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OAKLEY, INC.  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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OAKLEY, INC., a Washington corporation,	)	Civil Action No. 8:18-cv-00455
	)	
Plaintiff,	)	
	)	<b>COMPLAINT FOR</b>
v.	)	<b>PATENT INFRINGEMENT,</b>
	)	<b>TRADE DRESS</b>
SUN BUSTER INC d/b/a KARLEN'S	)	<b>INFRINGEMENT, FALSE</b>
TRADING, a California corporation,	)	<b>DESIGNATION OF ORIGIN,</b>
	)	<b>AND UNFAIR COMPETITION</b>
Defendant.	)	
	)	<b>DEMAND FOR JURY TRIAL</b>

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1 Plaintiff Oakley, Inc. (“Oakley”) hereby complains of Sun Buster Inc  
2 d/b/a Karlen’s Trading (“Defendant”) and alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has original subject matter jurisdiction over the claims  
5 in this action that relate to patent infringement, trade dress infringement, false  
6 designation of origin, and federal unfair competition pursuant to 35 U.S.C.  
7 §§ 271 and 281, 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. §§ 1116(a),  
8 1121(a), and 1125(a), as these claims arise under the laws of the United States.  
9 The Court has supplemental jurisdiction over the claims in this Complaint  
10 which arise under state statutory and common law pursuant to 28 U.S.C.  
11 §§ 1338(b) and 1367(a) because the state law claims are so related to the federal  
12 claims that they form part of the same case or controversy and derive from a  
13 common nucleus of operative facts.

14 2. This Court has personal jurisdiction over Defendant because  
15 Defendant has a continuous, systematic, and substantial presence within this  
16 judicial district including by selling and offering for sale infringing products in  
17 this judicial district, and by committing acts of patent and trade dress  
18 infringement in this judicial district, including but not limited to selling  
19 infringing eyewear directly to consumers and/or retailers in this judicial district  
20 and selling into the stream of commerce knowing such products would be sold  
21 in California and this judicial district, which acts form a substantial part of the  
22 events or omissions giving rise to Oakley’s claim.

23 3. Oakley is informed and believes, and thereon alleges, that venue is  
24 proper in this judicial district under 28 U.S.C. §§ 1391(b) and (d), and 1400(b)  
25 because Defendant is a resident in this judicial district, and Defendant has  
26 committed acts of infringement in this judicial district and has a regular  
27 established place of business in this judicial district.

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1 **THE PARTIES**

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

5 5. Oakley is informed and believes, and thereon alleges, that  
6 Defendant Sun Buster Inc d/b/a Karlen’s Trading is a corporation organized and  
7 existing under the laws of the State of California, having its principal place of  
8 business at 431 South Los Angeles Street, Los Angeles, California 90013.

9 **GENERAL ALLEGATIONS**

10 6. Oakley has been actively engaged in the manufacture and sale of  
11 high quality eyewear since at least 1985. Oakley is the manufacturer and  
12 retailer of several lines of eyewear that have enjoyed substantial success and are  
13 protected by various intellectual property rights owned by Oakley.

14 7. On May 8, 2012, the United States Patent and Trademark Office  
15 duly and lawfully issued United States Design Patent No. D659,180 (“the D180  
16 Patent”), titled “EYEGLASS.” Oakley is the owner by assignment of all right,  
17 title, and interest in the D180 Patent. A true and correct copy of the D180  
18 Patent is attached hereto as **Exhibit 1**.

19 8. Defendant manufactures, uses, sells, offers for sale, and/or imports  
20 into the United States eyewear that infringes Oakley’s patent rights, including  
21 the D180 Patent.

22 9. Oakley manufactures and sells sunglasses under the mark  
23 HOLBROOK bearing distinctive trade dress in the overall design of the  
24 sunglasses (“HOLBROOK Trade Dress”). An example of an Oakley product  
25 bearing the distinctive HOLBROOK Trade Dress is depicted in the photograph  
26 attached as **Exhibit 2**.

27 10. As a result of Oakley’s widespread use and display of the  
28 HOLBROOK Trade Dress in association with its eyewear, (a) the public has

1 come to recognize and identify eyewear bearing the HOLBROOK Trade Dress  
2 as emanating from Oakley, (b) the public recognizes that products bearing the  
3 HOLBROOK Trade Dress constitute high quality products that conform to the  
4 specifications created by Oakley, and (c) the HOLBROOK Trade Dress has  
5 established strong secondary meaning and extensive goodwill.

6 11. The HOLBROOK Trade Dress is not functional. The design  
7 features embodied by the HOLBROOK Trade Dress are not essential to the  
8 function of the product, do not make the product cheaper or easier to  
9 manufacture, and do not affect the quality of the product. The design of the  
10 HOLBROOK Trade Dress is not a competitive necessity.

11 12. Subsequent to Oakley's use and adoption of the HOLBROOK  
12 Trade Dress, Defendant has developed, manufactured, imported, advertised,  
13 and/or sold products that use trade dress that is confusingly similar to the  
14 HOLBROOK Trade Dress.

15 13. Defendant's acts complained of herein have caused Oakley to  
16 suffer irreparable injury to its business. Oakley will continue to suffer  
17 substantial loss and irreparable injury including loss of goodwill unless and until  
18 Defendant is preliminarily and permanently enjoined from its wrongful actions  
19 complained of herein.

20 14. Oakley is informed and believes, and on that basis alleges, that  
21 Defendant's acts complained of herein are willful and deliberate.

22 **FIRST CLAIM FOR RELIEF**

23 (Patent Infringement)


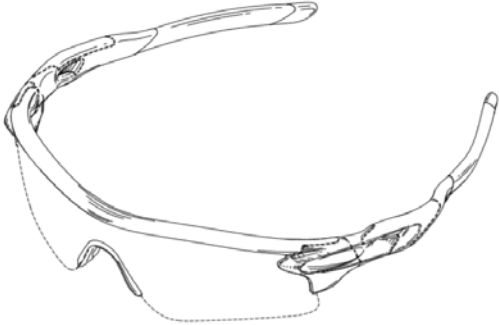
24 (35 U.S.C. § 271)

25 15. Oakley repeats and re-alleges the allegations of paragraphs 1-14 of  
26 this Complaint as if set forth fully herein.

27 16. This is a claim for patent infringement under 35 U.S.C. § 271.

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1 17. Defendant, through its agents, employees, and/or servants has, and  
2 continues to, knowingly, intentionally, and willfully infringe the D180 Patent by  
3 making, using, selling, offering for sale, and/or importing eyewear having a  
4 design that would appear to an ordinary observer to be substantially similar to  
5 the claim of the D180 Patent, for example, Defendant's 2150RV sunglass model  
6 as shown below.

<b>Defendant's 2150RV Sunglass Model</b>	<b>Oakley's D180 Patent</b>
	

15 18. Defendant's acts of infringement of the D180 Patent were  
16 undertaken without permission or license from Oakley. Oakley is informed and  
17 believes, and thereon alleges, that Defendant had actual knowledge of Oakley's  
18 rights in the design claimed in the D180 Patent. Oakley and its iconic designs  
19 are well-known throughout the eyewear industry, and Defendant's 2150RV  
20 sunglass model is an identical copy of Oakley's patented design. Accordingly,  
21 Defendant's actions constitute willful and intentional infringement of the D180  
22 Patent. Defendant infringed the D180 Patent with reckless disregard of  
23 Oakley's patent rights. Defendant knew, or it was so obvious that Defendant  
24 should have known, that its actions constitute infringement of the D180 Patent.  
25 Defendant's acts of infringement of the D180 Patent were not consistent with  
26 the standards of commerce for its industry.

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1 the HOLBROOK Trade Dress as a distinctive designation of origin of Oakley's  
2 products. The HOLBROOK Trade Dress is an intellectual property asset of  
3 great value as a symbol of Oakley and its quality products, services, reputation,  
4 and goodwill.

5 28. Subsequent to Oakley's use and adoption of the HOLBROOK  
6 Trade Dress, Defendant has developed, manufactured, imported, advertised,  
7 and/or sold products that use trade dress that is confusingly similar to the  
8 HOLBROOK Trade Dress without Oakley's consent. As shown below, for  
9 example, Defendant's BP0090-GL sunglass model, which is sold and/or offered  
10 for sale at Defendant's 431 South Los Angeles Street, Los Angeles, California  
11 90013 store location and elsewhere, uses a trade dress that is confusingly similar  
12 to Oakley's HOLBROOK Trade Dress.

<b>Defendant's BP0090-GL Sunglass Model</b>	<b>Oakley's HOLBROOK Trade Dress</b>
 A pair of black-rimmed sunglasses with dark lenses. A black tag with white and blue text is attached to the left temple. The tag features the word "HOLBROOK" in a stylized font and "UV" above it.	 A pair of black-rimmed sunglasses with dark lenses, shown from a side profile. The design is similar to the defendant's model but lacks the tag.

23 29. Defendant's use of the HOLBROOK Trade Dress in connection  
24 with its sunglasses is likely to cause confusion, or to cause mistake, or to  
25 deceive as to the affiliation, connection, or association of Defendant with  
26 Oakley and/or as to the origin of the HOLBROOK Trade Dress or cause  
27 Defendant's customers, purchasers, and members of the public to believe that  
28 Defendant and/or its products have been sponsored, approved, authorized, or

1 licensed by Oakley, and creates a false designation of origin, false or misleading  
2 description of fact, or false or misleading representation of fact, which in  
3 commercial advertising or promotion, misrepresents the nature, characteristics,  
4 qualities, or geographic origin of his or her or another person's goods or  
5 commercial activities, all in violation of 15 U.S.C. § 1125(a), and constitutes  
6 trade dress infringement and unfair competition.

7 30. Oakley is informed and believes, and thereon alleges, that  
8 Defendant acted with the intent to unfairly compete with Oakley, to trade upon  
9 Oakley's reputation and goodwill by causing confusion and mistake among  
10 customers and the public, and to deceive the public into believing that  
11 Defendant's products are associated with, sponsored by, originated from, or are  
12 approved by Oakley, when they are not, resulting in a loss of reputation in, and  
13 mischaracterization of, Oakley's products and its brand, damaging its  
14 marketability and saleability.

15 31. Defendant's activities constitute willful and intentional  
16 infringement of Oakley's trade dress rights in total disregard of Oakley's  
17 proprietary rights, and were done despite Defendant's knowledge that use of the  
18 HOLBROOK Trade Dress was and is in direct contravention of Oakley's rights.

19 32. Oakley is informed and believes, and thereon alleges, that  
20 Defendant's actions were undertaken willfully with full knowledge of the falsity  
21 of such designation of origin and false descriptions or representations.

22 33. Oakley is informed and believes, and thereon alleges, that  
23 Defendant has derived and received, and will continue to derive and receive,  
24 gains, profits, and advantages from Defendant's trade dress infringement, false  
25 designation of origin, false or misleading statements, descriptions of fact, false  
26 or misleading representations of fact, and unfair competition in an amount that  
27 is not presently known to Oakley. By reason of Defendant's actions,  
28 constituting trade dress infringement false designation of origin, false or



1 misleading statements, descriptions of fact, false or misleading representations  
2 of fact, and unfair competition, Oakley has been damaged and is entitled to  
3 monetary relief in an amount to be determined at trial.

4 34. Pursuant to 15 U.S.C. § 1117, Oakley is entitled to recover  
5 (1) Defendant's profits, (2) any damages sustained by Oakley, and (3) the costs  
6 of the action. In assessing damages, the Court may enter judgment up to three  
7 times actual damages, and in awarding profits, the Court may in its discretion  
8 enter judgment for such sum as the court shall find to be just, according to the  
9 circumstances of the case. The Court may also award Oakley its reasonable  
10 attorneys' fees for the necessity of bringing this claim.

11 35. Due to Defendant's actions, constituting trade dress infringement,  
12 false designation of origin, false or misleading statements, false or misleading  
13 description of fact, false or misleading representations of fact, and unfair  
14 competition, Oakley has suffered great and irreparable injury, for which Oakley  
15 has no adequate remedy at law.

16 36. Defendant will continue to infringe Oakley's trade dress rights and  
17 its false designation of origin, false or misleading statements, false or  
18 misleading description of fact, false or misleading representations of fact, and  
19 unfair competition to the great and irreparable injury of Oakley, unless and until  
20 Defendant is enjoined by this Court.

21 **THIRD CLAIM FOR RELIEF**

22 (California Unfair Competition)

23 37. Oakley repeats and re-alleges the allegations of paragraphs 1-36  
24 and 25-36 of this Complaint as if set forth fully herein.

25 38. This is a claim for unfair competition, arising under California  
26 Business & Professions Code § 17200, et seq. and California common law.

27 39. Defendant's acts of trade dress infringement and false designation  
28 of origin complained of herein constitute unfair competition with Oakley under

1 the common law and statutory laws of the State of California, particularly  
2 California Business & Professions Code § 17200, et seq.

3 40. Oakley is informed and believes, and thereon alleges, that  
4 Defendant has derived and received, and will continue to derive and receive,  
5 gains, profits, and advantages from Defendant's unfair competition in an  
6 amount that is not presently known to Oakley. By reason of Defendant's  
7 wrongful acts as alleged in this Complaint, Oakley has been damaged and is  
8 entitled to monetary relief in an amount to be determined at trial.

9 41. By its actions, Defendant has injured and violated the rights of  
10 Oakley and has irreparably injured Oakley, and such irreparable injury will  
11 continue unless Defendant is enjoined by this Court.

12  
13 **WHEREFORE**, Oakley prays for judgment in its favor against  
14 Defendant for the following relief:

15 A. An Order adjudging Defendant to have willfully infringed the  
16 D180 Patent under 35 U.S.C. § 271;

17 B. A preliminary and permanent injunction enjoining Defendant, its  
18 respective officers, directors, agents, servants, employees, and attorneys, and  
19 those persons in active concert or participation with Defendant, from making,  
20 using, selling, offering to sell, and/or importing into the United States  
21 Defendant's 2150RV sunglass model, as well as any products that are not  
22 colorably different therefrom;

23 C. A preliminary and permanent injunction enjoining Defendant, its  
24 respective officers, directors, agents, servants, employees, and attorneys, and  
25 those persons in active concert or participation with Defendant, from directly or  
26 indirectly infringing the D180 Patent in violation of 35 U.S.C. § 271;

27 D. That Defendant account for all gains, profits, and advantages  
28 derived by Defendant's infringement of the D180 Patent in violation of

1 35 U.S.C. § 271, and that Defendant pay to Oakley all damages suffered by  
2 Oakley and/or Defendant's total profit from such infringement pursuant to  
3 35 U.S.C. § 284 and § 289;

4 E. An Order for a trebling of damages and/or exemplary damages  
5 because of Defendant's willful conduct pursuant to 35 U.S.C. § 284;

6 F. That the Court find for Oakley and against Defendant on Oakley's  
7 claims of trade dress infringement, false designation of origin, and unfair  
8 competition under 15 U.S.C. § 1125(a);

9 G. That the Court find for Oakley and against Defendant on Oakley's  
10 claims of unfair competition under California Business & Professions Code  
11 § 17200, et seq. and California common law;

12 H. That the Court issue a preliminary and permanent injunction  
13 against Defendant, its agents, servants, employees, representatives, successors,  
14 and assigns, and all persons, firms, or corporations in active concert or  
15 participation with Defendant, enjoining them from engaging in the following  
16 activities and from assisting or inducing, directly or indirectly, others to engage  
17 in the following activities:

- 18 1. Manufacturing, importing, marketing, displaying,  
19 distributing, offering to sell, and/or selling Defendant's  
20 BP0090-GL product shown above and any products that are  
21 not colorably different therefrom;
- 22 2. using Oakley's HOLBROOK Trade Dress, or any other trade  
23 dress that is confusingly similar to Oakley's HOLBROOK  
24 Trade Dress;
- 25 3. falsely designating the origin of Defendant's goods;
- 26 4. unfairly competing with Oakley in any manner whatsoever;
- 27 5. causing a likelihood of confusion or injuries to Oakley's  
28 business reputation; and,

1           6.     manufacturing,     importing,     marketing,     displaying,  
2                     distributing, offering to sell, and/or selling any goods that  
3                     infringe Oakley’s HOLBROOK Trade Dress.

4           I.     That an accounting be ordered to determine Defendant’s profits  
5     resulting from its trade dress infringement, false designation of origin, and  
6     unfair competition, and that Oakley be awarded monetary relief in an amount to  
7     be fixed by the Court in its discretion as it finds just as an equitable remedy and  
8     as a remedy under 15 U.S.C. § 1117, including:

- 9           1.     all profits received by Defendant as a result of its infringing  
10                    actions, said amount to be trebled;
- 11           2.     all damages sustained by Oakley as a result of Defendant’s  
12                    acts of trade dress infringement, unfair competition, and  
13                    false designation of origin, and that such damages be trebled;  
14                    and
- 15           3.     punitive damages stemming from Defendant’s willful,  
16                    intentional, and malicious acts;

17           J.     That such damages and profits be trebled and awarded to Oakley  
18     pursuant to 15 U.S.C. § 1117;

19           K.     An Order adjudging that this is an exceptional case;

20           L.     That, because of the exceptional nature of this case resulting from  
21     Defendant’s deliberate infringing actions, this Court award to Oakley all  
22     reasonable attorneys’ fees, costs, and disbursements incurred as a result of this  
23     action, pursuant to 15 U.S.C. § 1117 and/or 35 U.S.C. § 285;

24           M.     That Oakley recover exemplary damages pursuant to California  
25     Civil Code § 3294;

26           N.     An award of pre-judgment and post-judgment interest and costs of  
27     this action against Defendant; and,

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

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

Dated: March 21, 2018

By: /s/ Lauren Keller Katzenellenbogen  
Michael K. Friedland  
Lauren Keller Katzenellenbogen  
Ali S. Razai  
James F. Smith

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: March 21, 2018

By: /s/ Lauren Keller Katzenellenbogen  
Michael K. Friedland  
Lauren Keller Katzenellenbogen  
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