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2013 APR 10 PM 2:38
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

FILED

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 SOUTHERN DIVISION

SACV13 - 00572 JVS (ANx)

14 OAKLEY, INC., a Washington
15 corporation,

16 Plaintiff,

17 v.

18 MILNER DISTRIBUTION ALLIANCE,
19 INC. d/b/a MAXX HD SUNGLASSES, a
Colorado corporation,

20 Defendant.

Civil Action No.

COMPLAINT FOR
PATENT INFRINGEMENT

DEMAND FOR JURY TRIAL

1 Plaintiff Oakley, Inc. ("Oakley") hereby complains of Defendant Milner
2 Distribution Alliance, Inc. d/b/a Maxx HD Sunglasses ("Defendant" or
3 "Milner") and alleges as follows:

4 **I. JURISDICTION AND VENUE**

5 1. This Court has subject matter jurisdiction over this action pursuant
6 to 28 U.S.C. § 1331 and 1338, as it arises under the patent laws of the United
7 States.

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

17 3. Venue is proper in this judicial district under 28 U.S.C. §1391 (b)
18 and (c), and 28 U.S.C. § 1400(b).

19 **II. THE PARTIES**

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

23 5. Oakley is informed and believes, and thereon alleges, that
24 Defendant Milner is a corporation organized and existing under the laws of the
25 state of Colorado and has a principal place of business at 738 Synthes Avenue,
26 Monument, Colorado 80132.

27 6. Oakley is informed and believes, and thereon alleges, that
28 Defendant has committed the acts alleged herein within this judicial district.

13. Oakley has provided the public with constructive notice of its patent rights pursuant to 35 U.S.C. § 287.

IV. CLAIM FOR RELIEF

(Patent Infringement)

(35 U.S.C. § 271)

14. Oakley repeats and re-alleges the allegations of paragraphs 1-13 of this Complaint as if set forth fully herein.

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

16. Defendant, through its agents, employees and servants, have, and continue to, knowingly, intentionally and willfully directly infringe, engage in acts of contributory infringement, and/or induce the infringement of the D412 patent by directly and/or indirectly making, using, selling, offering for sale and/or importing eyewear which are covered by the D412 patent, including Defendant's Maxx HD sunglass model "Python."

17. Defendant's acts of infringement of the D412 patent were undertaken without permission or license from Oakley. Defendant had actual and/or constructive knowledge of the D412 patent, and its actions constitute willful and intentional infringement of the D412 patent. Defendant infringed the D412 patent with reckless disregard of Oakley's patent rights. Defendant knew, or it was so obvious that Defendant should have known, that its actions constituted infringement of the D412 patent. Defendant's acts of infringement of the D412 patent were not consistent with the standards of commerce for its industry.

18. Defendant, through its agents, employees and servants, have, and continue to, knowingly, intentionally and willfully directly infringe, engage in acts of contributory infringement, and/or induce the infringement of the D443 patent by directly and/or indirectly making, using, selling, offering for sale and/or importing eyewear which are covered by the D443 patent, including

1 Defendant's Maxx HD sunglass model "Python."

2 19. Defendant's acts of infringement of the D443 patent were
3 undertaken without permission or license from Oakley. Defendant had actual
4 and/or constructive knowledge of the D443 patent, and its actions constitute
5 willful and intentional infringement of the D443 patent. Defendant infringed
6 the D443 patent with reckless disregard of Oakley's patent rights. Defendant
7 knew, or it was so obvious that Defendant should have known, that its actions
8 constituted infringement of the D443 patent. Defendant's acts of infringement
9 of the D443 patent were not consistent with the standards of commerce for its
10 industry.

11 20. Defendant, through its agents, employees and servants, have, and
12 continue to, knowingly, intentionally and willfully directly infringe, engage in
13 acts of contributory infringement, and/or induce the infringement of the D444
14 patent by directly and/or indirectly making, using, selling, offering for sale
15 and/or importing eyewear which are covered by the D444 patent, including
16 Defendant's Maxx HD sunglass model "Python."

17 21. Defendant's acts of infringement of the D444 patent were
18 undertaken without permission or license from Oakley. Defendant had actual
19 and/or constructive knowledge of the D444 patent, and its actions constitute
20 willful and intentional infringement of the D444 patent. Defendant infringed
21 the D444 patent with reckless disregard of Oakley's patent rights. Defendant
22 knew, or it was so obvious that Defendant should have known, that its actions
23 constituted infringement of the D444 patent. Defendant's acts of infringement
24 of the D444 patent were not consistent with the standards of commerce for its
25 industry.

26 22. Defendant, through its agents, employees and servants, have, and
27 continue to, knowingly, intentionally and willfully directly infringe, engage in
28 acts of contributory infringement, and/or induce the infringement of the D571

1 patent by directly and/or indirectly making, using, selling, offering for sale
2 and/or importing eyewear which are covered by one or more claims of the D571
3 patent, including Defendant's Maxx HD sunglass model "Stealth."

4 23. Defendant's acts of infringement of the D571 patent were
5 undertaken without permission or license from Oakley. Defendant had actual
6 and/or constructive knowledge of the D571 patent, and its actions constitute
7 willful and intentional infringement of the D571 patent. Defendant infringed
8 the D571 patent with reckless disregard of Oakley's patent rights. Defendant
9 knew, or it was so obvious that Defendant should have known, that its actions
10 constituted infringement of the D571 patent. Defendant's acts of infringement
11 of the D571 patent were not consistent with the standards of commerce for its
12 industry.

13 24. As a direct and proximate result of Defendant's patent
14 infringement, Defendant has derived and received gains, profits, and advantages
15 in an amount not presently known to Oakley.

16 25. Pursuant to 35 U.S.C. § 284, Oakley is entitled to damages for
17 Defendant's infringing acts and treble damages together with interests and costs
18 as fixed by this Court.

19 26. Pursuant to 35 U.S.C. § 289, Oakley is entitled to Defendant's total
20 profits from the sale of eyewear that infringe any one of Oakley's design
21 patents.

22 27. Pursuant to 35 U.S.C. § 285, Oakley is entitled to reasonable
23 attorneys' fees for the necessity of bringing this claim.

24 28. Due to the aforesaid infringing acts, Oakley has suffered great and
25 irreparable injury, for which Oakley has no adequate remedy at law.

26 29. Defendant continues to directly and/or indirectly infringe Oakley's
27 patents to the great and irreparable injury of Oakley, unless enjoined by this
28 Court.

1 **WHEREFORE**, Oakley prays for judgment in its favor against
2 Defendant for the following relief:

3 A. An Order adjudging Defendant to have willfully infringed the
4 D412 patent, the D443 patent, the D444 patent, and the D571 patent under 35
5 U.S.C. § 271;

6 B. A preliminary and permanent injunction enjoining Defendant, its
7 respective officers, directors, agents, servants, employees and attorneys, and
8 those persons in active concert or participation with Defendant, from directly or
9 indirectly infringing any of the D412 patent, the D443 patent, the D444 patent,
10 and the D571 patent under in violation of 35 U.S.C. § 271;

11 C. That Defendant account for all gains, profits, and advantages
12 derived by Defendant's infringement of the D412 patent, the D443 patent, the
13 D444 patent, and the D571 patent in violation of 35 U.S.C. § 271, and that
14 Defendant pay to Oakley all damages suffered by Oakley and/or Defendant's
15 total profit from such infringement;

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

18 E. An Order adjudging that this is an exceptional case;

19 F. An award to Oakley of the attorney fees, expenses, and costs
20 incurred by Oakley in connection with this action pursuant to 35 U.S.C. § 285;

21 G. An award of pre-judgment and post-judgment interest and costs of
22 this action against Defendant;

23 H. That Oakley have and recover the costs of this civil action,
24 including reasonable attorneys' fees;

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

27 ///

28 ///

1 J. Such other and further relief as this Court may deem just and
2 proper.

3 Respectfully submitted,

4 KNOBBE, MARTENS, OLSON & BEAR, LLP

5
6 Dated: 4/10/2013

By: 

Michael K. Friedland

Ali S. Razai

Reza Mirzaie

- Samantha Y. Hsu

Attorneys for Plaintiff Oakley, Inc.

DEMAND FOR JURY TRIAL

Plaintiff Oakley, Inc. hereby demands a trial by jury on all issues so triable.

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 4/10/2013

By: 

Michael K. Friedland
Ali S. Razai
Reza Mirzaie
Samantha Y. Hsu
Attorneys for Plaintiff Oakley, Inc

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge James V. Selna and the assigned discovery Magistrate Judge is Arthur Nakazato.

The case number on all documents filed with the Court should read as follows:

SACV13- 572 JVS (ANx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

for the

Central District of California

Plaintiff(s)

V.

MILNER DISTRIBUTION ALLIANCE, INC.
d/b/a MAXX HD SUNGLASSES, a Colorado
corporation

Defendant(s)

SACV13 - 00572 JVS (ANx)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MILNER DISTRIBUTION ALLIANCE, INC.
d/b/a MAXX HD SUNGLASSES
738 Synthes Avenue
Monument, Colorado 80132

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Michael K. Friedland

Michael K. Friedland
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, Suite 1400
Irvine, CA 92614

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date:

APR 10 2013

CLERK OF COURT

DODJIE LAGIMAN

Signature of Clerk or Deputy Clerk



UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

COPY

I. (a) PLAINTIFFS (Check box if you are representing yourself ☐)**DEFENDANTS** (Check box if you are representing yourself ☐)

OAKLEY INC., a Washington corporation

MILNER DISTRIBUTION ALLIANCE INC. d/b/a MAXX HD SUNGLASSES, a Colorado corporation

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Michael K. Friedland

Ali S. Razai

KNOBBE, MARTENS, OLSON & BEAR, LLP

2040 Main Street, 14th Floor, Irvine, CA 92614, Telephone: 949-760-0404

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Unknown

II. BASIS OF JURISDICTION (Place an X in one box only.)☐ 1. U.S. Government Plaintiff☒ 3. Federal Question (U.S. Government Not a Party)☐ 2. U.S. Government Defendant☐ 4. Diversity (Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only** (Place an X in one box for plaintiff and one for defendant)

Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN (Place an X in one box only.)☒ 1. Original Proceeding☐ 2. Removed from State Court☐ 3. Remanded from Appellate Court☐ 4. Reinstated or Reopened☐ 5. Transferred from Another District (Specify)☐ 6. Multi-District Litigation**V. REQUESTED IN COMPLAINT: JURY DEMAND:** ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)**CLASS ACTION under F.R.Cv.P. 23:** ☐ Yes ☒ No☒ **MONEY DEMANDED IN COMPLAINT:** \$ TBD at trial**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Patent Infringement arising under 35 U.S.C. Section 271

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> Habeas Corpus: 463 Alien Detainee	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input checked="" type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 530 General	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	TORTS	TORTS	<input type="checkbox"/> 535 Death Penalty	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	PERSONAL INJURY	PERSONAL PROPERTY	<input type="checkbox"/> Other: 540 Mandamus/Other	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	LABOR	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 210 Land	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision		<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 751 Family and Medical Leave Act	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 790 Other Labor Litigation	
		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	
			<input type="checkbox"/> 446 American with Disabilities-Other		
			<input type="checkbox"/> 448 Education		

FOR OFFICE USE ONLY: Case Number: SACV13 - 00572 JVS (ANx)

AFTER COMPLETING PAGE 1 OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED ON PAGE 2.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Colorado

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
NOTE: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange County	United States

*Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT):

DATE: April 10, 2013

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))