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JS 44 (Rev. 12/07) (cand rev 1-16-08)

CIVIL COVER SHEET

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 PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS: ETAGZ, INC. DEFENDANTS: QUIKSILVER, INC. (b) County of Residence of First Listed Plaintiff: Utah County, Utah (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant: Orange County, California (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. (c) Attorney's (Firm Name, Address, and Telephone Number): Gary S. Fergus (415) 537-9032, Fergus, A Law Office, 595 Market Street, Suite 2430, San Francisco, CA 94105

MEJ E-filing ADF

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) 1 U.S. Government Plaintiff 2 U.S. Government Defendant 3 Federal Question (U.S. Government Not a Party) 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) Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country Incorporated or Principal Place of Business In This State Incorporated and Principal Place of Business In Another State Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only) CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excl. Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise. REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property. TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury. CIVIL RIGHTS: 441 Voting, 442 Employment, 443 Housing/Accommodations, 444 Welfare, 445 Amer. w/Disabilities - Employment, 446 Amer. w/Disabilities - Other, 440 Other Civil Rights. PRISONER PETITIONS: 510 Motions to Vacate Sentence, Habeas Corpus: 530 General, 535 Death Penalty, 540 Mandamus & Other, 550 Civil Rights, 555 Prison Condition. FORFEITURE/PENALTY: 610 Agriculture, 620 Other Food & Drug, 625 Drug Related Seizure of Property 21 USC 881, 630 Liquor Laws, 640 R.R. & Truck, 650 Airline Regs., 660 Occupational Safety/Health, 690 Other. LABOR: 710 Fair Labor Standards Act, 720 Labor/Mgmt. Relations, 730 Labor/Mgmt. Reporting & Disclosure Act, 740 Railway Labor Act, 790 Other Labor Litigation, 791 Empl. Ret. Inc. Security Act. IMMIGRATION: 462 Naturalization Application, 463 Habeas Corpus - Alien Detainee, 465 Other Immigration Actions. BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157. SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g)). FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS - Third Party 26 USC 7609. OTHER STATUTES: 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 810 Selective Service, 850 Securities/Commodities/Exchange, 875 Customer Challenge 12 USC 3410, 890 Other Statutory Actions, 891 Agricultural Acts, 892 Economic Stabilization Act, 893 Environmental Matters, 894 Energy Allocation Act, 895 Freedom of Information Act, 900 Appeal of Fee Determination Under Equal Access to Justice, 950 Constitutionality of State Statutes.

009-51026 MEJ

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 U.S.C. Sec. 271 et seq., including 281, 283-285. Brief description of cause: Willful 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 PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY) SAN FRANCISCO/OAKLAND SAN JOSE

DATE: December 17, 2009 SIGNATURE OF ATTORNEY OF RECORD: [Signature]

ORIGINAL

FILED
DEC 17 2009
U.S. DISTRICT COURT
SAN FRANCISCO, CALIFORNIA
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S.M.
J. [Signature]
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E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MEJ

ETAGZ, INC.

Plaintiff

v.

QUIKSILVER, INC.

Defendant.

CV 09 5926
Case No.

COMPLAINT FOR PATENT
INFRINGEMENT

DEMAND FOR JURY TRIAL

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Plaintiff, Etagz, Inc. ("Etagz"), by and through its attorneys, complains of Defendant, Quiksilver, Inc. ("Quiksilver"), and alleges as follows:

NATURE OF THE ACTION

1. This is an action for willful patent infringement by Quiksilver of Etagz' United States Patent No. 6,298,332 (the "'332 Patent") entitled "CD-Rom Product Label Apparatus and Method." The '332 Patent relates to an apparatus and method for attaching a computer readable medium as a label to merchandise at retail. Etagz notified Quiksilver in September 2006 of the '332 Patent and Quiksilver's infringing activity. Quiksilver represented to Etagz in approximately January 2007 that Quiksilver had only used computer readable material ("Product Label") in connection with the retail tag for one product and that Quiksilver would shortly be ceasing the use

1 of the Product Label and had no plans to continue the use of such Product Label. Instead,
2 Quiksilver has resumed its infringing activities of the '332 Patent.

3 **PARTIES**

4 2. Etagz, Inc. is an Indiana corporation, with its principal place of business in Provo,
5 Utah.

6 3. Etagz owns and has all right, title and interest in the '332 Patent including the right
7 to sue for and collect damages for past, present or future infringement and therefore has standing to
8 sue for infringement of the '332 Patent.

9 4. Quiksilver is a Delaware corporation with its corporate headquarters located at
10 15202 Graham Street, Huntington Beach, California.

11 **JURISDICTION**

12 5. This is a claim for patent infringement that arises under the patent laws of the
13 United States, including 35 U.S.C. §§271 and 281. This Court has exclusive subject matter
14 jurisdiction under 28 U.S.C. §1338.

15 **VENUE**

16 6. Etagz is informed and believes, and on the basis of that information and belief,
17 alleges that Quiksilver has committed acts of infringement within this judicial district and has a
18 regular and established place of business located in San Francisco, California which is within this
19 judicial district. Venue is proper in this district pursuant to 28 U.S.C. §1391 and §1400(b).

20 **COUNT ONE**

21 **Patent Infringement 35 U.S.C. §271 et seq.**

22 7. Etagz incorporates by this reference as if fully set forth herein paragraphs 1 through
23 6 inclusive.

24 8. The '332 Patent relates to an apparatus and method for attaching a computer
25 readable medium as a label to merchandise at retail.

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9. In September 2006, Etagz provided Quiksilver with actual written notice of the '332 Patent and Quiksilver's infringing activity. Shortly thereafter, Quiksilver agreed to cease and desist Quiksilver's infringing activity.

10. Despite notice and knowledge of the '332 Patent, Quiksilver resumed infringing and continues to infringe at least claims 16 and 17 of the '332 Patent. Among other things, Quiksilver has advertised, sold and offered to sell, and induced others to make, use and/or sell or offer to sell products and/or services throughout the United States, including within this judicial district, that are covered by the claims of the '332 Patent.

11. Quiksilver's direct infringement has injured Etagz and Etagz is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

12. Quiksilver's infringing activities have injured and will continue to injure Etagz unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further infringement of the '332 Patent.

Wherefore Etagz prays for relief as set forth below:

PRAYER FOR RELIEF

Wherefore Etagz requests that on Count One judgment be entered against Quiksilver and its subsidiaries and affiliates and all persons in active concert or participation with them as follows:

A. An entry of final judgment in favor of Etagz against Quiksilver;

B. An award of damages adequate to compensate Etagz for the infringement that has occurred according to proof at trial, but in no event less than a reasonable royalty as permitted by 35 U.S.C. §284, together with prejudgment interest from the date the infringement began;

C. An injunction permanently prohibiting Quiksilver and all persons in active concert or participation with it, from further acts of infringement of the '332 Patent;

D. Increased damages as permitted under 35 U.S.C. §284 for willful infringement;

E. A finding that this case is exceptional and award Etagz reasonable attorneys' fees and costs as provided by 35 U.S.C. §285; and

F. Such other and further relief as this Court or a jury may deem proper.

JURY DEMAND

Etagz demands a trial by jury on all issues so triable.

Dated: December 17, 2009

Fergus, A Law Office

By: 

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Pro Hac Vice Application to be filed

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