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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

govino, LLC, a Delaware
limited liability company,

Plaintiff,

v.

Tuesday Morning, Inc., a
Texas corporation; and
DOES 1-10,

Defendants.

Case No. 8:17-cv-473

COMPLAINT FOR:

(1) PATENT INFRINGEMENT;

(2) TRADEMARK INFRINGEMENT;

(3) TRADE DRESS INFRINGEMENT;

(4) TRADEMARK DILUTION

**(5) CALIFORNIA STATUTORY UNFAIR
COMPETITION;**

**(6) COMMON LAW UNFAIR
COMPETITION;**

**(7) FEDERAL UNFAIR COMPETITION;
AND**

(8) COPYRIGHT INFRINGEMENT

DEMAND FOR JURY TRIAL

1 **COMPLAINT FOR DAMAGES**

2 Plaintiff govino, LLC (“govino”) hereby pleads its complaint for damages
3 against Defendants Tuesday Morning, Inc. (“Tuesday Morning”) and DOES 1-10,
4 as follows:

5 **JURISDICTION AND VENUE**

6 1. This civil action arises under the patent laws of the United States,
7 Title 35 United States Code, particularly §§ 271 and 281; the Federal Trademark
8 Act of 1946, 15 U.S.C. § 1051, *et seq.*, as amended (the “Lanham Act”) and
9 California Common Law; the Copyright Act of the United States, Title 17, United
10 States Code, § 101 *et seq.* (the “Copyright Act”); and California Business and
11 Professions Code §§ 17200 *et seq.*

12 2. This court has original jurisdiction over the parties and the subject
13 matter of the action pursuant to 28 U.S.C. §§ 1131 and 1338(a)-(b), as well as
14 under 15 U.S.C. § 1121. This court also has personal jurisdiction over
15 Defendants because Defendants are doing business and/or reside in this state
16 and/or the alleged acts of infringement have occurred and/or are occurring in this
17 state.

18 3. Venue is proper in this district under 28 U.S.C. §§ 1391(b)-(c) and
19 1400(a)-(b). The alleged acts of infringement and misappropriation have occurred
20 and/or are occurring in this district and Tuesday Morning resides within this
21 judicial district.

22 **PARTIES**

23 4. govino is a Delaware limited liability company having its principal
24 place of business at 20371 Irvine Ave., Suite A-100, Newport Beach, California
25 92660.

26 5. Tuesday Morning is a Texas corporation having its principal place of
27 business at 6250 Lyndon B. Johnson Freeway, Dallas, Texas 75240 and retail
28 stores nationwide, including throughout California.

6. govino is unaware of the true names of the Defendants identified in the Complaint under the fictitious names Does 1-10. On information and belief, Does 1-10 are unlawfully making, using, selling, offering to sell, or otherwise importing products that infringe govino's patents, trademarks, and/or copyrights, such as in connection with drinking vessels. govino will amend its Complaint to identify the names of the Doe Defendants as they are discovered.

FACTUAL BACKGROUND

7. govino is a small company engaged in the design, manufacturing, distribution and retail sales of a niche group of drinking vessels. More specifically, govino has become a leading global provider of original and distinctive wine related products that include, *inter alia*, its GOVINO® Go Anywhere® shatterproof, reusable, recyclable™ stemless wine glasses, flutes, cocktail glasses, beer glasses, and decanters (collectively the "govino Products") made from a plastic composition designed to replicate the look, feel, and quality of glass or crystal.

8. The govino Products are now some of the most sought after and well-recognized products in the industry. For example, the GOVINO® Go Anywhere® Wine Glass (Exhibit A) sold in the GOVINO® 4-Pack Tote (Exhibit B) is a top selling wine glass on Amazon.com, having been ranked #1 almost daily for over four years dating back to February 2012, and has otherwise been consistently a highly ranking seller, *i.e.*, between the #1 and #4 best selling wine glass since about 2010. A true and correct printout of the Amazon.com listing is enclosed as Exhibit C. Moreover, the GOVINO® Go Anywhere® Wine Glass (new release Dishwasher Safe version) (Exhibit D); the GOVINO® Go Anywhere® Champagne Glass (Exhibit E); the GOVINO® Go Anywhere® Beer Glass (Exhibit F); and the GOVINO® Go Anywhere® Decanter (Exhibit G) are also highly ranking sellers on Amazon.com. The GOVINO® Go Anywhere® Wine Glass ranks in the top 1% of wine glass products on Amazon.com, along with the

1 GOVINO® Go Anywhere® Champagne and Beer Glasses, and the GOVINO® Go
2 Anywhere® Decanters. In each instance, the Amazon.com listings prominently
3 display govino's trademarks, distinctive product configurations, and distinctive
4 trade dress.

5 9. The United States Patent and Trademark Office ("USPTO")
6 recognized the uniqueness of the GOVINO® Go Anywhere® Wine in granting
7 U.S. Patent No. D577,547, which issued on September 30, 2008, claiming an
8 "ornamental design for a wine glass". See Exhibit H.

9 10. govino has received numerous awards related to the distinctive
10 product configuration and/or trade dress for several of its products. Specifically,
11 the GOVINO® Go Anywhere® Wine Glass (Exhibit A) won the International
12 Design Excellence Award (IDEA) – Silver Award (2010) and the Good Design
13 Award for 2010 from the Chicago Athenaeum: Museum of Architecture and
14 Design; and the GOVINO® Go Anywhere® Flute won the International Design
15 Excellence Award (IDEA) – Bronze Award (2012) and the Good Design Award
16 for 2012 from the Chicago Athenaeum: Museum of Architecture and Design. Of
17 particular note, the IDEA awards are from the Industrial Designers Society of
18 America, and govino was the recipient of these awards based on the premise that
19 the GOVINO® Go Anywhere® Wine Glass and the GOVINO® Go Anywhere®
20 Flute made drinking wine out of plastic glass acceptable in the wine industry.

21 11. The govino Products have received wide-spread publicity, being
22 featured in world renowned publications, including newspapers, magazines and
23 respected online articles that reach millions of readers daily. In particular,
24 govino's products have been featured in publications such as *The New York Times*
25 (Dec. 2012, June 2011, Dec. 2010, Apr. 2009), *Los Angeles Times* (Jul. 2011, Mar.
26 2008); *The Wall Street Journal* (Nov. 2012, Jun. 2012); *Chicago Tribune* (Jul.
27 2009), *Wine Spectator* (Dec. 2012, Feb. 2011, Dec. 2008, Sep. 2008), *Sunset*
28 *Magazine* (Sept. 2012), *Lucky Magazine* (Dec. 2011), *InStyle Magazine* (Mar.

2011), *Real Simple Magazine* (Dec. 2010), *Los Feliz Ledger* (Jul. 2010), *Town & Country Magazine* (Jun. 2010), *Food & Wine Magazine*, *San Francisco Chronicle* (Jan. 2009), and the *Calgary Herald* (Jul. 2008). Moreover, govino's products have been featured in dozens of other publications that include, but are not limited to, *TimeOut New York*, *Refinery 29*, *iVillage.com* (Nov. 2012, Jul. 2011), *Alsace "Hugel"*, *PopSugar*, *Newsday*, *Food Republic*, *Tasting Table*, *Huffpost Food*, *Cool Hunting*, *Dexinger*, *Star-Telegram*, *Socializzare Luxury*, *Ready Made Magazine*, *Details Magazine*, *Saveur*, and *Solano Magazine*, just to name a few.

12. The govino Products have been recognized by experts in the wine industry, such as Nicola Marzovilla (wine distribution company, restaurant and vineyard owner) and Seth Box (director of education for Moët Hennessy USA), both of whom recommended the GOVINO® Go Anywhere® Wine Glass in *The New York Times*. The GOVINO® Go Anywhere® Wine Glass, along with other govino Products, have been displayed and endorsed through video publications, such as by television personality and well known celebrity Martha Stewart (marthastewartliving.com) and *The Today Show*. Moreover, the GOVINO® Go Anywhere® Wine Glass and its GOVINO® 4-Pack Tote were shown in the Seminal Design Exhibition "How Wine Became Modern" at the San Francisco Museum of Modern Art in 2010.

13. Through the expenditure of considerable time, effort, and money, the proprietary govino Products have garnered well known industry recognizable trade dress and product packaging distinction that has become associated only with govino, and serves to designate govino as an exclusive manufacturing source distinguishable over other wine-related products in the marketplace.

14. Additionally, govino is the owner by assignment of the entire right, title, and interest in and to United States Patent No. 8,875,935 ("the '935 Patent") entitled "Wine Glass", which issued November 4, 2014. A true and correct copy of the '935 Patent is attached as Exhibit I. Under 35 U.S.C., § 282, the '935 Patent

1 is presumed valid and enforceable. Moreover, govino is the owner by assignment
2 of the entire right, title, and interest in and to United States Patent No. 9,089,233
3 (“the ’233 Patent”) entitled “Wine Glass”, which issued July 28, 2015. A true and
4 correct copy of the ’233 Patent is attached as Exhibit J. The ’233 Patent is also
5 presumed valid and enforceable under 35 U.S.C., § 282. The ’935 Patent and the
6 ’233 Patent are collectively referenced herein as “the govino Patents”.

7 15. The govino Patents are generally directed to wine glasses constructed
8 from plastic that include an upper generally shell-shaped body terminating at an
9 upper rim in an open mouth, a lower base defining a recessed annular moat
10 surrounding an upstanding central punt. In some embodiments, the govino Patents
11 are also generally directed to an upwardly concave central inner cup circumscribed
12 by and extending downwardly into the punt, the inner cup having an outer convex
13 surface externally accessible for convenient fingertip support.

14 16. Tuesday Morning is a national retail chain specializing in both
15 domestic and international closeouts of medium to high end name brand gifts, soft
16 home, home furnishings, housewares, luggage, toys, seasonal items, gourmet food
17 and fashion accessories for men, women and children.

18 17. Tuesday Morning claims to have diverse merchandise selection, with
19 a focus on quality brands and designer names at “unparalleled savings”. Moreover,
20 Tuesday Morning claims that its merchandise is identical or similar to those
21 products found in other department and specialty stores, but at lower prices –
22 specifically collections of deeply discounted closeout merchandise. Tuesday
23 Morning, undercuts major market brands with identical products at a lower price.

24 18. Today Tuesday Morning boasts nearly 800 stores in almost all 50
25 states in the United States, including California.

26 19. Tuesday Morning advertises and sells in its retail stores “6 all purpose
27 plastic stemless glasses” (hereinafter “Infringing Wine Glasses”). A true and
28 correct photograph of the packaged goods is attached hereto as Exhibit K.

1 20. Tuesday Morning sells the Infringing Wine Glasses in its retail stores
2 throughout California, as shown, *e.g.*, in attached Exhibit L.

3 21. The Infringing Wine Glasses are blatant knock-offs of the GOVINO®
4 Go Anywhere® Wine Glass. A side-by-side comparison of the GOVINO® Go
5 Anywhere® Wine Glass and one of the Infringing Wine Glasses is shown in
6 Exhibit M.

7 22. Furthermore, a comparison of the identical replication of the
8 distinctive contoured base of the GOVINO® Go Anywhere® Wine Glass with one
9 of the Infringing Wine Glasses is shown in Exhibit N – the two products are
10 indistinguishable. Moreover, Tuesday Morning notably sells the knock-off
11 Infringing Wine Glasses at a steep retail discount price of \$7.99. The Tuesday
12 Morning product packaging even invites consumers to “compare at \$15.99”, a
13 clear indicator of market price erosion of nearly 50%.

14 23. The product packaging also uses govino’s own artwork and depicts at
15 least one GOVINO® Go Anywhere® Wine Glass bearing govino’s registered
16 brand name “GOVINO” thereon.

17 24. Tuesday Morning does not have authorization to use any of govino’s
18 artwork and thus such use of govino’s artwork constitutes blatant copyright
19 infringement. Moreover, Tuesday Morning is using the GOVINO® brand name to
20 market and sell the Infringing Wine Glasses, including passing off the Infringing
21 Wine Glasses, which dilutes govino’s trademark rights.

22 25. Thus, Tuesday Morning endeavors to and stands to obtain substantial
23 business by passing off the Infringing Wine Glasses as a product endorsed,
24 sponsored or otherwise manufactured by govino, or to otherwise use govino’s
25 goodwill to divert business away from govino, at the expense of govino, and to
26 Tuesday Morning’s financial gain.

27 26. Unless immediately enjoined by a preliminary injunction, Tuesday
28 Morning’s actions will continue to infringe govino’s intellectual property rights

1 and cause consumer confusion to govino's detriment and to Tuesday Morning's
2 commercial advantage, by riding on the substantial consumer goodwill developed
3 by govino, for which govino has no adequate remedy.

4 **FIRST CAUSE OF ACTION**

5 (Patent Infringement of the '935 Patent, 35 USC § 271)

6 27. govino re-alleges and incorporates the allegations set forth in
7 paragraphs 1-26 above.

8 28. Defendants have been and currently are directly and/or indirectly
9 infringing Claims 1-3, 5-8, 10-13, 15-18, and 20 of the '935 Patent in violation of
10 35 U.S.C. § 271 by making, using, offering to sell, selling and/or importing the
11 Infringing Wine Glasses.

12 29. The product packaging of the Infringing Wine Glasses depict images
13 of govino's patented "GOVINO" branded wine glasses and therefore Defendants'
14 infringement was and continues to be deliberate and willful.

15 30. Defendants' infringement of Claims 1-3, 5-8, 10-13, 15-18, and 20 of
16 the '935 Patent will continue unless enjoined by this Court.

17 31. As a direct and proximate cause of Defendants' infringement of
18 Claims 1-3, 5-8, 10-13, 15-18, and 20 of the '935 Patent, govino has suffered, is
19 suffering, and will continue to suffer injury, unless enjoined by the court, for which
20 govino is entitled to treble damages pursuant to 35 U.S.C. § 284 of an amount to be
21 proven at trial.

22 32. As a direct and proximate consequence of Defendants' infringement
23 of Claims 1-3, 5-8, 10-13, 15-18, and 20 of the '935 Patent, govino has suffered, is
24 suffering, and will continue to suffer, unless enjoined by the court, irreparable
25 harm for which there is no adequate remedy at law, and for which govino is
26 entitled to injunctive relief pursuant to 35 U.S.C. § 283.

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41. As a direct and proximate cause of Defendants' infringement of Claims 1-7, 9-13, 15-16, and 18-19 of the '233 Patent, govino has suffered, is suffering, and will continue to suffer injury, unless enjoined by the court, for which govino is entitled to treble damages pursuant to 35 U.S.C. § 284 of an amount to be proven at trial.

42. As a direct and proximate consequence of Defendants' infringement of Claims 1-7, 9-13, 15-16, and 18-19 of the '233 Patent, govino has suffered, is suffering, and will continue to suffer, unless enjoined by the court, irreparable harm for which there is no adequate remedy at law, and for which govino is entitled to injunctive relief pursuant to 35 U.S.C. § 283.

FOURTH CAUSE OF ACTION

(Contributory Patent Infringement of the '233 Patent, 35 USC § 271)

43. govino re-alleges and incorporates the allegations set forth in paragraphs 1-42 above.

44. Third parties that use and sell Defendants' Infringing Wine Glasses also infringe Claims 1-7, 9-13, 15-16, and 18-19 of the '233 Patent. The Infringing Wine Glasses have no substantial non-infringing uses other than to practice Claims 1-7, 9-13, 15-16, and 18-19 of the '233 Patent.

45. Defendants have contributed to infringement of Claims 1-7, 9-13, 15-16, and 18-19 of the '233 Patent by others in violation of 35 U.S.C. § 271, and continue to contribute to such infringement by selling the Infringing Wine Glasses to resellers and consumers, such that others directly infringe Claims 1-7, 9-13, 15-16, and 18-19 of the '233 Patent, as described above.

46. govino has been and will continue to be injured as a result of Defendants' contributory infringement.

FIFTH CAUSE OF ACTION

(Trademark Infringement, 15 U.S.C. § 1114)

47. govino re-alleges and incorporates the allegations set forth in

1 paragraphs 1-46 above.

2 48. govino is the owner by assignment of the entire right, title, and
3 interest in and to United States Trademark Registration No. 3,586,708 for
4 GOVINO (“the ’708 Registration”), which registered March 10, 2009 on the
5 Principal Register. The goods identified in the ’708 Registration include “Drinking
6 vessels” in Intl. Class 021. The ’708 Registration is valid, enforceable, and
7 incontestable. A true and correct copy of the ’708 Registration from the USPTO
8 records is attached hereto as Exhibit O.

9 49. Defendants’ commercial use and sale of the GOVINO® mark on the
10 product packaging of the Infringing Wine Glasses without the consent of govino
11 constitutes infringement of the registered GOVINO® mark and has caused and
12 continues to cause a likelihood of confusion in violation of Section 32 of the
13 Lanham Act, 15 U.S.C. § 1114 for which govino is entitled to relief.

14 50. govino has been injured in an amount to be proven at the time of trial,
15 and has suffered and will continue to suffer irreparable harm for which govino has
16 no adequate remedy at law. Unless the acts of trademark infringement are enjoined
17 by this Court, govino will continue to suffer irreparable harm.

18 51. Defendants’ actions have been knowing, intentional, wanton, and
19 willful, entitling govino to damages, treble damages, profits, attorney fees, and the
20 costs of this action.

21 **SIXTH CAUSE OF ACTION**

22 (Trade Dress Infringement, 15 U.S.C. § 1125(a))

23 52. govino re-alleges and incorporates the allegations set forth in
24 paragraphs 1-51 above.

25 53. Through the expenditure of considerable time, effort, money, awards,
26 and publicity, the proprietary govino Products, including, but not limited to, the
27 GOVINO® Go Anywhere® Wine Glass, have garnered well known industry
28 recognizable trade dress distinction that associates the designs of these products

1 only with govino and serve to designate govino as an exclusive manufacturing
2 source of such products.

3 54. Defendants adopted and commercially used and sold the confusingly
4 similarly configured Infringing Wine Glasses, *e.g.*, including the distinctive
5 contoured base as shown in Exhibit M, so as to cause a likelihood of confusion
6 among the public as to the source of the Infringing Wine Glasses.

7 55. Such past, present and future commercial usage by Defendants of the
8 Infringing Wine Glasses constitutes at least infringement of govino's GOVINO®
9 Go Anywhere® Wine Glass trade dress in violation of Section 32 of the Lanham
10 Act, 15 U.S.C. 1125(a) for which govino is entitled to relief. 15 U.S.C. § 1051 *et*
11 *seq.*; 15 U.S.C. § 1125(a).

12 56. Defendants' unauthorized use is likely to cause and has already
13 caused and will continue to cause confusion, mistake or deception in the minds of
14 purchasers, members of the trade, and the general public relative to govino,
15 govino's distinctive trade dress identified above, and the correct source of the
16 Infringing Wine Glasses.

17 **SEVENTH CAUSE OF ACTION**

18 (Trademark Dilution, 15 U.S.C. § 1125(a))

19 57. govino re-alleges and incorporates the allegations set forth in
20 paragraphs 1-56 above.

21 58. govino's registered GOVINO® trademark and the distinctive trade
22 dress of the govino Products have become widely recognized by the general
23 consuming public of the United States as a designation of source widely
24 recognized with govino, as enumerated in detail above.

25 59. The actions of Defendants described above, and specifically, without
26 limitation, the blatant and unauthorized depiction the GOVINO® Go Anywhere®
27 Wine Glass on the product packaging and incorporation of the distinctive product
28 configuration of the contoured base of the GOVINO® Go Anywhere® Wine Glass

1 into the Infringing Wine Glasses, in commerce to advertise, market, and sell the
 2 Infringing Wine Glasses throughout the United States, are likely to and have
 3 already caused and will continue to cause dilution by blurring and tarnishment in
 4 violation of Section 32 of the Lanham Act, 15 U.S.C. § 1125(a), for which govino
 5 is entitled to relief.

6 60. govino has suffered and continues to suffer damages in an amount to
 7 be proven at trial, comprising, *inter alia*, diminution in the value of and goodwill
 8 associated with the GOVINO® registered trademark and the trade dress rights
 9 associated with at least the GOVINO® Go Anywhere® Wine Glass, which have
 10 caused injury to govino's business. govino is therefore entitled to injunctive relief
 11 pursuant to 15 U.S.C. §§ 1116 and 1125(c).

12 61. Defendants' actions described above were and continue to be
 13 deliberate and willful. govino is therefore entitled to recover treble damages in an
 14 amount to be determined at trial and based at least on the profits of the sales of the
 15 Infringing Wine Glasses, and to recover the costs of this action, including
 16 reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117.

17 **EIGHTH CAUSE OF ACTION**

18 (California Unfair Competition, Cal. Bus. & Prof. Code § 17200 *et seq.*)

19 62. govino re-alleges and incorporates the allegations set forth in
 20 paragraphs 1-61 above.

21 63. Defendants' use of the GOVINO® registered trademark, and
 22 distinctive trade dress of at least the GOVINO® Go Anywhere® Wine Glass
 23 constitutes unlawful, unfair, or fraudulent business acts or practices under Cal.
 24 Bus. & Prof. Code 17200. *et seq.*

25 64. As a result of Defendants acts, govino has suffered and will continue
 26 to suffer damage and irreparable harm for which it is entitled to relief, and
 27 Defendants have been unjustly enriched.

28 65. As a result of Defendants acts, govino has suffered and continues to

1 suffer irreparable harm, for which govino has no adequate remedy at law, unless
2 and until Defendants are enjoined.

3 **NINTH CAUSE OF ACTION**
4 **(Common Law Unfair Competition)**

5 66. govino re-alleges and incorporates by reference the allegations set
6 forth in paragraphs 1-65 above.

7 67. Defendants' use of the GOVINO® registered trademark, and
8 distinctive trade dress of at least the GOVINO® Go Anywhere® Wine Glass
9 constitute trademark infringement and unfair competition in violation of the
10 common law of California for which govino is entitled to relief.

11 68. Defendants' use of the GOVINO® registered trademark, and
12 distinctive trade dress of at least the GOVINO® Go Anywhere® Wine Glass have
13 caused, is causing, and unless enjoined by this Court, will continue to cause
14 confusion of the public as to the source of the Infringing Wine Glasses.

15 69. Defendants, with full knowledge of the GOVINO® trademark, and of
16 the valuable goodwill associated therewith, have committed the acts alleged herein
17 willfully, with the intent to trade off, or in complete disregard of govino's goodwill
18 and the goodwill associated with the GOVINO® mark.

19 70. As a result of Defendants acts, Defendants have been unjustly
20 enriched and govino has suffered and will continue to suffer damages and injury,
21 for which govino is entitled to relief under the common law.

22 **TENTH CAUSE OF ACTION**
23 **(Federal Unfair Competition and False Designation of Origin**
24 **Lanham Act § 43(a), 15 U.S.C. § 1125(a))**

25 71. govino re-alleges and incorporates by reference the allegations set
26 forth in paragraphs 1-70 above.

27 72. Defendants have misappropriated the good will symbolized by
28 govino's GOVINO® registered trademark, and have misappropriated the

1 distinctive trade dress of at least the GOVINO® Go Anywhere® Wine Glass.

2 73. Defendants had prior knowledge of govino's GOVINO® registered
3 trademark, have imitated govino's established trade dress, and have unjustly
4 enriched themselves at govino's expense.

5 74. Defendants' above-described conduct constitute unfair competition,
6 false designation of origin, and trademark infringement in violation of Section
7 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) for which govino is entitled to relief.

8 **ELEVENTH CAUSE OF ACTION**
9 (Copyright Infringement, 17 U.S.C. § 501)

10 75. govino re-alleges and incorporates the allegations set forth in
11 paragraphs 1-74 above.

12 76. govino is the owner by assignment of the entire right, title, and
13 interest of the copyrights related to the images of the GOVINO® Wine Glass
14 depicted on the product packaging of the Infringing Wine Glasses.

15 77. Defendants directly infringe and, unless enjoined, will continue to
16 infringe govino's copyrights by exploiting, reproducing, displaying, distributing,
17 and utilizing for purposes of trade, unauthorized copies or derivative versions of
18 govino's copyrighted work and the copyrighted elements therein, in violation of 17
19 U.S.C. § 501 *et seq.* for which govino is entitled to relief.

20 78. All of the Defendants' acts are and were performed without the
21 permission, license, or consent of govino.

22 79. Such past, present and future usage by Defendants of the Infringing
23 Wine Glasses product packaging constitutes infringement of govino's copyrights
24 under the U.S. copyright laws. 17 U.S.C. § 101 *et seq.*; 17 U.S.C. § 501.

25 80. govino is therefore entitled, under the U.S. copyright laws, to a full
26 range of injunctive relief under 17 U.S.C. §§ 502, monetary relief for willful
27 infringement under 17 U.S.C. § 504, costs and attorneys' fees under 17 U.S.C. §
28 505 and the impounding of said infringing articles under 17 U.S.C. § 503.

PRAYER FOR RELIEF

WHEREFORE, govino requests entry of judgment in its favor and against Defendants as follows:

a. Defendants directly and/or indirectly infringed one or more of Claims 1-3, 5-8, 10-13, 15-18, and 20 of the '935 Patent and/or one or more of Claims 1-7, 9-13, 15-16, and 18-19 of the '233 Patent;

b. Preliminarily and permanently enjoin Defendants and their officers, agents, servants, employees, attorneys and those persons who have acted in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from any infringement of the '935 Patent and the '233 Patent whether direct or indirect;

c. Defendants account to govino for damages by virtue of infringement and/or contributory infringement of the '935 Patent and the '233 Patent;

d. Award govino all damages, in such amounts as are proved at trial, and in no event in an amount less than a reasonable royalty, resulting from Defendants' infringement and/or contributory infringement of the '935 Patent and the '233 Patent, pursuant to 35 U.S.C. § 284;

e. Defendants be adjudged to have infringed the '935 Patent and the '233 Patent willfully, deliberately, and contributed to said infringement;

f. The present case be judged an exceptional case within the meaning of 35 U.S.C. § 285 and that govino be awarded its reasonable attorneys' fees and costs pursuant thereto;

g. govino be awarded damages in an amount equal to three times the amount of damages found or assessed, to compensate govino for the willful and deliberate acts of infringement by Defendants, pursuant to 35 U.S.C. § 284;

h. Defendants and their parents, affiliates, subsidiaries, officers, agents, servants, employees, attorneys, successors, and assigns, and all those persons in active concert or participation with them, or any of them, destroy or offer up to

1 govino for destruction any and all Infringing Wine Glasses that are within
2 Defendants' possession, custody, or control;

3 i. Judgment be entered in favor of govino that Defendants have directly
4 and/or indirectly infringed U.S. Trademark Reg. No. 3,586,708 and the distinctive
5 product configuration of the contoured base of the GOVINO® Go Anywhere®
6 Wine Glass;

7 j. Judgment be entered in favor of govino that Defendants have directly
8 and/or indirectly infringed govino's common law copyrights;

9 k. Defendants and their officers, agents, servants, employees, attorneys
10 and those persons in active concert or participation with them who receive actual
11 notice of the order by personal service or otherwise, be preliminarily and
12 permanently enjoined from violating govino's rights by way of:

13 i. using govino's GOVINO® trademark and distinctive trade
14 dress in connection with selling, marketing, advertising,
15 promoting and/or distributing drinking vessels, including wine
16 glasses;

17 ii. using any word, name, mark, designation, logo, or other
18 material for or in connection with selling, marketing,
19 advertising, promoting and/or distributing drinking vessels,
20 including wine glasses, which is likely to cause confusion,
21 mistake or deception as to source relative to govino's names,
22 marks, designations of origin and logos, including in the
23 Infringing Wine Glasses, and product packaging;

24 iii. passing off Defendants' goods as govino's goods;

25 iv. practicing unfair competition, unfair trade practices, false
26 advertising and misappropriation against govino;

27 v. practicing any conduct aimed at or likely to result in diverting
28 business intended for govino or injuring govino's good will and

business reputation by way of imitation, misrepresentation,
false statements, fraud, advertising and/or deception;

l. govino be awarded (a) Defendants' profits; (b) damages sustained by
govino; and (c) the costs for this civil action, including reasonable attorneys' fees,
under 15 U.S.C. § 1117(a);

m. The present case be judged as exceptional within the meaning of
Lanham Act 15 U.S.C. § 1117 to warrant judgment for three times such profits and
damages, including prejudgment interest;

n. Defendants be held liable for willful copyright infringement, and
award govino injunctive relief under 17 U.S.C. §§ 502, monetary relief under 17
U.S.C. § 504, costs and attorneys' fees under 17 U.S.C. § 505 and the impounding
of the infringing articles under 17 U.S.C. § 503;

o. Defendants be ordered to mail notice letters at their expense to all
customers, accounts, distributors, dealers, jobbers, salesmen, sales representatives
and suppliers, informing them that it has committed trademark infringement and
unfair competition against govino and that it has no affiliation, connection or other
business relationship with govino; and

p. Any further relief that this Court deems just, proper, and equitable.

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, govino respectfully demands a trial by jury on all claims and issues so triable.

Dated: March 17, 2017

/s/ Scott M. Lowry

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