

22 Dated: August 15, 2008

STETINA BRUNDA GARRED & BRUCKER

23
24
25 By: 
26 Kit M. Stetina
27 Attorneys for Plaintiff
28 SPY OPTIC, INC.

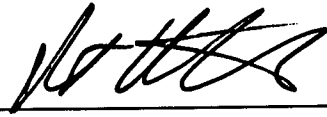
STETINA BRUNDA GARRED & BRUCKER
75 ENTERPRISE, SUITE 250
ALISO VIEJO, CALIFORNIA 92656
PHONE: (949) 855-1246; FACSIMILE: (949) 855-6371

DEMAND FOR JURY TRIAL

Plaintiff, Spy Optic, Inc., hereby demands a jury trial in this action.

Dated: August 15, 2008

STETINA BRUNDA GARRED & BRUCKER

By: 
Kit M. Stetina
Attorneys for Plaintiff
SPY OPTIC, INC.

T:\Client Documents\SPYNO\333L\Complaint.doc

STETINA BRUNDA GARRED & BRUCKER
75 ENTERPRISE, SUITE 250
ALISO VIEJO, CALIFORNIA 92656
PHONE: (949) 855-1246; FACSIMILE: (949) 855-6371

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



US00D534573S

(12) **United States Design Patent** (10) **Patent No.:** **US D534,573 S**
Mage (45) **Date of Patent:** **** Jan. 2, 2007**

(54) **SUNGLASS**
 (75) **Inventor:** **Jerome J. M. Mage**, Beverly Hills, CA (US)

D420,035 S * 2/2000 Hartman D16/325
 D434,789 S * 12/2000 Lane D16/337
 D456,038 S * 4/2002 Arnette D16/326
 D488,499 S * 4/2004 Mage D16/326
 D500,781 S * 1/2005 Mage D16/335

(73) **Assignee:** **Spy Optics, Inc.**, Carlsbad, CA (US)

* cited by examiner

(**) **Term:** **14 Years**

Primary Examiner—Raphael Barkai

(21) **Appl. No.:** **29/234,271**

(74) *Attorney, Agent, or Firm*—Stetina Brunda Garred & Brucker

(22) **Filed:** **Jul. 15, 2005**

(57) **CLAIM**

(51) **LOC (8) Cl.** **16-06**

The ornamental design for a sunglass, as shown and described.

(52) **U.S. Cl.** **D16/326; D16/335**

(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, 351/130, 61, 114-119, 121-123; 2/426-432, 2/447-449, 441, 434-437

DESCRIPTION

See application file for complete search history.

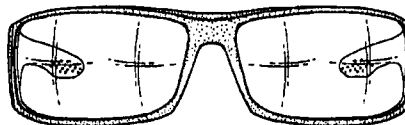
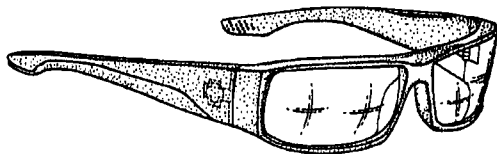
FIG. 1 is a front perspective view of the sunglass of the present invention showing my new design with the broken lines forming no part of the claimed design;
 FIG. 2 is a front elevational view thereof;
 FIG. 3 is left side elevational view thereof with the broken lines forming no part of the claimed design;
 FIG. 4 is rear plan view thereof;
 FIG. 5 is a top plan view thereof; and,
 FIG. 6 is bottom plan view thereof.

(56) **References Cited**

U.S. PATENT DOCUMENTS

D213,595 S * 3/1969 Simon D16/326
 D220,291 S * 3/1971 Simon D16/320
 D410,022 S * 5/1999 Conway D16/327

1 Claim, 2 Drawing Sheets



U.S. Patent

Jan. 2, 2007

Sheet 1 of 2

US D534,573 S

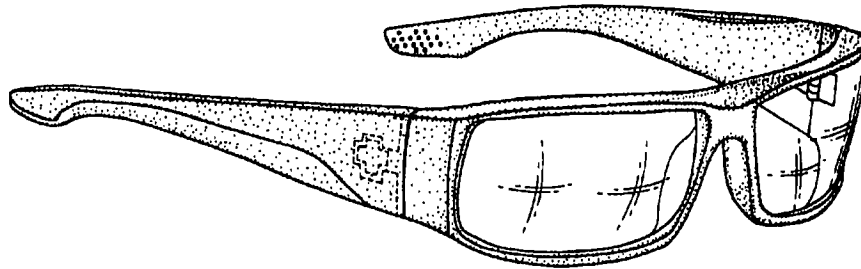


Fig. 1

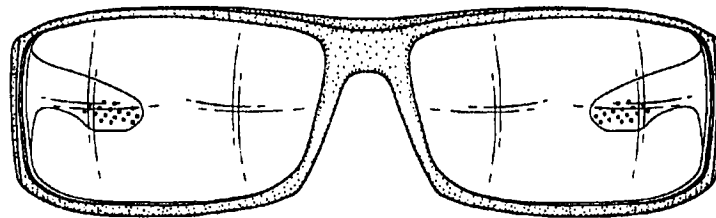


Fig. 2

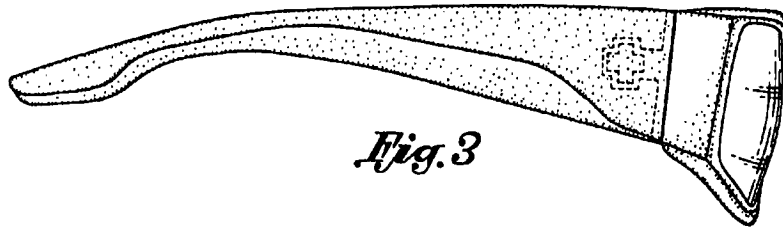


Fig. 3

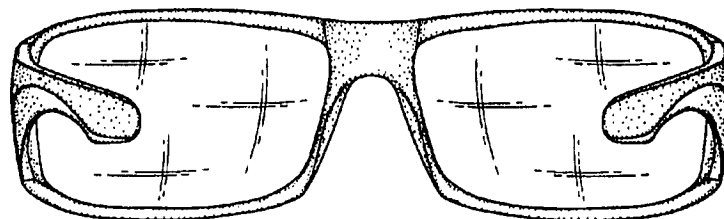


Fig. 4

U.S. Patent

Jan. 2, 2007

Sheet 2 of 2

US D534,573 S

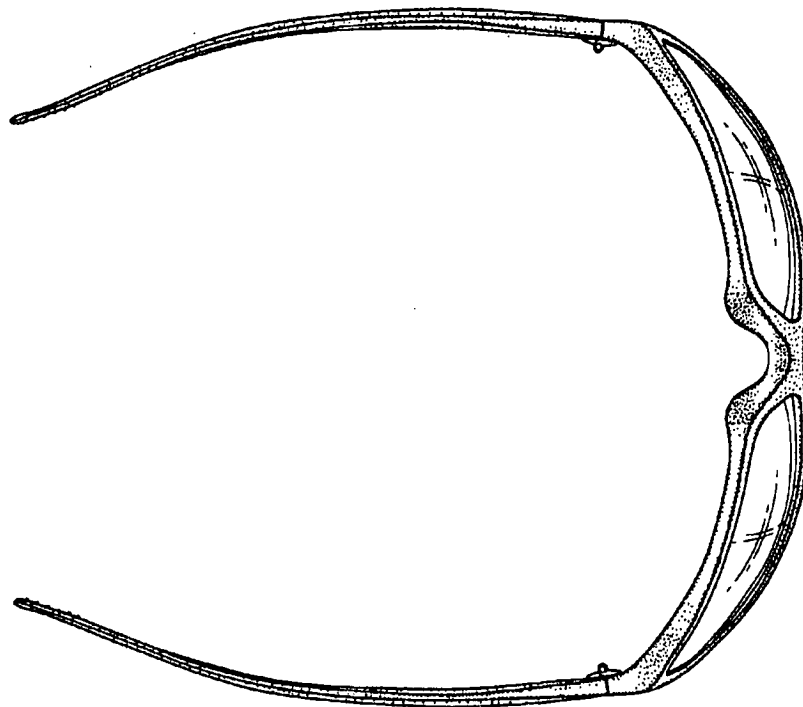


Fig. 6

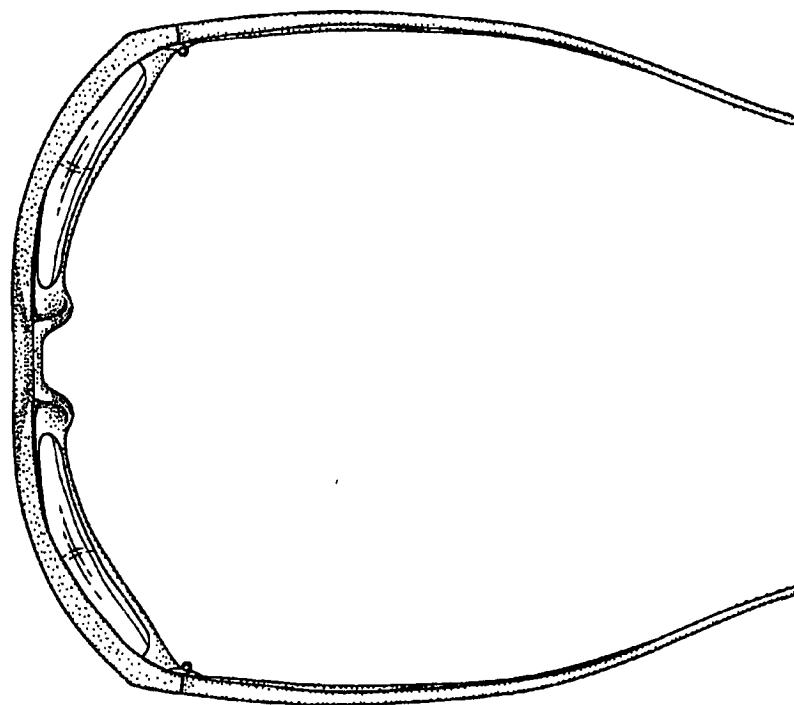


Fig. 5



US00D564570S

(12) United States Design Patent
Mage

(10) **Patent No.:** **US D564,570 S**
(45) **Date of Patent:** **** Mar. 18, 2008**

(54) **SUNGLASS**
(75) **Inventor:** **Jerome J. M. Mage**, Los Angeles, CA (US)
(73) **Assignee:** **Spy Optic, Inc.**, Carlsbad, CA (US)
(**) **Term:** **14 Years**
(21) **Appl. No.:** **29/288,390**
(22) **Filed:** **Jun. 8, 2007**

D537,467 S * 2/2007 Teng D16/326
D539,830 S * 4/2007 Saderholm et al. D16/326
D543,573 S * 5/2007 Chuang D16/323
D547,794 S * 7/2007 Jannard et al. D16/326
D548,269 S * 8/2007 Baden et al. D16/313
D548,767 S * 8/2007 Jannard et al. D16/309
D549,270 S * 8/2007 Daems et al. D16/321
D552,154 S * 10/2007 Arnette D16/326
D552,665 S * 10/2007 Mage D16/326
D553,176 S * 10/2007 Yee et al. D16/335
D554,689 S * 11/2007 Jannard et al. D16/326

* cited by examiner

(51) **LOC (8) Cl.** **16-06**
(52) **U.S. Cl.** **D16/325; D16/335**
(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, 434-437**
See application file for complete search history.

Primary Examiner—Raphael Barkai
(74) *Attorney, Agent, or Firm*—Stetina Brunda Garred & Brucker

(57) **CLAIM**

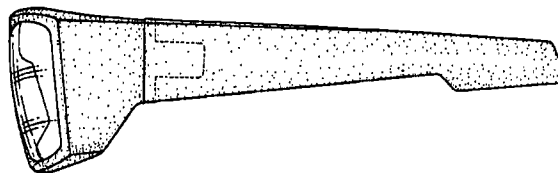
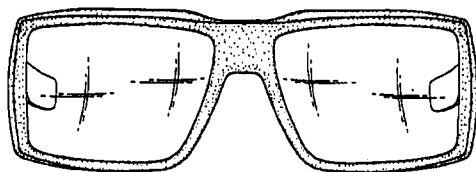
The ornamental design for a sunglass, as shown and described.

DESCRIPTION

FIG. 1 is a front top perspective view of the sunglass of the present invention showing my new design;
FIG. 2 is a front elevational view thereof;
FIG. 3 is a right side view thereof;
FIG. 4 is a rear elevational view thereof;
FIG. 5 is a bottom plan view thereof; and,
FIG. 6 is a top plan view thereof.
The broken lines shown in FIG. 3 are for illustrative purposes only and form no part of the claimed design.

1 Claim, 2 Drawing Sheets

- (56) **References Cited**
U.S. PATENT DOCUMENTS
D210,418 S * 3/1968 Bloch D16/326
3,689,136 A * 9/1972 Atamian 351/44
D335,133 S * 4/1993 Langley D16/325
D336,097 S * 6/1993 Wiedner D16/324
D345,744 S * 4/1994 Hirschman D16/325
D420,035 S * 2/2000 Hartman D16/325
D518,847 S * 4/2006 Teng D16/326
D532,033 S * 11/2006 Mangum D16/323
D534,573 S * 1/2007 Mage D16/335
D534,574 S * 1/2007 Lane D16/329
D536,027 S * 1/2007 Paulson D16/335
D536,028 S * 1/2007 Paulson D16/335



U.S. Patent

Mar. 18, 2008

Sheet 1 of 2

US D564,570 S

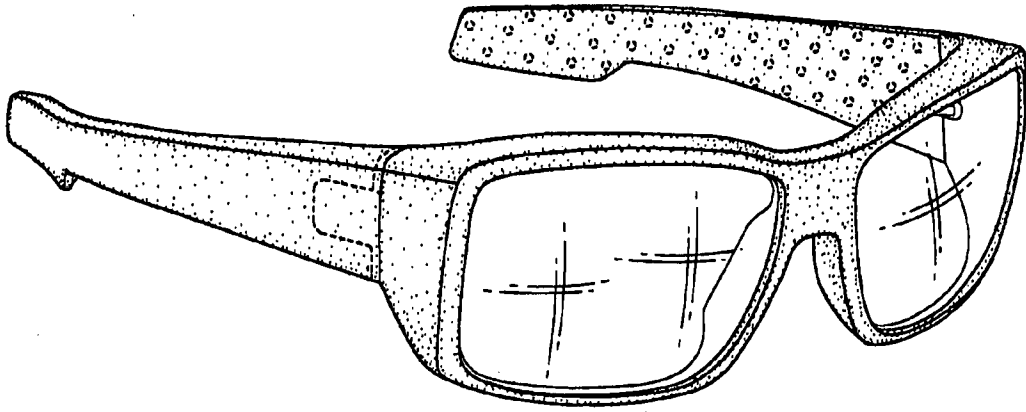


Fig. 1

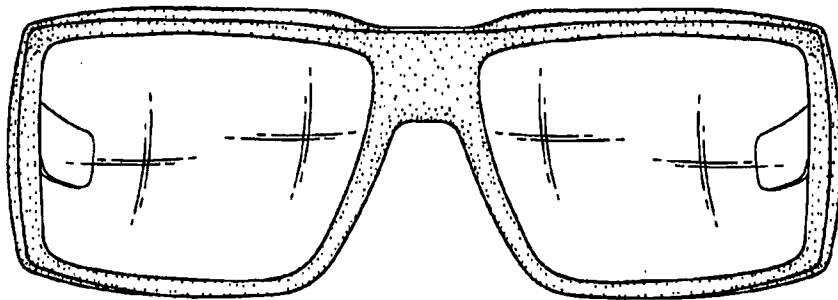


Fig. 2

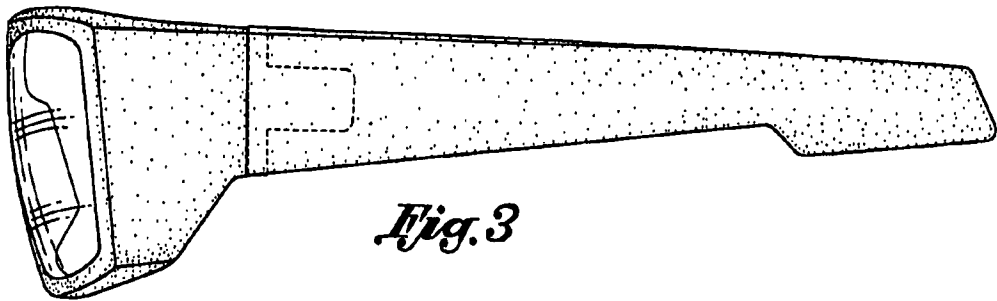


Fig. 3

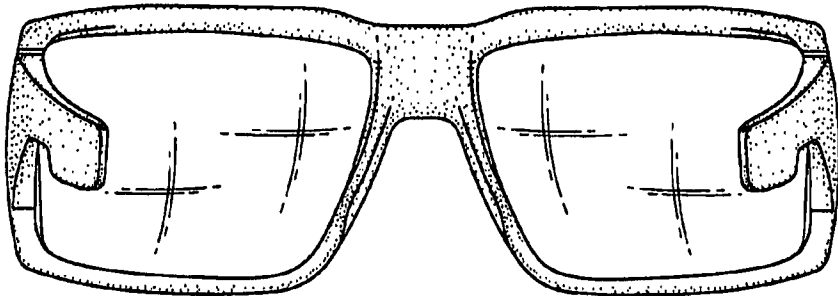


Fig. 4

U.S. Patent

Mar. 18, 2008

Sheet 2 of 2

US D564,570 S

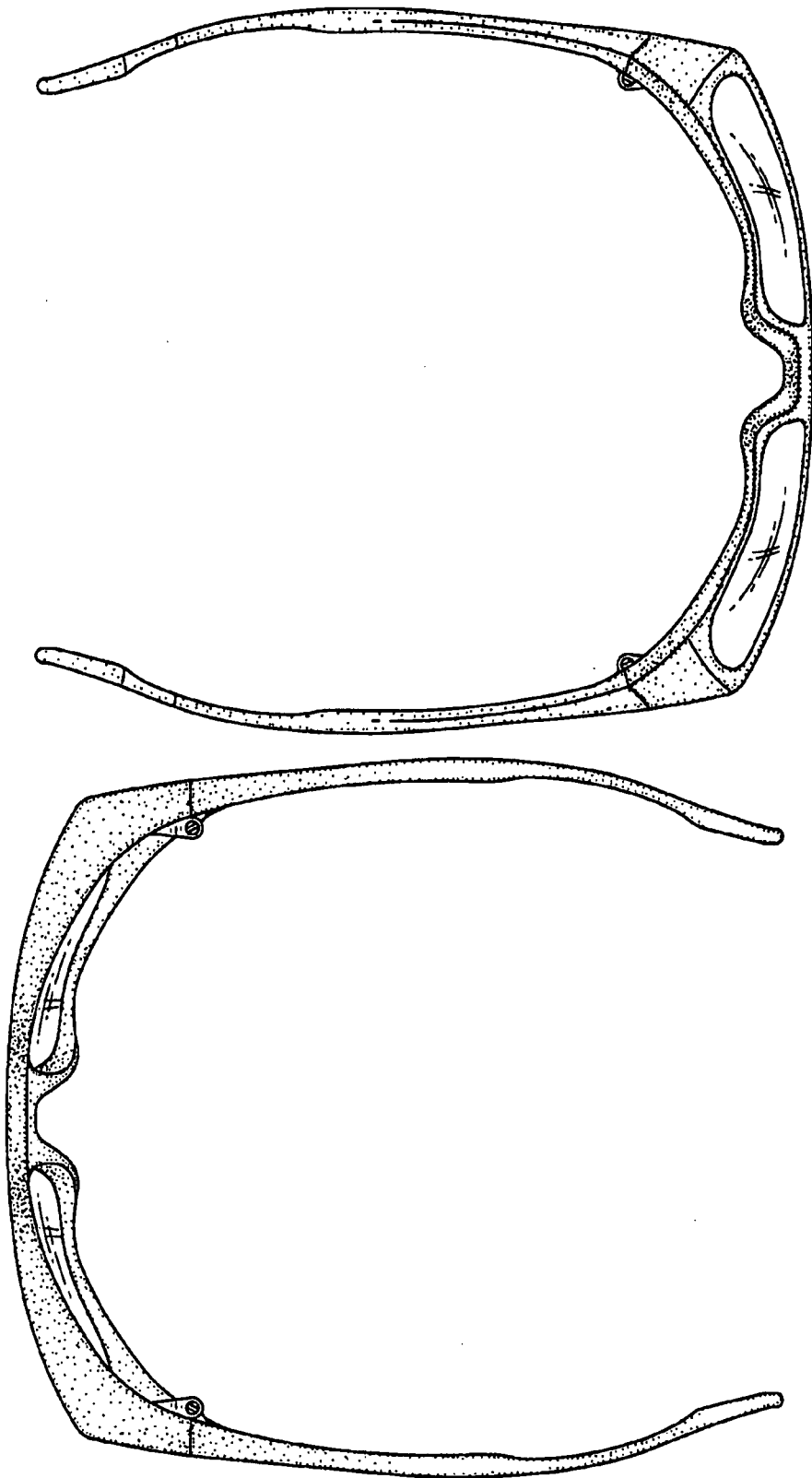


Fig. 6

Fig. 5



US00D557730S

(12) **United States Design Patent**
Mage

(10) **Patent No.:** US D557,730 S
(45) **Date of Patent:** ** Dec. 18, 2007

(54) **SUNGLASS**
(75) **Inventor:** Jerome J. M. Mage, Beverly Hills, CA (US)

D488,499 S * 4/2004 Mage D16/326
D500,781 S * 1/2005 Mage D16/326
D532,033 S * 11/2006 Mangum D16/323
D534,573 S * 1/2007 Mage D16/335
D539,830 S * 4/2007 Saderholm et al. D16/326

(73) **Assignee:** Spy Optic, Inc., Carlsbad, CA (US)

* cited by examiner

(**) **Term:** 14 Years

Primary Examiner—Raphael Barkai
(74) *Attorney, Agent, or Firm*—Stentina Brunda Garred & Brucker

(21) **Appl. No.:** 29/267,913

(22) **Filed:** Oct. 25, 2006

(57) **CLAIM**

(51) **LOC (8) Cl.** 16-06
(52) **U.S. Cl.** D16/326; D16/335
(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, 434-437
See application file for complete search history.

The ornamental design for a sunglass, as shown and described.

DESCRIPTION

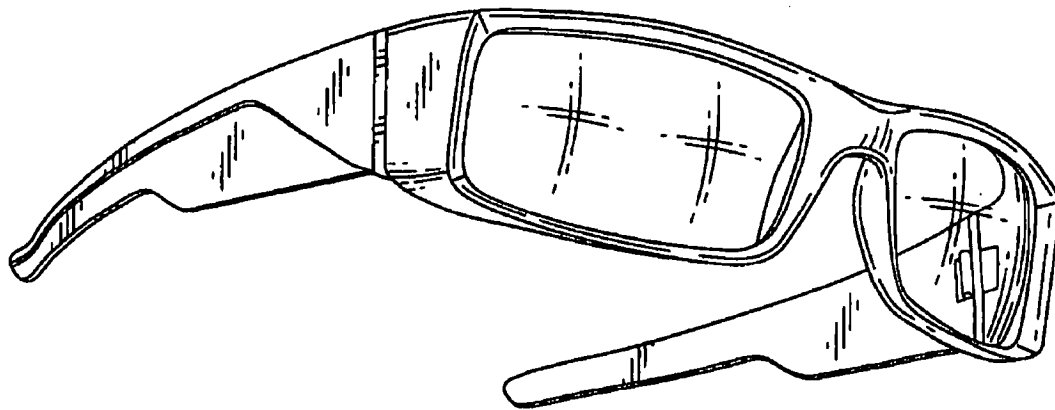
FIG. 1 is a front perspective view of the sunglass of the present invention showing my new design;
FIG. 2 is a front elevational view thereof;
FIG. 3 is a side elevational view thereof;
FIG. 4 is a rear elevational view thereof;
FIG. 5 is a top plan view thereof; and,
FIG. 6 is a bottom plan view thereof.

(56) **References Cited**

U.S. PATENT DOCUMENTS

3,689,136 A * 9/1972 Atamian 351/44
D397,351 S * 8/1998 Simioni D16/326
D420,035 S * 2/2000 Hartman D16/325
D425,103 S * 5/2000 Yee et al. D16/326

1 Claim, 2 Drawing Sheets



U.S. Patent

Dec. 18, 2007

Sheet 1 of 2

US D557,730 S

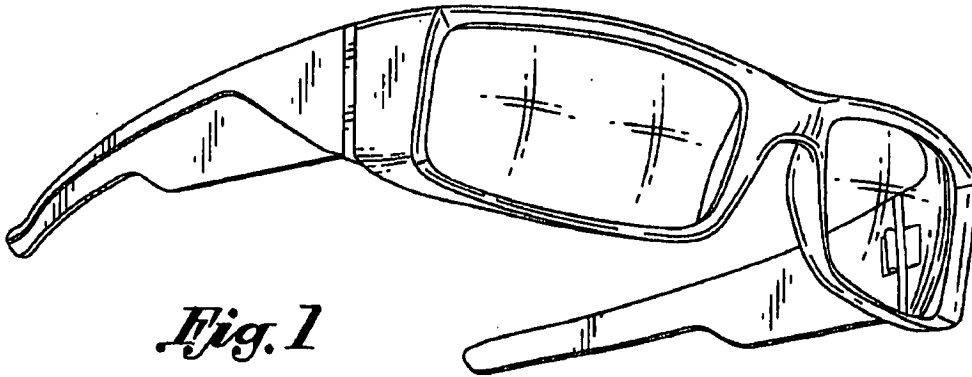


Fig. 1

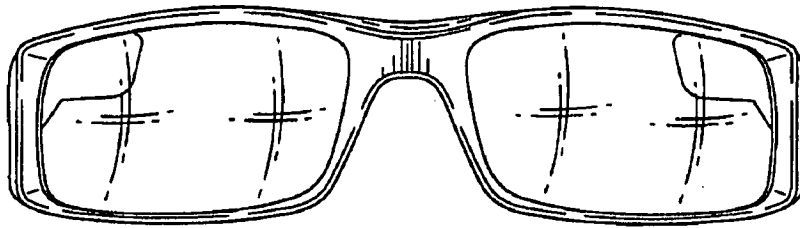


Fig. 2

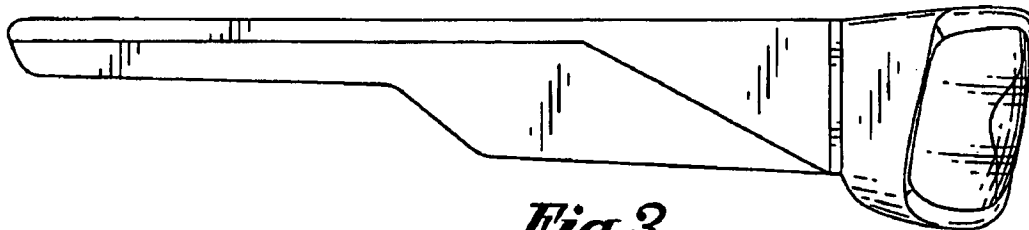


Fig. 3

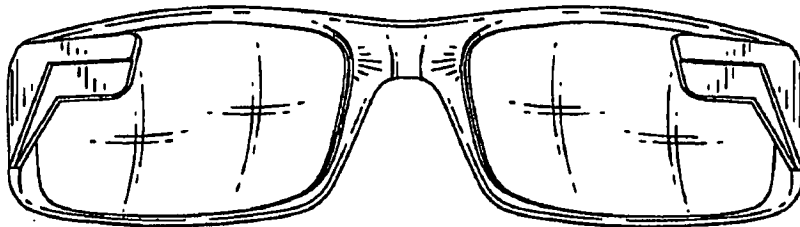


Fig. 4

U.S. Patent

Dec. 18, 2007

Sheet 2 of 2

US D557,730 S

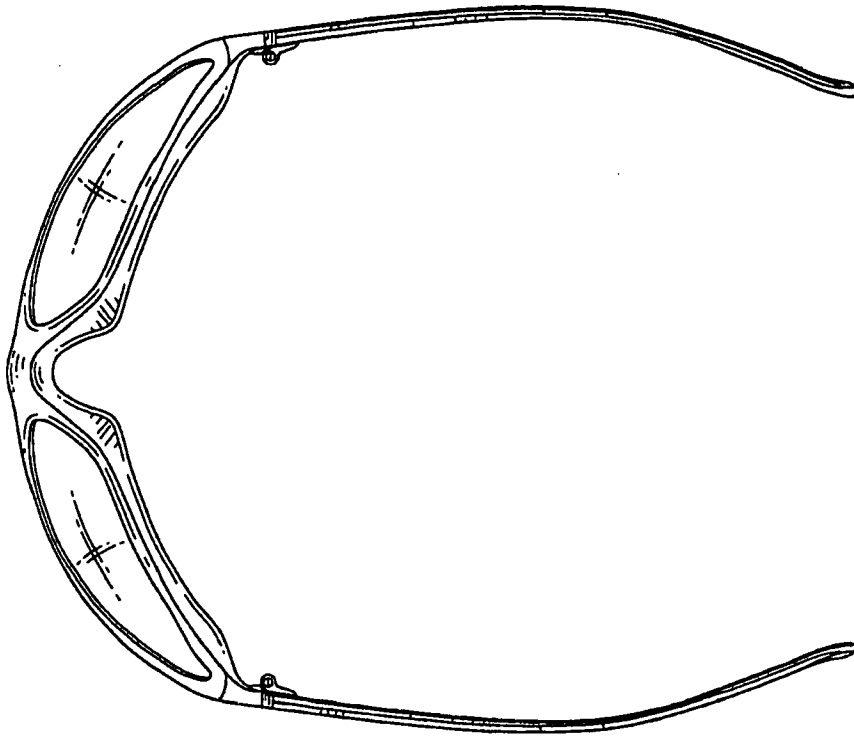


Fig. 6

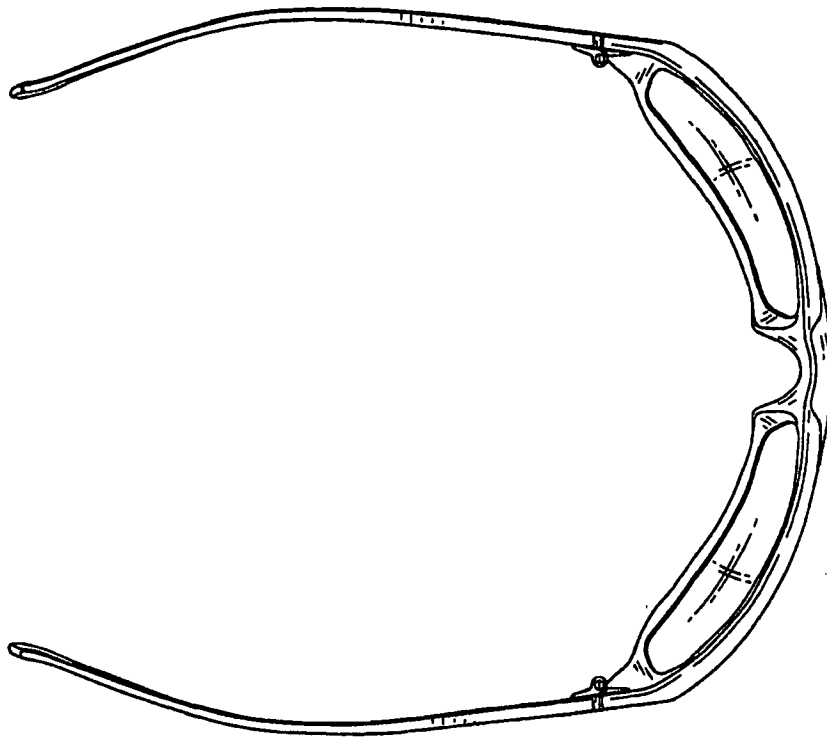


Fig. 5

LAW OFFICES

Stetina Brunda Garred & Brucker

A PROFESSIONAL CORPORATION
PATENT, TRADEMARK, COPYRIGHT AND UNFAIR COMPETITION CAUSES

75 ENTERPRISE, SUITE 250
ALISO VIEJO, CALIFORNIA 92656

KIT M. STETINA
BRUCE B. BRUNDA
WILLIAM J. BRUCKER
MARK B. GARRED
MATTHEW A. NEWBOLES
ERIC L. TANEZAKI
LOWELL ANDERSON
JAMES C. YANG

SHUNSUKE S. SUMITANI
STEPHEN Z. VEGH
BENJAMIN N. DIEDERICH
MICHAEL J. ZINGALE
AMICHAJ KOTEV

GAURAV K. MOHINDRA †
ABIGAIL M. COTTON †

TELEPHONE (949) 855-1246
FACSIMILE I (949) 855-6371
FACSIMILE II (949) 716-8197

www.stetinalaw.com
Writer's Direct E-mail:
kstetina@stetinalaw.com

June 2, 2008

THIS MATTER REQUIRES YOUR IMMEDIATE ATTENTION

VIA CERTIFIED MAIL R.R.R. AND U.S. MAIL

No.: 7002 2410 0007 9124 1297

James W. Y. Chen
Jay-Y Enterprise Co., Inc.
632 New York Dr.
Pomona, CA 91768

RE: *Spy Optic, Inc. v. Jay-Y Enterprise Co., Inc.*
Patent Infringement
Our Ref.: SPYNO-000

Dear Mr. Chen:

Please be advised that our firm represents Spy Optic, Inc. of Carlsbad, California in patent, trademark, copyright and unfair competition matters. Spy Optic, Inc. is the originator and manufacturer of unique sunglass products. Due to the uniqueness of our client's sunglass products, our client has obtained numerous United States Patents for its sunglass products, including, U.S. Patent No. D564,570. We are enclosing a copy of our client's patent for your review.

It has recently come to our client's attention that your company is manufacturing, marketing and/or selling sunglass products which fall within the claim of our client's above-identified patent. Specifically, your product identified as the "Biohazard® Money Short 6656". We are attaching a photograph of your product for your reference. As you probably know, under United States law, a patent owner is given the exclusive rights to manufacture, use, sell or import the claimed invention in the United States. Additionally, Title 35 of the United States Code provides monetary damages and preliminary and permanent injunctive relief for acts of patent infringement. Further, if such infringement is determined by a court to be willful, such damages can be trebled.

† PATENT AGENT

18

Exhibit 4 Page 1 of 5

Stetina Brunda Garred & Brucker

June 2, 2008

Page 2

Accordingly, we must demand on behalf of our client that your company immediately cease and desist from all further sales, distribution and/or importation of infringing products, and immediately recall any such products that have already been distributed. Further, to the extent that your company has the infringing products manufactured by a third party, Spy Optic, Inc. requests identification of that third party or supplier. Also Spy Optic, Inc. demands an accounting of all such infringing products sold to date, together with copies of all invoices for such products, along with an indication of the amount remaining in inventory.

Due to the importance of this matter, Spy Optic, Inc. requests a response within **fourteen (14) days** of the date of mailing of this letter.

This letter is not intended to be a full statement of the facts in this matter, nor is it a waiver of any of our client's rights or remedies, whether at law or equity, or those of any respective parties, all of which are hereby expressly reserved.

Very truly yours,

Stetina Brunda Garred & Brucker



Kit M. Stetina

KMS/th

Encls.

Cc: Spy Optic, Inc.

T:\Client Documents\SPYNO\000\C&D.Jay-Y Enterprise.05 30 08.doc

LAW OFFICES

Stetina Brunda Garred & Brucker

A PROFESSIONAL CORPORATION
PATENT, TRADEMARK, COPYRIGHT AND UNFAIR COMPETITION CAUSES

75 ENTERPRISE, SUITE 250
ALISO VIEJO, CALIFORNIA 92656

KIT M. STETINA
BRUCE B. BRUNDA
WILLIAM J. BRUCKER
MARK B. GARRED
MATTHEW A. NEWBOLES
ERIC L. TANEZAKI
LOWELL ANDERSON
JAMES C. YANG

SHUNSUKE S. SUMITANI
STEPHEN Z. VEGH
BENJAMIN N. DIEDERICH
MICHAEL J. ZINGALE
AMICHAJ KOTEV

GAURAV K. MOHINDRA †
ABIGAIL M. COTTON †

TELEPHONE (949) 855-1246
FACSIMILE I (949) 855-6371
FACSIMILE II (949) 716-8197
www.stetinalaw.com

Writer's Direct E-mail:
kstetina@stetinalaw.com

June 2, 2008

THIS MATTER REQUIRES YOUR IMMEDIATE ATTENTION

VIA CERTIFIED MAIL R.R.R. AND U.S. MAIL

No.: 7002 2410 0007 9124 1303

7-Eleven, Inc.
1722 Routh Street, Suite 1000
Dallas, TX 75201

RE: *Spy Optic, Inc. v. 7-Eleven, Inc.*
Patent Infringement
Our Ref.: SPYNO-000

Dear Sir/Madam:

Please be advised that our firm represents Spy Optic, Inc. of Carlsbad, California in patent, trademark, copyright and unfair competition matters. Spy Optic, Inc. is the originator and manufacturer of unique sunglass products. Due to the uniqueness of our client's sunglass products, our client has obtained numerous United States Patents for its sunglass products, including, U.S. Patent No. D564,570. We are enclosing a copy of our client's patent for your review.

It has recently come to our client's attention that your company is manufacturing, marketing and/or selling sunglass products which fall within the claim of our client's above-identified patent. Specifically, your product identified as the "Biohazard® Money Short 6656". We are attaching a photograph of your product for your reference as well as a copy of the receipt with the SKU number. As you probably know, under United States law, a patent owner is given the exclusive rights to manufacture, use, sell or import the claimed invention in the United States. Additionally, Title 35 of the United States Code provides monetary damages and preliminary and permanent injunctive relief for acts of patent infringement. Further, if such infringement is determined by a court to be willful, such damages can be trebled.

† PATENT AGENT

10

Exhibit 4 Page 3 of 5

Stetina Brunda Garred & Brucker

June 2, 2008
Page 2

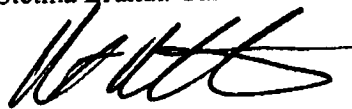
Accordingly, we must demand on behalf of our client that your company immediately cease and desist from all further sales, distribution and/or importation of infringing products, and immediately recall any such products that have already been distributed. Further, to the extent that your company has the infringing products manufactured by a third party, Spy Optic, Inc. requests identification of that third party or supplier. Also Spy Optic, Inc. demands an accounting of all such infringing products sold to date, together with copies of all invoices for such products, along with an indication of the amount remaining in inventory.

Due to the importance of this matter, Spy Optic, Inc. requests a response within **fourteen (14) days** of the date of mailing of this letter.

This letter is not intended to be a full statement of the facts in this matter, nor is it a waiver of any of our client's rights or remedies, whether at law or equity, or those of any respective parties, all of which are hereby expressly reserved.

Very truly yours,

Stetina Brunda Garred & Brucker



Kit M. Stetina

KMS/th
Encls.

Cc: Spy Optic, Inc.

T:\Client Documents\SPYNO\000\C&D.7-Eleven.05 30 08.doc

7-ELEVEN
5802 VAN ALLEN WAY
CARLSBAD CA 920087300
7609311154
STORE#: 32942
THANKS FOR SHOPPING
7-ELEVEN

1 00094119001966 9.99
SUBTOTAL 9.99
SALES TAX ON 9.99 0.77
TOTAL DUE 10.76
DEBIT 10.76

ACCT TYPE: [REDACTED]
AUTH CODE: 0
APPROVAL TIME: 140403
FIG/Honor
STORE#: 32942
TERM#: 00073294201 08
TERM SEQ#: 993766
REF#: 95000 00 000 1
APPROVED

CUSTOMER AGREES TO PAY THE ABOVE
TOTAL AMOUNT ACCORDING TO THE CARD
HOLDERS AGREEMENT

TRY ONE OF NEW CHICKEN
BITES

1#01 OP13 TRN1450 08/04/21 02:04 pm



HOME MY ACCOUNT MY LIST FAQ POLICY VIEW CART CONTACT

Search

Keywords: 6656

- at least one word must match
- all words must match


Search

- New Items
- Top Sellers
- Aviator
- Bikers
- Biohazard
- CG
- Choppers
- DG
- DG Ski Goggles
- Generic
- Hoodiez
- Kids
- Locs
- MLB Sunglasses
- NFL Sunglasses
- XLoop
- XLoop Ski Goggles
- Optical Frames
- Polarized Lens
- Princess
- Reading Glasses
- Relic
- RhInestone
- Road Warrior
- True Love
- Skull
- USA Eagle
- VG
- Vivid Star
- Accessories
- Clearance
- Closeout

Search Results:

showing 1-1 of 1

Page 1 of 1 | previous | next

Image	SKU	Description	Price	Quantity
	8BZ6656 <u>8BZ6656</u>	BIOHAZARD	Inventory On Hand 0	
			1-9	Price: DOZEN \$33.00
			10-24	DOZEN \$31.00
			25-49	DOZEN \$29.00 OUT OF STOCK
			50-99	DOZEN \$27.00
			100+	DOZEN \$25.00

Home | My Account | My List | FAQ | Policy | View Cart | Contact

Powered by webjaguar

23



[HOME](#) [MY ACCOUNT](#) [MY LIST](#) [FAQ](#) [POLICY](#) [VIEW CART](#) [CONTACT](#)

Keywords:

- at least one word must match
 all words must match

- New Items
- Top Sellers
- Aviator
- Bikers
- Biohazard
- CG
- Choppers
- DG
- DG Ski Goggles
- Generic
- Hoodiez
- Kids
- Locs
- MLB Sunglasses
- NFL Sunglasses
- XLoop
- XLoop Ski Goggles
- Optical Frames
- Polarized Lens
- Princess
- Reading Glasses
- Relic
- Rhinestone
- Road Warrior
- True Love
- Skull
- USA Eagle
- VG
- Vivid Star
- Accessories
- Clearance
- Closeout

Search Results:

showing 1-2 of 2

Page **1** of 1 | [previous](#) | [next](#)

Image	SKU	Description	Price	Quantity
	8BZ6645/MIX	<u>8BZ6645/MIX</u> BIOHAZARD	Inventory On Hand 0 1-9 Price: DOZEN \$33.00	
			10-24 DOZEN \$31.00	
			25-49 DOZEN \$29.00	OUT OF STOCK
			50-99 DOZEN \$27.00	
			100+ DOZEN \$25.00	
			Inventory On Hand 204 1-9 Price: DOZEN \$47.00	
			10-24 DOZEN \$45.00	
	PZ/BZ6645	<u>PZ/BZ6645</u> POLARIZED BIOHAZARD	25-49 DOZEN \$43.00	Qty: <input type="text"/> DOZEN
		50-99 DOZEN \$41.00		
		100+ DOZEN \$39.00		

[Home](#) | [My Account](#) | [My List](#) | [FAQ](#) | [Policy](#) | [View Cart](#) | [Contact](#)
 Powered by [webgauer](#)



[HOME](#) [MY ACCOUNT](#) [MY LIST](#) [FAQ](#) [POLICY](#) [VIEW CART](#) [CONTACT](#)

Keywords:


- at least one word must match
- all words must match

- New Items
- Top Sellers
- Aviator
- Bikers
- Biohazard
- CG
- Choppers
- DG
- DG Ski Goggles
- Generic
- Hoodiez
- Kids
- Locs
- MLB Sunglasses
- NFL Sunglasses
- XLoop
- XLoop Ski Goggles
- Optical Frames
- Polarized Lens
- Princess
- Reading Glasses
- Relic
- Rhinestone
- Road Warrior
- True Love
- Skull
- USA Eagle
- VG
- Vivid Star
- Accessories
- Clearance
- Closeout

Search Results:

showing 1-1 of 1

Page **1** of 1 | [previous](#) | [next](#)

Image	SKU	Description	Price	Quantity
	8LOC9018 <u>8LOC9018</u> LOCS		Inventory On Hand 0	
			1-9	
			Price: DOZEN \$34.00	
			10-24	DOZEN \$32.00
			25-49	DOZEN \$30.00 OUT OF STOCK
			50-99	DOZEN \$28.00
			100+	DOZEN \$26.00

[Home](#) | [My Account](#) | [My List](#) | [FAQ](#) | [Policy](#) | [View Cart](#) | [Contact](#)

Powered by webjaquer



HOME MY ACCOUNT MY LIST FAQ POLICY VIEW CART CONTACT

-
-
- New Items
- Top Sellers
- Aviator
- Bikers
- Biohazard
- CG
- Choppers
- DG
- DG Ski Goggles
- Generic
- Hoodlez
- Kids
- Locs
- MLB Sunglasses
- NFL Sunglasses
- XLoop
- XLoop Ski Goggles
- Optical Frames
- Polarized Lens
- Princess
- Reading Glasses
- Relic
- Rhinestone
- Road Warrior
- True Love
- Skull
- USA Eagle
- VG
- Vivid Star
- Accessories
- Clearance
- Closeout

Keywords: 6636

- at least one word must match
- all words must match

Search Results:

showing 1-2 of 2

Page 1 of 1 | previous | next

Image	SKU	Description	Price	Quantity
	8BZ6636/MIX	BIOHAZARD	Inventory On Hand 0 1-9 Price: DOZEN \$34.00	
	<u>8BZ6636/MIX</u>		10-24 DOZEN \$32.00	
			25-49 DOZEN \$30.00	OUT OF STOCK
			50-99 DOZEN \$28.00	
			100+ DOZEN \$26.00	
	PZ/BZ6636	POLARIZED BIOHAZARD	Inventory On Hand 44 1-9 Price: DOZEN \$45.00	
	<u>PZ/BZ6636</u>		10-24 DOZEN \$43.00	
			25-49 DOZEN \$41.00	Qty: <input type="text"/> DOZEN
			50-99 DOZEN \$39.00	
			100+ DOZEN \$37.00	

Home | My Account | My List | FAQ | Policy | View Cart | Contact
 Powered by webjaguar

24

AO 120 (Rev. 3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
---------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Southern District of California on the following Patents or Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT Southern District of California
PLAINTIFF SPY OPTIC, INC., a California corporation		DEFENDANT JAY-Y ENTERPRISE CO., INC., a California corporation; 7-ELEVEN, INC., a Texas corporation; and DOES 1 through 5, inclusive
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 D534,573	1/2/2007	Spy Optics, Inc.
2 D564,570	3/18/2008	Spy Optic, Inc.
3 D557730	12/18/2007	Spy Optic, Inc.
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE
-------	-------------------	------

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

**# 154124 - TC
* * C O P Y * *
August 18, 2008
10:05:38**

Civ Fil Non-Pris

USAO #: 08CV1508
Judge.: ROGER T BENITEZ
Amount.: \$350.00 CK
Check#: BC0065215

Total-> \$350.00

FROM: SPY OPTIC
VS
JAY-Y ENTERPRISE/7-ELEVEN

COURT REPORT

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
 SPY OPTIC, INC., a California corporation

(b) County of Residence of First Listed Plaintiff San Diego
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Kit M. Stetina/Stetina Brunda Garred & Brucker (949) 855 1246
 75 Enterprise Suite 250, Alice Viejo, CA 92666

DEFENDANTS
 JAY-Y ENTERPRISE CO. INC. a California corporation;
 7-ELEVEN, INC., a Texas corporation; DOES 1-5

County of Residence of First Listed Defendant San Diego
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) **BY:**
08 CV 1508 BEN LSP DEPUTY

FILED
08 AUG 18 AM 10:03

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
35 USC §§1 et seq.

Brief description of cause:
Patent Infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ proof at trial

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE Irma E. Gonzalez DOCKET NUMBER 08cv0384

DATE 8/15/08 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 154124 AMOUNT \$350 APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

LAC 8/18/08

CR