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14 UNITED STATES DISTRICT COURT
15 DISTRICT OF NEVADA

16 ROLEX WATCH U.S.A., INC.,)
17)
18 Plaintiff,)
19 vs.)
20 ALBERT M. KAUFMAN, individually and)
d/b/a TRANSCONTINENTAL MARKETING,)
21 REPLICA LOVERS and RLCV.COM,)
22)
23 Defendant)

**COMPLAINT FOR TRADEMARK
COUNTERFEITING, TRADEMARK
INFRINGEMENT, FALSE
DESIGNATION OF ORIGIN AND
FALSE DESCRIPTION, AND
UNFAIR COMPETITION**

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26 Plaintiff Rolex Watch U.S.A., Inc. (“Plaintiff” or “Rolex”), through its attorneys, sues
27 Albert M. Kaufman (“Defendant” or “Kaufman”) named above, and says:
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STATEMENT OF THE CASE

This is a suit by Rolex against Defendant for preliminary and permanent injunctions, statutory damages, treble damages and/or profits, compensatory damages, punitive damages, pre-judgment interest, attorneys fees, investigators fees, costs and expenses from the Defendant for each of Plaintiff’s marks that the Defendant has willfully and maliciously counterfeited under the Lanham Act. Defendant is being sued by Rolex as a result of his sale, offers for sale, distribution, promotion and advertisement of watches bearing counterfeits and infringements of Rolex’s federally registered trademarks and hosting a website that promotes for sale and sells watches bearing Rolex’s federally registered trademarks. As set forth below, Defendant’s unlawful acts constitute federal trademark counterfeiting, infringement, false designation of origin and false description and unfair competition.

SUBJECT MATTER JURISDICTION AND VENUE

JURISDICTION

1. This Court has subject matter jurisdiction over the claims in this action that relate to trademark counterfeiting and infringement, false designations of origin and false descriptions, pursuant to the provisions of 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a).

2. This Court has supplemental jurisdiction over the claims in this Complaint that arise under the statutory and common law of the State of Nevada 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 fact.

VENUE

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

PARTIES AND PERSONAL JURISDICTION

4. Plaintiff Rolex Watch U.S.A., Inc. 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.

1 5. Upon information and belief, Kaufman is a resident of the State of Nevada
2 residing at Canyon Villas Apartments, 650 S. Town Center Drive, Unit 1091, Las Vegas, NV
3 89144.

4 6. Upon information and belief, Defendant is doing business in the State of Nevada
5 at addresses 9101 W. Sahara, Suite 105-164, Las Vegas, NV 89117 and 8550 W. Desert Inn
6 Road, Las Vegas, NV 89117.

7 7. Upon information and belief, Defendant does business and operates under the
8 company names Transcontinental Marketing, RLCV.com and Replica Lover.

9 8. Upon information and belief, Transcontinental Marketing is a fictitious company,
10 created by the Defendant.

11 9. Upon information and belief, the Defendant uses the name Sergey Khromov as an
12 alias.

13 10. Upon information and belief, Defendant is the registrant of the domain name
14 and/or controller of the website RLCV.com a/k/a Replica Lovers (the "Website").

15 11. Upon information and belief, Defendant has established e-mail addresses at:
16 replicabuys@yahoo.com, support@rlcv.com, sales@rlcv.com, custserv@rlcv.com and
17 lee_u@hotmail.com.

18 12. Defendant is subject to the jurisdiction of this Court because he resides in and
19 conducts substantial business within this District.

20 **FACTUAL ALLEGATIONS**

21 **ROLEX'S WORLD FAMOUS PRODUCTS AND MARK**


22 13. Rolex is the exclusive distributor and warrantor in the United States of Rolex
23 watches, all of which bear one or more of Rolex's trademarks described below. Rolex watches
24 are identified by the trade name and trademark ROLEX and one or more of Rolex's trademarks.

25 14. Rolex is responsible for assembling, finishing, marketing and selling in interstate
26 commerce high quality Rolex watches, watch bracelets and related products for men and women.

27 15. Rolex owns numerous trademarks, including, but not limited to, the trademarks
28 and trade names ROLEX, PRESIDENT, CROWN DEVICE (design), DATEJUST, OYSTER,

1 OYSTER PERPETUAL, GMT-MASTER, YACHT-MASTER, SUBMARINER, ROLEX
 2 DAYTONA, DAYTONA and EXPLORER.

3 16. Rolex is the owner of the following federal trademark registrations in the U.S.
 4 Patent and Trademark Office:

| 5 Trademark | 6 Reg. No. | 7 Date | 8 Goods |
|---|------------|----------|---|
| 9 ROLEX | 101,819 | 1/12/15 | Watches, clocks, parts of watches and clocks, and their cases. |
| OYSTER | 239,383 | 3/6/28 | Watches, movements, cases, dials, and other parts of watches. |
| PRESIDENT | 520,309 | 1/24/50 | Wristbands and bracelets for watches made wholly or in part or plated with precious metals, sold separately from watches. |
| 11  CROWN DEVICE | 657,756 | 1/28/58 | Timepieces of all kinds and parts thereof. |
| DATEJUST | 674,177 | 2/17/59 | Timepieces and parts thereof. |
| GMT-MASTER | 683,249 | 8/11/59 | Watches. |
| OYSTER PERPETUAL | 1,105,602 | 11/7/78 | Watches and parts thereof. |
| YACHT-MASTER | 1,749,374 | 1/26/93 | Watches. |
| SUBMARINER | 1,782,604 | 7/20/93 | Watches. |
| ROLEX DAYTONA | 1,960,768 | 3/5/96 | Watches. |
| DAYTONA | 2,331,145 | 3/21/00 | Watches. |
| EXPLORER | 2,518,894 | 12/18/01 | Watches. |

16 Correct and true copies of these federal trademark registrations (hereinafter collectively referred
 17 to as the “Rolex Registered Trademarks”) are attached as **Exhibit 1**.

18 17. The Rolex Registered Trademarks are arbitrary and fanciful marks that are
 19 entitled to the highest level of protection afforded by law.

20 18. The Rolex Registered Trademarks are associated with Rolex in the minds of
 21 consumers, the public and the trade.

22 19. The Rolex Registered Trademarks are world-famous.

23 20. Rolex and its predecessors have used the Rolex Registered Trademarks for many
 24 years on and in connection with Rolex watches and related products. The Rolex Registered
 25 Trademarks identify high quality products originating with Rolex.

26 21. Based upon Rolex’s extensive advertising, sales and the wide popularity of
 27 Rolex’s products, the Rolex Registered Trademarks have acquired secondary meaning so that
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1 any product and advertisement bearing such marks is immediately associated by consumers, the
2 public and the trade as being a product and affiliate of Rolex.

3 22. The Rolex Registered Trademarks are widely recognized by the general
4 consuming public of the United States as a designation of source of the watches distributed by
5 Rolex.

6 23. Rolex has gone to great lengths to protect its name and enforce the Rolex
7 Registered Trademarks.

8 24. The Rolex Registered Trademarks are in full force and effect and have become
9 incontestable pursuant to 15 U.S.C. § 1065.

10 **DEFENDANT’S COUNTERFEITING AND INFRINGING ACTIVITIES**

11 25. Rolex hereby incorporates all prior allegations by reference.

12 26. Upon information and belief, long after Rolex's adoption and use of the Rolex
13 Registered Trademarks on its products and after Rolex’s federal registration of the Rolex
14 Registered Trademarks, Defendant began selling, offering for sale, distributing, promoting and
15 advertising watches in interstate commerce bearing counterfeits and infringements of the Rolex
16 Registered Trademarks as those marks appear on Rolex’s products and as shown in the Rolex
17 Registered Trademarks attached hereto as Exhibit 1. Representative samples of Defendant’s
18 Website offering replica Rolex Watches for sale are attached as **Exhibit 2**, and are incorporated
19 herein by this reference.

20 27. In January 2007, Rolex’s investigator alerted Rolex to the Website.

21 28. According to the Whois database, the Website was registered to Sergey Khromov,
22 at P.O. Box 17853, Miami, FL 33101. A copy of the Whois report is attached as **Exhibit 3**.

23 29. Upon information and belief, Sergey Khromov is a fictitious name created by
24 Defendant.

25 30. Upon information and belief, P.O. Box 17853, Miami, FL 33101, is a fictitious
26 address created by Defendant.

27 31. On January 22, 2007, Rolex’s counsel wrote to the Website, via e-mail addresses
28 sales@rlcv.com and custserv@rlcv.com, informing the Website of the illegality and potential

1 penalties for the sale of counterfeit Rolex merchandise through the Website. A copy of this
2 correspondence is attached as **Exhibit 4**.

3 32. To date, no response has been received from Rolex's counsel's January 22, 2007
4 correspondence with the Website.

5 33. The spurious marks or designations used by the Defendant in interstate commerce
6 are identical with, or substantially indistinguishable from, the Rolex Registered Trademarks on
7 goods covered by the Rolex Registered Trademarks.

8 34. RLCV.com has been used by the Defendant to advertise, distribute, promote,
9 offer for sale, and sell watches bearing counterfeits of one or more of the Rolex Registered
10 Trademarks, as shown in the webpages attached hereto as Exhibit 2.

11 35. On February 6, 2007, Rolex's investigator visited RLCV.com and placed an order
12 for a "replica" Ladies Rolex watch for \$169.99 (the "Counterfeit Watch").

13 36. On February 7, 2007, Rolex's Investigator received an e-mail from the Website,
14 replicabuys@yahoo.com, informing the investigator that the order for the Counterfeit Watch had
15 been placed and the investigator's bill would be charged by Transcon/Transcontinental
16 Marketing.

17 37. Rolex investigator's credit card statement was charged \$169.99 by
18 Transcontinental Marketing.

19 38. On February 8, 2007 Rolex's counsel wrote to the registrant of the Website,
20 Sergey Khromov, via e-mail, lee_u@hotmail.com, and first class mail, to P.O. Box 17853,
21 Miami, FL 33101. A copy of this correspondence is attached as **Exhibit 5**.

22 39. To date, no response has been received from Rolex's counsel's February 8, 2007
23 correspondence with the Website's registrant and the letter sent by first class mail was returned
24 to counsel due to an insufficient address. A copy of the returned letter is attached as **Exhibit 6**.

25 40. On February 19, 2007, the investigator received a package containing the
26 Counterfeit Watch. A digital image of the Counterfeit Watch is attached as **Exhibit 7**.

27 41. Rolex technical personnel have examined the Counterfeit Watch and determined
28 that none of its parts, including the dial, bracelet links, bezel, and movement are of Rolex origin.

1 42. On February 19, 2007, Rolex's investigator upon receiving the Counterfeit
2 Watch, sent an e-mail to replicabuys@yahoo.com stating that the Counterfeit Watch was
3 damaged and requested an address to which he could return the Counterfeit Watch.

4 43. On February 28, 2007, the investigator received an e-mail from
5 replicabuys@yahoo.com in response to the February 19, 2007 correspondence. "Replica
6 Lovers" stated that the investigator could return the Counterfeit Watch to one of its U.S. drop off
7 points at RLCV.com, 247 SW 8th Street, Suite 181, Miami, FL 33130.

8 44. Upon further investigation, Rolex determined that the U.S. drop off point
9 provided by Replica Lovers is a UPS Store and that Replica Lovers rents a mail box at this
10 location.

11 45. On March 1, 2007, Rolex's investigator called the UPS Store, spoke with an
12 employee and discovered that the individual renting the Replica Lovers box was named Albert
13 Kaufman. The employee indicated that Kaufman receives numerous packages.

14 46. Rolex's investigator researched public records and found that an individual named
15 Albert Kaufman was the President and registered Agent for a business called Transcontinental
16 Marketing, the same name of the business that billed the investigator's credit card upon
17 purchasing the Counterfeit Watch. The business's registered address is 247 SW 8th Street, Suite
18 181, Miami, FL 33130, the same address of the UPS Store.

19 47. In May 2007, though database research, Rolex's investigator reported that
20 Kaufman's most recent listed address was 640 S. Miami Avenue, Miami, FL 33130.

21 48. The address 640 S. Miami Avenue, Miami, FL 33130, belongs to Advantage
22 Investors Mortgage ("Advantage"), a firm specializing in trading media, mortgage leads and
23 gambling.

24 49. Rolex's investigator called Advantage and spoke with a man who at one time
25 worked with Kaufman. The man told the investigator that Kaufman was most likely in Las
26 Vegas and provided a Las Vegas mobile phone number 702-241-8432, belonging to Kaufman,
27 with the address 247 SW 8th Street, Apt. 181, Miami, FL 33130.

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1 50. Rolex's investigator called the Las Vegas mobile phone number, 702-241-8432,
2 and spoke with a man who identified himself as Albert Kaufman.

3 51. On May 3, 2007, Rolex's investigator called a phone number listed on the
4 Website, 785-515-8219, which traced back to Transcontinental Marketing.

5 52. Upon information and belief, after dialing the phone number 785-515-8219, the
6 investigator spoke with a man who works with Kaufman. This man provided another mailbox
7 drop off point: 5309 W. Broward Blvd., #192, Plantation, FL 33312.

8 53. Rolex determined that the address 5309 W. Broward Blvd., #192, Plantation, FL
9 33312 belongs to another mailbox store called "Us Pak N Ship."

10 54. On May 3, 2007, Rolex's investigator called "Us Pak N Ship" and spoke with an
11 employee who indicated that box #192 was recently rented by a company called Replica Lovers.

12 55. On May 23, 2007, Rolex's investigator spoke again with the employee at
13 Advantage who repeated that he believed the Defendant was in Las Vegas.

14 56. On May 23, 2007, following the conversation with the employee of Advantage,
15 Rolex's investigator called Defendant's mobile phone number, 702-241-8432, again and spoke
16 with Defendant. Defendant stated that he was currently living in Las Vegas.

17 57. During this conversation Defendant told Rolex's investigator that he is a
18 professional gambler and that he owned various websites, including RLCV.com, which
19 specializes in the sale of "Rolex replica watches."

20 58. Defendant boasted to Rolex's investigator that he has earned approximately one
21 million dollars since the Website's debut last year.

22 59. Defendant told Rolex's investigator that all of his mail is forwarded to a postal
23 box in Las Vegas: 901 W. Sahara, Suite 105-164, Las Vegas, NV 89117.

24 60. Upon further investigation, 901 W. Sahara, Suite 105-164, Las Vegas, NV 89117
25 is the address of another mailbox store called Postnet.

26 61. When Rolex's investigator directly asked Kaufman whether he was worried about
27 the legal ramifications of selling counterfeit goods online, Kaufman stated he was not.

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1 62. Upon further investigation, the Whois database links Kaufman to another address
2 in Las Vegas, 8550 W. Desert Inn Road, Suite 102-124, Las Vegas, NV 89117.

3 63. Upon further investigation the address 8550 W. Desert Inn Road, Suite 102-124,
4 Las Vegas, NV 89117 belongs to another UPS Store.

5 **DEFENDANT’S ILLEGAL CONDUCT**

6 64. Through the Website, Defendant intentionally, maliciously and willfully sold,
7 offered for sale, distributed, promoted and advertised watches bearing counterfeits of one or
8 more of the Rolex Registered Trademarks, despite knowledge that such sales were illegal.

9 65. The Defendant’s acts were calculated to confuse and to deceive the public and are
10 performed with full knowledge of Rolex’s rights.

11 66. Defendant is not now, nor has he ever been, associated, affiliated or connected
12 with, or endorsed or sanctioned by, Rolex.

13 67. Rolex has never authorized or consented in any way to the use by Defendant of
14 the ROLEX mark or marks confusingly similar thereto.

15 68. The use by Defendant of the Rolex Registered Trademarks or marks substantially
16 indistinguishable and/or confusingly similar thereto in connection with Defendant’s services is
17 likely to cause consumers, the public and the trade to erroneously believe that the services
18 provided by Defendant emanate or originate from Rolex, or that said services are authorized,
19 sponsored, or approved by Rolex, even though they are not. This confusion causes irreparable
20 harm to Rolex and weakens and dilutes the distinctive quality of the Rolex Registered
21 Trademarks.

22 69. By using counterfeits and infringements of the Rolex Registered Trademarks on
23 his goods, Defendant is trading on the goodwill and reputation of Rolex and creating the false
24 impression that Defendant’s goods are affiliated with Rolex.

25 70. Defendant has been unjustly enriched by illegally using and misappropriating
26 Rolex’s intellectual property for his own financial gain. Furthermore, Defendant has unfairly
27 benefited and profited from Rolex’s outstanding reputation for high quality products and its
28 significant advertising and promotion of Rolex watches and the Rolex Registered Trademarks.

1 71. Defendant has disparaged Rolex, its Rolex Registered Trademarks and its Rolex
2 Watch products by creating a false association with Rolex, its genuine goods and its Rolex
3 Registered Trademarks.

4 72. Rolex has had no control over the nature and quality of the products sold by
5 Defendant which bear counterfeits and infringements of the Rolex Registered Trademarks.

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

10 74. Upon information and belief, Defendant has acted with reckless disregard for
11 Rolex’s rights and/or was willfully blind in connection with his unlawful activities. Upon
12 information and belief, Defendant has willfully and maliciously engaged in his infringing
13 activities. Therefore, this case constitutes an exceptional case under 15 U.S.C. § 1117(a).

14 75. Rolex has suffered irreparable harm and damages as a result of Defendant’s acts
15 in an amount thus far not determined. The injuries and damages sustained by Rolex have been
16 directly and proximately caused by the Defendant’s wrongful advertisement, promotion,
17 distribution, sale and offers of sale of his goods bearing counterfeits and/or infringements of the
18 Rolex Registered Trademarks.

19 76. Rolex has no adequate remedy at law.

20 77. Defendant’s wrongful acts will continue unless enjoined by the Court.
21 Accordingly, Defendant must be restrained and enjoined from any further counterfeiting or
22 infringement of the Rolex Registered Trademarks.

23 **FIRST CLAIM FOR RELIEF**
24 **Trademark Counterfeiting 15 U.S.C. § 1114**

25 78. Plaintiff hereby incorporates by reference all prior allegations as though fully set
26 forth herein.
27
28

1 79. Defendant has used spurious designations that are identical with, or substantially
2 indistinguishable from, the Rolex Registered Trademarks on goods covered by registrations for
3 the Rolex Registered Trademarks.

4 80. Defendant has intentionally used these spurious designations, knowing they are
5 counterfeit, in connection with the advertisement, promotion, sale, offering for sale and
6 distribution of goods.

7 81. Defendant's use of the Rolex Registered Trademarks to advertise, promote, offer
8 for sale, distribute and sell watches bearing counterfeits was and is without the consent of
9 Plaintiff.

10 82. Defendant's unauthorized use of the Rolex Registered Trademarks on and in
11 connection with his advertisement, promotion, sale, offering for sale and distribution of watches
12 through the World Wide Web constitute Defendant's use of the Rolex Registered Trademarks in
13 commerce.

14 83. Defendant's unauthorized use of the Rolex Registered Trademarks as set forth
15 above is likely to:

16 (a) cause confusion, mistake and deception;

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

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

24 84. Defendant's acts constitute willful trademark counterfeiting in violation of
25 Section 32 of the Lanham Act, 15 U.S.C. §1114.

26 85. By reason of the foregoing, Defendant is liable to Rolex for: (a) statutory damages
27 in the amount of up to \$1,000,000 for each mark counterfeited as provided by 15 U.S.C. §
28 1117(c) of the Lanham Act, or, at Rolex's election, an amount representing three (3) times

1 Rolex's damages and/or Defendant's illicit profits; and (b) reasonable attorneys fees,
2 investigative fees and pre-judgment interest pursuant to 15 U.S.C. § 1117(b).

3
4 **SECOND CLAIM FOR RELIEF**
5 **Trademark Infringement, 15 U.S.C. § 1114**

6 86. Rolex hereby incorporates by reference the allegations set forth above.

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

12 88. Defendant's activities constitute Defendant's use in commerce of the Rolex
13 Registered Trademarks. Defendant uses the Rolex Registered Trademarks in connection with
14 the Defendant's sale, offers of sale, distribution, promotion and advertisement of his goods
15 bearing infringements and/or counterfeits of the Rolex Registered Trademarks.

16 89. Defendant has used the Rolex Registered Trademarks, knowing they are the
17 exclusive property of Rolex, in connection with their sale, offers for sale, distribution, promotion
18 and advertisement of his goods bearing counterfeits or infringements of the Rolex Registered
19 Trademarks.

20 90. Defendant's activities create the false and misleading impression that Defendant
21 is sanctioned, assigned or authorized by Rolex to use the Rolex Registered Trademarks to
22 advertise, manufacture, distribute, appraise, offer for sale or sell watches bearing the Rolex
23 Registered Trademarks when Defendant is not so authorized.

24 91. Defendant engages in the aforementioned activity with the intent to confuse and
25 deceive the public into believing that he and the watches he sells are in some way sponsored,
26 affiliated or associated with Rolex, when in fact they are not.

27 92. Defendant's use of one or more of the Rolex Registered Trademarks has been
28 without the consent of Rolex, is likely to cause confusion and mistake in the minds of the public

1 and, in particular, tends to and does falsely create the impression that the goods advertised,
2 promoted, distributed and sold by Defendant are warranted, authorized, sponsored or approved
3 by Rolex when, in fact, they are not.

4 93. Defendant's unauthorized use of the Rolex Registered Trademarks has resulted in
5 Defendant unfairly benefiting from Rolex's advertising and promotion, and profiting from the
6 reputation of Rolex and the Rolex Registered Trademarks, to the substantial and irreparable
7 injury of the public, Rolex and the Rolex Registered Trademarks and the substantial goodwill
8 represented thereby.

9 94. Defendant's acts constitute willful trademark infringement in violation of Section
10 32 of the Lanham Act, 15 U.S.C. § 1114.

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

14
15 **THIRD CLAIM FOR RELIEF**

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

17 96. Rolex hereby incorporates by reference all prior allegations set forth above.

18 97. In connection with Defendant's advertisement, promotion, distribution, offers of
19 sale and sales of his goods, Defendant has used the Rolex Registered Trademarks in commerce.

20 98. In connection with Defendant's advertisement, promotion, distribution, offers of
21 sale and sales of his goods, Defendant has affixed, applied and/or used false designations of
22 origin and false and misleading descriptions and representations, including the Rolex Registered
23 Trademarks, which tend falsely to describe the origin, sponsorship, association or approval by
24 Rolex of the goods Defendant sells.

25 99. Defendant has used one or more of the Rolex Registered Trademarks with full
26 knowledge of the falsity of such designations of origin, descriptions and representations, all to
27 the detriment of Rolex.
28

1 100. Defendant's use of the Rolex Registered Trademarks on the Website and on his
2 goods bearing counterfeits or infringements of the Rolex Registered Trademarks constitutes false
3 descriptions and representations tending falsely to describe or represent Defendant and his
4 products as being authorized, sponsored, affiliated or associated with Rolex.

5 101. Defendant has used one or more of the Rolex Registered Trademarks on his
6 Website and goods with the express intent to cause confusion and mistake, to deceive and
7 mislead the public, to trade upon the reputation of Rolex and to improperly appropriate to
8 himself the valuable trademark rights of Rolex.

9 102. Defendant's acts constitute the use in commerce of false designations of origin
10 and false and/or misleading descriptions or representations, tending to falsely or misleadingly
11 describe and/or represent his products as those of Rolex in violation of Section 43(a) of the
12 Lanham Act, 15 U.S.C. § 1125(a).

13
14 **FOURTH CLAIM FOR RELIEF**
Common Law Trademark Infringement

15 103. Rolex hereby incorporates by reference the allegations set forth above.

16 104. Plaintiff states, upon information and belief and thereupon alleges, that the
17 Defendant knew his acts would cause confusion, mistake or deception.

18 105. Plaintiff states, upon information and belief and thereupon alleges, that his acts
19 have caused a likelihood of injury to Plaintiff's goodwill and business reputation and impaired
20 the effectiveness of the Plaintiff's Rolex Registered Trademarks.

21 106. Plaintiff states, upon information and belief and thereupon alleges, that the acts of
22 Defendant have violated the common law of the State of Nevada.

23 107. Plaintiff has no adequate remedy at law. The conduct of Defendant has caused
24 and, if not enjoined, will continue to cause, irreparable damage to the rights of Plaintiff in its
25 Trademarks, and to Plaintiff's business, reputation, and goodwill.

26 108. By reason of the foregoing, Defendant is liable to Rolex for all remedies available
27 under common law, including injunctive relief and damages.

1
2 **FIFTH CLAIM FOR RELIEF**
3 **Common Law Unfair Competition**

4 109. Rolex hereby incorporates by reference the allegations set forth above.

5 110. This is a claim against Defendant for unfair competition under the laws of the
6 State of Nevada.

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

9 112. Defendant's use of the Rolex Registered Trademarks is likely to and does permit
10 Defendant to pass off his products as those of Rolex, all to the detriment of Rolex and the unjust
11 enrichment of Defendant.

12 113. Defendant, upon information and belief, with full knowledge of the notoriety of
13 the Rolex Registered Trademarks, intended to and did trade on the goodwill associated with the
14 Rolex Registered Trademarks and has misled and will continue to mislead the public into
15 assuming a connection between Rolex and Defendant's services by Defendant's advertisement,
16 promotion, distribution, and provision of services using a mark that is confusingly similar to the
17 Rolex Registered Trademarks.

18 114. Defendant's unauthorized use of the Rolex Registered Trademarks has caused and
19 is likely to continue to cause damage to Rolex's valuable reputation and image associated with
20 Rolex and its goods. Defendant has passed off his goods and services as those of Rolex by
21 Defendant's misrepresentations to the public, members of which are likely to believe that
22 Defendant's watches emanate from, or are associated with, Rolex.

23 115. Defendant's acts are likely to have caused confusion and deceived the public as to
24 the source of Defendant's goods. Defendant's goods falsely suggest a connection with Rolex.

25 116. Defendant's conduct constitutes unfair competition in violation of Nevada State
26 law.

27 117. Upon information and belief, Defendant's actions have been willful and
28 malicious.

1 118. By reason of the foregoing, Defendant is liable to Rolex for compensatory
2 damages and/or Defendant's illicit profits.

3 **PRAYER FOR RELIEF**

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

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

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

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

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

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

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

27 (f) making any statement or representation whatsoever, or using any false
28 designation of origin or false description, or performing any act, which can or is likely to lead the

1 trade or public, or individual members thereof, to believe that any products manufactured,
2 distributed, sold or offered for sale, or rented by Defendant are in any way associated or
3 connected with Rolex, or is provided, sold, manufactured, licensed, sponsored, approved or
4 authorized by Rolex;

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

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

13 (i) hosting or operating any websites that offer for sale any products bearing
14 counterfeits of the Rolex Registered Trademarks;

15 (j) using any e-mail addresses to offer for sale any non-genuine products bearing
16 counterfeits of the Rolex Registered Trademarks;

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

19 (l) secreting, destroying, altering, removing, or otherwise dealing with the
20 unauthorized products or any books or records which contain any information relating to its
21 advertising, promoting, or provision of services which infringe the Rolex Registered
22 Trademarks; and

23 (m) acquiring any domain names that include the Rolex Registered Trademarks or
24 any mark confusingly similar thereto, activating any website under said domain names, or
25 selling, transferring, conveying, or assigning any such domain names to any entity other than
26 Rolex;

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

4 II. That Defendant, within ten (10) days of Judgment, takes all steps necessary to remove
5 from all websites he owns or controls, including, but not limited to the Website and all text or
6 other media offering for sale any merchandise bearing the Rolex Registered Trademarks or any
7 mark confusingly similar thereto.

8 III. Directing that Defendant, within thirty (30) days of Judgment, files and serves Rolex with
9 a sworn statement setting forth in detail the manner in which Defendant has complied with this
10 injunction pursuant to 15 U.S.C. § 1116(a).

11 IV. Directing that Defendant delivers up for destruction to Rolex all unauthorized products
12 and advertisements in his possession or under his control bearing any of the Rolex Registered
13 Trademarks or any simulation, reproduction, counterfeit, copy or colorable imitation thereof, and
14 all plates, molds, matrices or other means of production of same pursuant to 15 U.S.C. § 1118.

15 V. Directing such other relief as the Court may deem appropriate to prevent the trade and
16 public from deriving any erroneous impression that any services provided, advertised, or
17 promoted by Defendant are authorized by Rolex or related in any way to Rolex's products.

18 VI. Requiring Defendant pay to Rolex such damages as Rolex has sustained as a
19 consequence of Defendant's willful infringement of the Rolex Registered Trademarks and unfair
20 competition and to account for all gains, profits and advantages derived by Defendant from the
21 provision of his products using the Rolex Registered Trademarks, which are infringements of the
22 Plaintiff's Rolex Registered Trademarks and that the award to Rolex be trebled as provided for
23 under 15 U.S.C. §1117.

24 VII. Ordering that Rolex recover the costs of this action, together with reasonable attorneys'
25 and investigators' fees and prejudgment interest in accordance with 15 U.S.C. § 1117.

26 VIII. Ordering that Rolex be awarded punitive damages for Defendant's willful, malicious and
27 bad faith conduct.

28

1 IX. Ordering that, pursuant to 11 U.S.C. § 523(a)(6), Defendant be prohibited from a
2 discharge under 11 U.S.C. § 727 for malicious, willful and fraudulent injury to Rolex.

3 X. Directing that this Court retain jurisdiction of this action for the purpose of enabling
4 Rolex to apply to the Court at any time for such further orders and interpretation or execution of
5 any order entered in this action, for the modification of any such order, for the enforcement or
6 compliance therewith and for the punishment of any violations thereof.

7 XI. Awarding to Rolex such other and further relief as the Court may deem just and proper,
8 together with the costs and disbursements which Rolex has incurred in connection with this
9 action.

10 Dated: July 3, 2007

Respectfully submitted,

11 LEWIS AND ROCA LLP

12
13 By: /s/ _____
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