

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO.

MERIT DIAMOND CORPORATION,  
a Florida corporation,

Plaintiff,

vs.

SEARS, ROEBUCK & CO., SEARS HOLDINGS  
MANAGEMENT CORPORATION, SEARS BRANDS, LLC,  
KMART OPERATIONS, LLC., and KMART CORPORATION,

Defendants.

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**COMPLAINT**

Plaintiff, MERIT DIAMOND CORPORATION (“Plaintiff”), by and through undersigned counsel, hereby sues Defendants, SEARS, ROEBUCK & CO. (“Sears”), SEARS HOLDINGS MANAGEMENT CORPORATION (“Sears Holdings”), SEARS BRANDS, LLC, (“Sears Brands”), KMART OPERATIONS LLC (“Kmart Operations”), and KMART CORPORATION (“Kmart Corporation”) (collectively “Defendants”) and for its complaint alleges as follows:

**NATURE OF THE ACTION**

1. This action arises out of Defendants’ blatant and willful violation of Plaintiff’s valuable copyright and trade dress rights in and to its distinctive, federally-registered copyright design and distinctive trade dress, each of which has been used by Plaintiff widely and continuously in the State of Florida and throughout the United States in interstate commerce vis-à-vis marketing, advertising, distributing, and selling the subject jewelry for over a decade.

2. Rather than competing fairly with Plaintiff in the jewelry industry, Defendants have instead engaged in an unlawful campaign to leverage and trade on Plaintiff’s reputation and brand

equity by developing, advertising, marketing, and/or selling a knock-off, low quality, private label brand of jewelry, and more specifically necklaces, in a calculated manner to pass off their inferior, lower-priced jewelry as Plaintiff's superior-quality goods. Consequently, Plaintiff is suffering harm to the value, distinctiveness, goodwill, reputation, and brand equity associated with its product that has been acquired through years of use in United States interstate commerce. As a result, the injury that has been suffered and continues to be suffered by Plaintiff due to Defendants' unlawful acts of infringement and unfair competition, as alleged herein, is irreparable. Defendants' wrongful actions will continue unless enjoined by this Court.

### **JURISDICTION AND VENUE**

3. This is an action for injunctive and other relief under the Copyright Act of 1976, 17 U.S.C. §101, *et seq.*, for copyright infringement pursuant to 17 U.S.C. §501 against Defendants for the sale of jewelry that is substantially similar to Plaintiff's copyrighted designs. In addition, Plaintiff asserts claims for injunctive and other relief under the Federal Trademark Act, 15 U.S.C. §1051, *et seq.* ("Lanham Act"), particularly 15 U.S.C. §1125(a) for trade dress infringement. Plaintiff also asserts claims in accordance with common law rights pursuant to *Fla. Stat.* §495.161 for trade dress infringement.

4. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. §§1331, 1338(a) and 1338(b) and the Copyright Act, and 17 U.S.C. §101, *et. seq.* This Court also has supplemental jurisdiction pursuant to 28 U.S.C. §1367.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b) and (c), in that a substantial part of the events or omissions giving rise to the claim occurred in this district, and/or a substantial part of the property, namely Plaintiff's copyright and trade dress ownership,

is situated in this district.

6. Upon information and belief, jurisdiction is proper in that:
  - a. Defendants are engaged in substantial and not isolated activity within the State of Florida, within the meaning of *Fla. Stat.* §48.193(2); and/or
  - b. Defendants have operated, conducted, engaged in, or carried on a business venture in this State, from which this action arises, within the meaning of *Fla. Stat.* §48.193(1)(a); and/or
  - c. Defendants have committed tortious acts within this State, including the infringement set forth herein, within the meaning of *Fla. Stat.* §48.193(1)(b); and/or
  - d. Defendants have caused injury to the property of Plaintiff within this state, namely Plaintiff's copyrights and trade dress as set forth herein, arising out of acts or omissions by Defendants outside of this State, while, at or about the time of the injury, Defendants were engaged in solicitation or service activities within this State, within the meaning of *Fla. Stat.* §48.193(1)(f).

### **THE PARTIES**

7. Plaintiff is a corporation duly organized and existing under the laws of Florida with a principal place of business at 1900 Tyler Street, Suite 300, Hollywood, Florida 33020.
8. For thirty (30) years, Plaintiff has been engaged in the business of designing, manufacturing, and distributing high-quality jewelry items, including, but not limited to, uniquely crafted diamond pendants and earrings.
9. Since its inception, Plaintiff has established a substantial international reputation for high quality jewelry.

10. Plaintiff's jewelry has been widely distributed and advertised nationally, and has become well known to the trade and consuming public in connection with Plaintiff.

11. Upon information and belief, Defendant Sears is a corporation organized under the laws of New York, with its offices and principal place of business located at 3333 Beverly Road, Hoffman Estates, Illinois 60179.

12. Upon information and belief, Defendant Sears Holdings Management Corporation is a corporation organized under the laws of the State of Delaware, with its offices and principal place of business located at 3333 Beverly Road, Hoffman Estates, Illinois 60179, and is the parent company of Kmart Operations and Sears Brands.

13. Upon information and belief, Defendant Sears Brands, LLC is a limited liability company organized and existing under the laws of the State of Illinois, having an address and principal place of business located at 3333 Beverly Road, Hoffman Estates, Illinois 60179. Upon information and belief, Sears Brands is a wholly-owned subsidiary of Sears Holdings.

14. Upon information and belief, Defendant Kmart Operations is a limited liability company organized and existing under the laws of the State of Delaware, having an address and principal place of business at 3333 Beverly Road B2-126B, Hoffman Estates, Illinois 60179. Upon information and belief, Kmart Operations is a wholly-owned subsidiary of Sears Holdings, and operates a discount "big box" department store chain with locations throughout the State of Florida and the United States, and an e-commerce website located at the domain name [www.kmart.com](http://www.kmart.com). Through physical and online retail channels, Kmart sells a wide variety of various goods, including the infringing products at issue in this lawsuit.

15. Upon information and belief, Defendant Kmart Corporation is a Michigan

corporation with its principal place of business located at 3333 Beverly Road, Hoffman Estates, Illinois 60179. Kmart Corporation operates a chain of approximately 1,077 retail stores that sell a wide variety of merchandise, including home appliances, consumers electronics, apparel, pharmacy items, and jewelry.

16. Plaintiff is informed and believes and thereon alleges that at all times relevant hereto each of the Defendants was the agent, parent company, subsidiary company, affiliate, officer, director, manager, principal, alter-ego, and/or employee of the other Defendants and was at all times acting within the scope of such agency, affiliation, alter-ego relationship and/or employment; and actively participated in or subsequently ratified and adopted, or both, each and all of the acts or conduct alleged, with full knowledge of all the facts and circumstances, including, but not limited to, full knowledge of each and every violation of Plaintiff's rights and the damages to Plaintiff proximately caused thereby.

#### **PLAINTIFF'S "SOLITAIRE" DESIGN**

17. In approximately October 2002, Plaintiff created a series of original, single stone designs which was embodied in necklaces and earrings (the "Solitaire" Design). See **Exhibit A**.

18. The "Solitaire" Design contains the following original, sculptural and decorative elements: (i) one round, brilliant cut single diamond; (ii) the diamonds are channel-set; (iii) a precious helix of a clockwise turn; (iv) the diamond is mounted between the turn of the helix; (v) a tapered top portion of the helix and a tapered end portion of the helix; (vi) the inner and outer surface of the precious metal helix is polished; and (vii) the polishing of the inner surface creates a mirrored effect of the diamond in its setting. See **Exhibit A**.

19. Prior to the creation of the "Solitaire" Design, Plaintiff had never seen jewelry with

this combination and arrangement of design elements.

20. On November 27, 2002, Plaintiff registered the copyright of its “Solitaire” Design in the United States Copyright Office and obtained Certificate of Registration No. VA 1-176-269, a copy of which is attached hereto as **Exhibit B**.

21. Plaintiff is, and at all relevant times has been, the owner of all rights, title and interest, including the copyright, in and to its “Solitaire” Design. Plaintiff has never assigned the copyright in its “Solitaire” Design to any other person or entity. Plaintiff’s copyright in its “Solitaire” Design is valid and subsisting and in full force and effect.

**PLAINTIFF’S SIRENA® COLLECTION**

22. Plaintiff’s “Solitaire” Design is part of Plaintiff’s highly successful and famous Sirena® Collection.

23. Plaintiff’s “Solitaire” Design represents original and creative sculptured pieces of jewelry created by Plaintiff’s unique arrangement of numerous original artistic elements.

24. Plaintiff’s artistic style, and the unique design and appearance in and of the “Solitaire” Design, which has been sold and offered for sale in commerce, is recognizable as the style and work of Plaintiff, exclusively.

25. Plaintiff’s “Solitaire” Design represents an original selection, coordination and arrangement of decorative elements, creating an elegant and sleek style.

26. Plaintiff’s Sirena® Collection, including the “Solitaire” Design, has proven to be a tremendous commercial success and has generated significant sales. To date, the Sirena® Collection has generated sales in excess of \$200,000,000 for Plaintiff and has generated sales in excess of \$500,000,000 for Plaintiff’s retailers. The “Solitaire” Design pendant alone has

generated sales in excess of \$7,000,000 per year for Plaintiff.

27. Plaintiff has spent in excess of \$18,000,000 in advertising and promotional activity in connection with its Sirena<sup>®</sup> Collection, including the “Solitaire” Design, which includes advertisements in various media such as national television commercials and national print advertisements.

28. Pieces from the Sirena<sup>®</sup> Collection, including Plaintiff’s “Sirena” Design, have been requested and worn by celebrities and have been featured on television shows such as the UPN Network’s *America’s Next Top Model* and VH1’s *My Fair Brady*.

29. As a result of, *inter alia*, the tremendous commercial success, advertising and promotional activity, and continuous use of the “Solitaire” Design, Plaintiff has acquired trade dress rights in its “Sirena” Design.

30. Plaintiff’s trade dress in its “Solitaire” Design is non-functional, generally consisting of: (i) one round, brilliant cut single diamond; (ii) the diamonds are channel-set; (iii) a precious helix of a clockwise turn; (iv) the diamond is mounted between the turn of the helix; (v) a tapered top portion of the helix and a tapered end portion of the helix; (vi) the inner and outer surface of the precious metal helix is polished; and (vii) the polishing of the inner surface creates a mirrored effect of the diamond in its setting (Plaintiff’s “Trade Dress”). See **Exhibit A**.

31. Plaintiff’s Trade Dress is inherently distinctive and/or has acquired secondary meaning.

32. Plaintiff’s Trade Dress is also depicted in its logo for its registered and incontestable “SIRENA COLLECTION & Design” mark. See **Exhibit C**.

33. Since long prior to the acts of Defendants complained of herein, Plaintiff has

expended a considerable amount of money, time, and effort in advertising, promoting, marketing, and selling the goods bearing the Plaintiff's Trade Dress.

34. Since long prior to the acts of Defendants complained of herein, Plaintiff's Trade Dress has been readily recognizable by the public as associated exclusively with Plaintiff by virtue of long and continuous use and has achieved a secondary meaning to the consuming public.

35. Plaintiff's Trade Dress has been in continuous use in U.S. commerce since its adoption and first use in U.S. commerce.

36. The phenomenal success of the Sirena<sup>®</sup> Collection, including Plaintiff's "Solitaire" Design and Plaintiff's Trade Dress, has not been lost on Plaintiff's competitors, who have copied Plaintiff's popular designs and have offered imitations of Plaintiff's "Solitaire" Design, Trade Dress and other pieces from Plaintiff's Sirena<sup>®</sup> Collection.

37. Plaintiff has carefully monitored the market for infringements and has actively and successfully enforced its rights to ensure that pieces from its Sirena<sup>®</sup> Collection are not produced and copied by third parties without consent.

#### **DEFENDANTS' INFRINGING ACTIVITIES**

38. Upon information and belief, Defendants own and operate the Sears and Kmart chains of discount department stores located throughout the United States, including in the State of Florida.

39. Upon information and belief, Defendants also own and operate e-commerce web sites accessible by the consuming public in the United States, including by consumers in the State of Florida, at the domain names "sears.com" and "kmart.com." Upon information and belief, and as evidenced by the domain name registry, Sears Brands is the registered owner of the Kmart

website.

40. Long subsequent to the creation, registration and use in commerce by Plaintiff of its “Solitaire” Design, Defendants have infringed the registered copyright in the “Solitaire” Design by reproducing, separately, in copies and/or preparing, separately, copies and/or derivative works based upon and copied from Plaintiff’s “Solitaire” Design, and by distributing said copies and/or derivative works of Plaintiff’s “Solitaire” Design, (“Defendants’ Infringing Works”) in violation of Plaintiff’s exclusive rights under 17 U.S.C. §§ 106 and 501. An example of the Infringing Works is attached hereto as **Exhibit D**.

41. Upon information and belief, Sears, Sears Holdings, and/or Sears Brands were one of Plaintiff’s former customers, and have had access to and knowledge of Plaintiff’s “Solitaire” Design and Trade Dress. Indeed, Sears, Sears Holdings, and/or Sears Brands actually carried Plaintiff’s Sirena® Collection, including the Solitaire Design from 2003 until 2011.

42. Defendants’ Infringing Works are identical to, and/or substantially similar to, Plaintiff’s “Solitaire” Design, copying the original and creative features of Plaintiff’s “Solitaire” Design. A comparison of Plaintiff’s “Solitaire” Design and Defendants’ Infringing Works is attached hereto as **Exhibit E**.

43. Moreover, long subsequent to Plaintiff’s adoption and use of Plaintiff’s Trade Dress in commerce, Defendants, upon information and belief, commenced selling jewelry, including the Infringing Works, utilizing trade dress that is confusingly similar to Plaintiff’s Trade Dress (the “Accused Trade Dress”), as demonstrated in **Exhibit D**.

44. Upon information and belief, Defendants have enjoyed and continue to enjoy financial gain and profit from the sale and marketing of the Infringing Works and the goods

utilizing the Accused Trade Dress.

45. Upon information and belief, Defendants' Infringing Works and goods utilizing the Accused Trade Dress, are offered for sale at retail stores nationwide, including within the State of Florida and this District.

46. In approximately November of 2016, Plaintiff's representative located the Infringing Works, which are substantially similar to Plaintiff's "Solitaire" Design and which utilize Plaintiff's Trade Dress, at one of Defendants' retail stores located in the Aventura Mall at 19501 Biscayne Blvd., Aventura, Florida 33180.

47. On or about November 28, 2016, Plaintiff's representative also located the Infringing Works on Defendants' website, with an advertised price of \$29.99 per item. *See* screenshot of Defendants' website attached hereto as **Exhibit F**.

48. In just over a week, or by December 6, 2016, the price of Defendants' Infringing Works had increased to \$41.99 per item. *See* screenshot of Defendants' website located at:

<http://www.sears.com/vedere-le-stelle-cubic-zirconia-pendant/p-04465377000P?plpSellerId=Sears&prdNo=25&blockNo=25&blockType=G25>

*See* screenshot attached hereto as **Exhibit G**.

49. The Infringing Works are also being sold on defendant Kmart Operations' website located at:

<http://www.kmart.com/vedere-le-stelle-cubic-zirconia-pendant/p-04465377000P>

*See* screenshot attached hereto as **Exhibit H**.

50. Upon information and belief, Defendants' aforesaid acts were deliberate, willful, and intentional violations of Plaintiff's rights made for the purpose of commercial gain, and were

done knowingly without the authorization of Plaintiff and involved the copying of Plaintiff's "Solitaire" Design with full knowledge of Plaintiff's rights thereunder.

51. Upon information and belief, Defendants were well aware and, since long prior to the acts of Defendants complained of herein, have been well aware of Plaintiff's use and ownership of Plaintiff's "Solitaire" Design and Plaintiff's Trade Dress.

52. Upon information and belief, Defendants have been well aware that Plaintiff's Trade Dress is widely recognized and relied upon by the public and the trade as identifying Plaintiff, and its goods.

53. Notwithstanding that knowledge, and indeed by reason of such knowledge, Defendants thereafter engaged in, and it is believed will continue to engage in, a deliberate and willful scheme to trade upon and to misappropriate for themselves the goodwill represented and symbolized by Plaintiff's Trade Dress, through the marketing and sales of competing goods bearing the Accused Trade Dress in U.S. commerce.

54. The acts of Defendants complained of herein constitute willful and intentional infringement, are in total disregard of Plaintiff's rights, and were commenced and it is believed will continue in spite of Defendants' knowledge that their sale and advertising of the Infringing Works and use of the Accused Trade Dress is in direct contravention of Plaintiff's rights.

55. Defendants' aforesaid use of the Accused Trade Dress is designed and is calculated to and is likely to cause confusion, to cause mistake, and to deceive customers and prospective customers as to the origin or sponsorship of Defendants' products and to cause them to falsely believe that said products are the products of Plaintiff, or are sponsored, licensed, authorized, or approved by Plaintiff, all to the detriment of Plaintiff, the trade, and the public.

56. Defendants' use, sale and/or advertising of Defendants' Infringing Works and Accused Trade Dress are without the license or consent of Plaintiff.

57. Plaintiff has been damaged by Defendants' acts of infringement.

58. Defendants' aforesaid acts have caused and will continue to cause substantial and irreparable injury to Plaintiff unless such acts are restrained by this Court.

59. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement as alleged herein. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement in an amount to be established at trial.

60. Plaintiff has no adequate remedy at law.

**COUNT I**  
**COPYRIGHT INFRINGEMENT OF PLAINTIFF'S "SOLITAIRE" DESIGN,**  
**REGISTRATION NO. VA 1-176-269**

61. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 60 as if fully set forth herein.

62. Defendants have infringed, contributed to, or induced the infringement of Plaintiff's "Solitaire" Design, under 17 U.S.C. §501, by making, reproducing and distributing, directing to be made, reproduced and distributed, and assisting in making, reproducing and distributing Infringing Works which are identical to or substantially similar, and based upon and copied from Plaintiff's "Solitaire" Design.

63. Upon information and belief, Defendants' aforesaid acts were deliberate, willful, and intentional violations of Plaintiff's rights for the purpose of commercial gain, and were done

so knowingly without the authorization of Plaintiff and with full knowledge of Plaintiff's rights.

64. Defendants' aforesaid acts have caused and will continue to cause substantial and irreparable injury to Plaintiff unless such acts are restrained by this Court.

65. Plaintiff has no adequate remedy at law.

**COUNT II**  
**FEDERAL UNFAIR COMPETITION, FALSE DESCRIPTION AND FALSE**  
**DESIGNATION OF ORIGIN AS TO TRADE DRESS, 15 U.S.C. §1125(a)**

66. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 60 as if fully set forth herein.

67. Defendants' intentional and unlawful use in commerce of the Accused Trade Dress constitutes use in commerce of a word, term, name, symbol, or device, or a combination thereof, or a false designation of origin, false or misleading description, and false representation that is likely to cause confusion, reverse confusion, or to cause mistake, or to deceive as to affiliation, connection, or association of Defendants with Plaintiff, or as to origin, sponsorship or approval of Defendants' goods, services or commercial activities by Plaintiff, or to cause reverse confusion thereof.

68. Defendants' aforesaid acts and use of the Accused Trade Dress constitute unfair competition and false designation and/or false description of origin in violation of §43(a)(1)(A) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A).

69. Defendants' aforesaid acts have caused and will cause great and irreparable injury to Plaintiff, and unless said acts are restrained by this Court, they will be continued and Plaintiff will continue to suffer great and irreparable injury.

70. Plaintiff has no adequate remedy at law.

**COUNT III**  
**COMMON LAW TRADE DRESS INFRINGEMENT AND UNFAIR**  
**COMPETITION**

71. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 60 as if fully set forth herein.

72. Defendants' aforesaid acts constitute infringement, misappropriation, and misuse of the Plaintiff's Trade Dress, unfair competition, palming-off, passing-off and/or reverse-passing off, against Plaintiff and unjust enrichment of Defendants, all in violation of Plaintiff's rights at common law and under the law of the State of Florida.

73. Plaintiff owns and enjoys common law trade dress rights in Florida in conjunction with the design of certain jewelry, which rights are superior to any rights that Defendants may claim in and to said trade dress.

74. The sale by Defendants of jewelry bearing the Accused Trade Dress in the State of Florida and elsewhere is likely to cause and has caused confusion as to the source of its jewelry in that purchasers thereof will be likely to associate or have associated such goods as originating with Plaintiff, all to the detriment of the Plaintiff.

75. Defendants' acts have harmed Plaintiff's reputation, severely damaged Plaintiff's goodwill, and upon information and belief, have diverted sales from Plaintiff and create the impression that Plaintiff is an infringer when in fact Defendants are the infringers.

76. Defendants' aforesaid acts have caused and will continue to cause great and irreparable injury to Plaintiff, and unless said acts are restrained by this Court, they will be continued and Plaintiff will continue to suffer great and irreparable injury.

77. Plaintiff has no adequate remedy at law.

**COUNT IV**  
**VICARIOUS AND/OR CONTRIBUTORY COPYRIGHT**  
**INFRINGEMENT AGAINST ALL DEFENDANTS**

78. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 60 as if fully set forth herein.

79. Plaintiff is informed and believes and thereon alleges that Defendants knowingly induced, participated in, aided and abetted in and profited from the illegal reproduction and/or subsequent sales of the Infringing Works as alleged hereinabove.

80. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, are vicariously liable for the infringement alleged herein because they had the right and ability to supervise the infringing conduct and because they had a direct financial interest in the infringing conduct.

81. By reason of the Defendants' and each of their acts of contributory and vicarious infringement as alleged above, Plaintiff has suffered and will continue to suffer substantial damages to its business in an amount to be established at trial, as well as additional general and special damages in an amount to be established at trial.

82. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement in an amount to be established at trial.

83. Plaintiff is informed and believes and thereon alleges that the infringement of Plaintiff's copyrighted design was willful, reckless, and/or in blatant disregard for Plaintiff's

rights as a copyright holder, and as such claims willful, exemplary and enhanced statutory damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

**AGAINST ALL DEFENDANTS**

A. That this Court will adjudge that the copyright in and to the “Solitaire” Design is valid, owned by Plaintiff and has been infringed as a direct and proximate result of the acts of Defendants as set forth in this Complaint, in violation of Plaintiff’s rights under the Copyright Act of 1976, 17 U.S.C. §101 et seq.

B. That this Court will adjudge that the Plaintiff’s Trade Dress has been infringed, as a direct and proximate result of the willful acts of Defendants as set forth in this Complaint, in violation of Plaintiff’s rights under the Lanham Act, 15 U.S.C. §1051 et seq., Fla. Stat. §495.151, and the common law of the State of Florida.

C. That Defendants, and all officers, directors, agents, servants, employees, parent companies, subsidiary companies, affiliates, attorneys, successors, and assigns, and all persons in active concert or participation therewith, be permanently enjoined and restrained:

- 1) From infringing or contributing to the infringement of Plaintiff’s “Solitaire” Design;
- 2) From reproducing, distributing, or otherwise using or contributing to the reproduction, distribution or use of the Infringing Works, and any substantially similar or derivative works, and any other works found infringing;
- 3) From using the Infringing Works or any design substantially similar

to the Plaintiff's "Solitaire" Design, in any way in connection with any goods and services;

4) From infringing the Plaintiff's Trade Dress;

5) From doing any other act or thing likely to cause the public or the trade to believe that there is any connection between Defendants and Plaintiff, or their respective goods; and

6) From otherwise infringing any copyright owned by Plaintiff.

D. That the Court order, and Defendants deliver up to Plaintiff or its attorneys, the impounding during the course of these proceedings pursuant to 17 U.S.C. §503, of all copies claimed or shown to have been made or used in violation of Plaintiff's exclusive rights, including the Infringing Works, including all plates, molds, matrices, masters, computer files, tapes, films, negatives or other articles by means of which such copies are or may be reproduced.

E. That Defendants be required to deliver up for destruction all goods, transfers, sketches, labels, signs, prints, packages, wrappers, receptacles, advertisements, and other written or printed materials that bear the Infringing Works and or any design similar thereto.

F. That Defendants be directed to file with this Court and to serve upon Plaintiff within thirty (30) days after service of the injunction issued in this action, a written report under oath, setting forth in detail the manner of compliance with paragraphs C through E.

G. That Plaintiff recover Defendants' profits and the damages of Plaintiff arising from Defendants' acts involving copyright infringement, or, in the alternative and upon timely request, statutory damages pursuant to 17 U.S.C. §504(c), including enhanced statutory damages for willful infringement.

H. That Plaintiff recover Defendants' profits and the damages of Plaintiff arising from Defendants' acts of trade dress infringement.

I. That Plaintiff recover such sums as are necessary to place or compensate for corrective advertising.

J. That Plaintiff recover both prejudgment and post-judgment interest on each and every award.

K. That Plaintiff recover its reasonable attorney's fees incurred in this action, pursuant to 17 U.S.C. §503 and §35 of the Lanham Act, 15 U.S.C. §1117.

L. That Plaintiff have and recover its taxable costs and disbursements incurred in this action.

M. That Plaintiff have other and such further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury as to all issues triable of right by a jury.

Respectfully submitted,

Dated: December 8, 2016

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