

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

AMER SPORTS CANADA INC.,

Plaintiff,

v.

THE PARTNERSHIPS and
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE “A,”

Defendants.

Case No. 19-cv-07943

COMPLAINT

Plaintiff Amer Sports Canada Inc. (“Arc'teryx” or “Plaintiff”) hereby brings the present action against the Partnerships and Unincorporated Associations identified on Schedule A attached hereto (collectively, “Defendants”) and alleges as follows:

I. JURISDICTION AND VENUE

1. This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Lanham Act, 15 U.S.C. § 1051, *et seq.*, 28 U.S.C. § 1338(a)-(b) and 28 U.S.C. § 1331. This Court has jurisdiction over the claims in this action that arise under the laws of the State of Illinois pursuant to 28 U.S.C. § 1367(a), because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this Court may properly exercise personal jurisdiction over Defendants since each of the Defendants directly targets business activities toward consumers in the United States, including Illinois, through at least the fully interactive, commercial Internet stores operating under the Defendant Domain

Names and/or the Online Marketplace Accounts identified in Schedule A attached hereto (collectively, the “Defendant Internet Stores”). Specifically, Defendants are reaching out to do business with Illinois residents by operating one or more commercial, interactive Defendant Internet Stores through which Illinois residents can purchase products using infringing and counterfeit versions of Arc’teryx’s trademarks. Each of the Defendants has targeted sales from Illinois residents by operating online stores that offer shipping to the United States, including Illinois, accept payment in U.S. dollars and, on information and belief, has sold counterfeit products using infringing and counterfeit versions of Arc’teryx’s federally registered trademarks to residents of Illinois. Each of the Defendants is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused Arc’teryx substantial injury in the State of Illinois.

II. INTRODUCTION

3. This action has been filed by Arc’teryx to combat Internet Store operators who trade upon Arc’teryx’s reputation and goodwill by offering for sale and/or selling unauthorized and unlicensed products, including outdoor apparel, active wear, and other merchandise using infringing and counterfeit versions of Arc’teryx’s federally registered trademarks (collectively, the “Counterfeit Arc’teryx Products”). Defendants create the Defendant Internet Stores by the dozens and design them to appear to be selling genuine Arc’teryx products, while actually selling Counterfeit Arc’teryx Products to unknowing consumers. The Defendant Internet Stores share unique identifiers, such as design elements and similarities of the counterfeit products offered for sale, establishing a logical relationship between them and suggesting that Defendants’ counterfeiting operation arises out of the same transaction, occurrence, or series of transactions or occurrences. Defendants attempt to avoid liability by going to great lengths to conceal both

their identities and the full scope and interworking of their counterfeiting operation. Arc'teryx is forced to file this action to combat Defendants' counterfeiting of its registered Arc'teryx trademarks, as well as to protect unknowing consumers from purchasing Counterfeit Arc'teryx Products over the Internet. Arc'teryx has been and continues to be irreparably damaged through consumer confusion, dilution, and tarnishment of its valuable trademarks as a result of Defendants' actions and seeks injunctive and monetary relief.

III. THE PARTIES

Plaintiff

4. Plaintiff is a corporation organized and existing under the laws of Province of British Columbia, Canada. Plaintiff's principal place of business for its ARC'TERYX® brand is located at 100 – 2155 Dollarton Hwy, North Vancouver, British Columbia, Canada V7H 3B2.

5. Arc'teryx is an outdoor clothing and sporting goods company founded in 1989. At Arc'teryx, the central purpose is to build the finest products possible. The Arc'teryx advantage is achieved by merging unrivaled designs with the best quality, highest performing materials, and assembling them in the most innovative and most durable manner for the intended use. Timeless quality, intuitive design and simplicity result in unrivaled performance at the point of extreme need.

6. Arc'teryx is built on the principle of obsessive, precise design and production. At Arc'teryx, the goal is to create equipment that enables a person to be immersed in the moment of doing, regardless of external conditions. Arc'teryx is one of the world's most recognized high-performance outdoor and athletic brands.

7. Products sold under the ARC'TERYX® brand include men's and women's apparel and products designed for climbing, skiing, snowboarding, surfing, and trail running. Arc'teryx also sells ARC'TERYX® branded gear and backpacks.

8. Over the years, Arc'teryx has earned accolades for many aspects of its business. Arc'teryx' designs have won a number of awards from *Backpacker*, *Outside*, *Climbing*, *Men's Journal*, and *Powder* magazines. In 2017, Arc'teryx was named the "Gold Winner" in the Ski category for its Arc'teryx Sashka Pant at ISPO Munich, which is the leading trade fair for sports professionals.



9. ARC'TERYX® products are distributed and sold to consumers throughout the United States, including in Illinois, through ARC'TERYX® branded stores, including a location in Chicago, through the official arcteryx.com website, and through retailers such as REI, Moosejaw, and Nordstrom.



10. Arc'teryx incorporates a variety of distinctive marks in the design of its various ARC'TERYX® products. As a result of its long-standing use, Arc'teryx owns common law trademark rights in its trademarks. Arc'teryx has also registered its trademarks with the United States Patent and Trademark Office. ARC'TERYX® products typically include at least one of Arc'teryx's registered trademarks. Often several Arc'teryx marks are displayed on a single ARC'TERYX® product. Arc'teryx uses its trademarks in connection with the marketing of its ARC'TERYX® products, including the following marks which are collectively referred to as the "ARC'TERYX Trademarks."

REGISTRATION NUMBER	REGISTERED TRADEMARK	REGISTRATION DATE	INTERNATIONAL CLASSES
2,136,908	ARC'TERYX	February 17, 1998	For: Back packs in class 018. For: Climbing trousers; climbing shirts in class 025.



			For: Mountaineering and rock climbing equipment, namely, harnesses; slings; chalk bags; rope bags; mountaineering and rock climbing equipment bags; crack protection equipment, namely, nuts which are shaped wedges with an hinged carabiner inserted into rock cracks or crevices for the purpose of receiving a rope; and spring loaded expandable, mechanical series of cams on an axle and a carabiner to which a rope can be secured after the cam is inserted into rock cracks or crevices in class 028.
4,078,937	ARC'TERYX	January 3, 2012	For: Clothing, namely, jackets, vests, pants, shorts, sweaters, t-shirts, polo shirts, button down shirts, base layer pants, base layer shirts, gloves, balaclavas, neck gaitors, scarves, headgear, namely, winter caps, baseball caps, and beanies, not for motor sports or motor recreation activities in class 025.
4,563,774	ARC'TERYX	July 8, 2014	For: Retail store services featuring rock climbing and mountaineering footwear, hiking footwear, ski footwear and backcountry ski boots, mountaineering and rock climbing equipment, bags, clothing and clothing accessories; online retail store services featuring rock climbing and mountaineering footwear, hiking footwear, ski footwear and backcountry ski boots, mountaineering and rock climbing equipment, bags, clothing and clothing

			accessories in class 035.
5,407,641	ARC'TERYX	February 20, 2018	<p>For: Avalanche rescue equipment, namely, avalanche airbags; life-saving apparatus and life-saving equipment consisting of an airbag inflated through a battery-operated air blower; Structural and replacement parts and fittings for all the aforesaid goods; protective backpacks, each with integrated avalanche rescue equipment in the nature of integrated avalanche airbags in class 009.</p> <p>For: Bags, namely, backpacks, sports bags, messenger bags, duffle bags, book bags, shoulder bags, tote bags, travel bags, waist bags, waist packs, toiletry bags sold empty; Reusable bag covers, namely, fitted protective backpack covers and backpack shelter covers in class 018.</p> <p>For: Clothing, namely, casual wear in the form of tops and bottoms, athletic wear in the form of tops and bottoms, jackets, waterproof shell jackets, insulated shell jackets, hoodies, parkas, windbreakers, coats, trench coats, blazers, vests, sweaters, hooded sweatshirts, cardigans, pullovers, t-shirts, base layer shirts, polo shirts, button down shirts, camisoles, tunics, tank tops, bras, base layer pants, base layer bottoms, tights pants, bib-style pants, underwear; shorts, boxer shorts, briefs, belts, dresses, skirts, skorts, gloves, mittens, balaclavas, neck</p>

			<p>gaiters, scarves, headgear, namely, hats, winter caps, baseball caps, headbands, beanies, and toques, footwear, namely, socks, shoes, boots, climbing boots, ski boots, mountaineering boots, mountaineering boot liners, and shoe liners in class 25.</p> <p>For: Climbing bags, namely, bags for climbers specially adapted for holding climbing equipment; Mountaineering and rock climbing equipment, namely, chalk bags, rope bags, and safety harnesses in class 28.</p>
2,426,527		February 6, 2001	<p>For: Back packs in class 018.</p> <p>For: Trousers; shirts; vests; caps; jackets; pullovers in class 025.</p> <p>For: Mountaineering and rock climbing equipment namely-- harnesses; slings; chalk bags; rope bags; mountaineering and rock climbing equipment bags; crack protection equipment namely-- nuts which are shaped wedges with an hinged carabiner inserted into rock cracks or crevices for the purpose of receiving a rope; and spring loaded expandable, mechanical series of cams on an axle and a carabiner to which a rope can be secured after the cam is inserted into rock cracks or crevices in class 028.</p>
4,087,079		January 17, 2012	<p>For: Clothing, namely, jackets, waterproof shell jackets, insulated shell jackets, vests, pants, shorts, sweaters, hooded</p>

			sweatshirts, t-shirts, polo shirts, button down shirts, base layer pants, base layer shirts, gloves, balaclavas, neck gaiters, scarves, headgear, namely, winter caps, baseball caps, and beanies in class 025.
4,563,776		July 8, 2014	For: Retail store services featuring rock climbing and mountaineering footwear, hiking footwear, ski footwear and backcountry ski boots, mountaineering and rock climbing equipment, bags, clothing and clothing accessories; online retail store services featuring rock climbing and mountaineering footwear, hiking footwear, ski footwear and backcountry ski boots, mountaineering and rock climbing equipment, bags, clothing and clothing accessories in class 035.
5,407,642		February 20, 2018	For: Avalanche rescue equipment, namely, avalanche airbags; life-saving apparatus and life-saving equipment consisting of an airbag inflated through a battery-operated air blower; Structural and replacement parts and fittings for all the aforesaid goods; protective backpacks, each with integrated avalanche rescue equipment in the nature of integrated avalanche airbags in class 009. For: Bags, namely, backpacks, sports bags, messenger bags, duffle bags, book bags, shoulder bags, tote bags, travel bags, waist bags, waist packs, toiletry

			<p>bags sold empty; Reusable bag covers, namely, fitted protective backpack covers and backpack shelter covers in class 018.</p> <p>For: Clothing, namely, casual wear in the form of tops and bottoms, athletic wear in the form of tops and bottoms, jackets, waterproof shell jackets, insulated shell jackets, hoodies, parkas, windbreakers, coats, trench coats, blazers, vests, sweaters, hooded sweatshirts, cardigans, pullovers, t-shirts, base layer shirts, polo shirts, button down shirts, camisoles, tunics, tank tops, bras, base layer pants, base layer bottoms, tights pants, bib-style pants, underwear; shorts, boxer shorts, briefs, belts, dresses, skirts, skorts, gloves, mittens, balaclavas, neck gaiters, scarves, headgear, namely, hats, winter caps, baseball caps, headbands, beanies, and toques, footwear, namely, socks, shoes, boots, climbing boots, ski boots, mountaineering boots, mountaineering boot liners, and shoe liners in class 025.</p> <p>For: Climbing bags, namely, bags for climbers specially adapted for holding climbing equipment; Mountaineering and rock climbing equipment, namely, chalk bags, rope bags, and safety harnesses in class 028.</p>
4,746,727	KHYBER	June 2, 2015	For: Bags, namely, backpacks, day packs, travel bags, shoulder bags, all-purpose carrying bags,

			book bags and backpacks compatible with personal hydration systems, sold empty in class 018.
4,211,945		September 25, 2012	For: Bags excluding golf bags, namely, all-purpose carrying, backpacks and book bags in class 018. For: Clothing excluding clothing intended exclusively for golfers, namely, suits, shirts, pants, jackets, shorts, t-shirts, sweatpants and sweatshirts in class 025.
4,296,732		March 5, 2013	For: clothing, namely, suits, shirts, pants, jackets, shorts, t-shirts, sweatpants and sweatshirts in class 025.
4,296,731	VEILANCE	March 5, 2013	For: Clothing, namely, suits, shirts, pants, jackets, shorts, t-shirts, sweatpants and sweatshirts in class 025.

11. The above U.S. registrations for the ARC'TERYX Trademarks are valid, subsisting, in full force and effect, and many are incontestable pursuant to 15 U.S.C. § 1065. The ARC'TERYX Trademarks have been used exclusively and continuously by Arc'teryx, some since at least as early as 1991, and have never been abandoned. The registrations for the ARC'TERYX Trademarks constitute *prima facie* evidence of their validity and of Arc'teryx's exclusive right to use the ARC'TERYX Trademarks pursuant to 15 U.S.C. § 1057(b). Attached hereto as **Exhibit 1** are true and correct copies of the United States Registration Certificates for the ARC'TERYX Trademarks included in the above table.

12. The ARC'TERYX Trademarks are exclusive to Arc'teryx, and are displayed extensively on ARC'TERYX® products and in Arc'teryx's marketing and promotional materials. The ARC'TERYX® brand has been extensively promoted and advertised at great expense. In fact, Arc'teryx has expended millions of dollars annually in advertising, promoting and marketing featuring the ARC'TERYX Trademarks. ARC'TERYX® products have also been the subject of extensive unsolicited publicity resulting from their high quality and innovative designs.

13. The ARC'TERYX Trademarks are distinctive when applied to the ARC'TERYX® products, signifying to the purchaser that the products come from Arc'teryx and are manufactured to Arc'teryx's quality standards. The ARC'TERYX Trademarks have achieved tremendous fame and recognition, which has only added to the inherent distinctiveness of the marks. As such, the goodwill associated with the ARC'TERYX Trademarks is of incalculable and inestimable value to Arc'teryx.

14. For many years, Arc'teryx has operated an e-commerce website where it promotes and sells genuine ARC'TERYX® products at arcteryx.com. Sales of ARC'TERYX® products via the arcteryx.com website represent a significant portion of Arc'teryx's business. The arcteryx.com website features proprietary content, images and designs exclusive to Arc'teryx.

15. Arc'teryx's innovative marketing and product designs have enabled Arc'teryx to achieve widespread recognition and fame and have made the ARC'TERYX Trademarks some of the most well-known marks in the outdoor apparel and active wear industry. The widespread fame, outstanding reputation, and significant goodwill associated with the ARC'TERYX® brand have made the ARC'TERYX Trademarks valuable assets of Arc'teryx.

16. Arc'teryx has expended substantial time, money, and other resources in developing, advertising and otherwise promoting the ARC'TERYX Trademarks. As a result, products bearing the ARC'TERYX Trademarks are widely recognized and exclusively associated by consumers, the public, and the trade as being high-quality products sourced from Arc'teryx. Arc'teryx is a multi-million dollar operation, and ARC'TERYX® products have become among the most popular of their kind in the world.

The Defendants

17. Defendants are individuals and business entities who, upon information and belief, reside in the People's Republic of China or other foreign jurisdictions. Defendants conduct business throughout the United States, including within the State of Illinois and this Judicial District, through the operation of the fully interactive, commercial websites and online marketplaces operating under the Defendant Internet Stores. Each Defendant targets the United States, including Illinois, and has offered to sell, and, on information and belief, has sold and continues to sell Counterfeit Arc'teryx Products to consumers within the United States, including the State of Illinois.

18. On information and belief, Defendants are an interrelated group of counterfeiters working in active concert to knowingly and willfully import, distribute, offer for sale, and sell products using infringing and counterfeit versions of the ARC'TERYX Trademarks in the same transaction, occurrence, or series of transactions or occurrences. Tactics used by Defendants to conceal their identities and the full scope of their counterfeiting operation make it virtually impossible for Arc'teryx to learn Defendants' true identities and the exact interworking of their counterfeit network. In the event that Defendants provide additional credible information regarding their identities, Arc'teryx will take appropriate steps to amend the Complaint.

IV. DEFENDANTS' UNLAWFUL CONDUCT

19. The success of the ARC'TERYX® brand has resulted in its significant counterfeiting. Consequently, Arc'teryx has a worldwide anti-counterfeiting program and regularly investigates suspicious websites and online marketplace listings identified in proactive Internet sweeps and reported by consumers. In recent years, Arc'teryx has identified many domain names linked to fully interactive websites and marketplace listings on platforms such as iOffer, eBay, AliExpress, Alibaba, Amazon, Wish.com, and Dhgate, including the Defendant Internet Stores, which were offering for sale and selling Counterfeit Arc'teryx Products to consumers in this Judicial District and throughout the United States. Despite Arc'teryx's enforcement efforts, Defendants have persisted in creating the Defendant Internet Stores. E-commerce sales, including through Internet stores like those of Defendants, have resulted in a sharp increase in the shipment of unauthorized products into the United States. **Exhibit 2**, Excerpts from Fiscal Year 2018 U.S. Customs and Border Protection ("CBP") Intellectual Property Seizure Statistics Report. Over 90% of all CBP intellectual property seizures were smaller international mail and express shipments (as opposed to large shipping containers). *Id.* Over 85% of CBP seizures originated from mainland China and Hong Kong. *Id.* Counterfeit and pirated products account for billions in economic losses, resulting in tens of thousands of lost jobs for legitimate businesses and broader economic losses, including lost tax revenue.

20. Defendants facilitate sales by designing the Defendant Internet Stores so that they appear to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers. Many of the Defendant Internet Stores look sophisticated and accept payment in U.S. dollars via credit cards, Alipay, Western Union, Amazon Pay, and/or PayPal. The Defendant Internet Stores often include content and design elements that make it very difficult for consumers to distinguish

such counterfeit sites from the official Arc'teryx.com website or another authorized website. Many Defendants further perpetuate the illusion of legitimacy by offering customer service and using indicia of authenticity and security that consumers have come to associate with authorized retailers, including the Visa®, MasterCard®, and/or PayPal® logos. Arc'teryx has not licensed or authorized Defendants to use any of the ARC'TERYX Trademarks, and none of the Defendants are authorized retailers of genuine ARC'TERYX® products.

21. Many Defendants also deceive unknowing consumers by using the ARC'TERYX Trademarks without authorization within the content, text, and/or meta tags of their websites in order to attract various search engines crawling the Internet looking for results relevant to consumer searches for ARC'TERYX® products. Additionally, upon information and belief, Defendants use other unauthorized search engine optimization (SEO) tactics and social media spamming so that the Defendant Internet Stores listings show up at or near the top of relevant search results and misdirect consumers searching for ARC'TERYX® products. Other Defendants only show the ARC'TERYX Trademarks in product images while using strategic item titles and descriptions that will trigger their listings when consumers are searching for genuine ARC'TERYX® products.

22. Defendants go to great lengths to conceal their identities and often use multiple fictitious names and addresses to register and operate their network of Defendant Internet Stores. For example, many of Defendants' names and physical addresses used to register the Defendant Domain Names are incomplete, contain randomly typed letters, or fail to include cities or states. Other Defendant Domain Names use privacy services that conceal the owners' identity and contact information. On information and belief, Defendants regularly create new websites and online marketplace accounts on various platforms using the identities listed in Schedule A to the

Complaint, as well as other unknown fictitious names and addresses. Such Defendant Internet Store registration patterns are one of many common tactics used by the Defendants to conceal their identities, the full scope and interworking of their counterfeiting operation, and to avoid being shut down.

23. Even though Defendants operate under multiple fictitious names, there are numerous similarities among the Defendant Internet Stores. For example, many of the Defendant websites have virtually identical layouts, even though different aliases were used to register the respective domain names. In addition, Counterfeit Arc'teryx Products for sale in the Defendant Internet Stores bear similar irregularities and indicia of being counterfeit to one another, suggesting that the Counterfeit Arc'teryx Products were manufactured by and come from a common source and that Defendants are interrelated. The Defendant Internet Stores also include other notable common features, including use of the same domain name registration patterns, shopping cart platforms, accepted payment methods, check-out methods, meta data, illegitimate SEO tactics, HTML user-defined variables, domain redirection, lack of contact information, identically or similarly priced items and volume sales discounts, the same incorrect grammar and misspellings, similar hosting services, similar name servers, and the use of the same text and images.

24. In addition to operating under multiple fictitious names, Defendants in this case and defendants in other similar cases against online counterfeiters use a variety of other common tactics to evade enforcement efforts. For example, counterfeiters like Defendants will often register new domain names or online marketplace accounts under new aliases once they receive notice of a lawsuit. Counterfeiters also often move website hosting to rogue servers located outside the United States once notice of a lawsuit is received. Rogue servers are notorious for

ignoring take down demands sent by brand owners. Counterfeiters also typically ship products in small quantities via international mail to minimize detection by U.S. Customs and Border Protection.

25. Further, counterfeiters such as Defendants typically operate multiple credit card merchant accounts and PayPal accounts behind layers of payment gateways so that they can continue operation in spite of Arc'teryx's enforcement efforts. On information and belief, Defendants maintain off-shore bank accounts and regularly move funds from their PayPal accounts or other financial accounts to off-shore bank accounts outside the jurisdiction of this Court. Indeed, analysis of PayPal transaction logs from previous similar cases indicates that off-shore counterfeiters regularly move funds from U.S.-based PayPal accounts to offshore bank accounts outside the jurisdiction of this Court.

26. Defendants, without any authorization or license from Arc'teryx, have knowingly and willfully used and continue to use the ARC'TERYX Trademarks in connection with the advertisement, distribution, offering for sale, and sale of Counterfeit Arc'teryx Products into the United States and Illinois over the Internet. Each Defendant Internet Store offers shipping to the United States, including Illinois, and, on information and belief, each Defendant has sold Counterfeit Arc'teryx Products into the United States, including Illinois.

27. Defendants' use of the ARC'TERYX Trademarks in connection with the advertising, distribution, offering for sale, and sale of Counterfeit Arc'teryx Products, including the sale of Counterfeit Arc'teryx Products into the United States, including Illinois, is likely to cause and has caused confusion, mistake, and deception by and among consumers and is irreparably harming Arc'teryx.

COUNT I
TRADEMARK INFRINGEMENT AND COUNTERFEITING (15 U.S.C. § 1114)

28. Arc'teryx hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 27.

29. This is a trademark infringement action against Defendants based on their unauthorized use in commerce of counterfeit imitations of the federally registered ARC'TERYX Trademarks in connection with the sale, offering for sale, distribution, and/or advertising of infringing goods. The ARC'TERYX Trademarks are highly distinctive marks. Consumers have come to expect the highest quality from ARC'TERYX® products sold or marketed under the ARC'TERYX Trademarks.

30. Defendants have sold, offered to sell, marketed, distributed, and advertised, and are still selling, offering to sell, marketing, distributing, and advertising products using counterfeit reproductions of the ARC'TERYX Trademarks without Arc'teryx's permission.

31. Arc'teryx is the exclusive owner of the ARC'TERYX Trademarks. Arc'teryx's United States Registrations for the ARC'TERYX Trademarks (Exhibit 1) are in full force and effect. Upon information and belief, Defendants have knowledge of Arc'teryx's rights in the ARC'TERYX Trademarks, and are willfully infringing and intentionally using counterfeits of the ARC'TERYX Trademarks. Defendants' willful, intentional and unauthorized use of the ARC'TERYX Trademarks is likely to cause and is causing confusion, mistake, and deception as to the origin and quality of the Counterfeit Arc'teryx Products among the general public.

32. Defendants' activities constitute willful trademark infringement and counterfeiting under Section 32 of the Lanham Act, 15 U.S.C. § 1114.

33. Arc'teryx has no adequate remedy at law, and if Defendants' actions are not enjoined, Arc'teryx will continue to suffer irreparable harm to its reputation and the goodwill of its well-known ARC'TERYX Trademarks.

34. The injuries and damages sustained by Arc'teryx have been directly and proximately caused by Defendants' wrongful reproduction, use, advertisement, promotion, offering to sell, and sale of Counterfeit Arc'teryx Products.

COUNT II
FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(a))

35. Arc'teryx hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 34.

36. Defendants' promotion, marketing, offering for sale, and sale of Counterfeit Arc'teryx Products has created and is creating a likelihood of confusion, mistake, and deception among the general public as to the affiliation, connection, or association with Arc'teryx or the origin, sponsorship, or approval of Defendants' Counterfeit Arc'teryx Products by Arc'teryx. By using the ARC'TERYX Trademarks in connection with the sale of Counterfeit Arc'teryx Products, Defendants create a false designation of origin and a misleading representation of fact as to the origin and sponsorship of the Counterfeit Arc'teryx Products.

37. Defendants' false designation of origin and misrepresentation of fact as to the origin and/or sponsorship of the Counterfeit Arc'teryx Products to the general public involves the use of counterfeit marks and is a willful violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125.

38. Arc'teryx has no adequate remedy at law and, if Defendants' actions are not enjoined, Arc'teryx will continue to suffer irreparable harm to its reputation and the goodwill of its Arc'teryx brand.

COUNT III
VIOLATION OF ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT
(815 ILCS § 510, *et seq.*)

39. Arc'teryx hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 38.

40. Defendants have engaged in acts violating Illinois law including, but not limited to, passing off their Counterfeit Arc'teryx Products as those of Arc'teryx, causing a likelihood of confusion and/or misunderstanding as to the source of their goods, causing a likelihood of confusion and/or misunderstanding as to an affiliation, connection, or association with genuine ARC'TERYX® products, representing that their products have Arc'teryx's approval when they do not, and engaging in other conduct which creates a likelihood of confusion or misunderstanding among the public.

41. The foregoing Defendants' acts constitute a willful violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510, *et seq.*

42. Arc'teryx has no adequate remedy at law, and Defendants' conduct has caused Arc'teryx to suffer damage to its reputation and associated goodwill. Unless enjoined by the Court, Arc'teryx will suffer future irreparable harm as a direct result of Defendants' unlawful activities.

PRAYER FOR RELIEF

WHEREFORE, Arc'teryx prays for judgment against Defendants as follows:

- 1) That Defendants, their affiliates, officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through, under or in active concert with them be temporarily, preliminarily, and permanently enjoined and restrained from:

- a. using the ARC'TERYX Trademarks or any reproductions, counterfeit copies or colorable imitations thereof in any manner in connection with the distribution, marketing, advertising, offering for sale, or sale of any product that is not a genuine ARC'TERYX® product or is not authorized by Arc'teryx to be sold in connection with the ARC'TERYX Trademarks;
 - b. passing off, inducing, or enabling others to sell or pass off any product as a genuine ARC'TERYX® product or any other product produced by Arc'teryx, that is not Arc'teryx's or not produced under the authorization, control, or supervision of Arc'teryx and approved by Arc'teryx for sale under the ARC'TERYX Trademarks;
 - c. committing any acts calculated to cause consumers to believe that Defendants' Counterfeit Arc'teryx Products are those sold under the authorization, control or supervision of Arc'teryx, or are sponsored by, approved by, or otherwise connected with Arc'teryx;
 - d. further infringing the ARC'TERYX Trademarks and damaging Arc'teryx's goodwill; and
 - e. manufacturing, shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner, products or inventory not manufactured by or for Arc'teryx, nor authorized by Arc'teryx to be sold or offered for sale, and which bear any of Arc'teryx's trademarks, including the ARC'TERYX Trademarks, or any reproductions, counterfeit copies or colorable imitations thereof;
- 2) Entry of an Order that, at Arc'teryx's choosing, the registrant of the Defendant Domain Names shall be changed from the current registrant to Arc'teryx, and that the domain name

registries for the Defendant Domain Names, including, but not limited to, VeriSign, Inc., Neustar, Inc., Afiliast Limited, CentralNic, Nominet, and the Public Interest Registry, shall unlock and change the registrar of record for the Defendant Domain Names to a registrar of Arc'teryx's selection, and that the domain name registrars, including, but not limited to, GoDaddy Operating Company, LLC ("GoDaddy"), Name.com, PDR LTD. d/b/a PublicDomainRegistry.com ("PDR"), and Namecheap, Inc. ("Namecheap"), shall take any steps necessary to transfer the Defendant Domain Names to a registrar account of Arc'teryx's selection; or that the same domain name registries shall disable the Defendant Domain Names and make them inactive and untransferable;

- 3) Entry of an Order that, upon Arc'teryx's request, those in privity with Defendants and those with notice of the injunction, including, without limitation, any online marketplace platforms such as iOffer, eBay, AliExpress, Alibaba, Amazon, Wish.com and Dhgate, web hosts, sponsored search engine or ad-word providers, credit cards, banks, merchant account providers, third party processors and other payment processing service providers, Internet search engines such as Google, Bing and Yahoo, and domain name registrars, including, but not limited to, GoDaddy, Name.com, PDR, and Namecheap, (collectively, the "Third Party Providers") shall:

- a. disable and cease providing services being used by Defendants, currently or in the future, to engage in the sale of goods using the ARC'TERYX Trademarks;
- b. disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of counterfeit and infringing goods using the ARC'TERYX Trademarks; and

- c. take all steps necessary to prevent links to the Defendant Domain Names identified on Schedule A from displaying in search results, including, but not limited to, removing links to the Defendant Domain Names from any search index;
- 4) That Defendants account for and pay to Arc'teryx all profits realized by Defendants by reason of Defendants' unlawful acts herein alleged, and that the amount of damages for infringement of the ARC'TERYX Trademarks be increased by a sum not exceeding three times the amount thereof as provided by 15 U.S.C. § 1117;
- 5) In the alternative, that Arc'teryx be awarded statutory damages for willful trademark counterfeiting pursuant to 15 U.S.C. § 1117(c)(2) of \$2,000,000 for each and every use of the ARC'TERYX Trademarks;
- 6) That Arc'teryx be awarded its reasonable attorneys' fees and costs; and
- 7) Award any and all other relief that this Court deems just and proper.

Dated this 4th day of December 2019.

Respectfully submitted,

/s/ Justin R. Gaudio

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