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OAKLEY, INC.

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

OAKLEY, INC., a Washington corporation,)	Case No. 11CV2173 WQH CAB
Plaintiff,)	SECOND AMENDED COMPLAINT
v.)	FOR PATENT INFRINGEMENT
5.11, INC., a California corporation, and WILEY)	DEMAND FOR JURY TRIAL
X, INC., a California corporation)	
Defendants.)	

1 Plaintiff Oakley, Inc. (“Oakley”) hereby complains of Defendant 5.11, Inc. (“5.11”)
2 and Defendant Wiley X, Inc. (“Wiley X”) (collectively, “Defendants”) and alleges as follows:

3 **I. JURISDICTION AND VENUE**

4 1. This Court has subject matter jurisdiction over this action pursuant to 28
5 U.S.C. § 1331 and 1338, as it arises under the patent laws of the United States.

6 2. This Court has personal jurisdiction over Defendants because Defendants have
7 a continuous, systematic, and substantial presence within this judicial district including by
8 selling and offering for sale infringing products for sale in this judicial district, and by
9 committing acts of patent infringement in this judicial district, including but not limited to
10 selling infringing eyewear directly to consumers and/or retailers in this district and selling
11 into the stream of commerce knowing such products would be sold in California and this
12 district, which acts form a substantial part of the events or omissions giving rise to Plaintiff’s
13 claim.

14 3. Venue is proper in this judicial district under 28 U.S.C. § 1391 (b) and (c), and
15 28 U.S.C. § 1400(b).

16 **II. THE PARTIES**

17 4. Plaintiff Oakley is a corporation organized and existing under the laws of the
18 State of Washington, having its principal place of business at One Icon, Foothill Ranch,
19 California 92610.

20 5. Plaintiff is informed and believes, and thereon alleges, that Defendant 5.11 is a
21 corporation organized and existing under the laws of the state of California and has a
22 principal place of business at 4300 Spyres Way, Modesto, California 95356.

23 6. Plaintiff is informed and believes, and thereon alleges, that Defendant Wiley X
24 is a corporation organized and existing under the laws of the state of California and has a
25 principal place of business at 7800 Patterson Pass Road, Livermore, California 94550.

26 7. Plaintiff is informed and believes, and thereon alleges, that Defendants have
27 committed the acts alleged herein within this judicial district.

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1 **III. GENERAL ALLEGATIONS**

2 8. Oakley has been actively engaged in the manufacture and sale of high quality
3 eyewear since at least 1985. Oakley is the manufacturer and retailer of several lines of
4 eyewear that have enjoyed substantial success and are protected by various intellectual
5 property rights owned by Oakley.

6 9. On May 29, 2007, the United States Patent and Trademark Office duly and
7 lawfully issued United States Letters Patent No. D543,572 (“the D572 patent”), entitled
8 “Eyeglass.” Oakley is the owner by assignment of all right, title, and interest in the D572
9 patent. A true and correct copy of the D572 patent is attached hereto as Exhibit A.

10 10. On October 7, 1997, the United States Patent and Trademark Office duly and
11 lawfully issued United States Letters Patent No. D384,686 (“the D686 patent”), entitled
12 “Eyeglass Front.” Oakley is the owner by assignment of all right, title, and interest in the
13 D686 patent. A true and correct copy of the D686 patent is attached hereto as Exhibit B.

14 11. Defendants manufacture, use, sell, offer for sale and/or import into the United
15 States eyewear that infringe Oakley’s intellectual property rights.

16 12. Defendants have received written notice of Oakley’s proprietary rights in the
17 D572 and D686 patents as early as July 25, 2011.

18 13. Oakley has provided constructive notice of its patent rights to the public by
19 causing its patents to be placed on patented products and/or packaging.

20 **IV. CLAIM FOR RELIEF**

21 **(Patent Infringement)**
22 **(35 U.S.C. § 271)**

23 14. Oakley repeats and re-alleges the allegations of paragraphs 1-13 of this
24 complaint as if set forth fully herein.

25 15. Defendants, through their agents, employees and servants, have, and continue
26 to, knowingly, intentionally and willfully infringe the D572 patent by making, using, selling,
27 offering for sale and/or importing eyewear which are covered by the claim of the D572
28 patent, including Defendants’ *Deflect* sunglasses.

1 16. Defendants' acts of infringement of the D572 patent were undertaken without
2 permission or license from Oakley. Defendants had actual and/or constructive knowledge of
3 the D572 patent and acted despite an objective likelihood that its actions constituted
4 infringement of the D572 patent. Defendants' actions constitute willful and intentional
5 infringement of the D572 patent.

6 17. Defendants, through their agents, employees and servants, have knowingly,
7 intentionally and willfully infringed the D686 patent by making, using, selling, offering for
8 sale and/or importing eyewear which were covered by the claim of the D686 patent, including
9 Defendants' *Ascend* sunglasses.

10 18. Defendants' acts of infringement of the D686 patent were undertaken without
11 permission or license from Oakley. Defendants had actual and/or constructive knowledge of
12 the D686 patent and acted despite an objective likelihood that its actions constituted
13 infringement of the D686 patent. Defendants' actions constitute willful and intentional
14 infringement of the D686 patent.

15 19. Oakley is informed and believes, and thereon alleges, that Defendants have
16 derived and received, and will continue to derive and receive, gains, profits and advantages
17 from the aforesaid acts of infringement in an amount that is not presently known to Oakley.
18 By reason of the aforesaid infringing acts, Oakley has been damaged and is entitled to
19 monetary relief in an amount to be determined at trial.

20 20. Due to the aforesaid infringing acts, Oakley has suffered and continues to
21 suffer great and irreparable injury, for which Oakley has no adequate remedy at law.

22 **WHEREFORE**, Oakley prays for judgment in its favor against Defendants for the
23 following relief:

24 A. An Order adjudging Defendants to have willfully infringed the D572 patent
25 under 35 U.S.C. § 271;

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1 B. A preliminary and permanent injunction enjoining Defendants, their respective
2 officers, directors, agents, servants, employees and attorneys, and those persons in active
3 concert or participation with Defendants, from infringing the D572 patent in violation of 35
4 U.S.C. § 271;

5 C. That Defendants account for all gains, profits, and advantages derived by
6 Defendants' infringement of the D572 patent in violation of 35 U.S.C. § 271, and that
7 Defendants pay to Oakley all damages suffered by Oakley and/or Defendant's total profit
8 from such infringement;

9 D. An Order adjudging Defendants to have willfully infringed the D686 patent
10 under 35 U.S.C. § 271;

11 E. That Defendants account for all gains, profits, and advantages derived by
12 Defendants' infringement of the D686 patent in violation of 35 U.S.C. § 271, and that
13 Defendants pay to Oakley all damages suffered by Oakley and/or Defendant's total profit
14 from such infringement;

15 F. An Order for a trebling of damages and/or exemplary damages because of
16 Defendants' willful conduct pursuant to 35 U.S.C. § 284;

17 G. An Order adjudging that this is an exceptional case;

18 H. An award to Oakley of the attorneys' fees and costs incurred by Oakley in
19 connection with this action pursuant to 35 U.S.C. § 285;

20 I. An award of pre-judgment and post-judgment interest and costs of this action
21 against Defendants;

22 J. That Oakley have and recover the costs of this civil action, including
23 reasonable attorneys' fees.

24 K. An award of pre-judgment and post-judgment interest and costs of this action
25 against Defendants;

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L. Such other and further relief as this Court may deem just and proper.

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: July 9, 2012 By: s/Ali S. Razai
Michael K. Friedland
Paul N. Conover
Ali S. Razai
Attorneys for Plaintiff
OAKLEY, INC.

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DEMAND FOR JURY TRIAL

Plaintiff Oakley, Inc. hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: July 9, 2012

By: s/Ali S. Razai

Michael K. Friedland
Paul N. Conover
Ali S. Razai

Attorneys for Plaintiff
OAKLEY, INC.

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PROOF OF SERVICE

On July 9, 2012, I caused SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT to be electronically filed with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to the following person(s):

E. Patrick Ellisen
Daniel T. McCloskey
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I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 9, 2012 at Irvine, California.

s/ Maria Zavala

Maria Zavala

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