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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 **OAKLEY, INC.**, a Washington
11 corporation,

12 Plaintiff,

13 vs.

14 **SUN OPTICS INC. dba RYDERS**
15 **EYEWEAR**, a Canadian company,

16 Defendant.

) Case No.: 09CV2037 JLS (JMA)

) FIRST AMENDED COMPLAINT
) FOR PATENT INFRINGEMENT,
) TRADEDRESS INFRINGEMENT,
) AND TRADEMARK INFRINGEMENT

) JURY TRIAL

17
18 Plaintiff Oakley, Inc. (hereinafter referred to as "Oakley") hereby complains
19 of Defendant Sun Optics Inc. dba Ryders Eyewear (hereinafter referred to as
20 "Ryders") and alleges as follows:

21 **JURISDICTION AND VENUE**

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

24 2. Venue is proper under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. §
25 1400(b). The Defendant has sold infringing products in this district, attempted to
26 pass off infringing products in this district, directed sales and marketing efforts
27 toward this district and/or own or operate retail stores in this judicial district and/or
28 otherwise introduced products sold by it into the stream of commerce, knowing or

1 believing that such products, including those accused of infringing in this action,
2 would be marketed and sold in this district.

3 **THE PARTIES**

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

7 4. Oakley is informed and believes, and thereupon alleges that
8 Defendant Sun Optics Inc. is a Canadian corporation having its corporate
9 headquarters at 758 Harbourside Drive, North Vancouver, British Columbia,
10 Canada V7P 3R7. Oakley is informed and believes, and thereupon alleges, that
11 Sun Optics Inc. does business as Ryders Eyewear and Bugaboo Eyewear
12 Corporation, all at the same business address. Oakley is informed and believes,
13 and thereupon alleges, that Ryders is doing business within this judicial district at
14 least on its websites, www.ryderseyewear.com and www.bugaboos.com, and has
15 been selling products, including the accused eyewear, directly to retailers in this
16 district, and selling into the stream of commerce knowing such products would be
17 sold in California and in this judicial district.

18 **FACTUAL BACKGROUND**

19 5. As early as 1985, Oakley has been and continues to be actively
20 engaged in the manufacture and sale of high quality sport sunglasses under various
21 product lines. Oakley is the manufacturer and retailer of several lines of
22 sunglasses that have enjoyed substantial success and are protected by various
23 intellectual property rights owned by Oakley.

24 6. Oakley is informed and believes, and thereupon alleges, that
25 Defendant Ryders manufactures, uses, offers for sale and/or sells eyeglasses under
26 the name Ryders Eyewear, which infringe Oakley's intellectual property rights in
27 the United States, as set forth below.

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PATENT INFRINGEMENT FACTS

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2 7. Oakley is the owner by assignment of U.S. Design Patent No.
3 D580,963, duly and lawfully issued on November 18, 2008, entitled "Eyeglass and
4 Eyeglass Components," describing and claiming the design and ornamentation
5 disclosed therein, which is embodied by the *Square Wire* eyeglass, made and sold
6 by Oakley. A correct copy of U.S. Design Patent No. D580,963 is attached hereto
7 as Exhibit 1.

8 8. Oakley is informed and believes, and thereupon alleges that
9 Defendant Ryders made, used, imported, offered to sell and/or sold sunglasses that
10 copy the design of U.S. Patent No. D580,963 patent. Defendant's copy sunglass
11 model is identified as "Valve." The *Square Wire* copy sunglass sold by Defendant
12 embodies the subject matter claimed in Oakley's design patent referred to above
13 without any license thereunder and is thereby infringing this patent. Oakley is
14 informed and believes, and based thereon alleges, that Defendant sold its imitation
15 Oakley sunglass in its own distribution channels, including directly to customers as
16 well as to multiple distributors and retailers for resale.

17 9. Oakley is the owner by assignment of U.S. Patent No. 5,387,949, duly
18 and lawfully issued on February 7, 1995, describing and claiming the invention
19 entitled "Eyeglass Connection Device" that protects the described and claimed
20 technology embodied by Oakley's *Half Jacket*® and *Flak Jacket*® lines of
21 eyeglasses, among others. A correct copy of U.S. Patent No. 5,387,949 is attached
22 hereto as Exhibit 2.

23 10. Oakley is informed and believes, and thereupon alleges, that
24 Defendant is selling sunglasses that unlawfully incorporate the claimed subject
25 matter of U.S. Patent No. 5,387,949. In particular, Oakley alleges that Defendant's
26 "Incline," "Intersect," "Chassis," "Hooligan," "Sprint," "Treviso," "Quench,"
27 "Wheelie," and "Shot" sunglass models each embody the subject matter claimed in
28 Oakley's patent referred to above without any license thereunder and thereby

1 infringe the patent. Oakley is informed and believes, and based thereon alleges,
2 that Defendant made, used, imported, offered for sale and/or sold its accused
3 sunglasses to multiple distributors, retailers, and/or retail customers.

4 11. Oakley is the owner by assignment of U.S. Patent No. 5,638,145, duly
5 and lawfully issued on June 10, 1997, describing and claiming the invention
6 entitled "Vented Eyeglass Lens" embodied by Oakley's *Jawbone* and *Water*
7 *Jacket*® lines of eyeglasses. A correct copy of U.S. Patent No. 5,638,145 is
8 attached hereto as Exhibit 3.

9 12. Oakley is informed and believes, and thereupon alleges that
10 Defendant is selling sunglasses that unlawfully embody the claimed subject matter
11 of U.S. Patent No. 5,638,145. In particular, Oakley alleges that Defendant's
12 "Incline," "Intersect," "Sprint," "Treviso," "Quench," and "Synchro" sunglass
13 models embody the subject matter claimed in Oakley's patent referred to above
14 without any license thereunder and thereby infringe the patent. Oakley is informed
15 and believes, and based thereon alleges, that Defendant made, used, imported,
16 offered for sale and/or sold their accused sunglasses to multiple distributors,
17 retailers, and/or retail customers.

18 13. Defendant has received written notice of Oakley's proprietary rights in
19 its patents by way of at least this lawsuit. Further, Defendant has received
20 constructive notice of Oakley's patents as Oakley caused its patents to be placed
21 plainly on its products and/or packaging. Despite actual and constructive
22 knowledge, Defendant continues to infringe Oakley's patent rights. On information
23 and belief, such infringement by Defendant must be deemed willful and wanton.

24 14. Oakley is informed and believes and thereupon alleges that the sale of
25 the unauthorized, infringing sunglasses has resulted in lost sales, reduced the
26 business and profit of Oakley, and greatly injured the general reputation of Oakley
27 due to the inferior quality of the copies, all to Oakley's damage in an amount not
28 yet fully determined.

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

5 TRADE DRESS AND TRADEMARK INFRINGEMENT FACTS

6 16. Since the mid-1990's, Oakley has expended large sums of money in
7 the promotion of its *M Frame*® line of sunglasses. As a result of Oakley's
8 promotional efforts, these sunglass lines have become and are now widely known
9 and recognized in this District and elsewhere as emanating from and authorized by
10 Oakley. Oakley's *M Frame* product line is inherently distinctive in appearance,
11 and has become, through widespread public acceptance, a distinctive designation
12 of the source of origin of goods offered by Oakley and an asset of incalculable
13 value as a symbol of Oakley and its quality goods and good will.

14 17. Oakley is the owner of U.S. Registered Trademark No. 2,393,107
15 duly registered on October 10, 2000, claiming the trade dress of Oakley's famous
16 *M Frame* sunglass for goods in Class 9. A true and correct copy of such trademark
17 registration is attached hereto and incorporated herein by reference as Exhibit 4.

18 18. Oakley is informed and believes and thereupon alleges that the
19 Defendant's "Slipstream" model is designed, manufactured, packaged, advertised,
20 displayed and sold expressly to profit from the demand created by Oakley for the
21 inherently distinctive features of the Oakley *M Frame* configuration and to trade
22 on Oakley's goodwill and reputation.

23 19. Oakley is informed and believes, and thereupon alleges, that
24 Defendant's "Slipstream" model is inferior to authentic Oakley *M Frame*
25 sunglasses. Oakley is further informed and believes and thereupon alleges that as a
26 result of the inferior quality Defendant's copy sunglasses, they are sold in the
27 marketplace at a lower price than are authentic Oakley sunglasses. As a result,
28 Oakley has been damaged significantly in the sunglass market. Oakley contends

1 and believes that its image and the reputation of its products has been tarnished and
2 diminished by Defendant's sale of Oakley copy sunglasses of inferior quality.

3 20. Oakley is further informed and believes and thereupon alleges that the
4 presence of Defendant's "Slipstream" model copies in the marketplace damages
5 the value of Oakley's exclusive rights. The presence of the copies in the
6 marketplace is likely to diminish the apparent exclusivity of genuine Oakley
7 products thereby dissuading potential customers who otherwise would have sought
8 the inherently distinctive Oakley sunglass configuration. Upon information and
9 belief, Oakley alleges that such deception has misled, and continues to mislead,
10 and confuse many purchasers to buy the products sold by Defendant and/or has
11 misled non-purchasers to believe the sunglass copies emanate from or are
12 authorized by Oakley.

13 21. Oakley is the owner of U.S. Registered Trademark No. 2,900,432
14 duly registered on November 2, 2004, claiming the trademark *Valve*® for goods in
15 Class 9. A true and correct copy of such trademark registration is attached hereto
16 and incorporated herein by reference as Exhibit 5.

17 22. Oakley is informed and believes and thereupon alleges that the
18 Defendant's "Valve" sunglass model is designed, manufactured, packaged,
19 advertised, displayed and sold expressly to profit from the demand created by
20 Oakley for the features of Oakley's sunglasses, especially where it uses an Oakley
21 product name "Valve" in association with a model that copies Oakley's patented
22 design. Oakley is informed and believes, and thereupon alleges, that Defendant's
23 attempt in this regard is intended to trade on Oakley's goodwill and reputation.

24 23. Oakley is informed and believes, and thereupon alleges, that
25 Defendant's "Valve" sunglass is an inferior product to authentic Oakley
26 sunglasses. Oakley is further informed and believes, and thereupon alleges, that as
27 a result of the inferior quality of Defendant's "Valve" sunglass, they are sold in the
28 marketplace at a lower price than are authentic Oakley sunglasses. As a result,

1 Oakley has been damaged significantly in the sunglass market. Oakley contends
2 and believes that its image and the reputation of its products has been tarnished and
3 diminished by Defendant's sale of Oakley copy sunglasses of inferior quality.

4 24. Oakley is further informed and believes and thereupon alleges that the
5 presence of Defendant's "Valve" sunglass in the marketplace damages the value of
6 Oakley's exclusive rights in its trademark. The presence of the copies in the
7 marketplace is likely to diminish the apparent exclusivity of genuine Oakley
8 products thereby dissuading potential customers who otherwise would have sought
9 inherently distinctive Oakley sunglass designs. Upon information and belief,
10 Oakley alleges that such deception has misled, and continues to mislead, and
11 confuse many purchasers to buy the products sold by Defendant and/or has misled
12 non-purchasers to believe the sunglass copies emanate from or are authorized by
13 Oakley.

14 25. Oakley is the owner of U.S. Registered Trademark No. 2,768,242
15 duly registered on September 23, 2003, claiming the trademark *Tangent*® for
16 goods in Class 9. A true and correct copy of such trademark registration is
17 attached hereto and incorporated herein by reference as Exhibit 6.

18 26. Oakley is informed and believes, and thereupon alleges, that the
19 Defendant is offering to sell and selling a sunglass called "Tangent," which is
20 designed, manufactured, packaged, advertised, displayed and sold expressly to
21 profit from the demand created by Oakley for the ornamental and inherently
22 distinctive features of Oakley's *Tangent* sunglasses and to trade on Oakley's
23 goodwill and reputation.

24 27. Oakley is informed and believes, and thereupon alleges, that
25 Defendant's unauthorized "Tangent" sunglasses are inferior products to authentic
26 Oakley sunglasses. Oakley is further informed and believes and thereupon alleges
27 that as a result of the inferior quality Defendant's "Tangent" sunglasses, they are
28 sold in the marketplace at a lower price than are authentic Oakley sunglasses. As a

1 result, Oakley has been damaged significantly in the sunglass market. Oakley
2 contends and believes that its image and the reputation of its products has been
3 tarnished and diminished by Defendant's sale of Oakley copy sunglasses of
4 inferior quality.

5 28. Oakley is further informed and believes and thereupon alleges that the
6 presence of Defendant's "Tangent" sunglass copies in the marketplace damages
7 the value of Oakley's exclusive rights. The presence of the copies in the
8 marketplace is likely to diminish the apparent exclusivity of genuine Oakley
9 products thereby dissuading potential customers who otherwise would have sought
10 inherently distinctive Oakley sunglass designs. Upon information and belief,
11 Oakley alleges that such deception has misled, and continues to mislead, and
12 confuse many purchasers to buy the products sold by Defendant and/or has misled
13 non-purchasers to believe the sunglass copies emanate from or are authorized by
14 Oakley.

15 29. The trademark registrations of Exhibits 4, 5, and 6 are in full force
16 and effect. The trademarks and the good will of the business of Plaintiff Oakley in
17 connection with which the trademarks have been used have never been abandoned.
18 Oakley continues to preserve and maintain its rights with respect to these
19 trademark registrations.

20 30. The trademarks of Exhibits 4, 5 and 6 are inherently distinctive in
21 appearance and have become, through widespread public acceptance, a distinctive
22 designation of the source of origin of goods offered by Oakley and have acquired
23 secondary meaning in the marketplace and constitute an asset of incalculable value
24 as a symbol of Oakley and its quality goods and good will.

25 31. Plaintiff is informed and believes, and based thereon alleges, that
26 Defendant and its agents, employees, and servants have advertised and sold
27 products bearing one or more of the trademarks referred to above, which
28 advertisements and products are confusingly similar to that of the Oakley's

1 trademarks, and are, therefore, an infringement of Oakley's trademarks of Exhibits
2 4, 5 and 6.

3 32. Defendant has received constructive notice of Oakley's trademarks set
4 forth in Exhibits 4, 5, and 6, as Oakley caused the trademarks to be placed plainly
5 on the product and/or packaging. Despite such knowledge, Defendant has
6 continued to infringe Oakley's trademark rights. On information and belief, such
7 infringements by Defendant has have been willful and wanton.

8 33. Oakley is informed and believes, and thereupon alleges, that the sale
9 of Defendant's "Slipstream," "Valve," and "Tangent" sunglasses while using
10 Oakley trademarks and trade dress to facilitate such sales, has resulted in lost sales,
11 reduced the business and profit of Oakley, and greatly injured the general
12 reputation of Oakley, all to Oakley's damage in an amount not yet fully
13 determined. Further, Oakley is entitled to the Defendants' ill-gotten profits.

14 34. The exact amount of profits realized by Defendant as a result of its
15 infringement of Oakley's trademarks and trade dress, are presently unknown to
16 Oakley, as are the exact amount of damages suffered by Oakley as a result of said
17 activities. These profits and damages cannot be accurately ascertained without an
18 accounting. Further, Defendant's actions are irreparably injuring Oakley and will
19 continue unless and until enjoined by this court.

20 **FIRST CLAIM FOR RELIEF**
21 **Patent Infringement**

22 35. The allegations of paragraphs 1 through 34 are repled and realleged as
23 though fully set forth herein.

24 36. This is a claim for patent infringement, and arises under 35 U.S.C.
25 Sections 271 and 281. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

26 37. Oakley is the owner of U.S. Design Patent No. D580,963, which
27 protects the ornamental design of an eyeglass as claimed and shown. A true and
28 correct copy of U.S. Design Patent No. D580,963 is attached hereto as Exhibit 1.

1 By statute, the patent is presumed to be valid and enforceable under 35 U.S.C. §
2 282.

3 38. Defendant, through its agents, employees and servants, has
4 manufactured, imported, offered to sell and sold, without any rights or license,
5 sunglasses that fall within the scope and claim contained in U.S. Design Patent No.
6 D580,963. Such actions constitute direct, indirect, and/or contributory patent
7 infringement.

8 39. Oakley is informed and believes, and thereupon alleges, that
9 Defendant willfully infringed upon Oakley's exclusive rights under this patent,
10 with full notice and knowledge thereof.

11 40. Oakley is informed and believes, and thereupon alleges, that
12 Defendant has derived, received and will continue to derive and receive from the
13 aforesaid acts of infringement, gains, profits and advantages in an amount not
14 presently known to Oakley. By reason of the aforesaid acts of infringement,
15 Oakley has been, and will continue to be, greatly damaged.

16 41. Defendant may continue to infringe U.S. Design Patent No. D580,963
17 to the great and irreparable injury of Oakley, for which Oakley has no adequate
18 remedy at law unless the Defendant is enjoined by this court.

19 **SECOND CLAIM FOR RELIEF**

20 **Patent Infringement**

21 42. The allegations of paragraphs 1 through 34 are repled and realleged as
22 though fully set forth herein.

23 43. This is a claim for patent infringement, and arises under 35 U.S.C.
24 Sections 271 and 281.

25 44. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

26 45. Oakley is the owner of U.S. Patent No. 5,387,949, which protects the
27 described and claimed invention therein. A true and correct copy of U.S. Patent
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1 No. 5,387,949 is attached hereto as Exhibit 2. By statute, the patent is presumed to
2 be valid and enforceable under 35 U.S.C. § 282.

3 46. Defendant, through its agents, employees and servants, has
4 manufactured, imported, offered to sell, and sold, without any rights or license,
5 sunglasses that fall within the scope and claim contained in U.S. Patent No.
6 5,387,949. Such actions constitute direct, indirect, and/or contributory
7 infringement.

8 47. Oakley is informed and believes, and thereupon alleges, that
9 Defendant willfully infringed upon Oakley's exclusive rights under this patent,
10 with full notice and knowledge thereof.

11 48. Oakley is informed and believes, and thereupon alleges, that
12 Defendant has derived, received and will continue to derive and receive from the
13 aforesaid acts of infringement, gains, profits and advantages in an amount not
14 presently known to Oakley. By reason of the aforesaid acts of infringement,
15 Oakley has been, and will continue to be, greatly damaged.

16 49. Defendant may continue to infringe U.S. Patent No. 5,387,949 to the
17 great and irreparable injury of Oakley, for which Oakley has no adequate remedy
18 at law unless the Defendant is enjoined by this court.

19 **THIRD CLAIM FOR RELIEF**

20 **Patent Infringement**

21 50. The allegations of paragraphs 1 through 34 are repled and realleged as
22 though fully set forth herein.

23 51. This is a claim for patent infringement, and arises under 35 U.S.C.
24 Sections 271 and 281.

25 52. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

26 53. Oakley is the owner of U.S. Patent No. 5,638,145, which protects the
27 described and claimed invention therein. A true and correct copy of U.S. Patent
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1 No. 5,638,145 is attached hereto as Exhibit 3. By statute, the patent is presumed to
2 be valid and enforceable under 35 U.S.C. § 282.

3 54. Defendant, through its agents, employees and servants, has
4 manufactured, imported, offered to sell, and sold, without any rights or license,
5 sunglasses that fall within the scope and claim contained in U.S. Patent No.
6 5,638,145. Such actions constitute direct, indirect, and/or contributory
7 infringement.

8 55. Oakley is informed and believes, and thereupon alleges, that
9 Defendant willfully infringed upon Oakley's exclusive rights under this patent,
10 with full notice and knowledge thereof.

11 56. Oakley is informed and believes, and thereupon alleges, that
12 Defendant has derived, received and will continue to derive and receive from the
13 aforesaid acts of infringement, gains, profits and advantages in an amount not
14 presently known to Oakley. By reason of the aforesaid acts of infringement,
15 Oakley has been, and will continue to be, greatly damaged.

16 57. Defendant may continue to infringe U.S. Patent No. 5,638,145 to the
17 great and irreparable injury of Oakley, for which Oakley has no adequate remedy
18 at law unless the Defendant is enjoined by this court.

19 **FOURTH CLAIM FOR RELIEF**

20 **Trademark Infringement Under 15 U.S.C. § 1114**

21 58. The allegations of paragraphs 1 through 34 are repled and realleged as
22 though fully set forth herein.

23 59. This is a claim for trademark infringement, and arises under 15 U.S.C.
24 § 1114 against Defendant.

25 60. Jurisdiction is founded upon 15 U.S.C. § 1121.

26 61. Oakley is the owner of U.S. Registered Trademark No. 2,393,107,
27 which confers the exclusive right to use this trademark in commerce. A true and
28

1 correct copy of U.S. registered Trademark No. 2,393,107 is attached hereto as
2 Exhibit 4.

3 62. The mark has been in use in commerce in connection with the sale of
4 Oakley eyewear continuously since at least as early as its date of issue.

5 63. Defendant, through its agents, employees and servants, has
6 manufactured, imported, advertised, offered for sale, and/or sold products
7 embodying this registered trade dress configuration without authority from Oakley
8 for doing so. Specifically, Defendant is selling a sunglass model known as
9 "Slipstream," which Plaintiff believes infringes its rights in the registered trade
10 dress of its famous *M Frame* configuration.

11 64. Plaintiff is informed and believes, and thereupon alleges, that
12 Defendant's use of Oakley's registered trade dress in commerce constitutes
13 trademark infringement, false designation or origin, a false description or
14 representation of goods and wrongfully and falsely represents to the consuming
15 public that the Defendant's advertising and products originated from or somehow
16 are authorized by Oakley.

17 65. Plaintiff is informed and believes, and thereupon alleges, that
18 Defendant's unauthorized use of Oakley's registered trade dress has caused
19 confusion in the marketplace as to the source of origin of Defendant's products and
20 has caused damage to Oakley within this jurisdictional district.

21 66. Plaintiff is informed and believes, and thereupon alleges, that
22 Defendant willfully infringed upon Oakley's exclusive rights under its trademark
23 with the intent to trade upon the good will of Oakley and to injure Oakley.

24 67. Plaintiff is informed and believes, and thereupon alleges, that
25 Defendant has derived, received, and will continue to derive and receive from the
26 aforesaid acts of infringement, gains, profits, and advantages in an amount not yet
27 ascertainable, but will be determined at the time of trial.

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1 trademark infringement, false designation or origin, a false description or
2 representation of goods and wrongfully and falsely represents to the consuming
3 public that the Defendant's advertising and products originated from or somehow
4 are authorized by Oakley.

5 77. Plaintiff is informed and believes, and thereupon alleges, that
6 Defendant's unauthorized use of Oakley's registered trademark has caused
7 confusion in the marketplace as to the source of origin of Defendant's products and
8 has caused damage to Oakley within this jurisdictional district.

9 78. Plaintiff is informed and believes, and thereupon alleges, that
10 Defendant willfully infringed upon Oakley's exclusive rights under its trademark
11 with the intent to trade upon the good will of Oakley and to injure Oakley.

12 79. Plaintiff is informed and believes, and thereupon alleges, that
13 Defendant has derived, received, and will continue to derive and receive from the
14 aforesaid acts of infringement, gains, profits, and advantages in an amount not yet
15 ascertainable, but will be determined at the time of trial.

16 80. Plaintiff is informed and believes, and thereupon alleges, that
17 Defendant will continue to infringe the registered Oakley trademarks to the great
18 and irreparable injury of Oakley, for which Oakley has no adequate remedy at law
19 unless Defendant is enjoined by this court.

20 81. Plaintiff has been damaged in this judicial district as a result of the
21 Defendant's infringement of its trademark.

22 **SIXTH CLAIM FOR RELIEF**

23 **Trademark Infringement Under 15 U.S.C. § 1114**

24 82. The allegations of paragraphs 1 through 34 are repled and realleged as
25 though fully set forth herein.

26 83. This is a claim for trademark infringement, and arises under 15 U.S.C.
27 § 1114 against Defendant Ryders Eyewear.

28 84. Jurisdiction is founded upon 15 U.S.C. § 1121.

1 85. Oakley is the owner of U.S. Registered Trademark No. 2,768,242,
2 which confers the exclusive right to use the mark "TANGENT" in commerce in
3 association with the goods designated. A true and correct copy of U.S. registered
4 Trademark No. 2,768,242 is attached hereto as Exhibit 6.

5 86. The mark has been in use in commerce in connection with the sale of
6 eyewear continuously since at least as early as its date of issue. The ® designation
7 appears clearly on packaging, advertisements, and product brochures, and
8 otherwise in association with Oakley's *Tangent* sunglass.

9 87. Defendant, through its agents, employees and servants, has
10 manufactured, imported, advertised, offered for sale, and/or sold products bearing
11 the mark without authority from Oakley for doing so. Specifically, Defendant is
12 selling a sunglass model known as "Tangent," which Plaintiff believes infringes its
13 rights in the registered trademark.

14 88. Plaintiff is informed and believes, and thereupon alleges, that
15 Defendant's use of Oakley's registered trademark in commerce constitutes
16 trademark infringement, false designation or origin, a false description or
17 representation of goods and wrongfully and falsely represents to the consuming
18 public that the Defendant's advertising and products originated from or somehow
19 are authorized by Oakley.

20 89. Plaintiff is informed and believes, and thereupon alleges, that
21 Defendant's unauthorized use of Oakley's registered trademark has caused
22 confusion in the marketplace as to the source of origin of Defendant's products and
23 caused damage to Oakley within this jurisdictional district.

24 90. Plaintiff is informed and believes, and thereupon alleges, that
25 Defendant willfully infringed upon Oakley's exclusive rights under its trademark
26 with the intent to trade upon the good will of Oakley and to injure Oakley.

27 91. Plaintiff is informed and believes, and thereupon alleges, that
28 Defendant has derived, received, and will continue to derive and receive from the

1 aforesaid acts of infringement, gains, profits, and advantages in an amount not yet
2 ascertainable, but will be determined at the time of trial.

3 92. Plaintiff is informed and believes, and thereupon alleges, that
4 Defendant will continue to infringe the registered trademark to the great and
5 irreparable injury of Oakley, for which Oakley has no adequate remedy at law
6 unless Defendant is enjoined by this court.

7 93. Plaintiff has been damaged in this judicial district as a result of the
8 Defendant's infringement of its trademark.

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

- 10 1. That Defendant Ryders Eyewear be adjudicated to have infringed
11 Oakley's U.S. Patent No. D580,963, and that the patent is valid and
12 enforceable and is owned by Oakley;
- 13 2. That Defendant Ryders Eyewear be adjudicated to have infringed
14 Oakley's U.S. Patent No. 5,387,949, and that the patent is valid and
15 enforceable and is owned by Oakley;
- 16 3. That Defendant Ryders Eyewear be adjudicated to have infringed
17 Oakley's U.S. Patent No.5,638,145, and that the patent is valid and
18 enforceable and is owned by Oakley;
- 19 4. That Defendant be adjudicated to have infringed Oakley's U.S.
20 Registered Trademark No. 2,393,107, and that the trademark is
21 inherently distinctive, has acquired secondary meaning and is
22 enforceable and owned by Oakley;
- 23 5. That Defendant be adjudicated to have infringed Oakley's U.S.
24 Registered Trademark No.2,900,432, and that the trademark is
25 inherently distinctive, has acquired secondary meaning and is
26 enforceable and owned by Oakley;
- 27 6. That Defendant be adjudicated to have infringed Oakley's U.S.
28 Registered Trademark No.2,768,242, and that the trademark is

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- inherently distinctive, has acquired secondary meaning and is enforceable and owned by Oakley;
7. That Defendants, their agents, servants, employees, and attorneys and all persons in active concert and participation with them, be forthwith preliminarily and thereafter permanently enjoined from making, using or selling any sunglass which infringe United States Patent Nos. D580,963, 5,387,949, and 5,638,145;
 8. That Defendant and its agents, distributors, partners, retailers, servants, employees, and attorneys and all persons in active concert and participation with them, be enjoined and restrained, during the pendency of this action and permanently thereafter from:
 - i. Using Registered Trademark Nos. 2,393,107, 2,900,432, and 2,768,242 or any mark similar thereto in connection with the sale of any goods;
 - ii. Committing any acts which may cause purchasers to believe that the Defendant or the products Defendant is selling are sponsored or authorized by, or are in any way associated with Oakley;
 - iii. Selling, passing off, or inducing or enabling others to sell or pass off any products as products produced by Plaintiff, which products are not Plaintiff's or are not produced under the control and supervision and approved by Plaintiff; and
 - iv. Infringing Plaintiff's trademark rights;
 9. That Defendant be required to account to Oakley for any and all profits derived by them associated with their sale of the accused products, and all damages sustained by Oakley by reason of Defendant's patent infringement, trade dress infringement and/or trademark infringement;

