

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

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**ROLEX WATCH U.S.A., INC.,**

**Plaintiff,**

**Case No. 09-C-25**

**v.**

**VINCENT F. BARRETT a/k/a  
VINCE KONICEK, individually and  
d/b/a WWW.TOPROLEXREPLICA.COM;  
WWW.MAGNETICSERVICES.COM;  
“VINCENTERPRISE”; “MAGNETIC  
JEWELRY ORIGINALS PLUS MAGNETIC  
HEALING AIDS”; “THE COMPLETE  
MAGNETIC HEALTH STORE”;  
UNKNOWN WEBSITES 1-10;  
UNKNOWN ENTITIES 1-10; and  
“JOHN DOES” 1-10**

**Defendants.**

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**COMPLAINT**

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Plaintiff Rolex Watch U.S.A., Inc. (“Rolex”) by its attorneys hereby complains of defendants Vincent F. Barrett a/k/a Vince Konicek, individually and d/b/a www.toprolexreplica.com; www.magneticservices.com; “VINCEnterprise”; “Magnetic Jewelry Originals PLUS Magnetic Healing Aids”; “The Complete Magnetic Health Store”; Unknown Websites 1-10; Unknown Entities 1-10; and “John Does” 1-10 (hereinafter collectively referred to as “Defendants”) as follows:

**STATEMENT OF THE CASE**

1. This is a suit by Rolex against Defendants for statutory damages, treble damages and/or profits, injunctive relief, compensatory damages, pre-judgment interest, attorneys' fees, investigators' fees, costs and expenses from Defendants for each of Rolex's marks that the Defendants have willfully and maliciously counterfeited under the Lanham Act. Defendants are being sued by Rolex as a result of their sale, offers for sale, distribution, promotion and advertisement, over the Internet and through e-mail, of watches bearing counterfeits and infringements of the federally registered Rolex trademarks and for hosting websites that promote for sale and sell watches bearing the federally registered Rolex trademarks. As set forth below, Defendants' unlawful acts constitute federal trademark counterfeiting, infringement, unfair competition, false designation of origin and false description, cybersquatting, trademark dilution and unfair competition under Wisconsin law.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over the federal trademark claims asserted in this action under 15 U.S.C. § 1121, and 28 U.S.C. § 1331 and 28 U.S.C. § 1338.

3. This Court has supplemental jurisdiction over the claims in this Complaint that arise under state statute and the common law of the State of Wisconsin pursuant to 28 U.S.C. § 1367(a), because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

4. Defendants are subject to the Court's jurisdiction because they reside and do business in the Western District of Wisconsin and have committed the acts complained of herein in this District.

5. Defendants are subject to the jurisdiction of this Court pursuant to and in accordance with Rule 4 of the Federal Rules of Civil Procedure.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### **THE PARTIES**

7. Rolex is a corporation duly organized and existing under the laws of the State of New York, having an office and principal place of business at 665 Fifth Avenue, New York, New York 10022.

8. Upon information and belief, Vincent F. Barrett a/k/a Vince Konicek (“Barrett”) is a resident of the State of Wisconsin residing at 429 Pearl Street, Unit 1, Poynette, WI 53955.

9. Upon information and belief, Barrett is the registrant, owner, operator and/or controlling force behind the website: [www.toprolexreplica.com](http://www.toprolexreplica.com) (“[toprolexreplica.com](http://www.toprolexreplica.com)”).

10. Upon information and belief, Barrett is responsible for the day-to-day operations and management of, and is the moving force behind, [toprolexreplica.com](http://www.toprolexreplica.com).

11. Upon information and belief, Barrett is the registrant, owner, operator and/or controlling force behind the website: [www.magneticservices.com](http://www.magneticservices.com) (“[magneticservices.com](http://www.magneticservices.com)”) ([toprolexreplica.com](http://www.toprolexreplica.com) and [magneticservices.com](http://www.magneticservices.com) are hereinafter collectively referred to as the “Websites”).

12. Upon information and belief, Barrett is responsible for the day-to-day operations and management of, and is the moving force behind, [magneticservices.com](http://www.magneticservices.com).

13. Upon information and belief, “VINCEnterprises” is a fictitious entity under which name [toprolexreplica.com](http://www.toprolexreplica.com) and Barrett are and have been doing business, with a place of business at P.O. Box 460, Poynette, WI 53955.

14. Upon information and belief, Barrett is responsible for the day-to-day operations and management of, and is the moving force behind, “VINCEnterprises.”

15. Upon information and belief, Barrett used the fictitious company name “Magnetic Jewelry Originals PLUS Magnetic Healing Aids” to register magneticservices.com.

16. Upon information and belief, “Magnetic Jewelry Originals PLUS Magnetic Healing Aids” a/k/a “The Complete Magnetic Health Store” is a fictitious entity under which name magneticservices.com and Barrett are and have been doing business, with a place of business at 39440 Desert Greens Drive East, Palm Desert, CA 92260.

17. Upon information and belief, Barrett is responsible for the day-to-day operations and management of, and is the moving force behind, “Magnetic Jewelry Originals PLUS Magnetic Healing Aids” a/k/a “The Complete Magnetic Health Store.”

18. Upon information and belief, Defendants have established e-mail addresses at: vkonicek@yahoo.com, vincekonicek@sprintpcs.com, vkonicek@msn.com and info@toprolexreplica.com that are used to assist in the distribution of infringing merchandise.

19. The identities of Unknown Websites 1-10, Unknown Entities 1-10, and “John Does” 1-10 are not currently known to Rolex, but, upon information and belief, they are associated with Defendants and contribute to Defendants’ infringements. Rolex will identify these Unknown Websites, Unknown Entities, and “John Does” upon further knowledge and investigation.

## **FACTUAL ALLEGATIONS**

### **A. Rolex's Famous Products and Trademarks**

20. Rolex is the exclusive distributor and warrantor in the United States of Rolex watches, all of which bear one or more of the Rolex Registered Trademarks as defined below.

21. Rolex watches are identified by the trade name and trademark ROLEX and one or more of the Rolex Registered Trademarks.


22. Rolex is responsible for assembling, finishing, marketing and selling in interstate commerce high quality Rolex watches, watch bracelets and related products for men and women (hereinafter referred to as "Rolex Watches").

23. Rolex is responsible for maintaining control over the quality of Rolex products and services in this country.

24. Rolex has developed an outstanding reputation because of the uniform high quality of Rolex Watches and the Rolex Registered Trademarks are distinctive marks used to identify these high quality products originating with Rolex.

25. Rolex owns numerous trademarks, including, but not limited to, the trademarks and trade names ROLEX, PRESIDENT, CROWN DEVICE (design), DATEJUST, SEADWELLER, OYSTER, OYSTER PERPETUAL, GMT-MASTER, YACHT-MASTER, SUBMARINER, ROLEX DAYTONA, DAYTONA, EXPLORER II, TURN-O-GRAPH and GMT-MASTER II.

26. Rolex is the owner of, including but not limited to, the following federal trademark registrations in the U.S. Patent and Trademark Office:

Trademark	Reg. No.	Reg. Date	Goods
<b>ROLEX</b>	101,819	1/12/15	Watches, clocks, parts of watches and clocks, and their cases.
<b>PRESIDENT</b>	520,309	1/24/50	Wristbands and bracelets for watches made wholly or in part or plated with precious metals, sold separately from watches.
 <b>CROWN DEVICE</b>	657,756	1/28/58	Timepieces of all kinds and parts thereof.
<b>DATEJUST</b>	674,177	2/17/59	Timepieces and parts thereof.
<b>GMT-MASTER</b>	683,249	8/11/59	Watches.
<b>SEA-DWELLER</b>	860,527	11/19/68	Watches, clocks and parts thereof.
<b>OYSTER</b>	239,383	3/6/28	Watches, movements, cases, dials, and other parts of watches.
<b>OYSTER PERPETUAL</b>	1,105,602	11/7/78	Watches and parts thereof.
<b>YACHT-MASTER</b>	1,749,374	1/26/93	Watches.
<b>SUBMARINER</b>	1,782,604	7/20/93	Watches.
<b>ROLEX DAYTONA</b>	1,960,768	3/5/96	Watches.
<b>DAYTONA</b>	2,331,145	3/21/00	Watches.
<b>EXPLORER II</b>	2,445,357	4/24/01	Watches.
<b>TURN-O-GRAPH</b>	2,950,028	5/10/05	Watches and parts thereof.
<b>GMT-MASTER II</b>	2,985,308	8/16/05	Watches and parts thereof.

Correct and true copies of Rolex's federal trademark registrations (hereinafter collectively referred to as the "Rolex Registered Trademarks") are attached hereto as **Exhibit 1**.

27. The Rolex Registered Trademarks are arbitrary and fanciful and are entitled to the highest level of protection afforded by law.

28. Rolex and its predecessors have used the Rolex Registered Trademarks for many years on and in connection with Rolex Watches and related products.

29. Based on Rolex's extensive advertising, sales and the wide popularity of Rolex products, the Rolex Registered Trademarks are now famous and have been famous since well prior to the activities of the Defendants complained of herein. Rolex Registered Trademarks have acquired secondary meaning so that any product or advertisement bearing such marks is immediately associated by consumers, the public and the trade as being a product or affiliate of Rolex.

30. Rolex has gone to great lengths to protect its name and enforce the Rolex Registered Trademarks.

31. The Rolex Registered Trademarks are valid and subsisting and in full force and effect and have become incontestable pursuant to 15 U.S.C. § 1065, with the exception of TURN-O-GRAPH and GMT MASTER II.

**B. Defendants' Counterfeiting and Infringing Activities**

32. Rolex hereby incorporates all prior allegations by reference.

33. Upon information and belief, long after Rolex's adoption and use of the Rolex Registered Trademarks on its products and after Rolex's federal registration of the Rolex Registered Trademarks, Defendants began selling, offering for sale, distributing, promoting and advertising watches in interstate commerce, through the Websites, through the Internet and through e-mail, watches bearing counterfeits and infringements of the Rolex Registered Trademarks as those marks appear on Rolex's products and as shown in the Rolex Registered Trademarks attached hereto as **Exhibit 1**. Further, Defendants registered and use the domain name toprolexreplica.com, which incorporates the federally registered ROLEX trademark.

34. On or about October 2008, Rolex received notice that a new domain name, toprolexreplica.com, was registered containing the ROLEX trademark. This domain name was registered to "Vince Konicek" at PO Box 460, Poynette, WI 53955 at the e-mail address vkonicek@yahoo.com. A "Whois" search confirming the registrant information is attached hereto as **Exhibit 2** and incorporated herein by reference.

35. On or about October 9, 2008, Rolex's counsel wrote to "Vince Konicek" via e-mail and First Class Mail informing him of the illegality and potential penalties for cybersquatting and counterfeiting. A copy of this letter is attached hereto as **Exhibit 3** and is

incorporated herein by reference.

36. Upon information and belief, “Vince Konicek” is an alias for the defendant Vincent F. Barrett.

37. On or about October 14, 2008, [toprolexreplica.com](http://toprolexreplica.com) became active and has been and continues to advertise, distribute, promote, offer for sale, and sell watches bearing counterfeits of one or more of the Rolex Registered Trademarks. Representative samples of printouts from this website are attached hereto as **Exhibit 4** and incorporated herein by reference.

38. On or about October 14, 2008, Rolex’s counsel received a facsimile from the phone number (608) 635-2931 signed by “Vince Konicek” stating “[w]hen you finish suing all of the following merchants listed on Google search pages, call me and let me know you are going after me next.” Attached to this correspondence were two (2) pages of a Google search for the term “Rolex Replica.” Therefore, Defendants are fully aware that their conduct is unlawful and their infringement is willful.

39. On or about October 14, 2008, Rolex’s investigator placed an order for a “Rolex Yachtmaster” (\$99.00) from [toprolexreplica.com](http://toprolexreplica.com). The investigator received a delivery confirmation e-mail from [vincekonicek@sprintpcs.com](mailto:vincekonicek@sprintpcs.com) signed by “Vince Konicek, Certified Magnetic Therapy Practioner, THE COMPLETE MAGNETIC HEALTH STORE, [www.MagneticServices.Com](http://www.MagneticServices.Com), (1-800-393-9025), VINCEnterprises . . . .” Rolex’s investigator also received a “Paypal” receipt confirming payment to “VINCEnterprises” with the e-mail address, [vincekonicek@sprintpcs.com](mailto:vincekonicek@sprintpcs.com).

40. Based upon Defendants’ correspondence, Rolex’s investigator visited [magneticservices.com](http://magneticservices.com). Defendants are also using [magneticservices.com](http://magneticservices.com) to advertise, distribute,



promote, offer for sale, and sell watches bearing counterfeits of one or more of the Rolex Registered Trademarks. The site also provides links to [toprolexreplica.com](http://toprolexreplica.com). Representative samples of printouts from this website are attached hereto as **Exhibit 5** and are incorporated herein by reference.

41. On or about October 15, 2008, Rolex conducted a “Whois” search for the [magneticservices.com](http://magneticservices.com). The search revealed the following administration contact information: Vince Konicek, 39440 Desert Greens Dr., East Desert, CA 92260 at the e-mail address [vkonicek@msn.com](mailto:vkonicek@msn.com). A “Whois” search confirming the registrant information is attached hereto as **Exhibit 6** and incorporated herein by reference.

42. On or about October 25, 2008, Rolex’s investigator received a package containing a watch bearing counterfeits of the Rolex Registered Trademarks (“Counterfeit Watch”). The return address for this package was “VINCE KONICEK, VINCENTERPRISES, PO BOX 460, PO BOX 460 (sic), POYNETTE WI 53955-0460.” Digital images of the Counterfeit Watch and packaging are attached hereto as **Exhibit 7** and incorporated herein by reference.

43. Rolex’s representatives have examined the Counterfeit Watch and determined that none of its parts, including the dial, bracelet link, bezel and movement are of Rolex origin. The Counterfeit Watch contains numerous counterfeits of the Rolex Registered Trademarks.

44. Further, on December 15, 2008, Rolex discovered that Barrett is also using the website, [www.fatczech.blogspot.com](http://www.fatczech.blogspot.com) to also advertise [toprolexreplica.com](http://toprolexreplica.com). Representative samples of this website are attached hereto as **Exhibit 8**.

45. To date, Defendants continue to advertise for sale and sell watches bearing counterfeits of the Rolex Registered Trademarks on the Internet.

**C. Summary of Defendants' Illegal Activities**

46. Defendants intentionally, maliciously and willfully sold, offered for sale, distributed, promoted and advertised watches bearing counterfeits of one or more of the Rolex Registered Trademarks, despite knowledge that such sales were illegal.

47. The Defendants' acts were calculated to confuse and to deceive the public and are performed with full knowledge of Rolex's rights.

48. Defendants are not now, nor have they ever been, associated, affiliated, connected with, endorsed or sanctioned by Rolex.

49. Rolex has never authorized or consented in any way to the use by Defendants of the Rolex Registered Trademarks or marks confusingly similar thereto.

50. The use by Defendants of the Rolex Registered Trademarks or marks substantially indistinguishable and/or confusingly similar thereto in connection with Defendants' products is likely to cause consumers, the public and the trade to erroneously believe that the products provided by Defendants emanate or originate from Rolex, and/or that said products are authorized, sponsored, or approved by Rolex, even though they are not. This confusion causes irreparable harm to Rolex and weakens and dilutes the distinctive quality of the Rolex Registered Trademarks.

51. By using counterfeits and infringements of the Rolex Registered Trademarks on their goods, Defendants are trading on the goodwill and reputation of Rolex and creating the false impression that Defendants' goods are affiliated with Rolex.

52. Defendants have been unjustly enriched by illegally using and misappropriating Rolex's intellectual property for their own financial gain. Furthermore, Defendants have unfairly

benefited and profited from Rolex's outstanding reputation for high quality products and its significant advertising and promotion of Rolex watches and the Rolex Registered Trademarks.

53. Defendants have disparaged Rolex, its Rolex Registered Trademarks and its products by creating a false association with Rolex, its genuine goods and its Rolex Registered Trademarks.

54. Rolex has no control over the nature and quality of the products sold by Defendants, which bear counterfeits and infringements of the Rolex Registered Trademarks.

55. Among other things, Defendants' promotion, advertisement and provision of its goods have and will reflect adversely on Rolex as the believed source of origin thereof; hamper continuing efforts by Rolex to protect its outstanding reputation for high quality, originality and distinctive goods; and tarnish the goodwill and demand for genuine Rolex watches and products.

56. Upon information and belief, Defendants have acted with reckless disregard for Rolex's rights and/or were willfully blind in connection with unlawful activities. Upon information and belief, Defendants have willfully and maliciously engaged in infringing activities. Therefore, this case constitutes an exceptional case under 15 U.S.C. § 1117(a).

57. Rolex has suffered irreparable harm and damages as a result of Defendants' conduct. The injuries and damages sustained by Rolex have been directly and proximately caused by the Defendants' wrongful advertisement, promotion, distribution, sale and offers of sale of their goods bearing counterfeits and/or infringements of the Rolex Registered Trademarks.

58. Rolex has no adequate remedy at law.

59. Defendants' wrongful acts will continue unless enjoined by the Court. Accordingly, Defendants must be restrained and enjoined from any further counterfeiting or infringement of the Rolex Registered Trademarks.

**FIRST CLAIM FOR RELIEF**  
**(Trademark Counterfeiting, 15 U.S.C. § 1114)**

60. Plaintiff hereby incorporates by reference all prior allegations as though fully set forth herein.

61. Defendants have used spurious designations that are identical with, or substantially indistinguishable from, the Rolex Registered Trademarks on goods covered by registrations for the Rolex Registered Trademarks.

62. Defendants have intentionally used these spurious designations, knowing they are counterfeit, in connection with the advertisement, promotion, sale, offering for sale and distribution of goods.

63. Defendants' use of the Rolex Registered Trademarks to advertise, promote, offer for sale, distribute and sell watches bearing counterfeits was and is without the consent of Rolex.

64. Defendants' unauthorized use of the Rolex Registered Trademarks on and in connection with their advertisement, promotion, sale, offering for sale and distribution of watches through e-mail and through the Internet constitutes Defendants' use of the Rolex Registered Trademarks in commerce.

65. Defendants' unauthorized use of the Rolex Registered Trademarks as set forth above is likely to:

- (a) cause confusion, mistake and deception;

(b) cause the public to believe that their watches are the same as Rolex's watches and/or that they are authorized, sponsored or approved by Rolex or that they are affiliated, connected or associated with or in some way related to Rolex; and

(c) result in Defendants unfairly benefiting from Rolex's advertising and promotion and profiting from the reputation of Rolex and its Rolex Registered Trademarks all to the substantial and irreparable injury of the public, Rolex and the Rolex Registered Trademarks and the substantial goodwill represented thereby.

66. Defendants' acts constitute willful trademark counterfeiting in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

67. By reason of the foregoing, Defendants are liable to Rolex for: (a) statutory damages in the amount of up to \$2,000,000 for each mark counterfeited as provided by 15 U.S.C. § 1117(c) of the Lanham Act, or, at Rolex's election, an amount representing three (3) times Rolex's damages and/or Defendants' illicit profits; and (b) reasonable attorneys' fees, investigative fees and pre-judgment interest pursuant to 15 U.S.C. § 1117(b).

**SECOND CLAIM FOR RELIEF**  
**(Trademark Infringement, 15 U.S.C. § 1114)**

68. Rolex hereby incorporates by reference all prior allegations as though fully set forth herein.

69. Based on Rolex's extensive advertising under the Rolex Registered Trademarks, its extensive sales and the wide popularity of Rolex Watches, the Rolex Registered Trademarks have acquired a secondary meaning so that any product and advertisement bearing such trademarks is immediately associated by purchasers and the public as being a product and affiliate of Rolex.

70. Defendants' activities constitute Defendants' use in commerce of the Rolex Registered Trademarks. Defendants use the Rolex Registered Trademarks in connection with Defendants' sale, offers of sale, distribution, promotion and advertisement of their goods bearing infringements and/or counterfeits of the Rolex Registered Trademarks.

71. Defendants have used the Rolex Registered Trademarks, knowing they are the exclusive property of Rolex, in connection with their sale, offers for sale, distribution, promotion and advertisement of their goods bearing counterfeits or infringements of the Rolex Registered Trademarks.

72. Defendants' activities create the false and misleading impression that Defendants are sanctioned, assigned or authorized by Rolex to use the Rolex Registered Trademarks to advertise, manufacture, distribute, appraise, offer for sale or sell watches bearing the Rolex Registered Trademarks when Defendants are not so authorized.

73. Defendants engage in the aforementioned activity with the intent to confuse and deceive the public into believing that they and the watches they sell are in some way sponsored, affiliated or associated with Rolex, when in fact they are not.

74. Defendants' use of the Rolex Registered Trademarks has been without the consent of Rolex, is likely to cause confusion and mistake in the minds of the public and, in particular, tends to and does falsely create the impression that the goods advertised, promoted, distributed and sold by Defendants are warranted, authorized, sponsored or approved by Rolex when, in fact, they are not.

75. Defendants' unauthorized use of the Rolex Registered Trademarks has resulted in Defendants unfairly benefiting from Rolex's advertising and promotion, and profiting from the reputation of Rolex and the Rolex Registered Trademarks, to the substantial and irreparable

injury of the public, Rolex and the Rolex Registered Trademarks and the substantial goodwill represented thereby.

76. Defendants' acts constitute willful trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

77. By reason of the foregoing, Defendants are liable to Rolex for: (a) an amount representing three (3) times Rolex's damage and/or their illicit profits; and (b) reasonable attorney's fees, investigative fees and pre-judgment interest pursuant to 15 U.S.C. § 1117.

**THIRD CLAIM FOR RELIEF**  
**(Federal Anti-Cybersquatting (Anti Cyberpiracy), 15.U.S.C. § 1125(d)(1)(A))**

78. Rolex hereby incorporates by reference all prior allegations as though fully set forth herein.

79. Upon information and belief, Defendants registered and/or use in bad faith the domain name toprolexreplica.com, which incorporates a mark confusingly similar to the ROLEX trademark.

80. toprolexreplica.com is substantially indistinguishable from, confusingly similar to and/or dilutive of the ROLEX trademark in violation of the Anti-Cybersquatting Consumer Act, 15 U.S.C. § 1125(d)(1)(A)(ii)(II).

81. Defendants registered and/or use toprolexreplica.com for the purpose of advertising and promoting goods that are not sponsored or authorized by Rolex.

82. Defendants have no trademark or other intellectual property rights in toprolexreplica.com and have acted in bad faith with the intent to profit from the goodwill of the ROLEX trademark.

83. Defendants' aforementioned acts constitute Cybersquatting (Cyberpiracy) in violation of 15 U.S.C. § 1125(d)(1)(A).

84. By reason of the foregoing, Defendants are liable to Rolex for (a) Rolex's actual damages and Defendants' profits; or (b) statutory damages in an amount up to \$100,000 as provided by 17 U.S.C. § 1117(d).

**FOURTH CLAIM FOR RELIEF**

(Federal Trademark Dilution, 15 U.S.C. §1125(c))

85. Rolex hereby incorporates by reference all prior allegations as though fully set forth herein.

86. Defendants' use of the Rolex Registered Trademarks or marks confusingly similar thereto in order to sell their products constitutes Defendants' commercial use in commerce of the Rolex Registered Trademarks.

87. The Rolex Registered Trademarks are world famous and distinctive.

88. Defendants' use of the ROLEX trademark in their domain name and use of Rolex Registered Trademarks to advertise unauthorized merchandise constitutes tarnishment of the Rolex Registered Trademarks.

89. Rolex is suffering and will continue to suffer irreparable harm from the Defendants' dilutive activities.

90. Defendants' acts as aforesaid are diluting the distinctive quality of the Rolex Registered Trademarks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

91. Defendants have intentionally and willfully appropriated the Rolex Registered Trademarks and traded on Rolex's reputation.

92. Defendants' wrongful acts of dilution will continue unless enjoined by this Court.



**FIFTH CLAIM FOR RELIEF**

**(Unfair Competition, False Designation of Origin & False Description, 15 U.S.C. § 1125(a))**

93. Rolex hereby incorporates by reference all prior allegations as though fully set forth herein.

94. In connection with Defendants' advertisement, promotion, distribution, offers of sale and sale of their goods, Defendants have used the Rolex Registered Trademarks in commerce.

95. In connection with Defendants' advertisement, promotion, distribution, offers of sales and sales of their goods, Defendants have affixed, applied and/or used false designations of origin and false and misleading descriptions and representations, including the ROLEX trademark and other Rolex Registered Trademarks, which tend falsely to describe the origin, sponsorship, association or approval by Rolex of the goods Defendants sell.

96. Defendants have used the Rolex Registered Trademarks with full knowledge of the falsity of such designations of origin, descriptions and representations, all to the detriment of Rolex.

97. Defendants' use of the Rolex Registered Trademarks on the Websites and on their goods bearing counterfeits or infringements of the Rolex Registered Trademarks constitutes false descriptions and representations tending falsely to describe or represent Defendants and their products as being authorized, sponsored, affiliated or associated with Rolex.

98. Defendants have used the Rolex Registered Trademarks in their domain name, on their Websites and on their goods with the express intent to cause confusion and mistake, to deceive and mislead the public, to trade upon the reputation of Rolex and to improperly

appropriate to themselves the valuable trademark rights of Rolex. Defendants' acts constitute unfair competition under federal law.

99. Defendants' acts constitute the use in commerce of false designations of origin and false and/or misleading descriptions or representations, tending to falsely or misleadingly describe and/or represent their products as those of Rolex in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). These acts constitute unfair competition.

**SIXTH CLAIM FOR RELIEF**  
**(Unfair Competition Under the Common Law)**

100. Rolex hereby incorporates by reference the allegations set forth above.

101. This is a claim against Defendant for unfair competition under the laws of the State of Wisconsin.

102. Rolex has built up valuable goodwill in its Rolex Registered Trademarks and the distinctive appearance of its watches and other products.

103. Defendants' use of the Rolex Registered Trademarks is likely to and does permit Defendant to pass off his products as those of Rolex, all to the detriment of Rolex and the unjust enrichment of Defendant.

104. Upon information and belief, Defendants, with full knowledge of the notoriety of the Rolex Registered Trademarks, intended to and did trade on the goodwill associated with the Rolex Registered Trademarks and has misled and will continue to mislead the public into assuming a connection between Rolex and Defendants' goods by Defendants' advertisement, promotion, distribution, and provision of services using marks that are confusingly similar to the Rolex Registered Trademarks.

105. Defendants' unauthorized use of the Rolex Registered Trademarks has caused and is likely to continue to cause damage to Rolex's valuable reputation and image associated with Rolex and its goods. Defendants have passed off their goods as those of Rolex by Defendants' misrepresentations to the public, members of which are likely to believe that Defendants' watches emanate from, or are associated with, Rolex.

106. Defendants' acts are likely to have caused confusion and deceived the public as to the source of Defendants' goods. Defendants' goods falsely suggest a connection with Rolex.

107. Defendants' conduct constitutes unfair competition in violation of Wisconsin common law.

108. Upon information and belief, Defendants' actions have been willful and malicious.

109. By reason of the foregoing, Defendants are liable to Rolex for compensatory damages and/or Defendants' illicit profits.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Rolex respectfully requests that the Court order the following relief:

I. That the Court enter an injunction ordering that Defendants, their agents, servants, employees, and all other persons in privity or acting in concert with them be enjoined and restrained from:

(a) using any reproduction, counterfeit, copy, or colorable imitation of the Rolex Registered Trademarks to identify any goods or the rendering of any services not authorized by Rolex;

(b) engaging in any course of conduct likely to cause confusion, deception or mistake, or injure Rolex's business reputation or weaken the distinctive quality of the Rolex Registered Trademarks, Rolex's name, reputation or goodwill;

(c) using a false description or representation including words or other symbols tending to falsely describe or represent their unauthorized goods as being those of Rolex or sponsored by or associated with Rolex and from offering such goods in commerce;

(d) further infringing or diluting the Rolex Registered Trademarks by manufacturing, producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, displaying or otherwise disposing of any products not authorized by Rolex bearing any simulation, reproduction, counterfeit, copy or colorable imitation of the Rolex Registered Trademarks;

(e) using any simulation, reproduction, counterfeit, copy or colorable imitation of the Rolex Registered Trademarks in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of any unauthorized products in such fashion as to relate or connect, or tend to relate or connect, such products in any way to Rolex, or to any goods sold, manufactured, sponsored or approved by, or connected with Rolex;

(f) making any statement or representation whatsoever, or using any false designation of origin or false description, or performing any act, which can or is likely to lead the trade or public, or individual members thereof, to believe that any services provided, products manufactured, distributed, sold or offered for sale, or rented by Defendants are in any way associated or connected with Rolex, or is provided, sold, manufactured, licensed, sponsored, approved or authorized by Rolex;

(g) engaging in any conduct constituting an infringement of any of the Rolex Registered Trademarks, of Rolex's rights in, or to use or to exploit, said trademark, or constituting any weakening of Rolex's name, reputation and goodwill;

(h) using or continuing to use the Rolex Registered Trademarks or trade names in any variation thereof on the Internet (either in the text of a website, as a domain name, or as a keyword, search word, metatag, or any part of the description of the site in any submission for registration of any Internet site with a search engine or index) in connection with any goods or services not directly authorized by Rolex;

(i) hosting or acting as Internet Service Provider for, or operating or engaging in the business of selling any website or other enterprise that offers for sale any products bearing the Rolex Registered Trademarks;

(j) acquiring, registering, maintaining or controlling any domain names that include the ROLEX trademark or any of the other Rolex Registered Trademarks or any marks confusingly similar thereto, activating any website under said domain names, or selling, transferring, conveying, or assigning any such domain names to any entity other than Rolex;

(k) using any e-mail addresses to offer for sale any nongenuine products bearing counterfeits of the Rolex Registered Trademarks;

(l) having any connection whatsoever with any websites that offer for sale any merchandise bearing counterfeits of the Rolex Registered Trademarks;

(m) secreting, destroying, altering, removing, or otherwise dealing with the unauthorized products or any books or records which contain any information relating to the importing, manufacturing, producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, or displaying of all unauthorized products which infringe the Rolex Registered Trademarks; and

(n) effecting assignments or transfers, forming new entities or associations or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in subparagraphs (a) through (m).

II. That Defendants, within ten (10) days of judgment, take all steps necessary to remove from all websites owned, operated or controlled by the Defendants, all text or other media offering for sale any merchandise bearing the Rolex Registered Trademarks, or marks substantially indistinguishable therefrom.

III. That Defendants, within ten (10) days of judgment, take all steps necessary to transfer to Rolex [toprolexreplica.com](http://toprolexreplica.com) and any other domain names they own or control that contain the Rolex Registered Trademarks, or marks substantially indistinguishable and/or confusingly similar thereto.

IV. That Defendants, within thirty (30) days of judgment, file and serve Rolex with a sworn statement setting forth in detail the manner and form in which they have complied with this injunction pursuant to 15 U.S.C. § 1116(a).

V. That Defendants be required to deliver up for destruction to Rolex all unauthorized materials bearing any of the Rolex Registered Trademarks in association with unauthorized goods or services and the means for production of same pursuant to 15 U.S.C. § 1118.

VI. That Defendants not operate any websites that offer for sale and/or sell any merchandise bearing counterfeits of the Rolex Registered Trademarks.

VII. Requiring Defendants to pay to Rolex such damages Rolex has sustained as a consequence of their counterfeiting and infringement of the Rolex Registered Trademarks and to account for all gains, profits and advantages derived by Defendants from the sale of their infringing merchandise bearing the Rolex Registered Trademarks, and that the award to Rolex be trebled as provided for under 15 U.S.C. § 1117; alternatively, that Rolex be awarded statutory damages pursuant to 15 U.S.C. § 1117(c) of up to \$2,000,000 for each trademark that Defendants have willfully counterfeited and infringed.

VIII. Requiring Defendants to pay to Rolex such damages that Rolex has sustained as a consequence of their cybersquatting of the ROLEX trademark and to account for all gains, profits and advantages therefrom derived; alternatively, that Rolex be awarded statutory damages pursuant to 15 U.S.C. § 1117(d) of up to \$100,000.

IX. Ordering that Rolex recover the costs of this action, together with reasonable attorneys' and investigators' fees and pre-judgment interest in accordance with 15 U.S.C. § 1117.

X. Directing that this Court retain jurisdiction of this action for the purpose of enabling Rolex to apply to the Court at any time for such further orders and interpretation or

execution of any Order entered in this action, for the modification of any such Order, for the enforcement or compliance therewith and for the punishment of any violations thereof.

XI. Ordering that pursuant to 11 U.S.C. § 523(a)(6), Defendants be prohibited from a discharge under 11 U.S.C. § 777 for malicious, willful and fraudulent injury to Rolex.

XII. Awarding to Rolex such other and further relief as the Court may deem just and proper, together with the costs and disbursements that Rolex has incurred in connection with this action.

Dated this 14th day of January, 2009.

Respectfully submitted,

**PERKINS COIE, LLP**

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