

**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. 21-cv-06557

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.

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 e-commerce stores¹ operating under the seller aliases identified on Schedule A attached hereto (the “Seller Aliases”). Specifically, Defendants have targeted sales to Illinois residents by setting up and operating e-commerce stores that target United States

¹ The e-commerce store urls are listed on Schedule A hereto under the Online Marketplaces and Domain Names.

consumers using one or more Seller Aliases, offer shipping to the United States, including Illinois, accept payment in U.S. dollars and, on information and belief, have sold 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 e-commerce 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 (the "Counterfeit Arc'teryx Products"). Defendants create e-commerce stores operating under one or more Seller Aliases that are advertising, offering for sale and selling Counterfeit Arc'teryx Products to unknowing consumers. E-commerce stores operating under the Seller Aliases share unique identifiers, establishing a logical relationship between them and that Defendants' counterfeiting operation arises out of the same transaction, occurrence, or series of transactions or occurrences. Defendants attempt to avoid and mitigate liability by operating under one or more Seller Aliases 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

REGISTRATION NUMBER	REGISTERED TRADEMARK	REGISTRATION DATE	INTERNATIONAL CLASSES
			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	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

REGISTRATION NUMBER	REGISTERED TRADEMARK	REGISTRATION DATE	INTERNATIONAL CLASSES
			<p>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 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</p>

REGISTRATION NUMBER	REGISTERED TRADEMARK	REGISTRATION DATE	INTERNATIONAL CLASSES
			adapted for holding climbing equipment; Mountaineering and rock climbing equipment, namely, chalk bags, rope bags, and safety harnesses in class 28.
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	For: Clothing, namely, jackets, waterproof shell jackets, insulated shell jackets, vests, pants, shorts, sweaters, hooded 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.

REGISTRATION NUMBER	REGISTERED TRADEMARK	REGISTRATION DATE	INTERNATIONAL CLASSES
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	<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</p>

REGISTRATION NUMBER	REGISTERED TRADEMARK	REGISTRATION DATE	INTERNATIONAL CLASSES
			<p>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	<p>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.</p>

REGISTRATION NUMBER	REGISTERED TRADEMARK	REGISTRATION DATE	INTERNATIONAL CLASSES
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 of unknown makeup who own and/or operate one or more of the e-commerce stores under at least the Seller Aliases identified on Schedule A and/or other seller aliases not yet known to Arc'teryx. On information and belief, Defendants reside and/or operate in the People's Republic of China or other foreign jurisdictions with lax trademark enforcement systems, or redistribute products from the same or similar sources in those locations. Defendants have the capacity to be sued pursuant to Federal Rule of Civil Procedure 17(b).

18. On information and belief, Defendants, either individually or jointly, operate one or more e-commerce stores under the Seller Aliases listed in Schedule A attached hereto. Tactics used by Defendants to conceal their identities and the full scope of their operation make it virtually impossible for Arc'teryx to learn Defendants' true identities and the exact interworking of their counterfeit network. If 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 significant counterfeiting of Arc'teryx trademarks. In recent years, Arc'teryx has identified many fully interactive, e-

commerce stores offering counterfeit Arc'teryx Products on online marketplace platforms such as Amazon, eBay, AliExpress, Alibaba, Wish.com, and DHgate, including the e-commerce stores operating under the Seller Aliases. The Seller Aliases target consumers in this Judicial District and throughout the United States. According to U.S. Customs and Border Protection (CBP), most counterfeit products now come through international mail and express courier services (as opposed to containers) due to increased sales from offshore online counterfeiters.

The Counterfeit Silk Road: Impact of Counterfeit Consumer Products Smuggled Into the United States prepared for The Buy Safe America Coalition by John Dunham & Associates ([Exhibit 2](#)).

The bulk of counterfeit products sent to the United States “come from China and its dependent territories,” accounting for over 90.6% of all cargo with intellectual property rights (IPR) violations. *Id.* Of the \$1.23 billion in total IPR violations intercepted, \$1.12 billion was from China. *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. *Id.*

20. Third party service providers like those used by Defendants do not adequately subject new sellers to verification and confirmation of their identities, allowing counterfeiters to “routinely use false or inaccurate names and addresses when registering with these e-commerce platforms.” [Exhibit 3](#), Daniel C.K. Chow, *Alibaba, Amazon, and Counterfeiting in the Age of the Internet*, 40 NW. J. INT’L L. & BUS. 157, 186 (2020); *see also* report on “Combating Trafficking in Counterfeit and Pirated Goods” prepared by the U.S. Department of Homeland Security’s Office of Strategy, Policy, and Plans (Jan. 24, 2020), attached as [Exhibit 4](#) and finding that on “at least some e-commerce platforms, little identifying information is necessary for a counterfeiter to begin selling” and recommending that “[s]ignificantly enhanced vetting of

third-party sellers” is necessary. Counterfeitors hedge against the risk of being caught and having their websites taken down from an e-commerce platform by preemptively establishing multiple virtual store-fronts. Exhibit 4 at p. 22. Since platforms generally do not require a seller on a third-party marketplace to identify the underlying business entity, counterfeitors can have many different profiles that can appear unrelated even though they are commonly owned and operated. Exhibit 4 at p. 39. Further, “E-commerce platforms create bureaucratic or technical hurdles in helping brand owners to locate or identify sources of counterfeits and counterfeiters.” Exhibit 3 at 186–187.

21. Defendants have targeted sales to Illinois residents by setting up and operating e-commerce stores that target United States consumers using one or more Seller Aliases, offer shipping to the United States, including Illinois, accept payment in U.S. dollars and, on information and belief, have sold Counterfeit Arc’teryx Products to residents of Illinois.

22. Defendants concurrently employ and benefit from substantially similar advertising and marketing strategies. For example, Defendants facilitate sales by designing the e-commerce stores operating under the Seller Aliases so that they appear to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers. E-commerce stores operating under the Seller Aliases look sophisticated and accept payment in U.S. dollars via credit cards, Alipay, Amazon Pay, and/or PayPal. E-commerce stores operating under the Seller Aliases often include content and images that make it very difficult for consumers to distinguish such stores from an authorized retailer. 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.

23. Many Defendants also deceive unknowing consumers by using the ARC'TERYX Trademarks without authorization within the content, text, and/or meta tags of their e-commerce stores to attract various search engines crawling the Internet looking for results relevant to consumer searches for ARC'TERYX® products. Other e-commerce stores operating under Seller Aliases omit using the ARC'TERYX Trademarks in the item title to evade enforcement efforts while using strategic item titles and descriptions that will trigger their listings when consumers are searching for ARC'TERYX® products.

24. E-commerce store operators like Defendants commonly engage in fraudulent conduct when registering the Seller Aliases by providing false, misleading and/or incomplete information to e-commerce platforms to prevent discovery of their true identities and the scope of their e-commerce operation.

25. E-commerce store operators like Defendants regularly register or acquire new seller aliases for the purpose of offering for sale and selling Counterfeit Arc'teryx Products. Such seller alias registration patterns are one of many common tactics used by e-commerce store operators like Defendants to conceal their identities and the full scope and interworking of their counterfeiting operation, and to avoid being shut down.

26. Even though Defendants operate under multiple fictitious aliases, the e-commerce stores operating under the Seller Aliases often share unique identifiers, such as templates with common design elements that intentionally omit any contact information or other information for identifying Defendants or other Seller Aliases they operate or use. E-commerce stores operating under the Seller Aliases include other notable common features such as use of the same registration patterns, accepted payment methods, check-out methods, keywords, advertising tactics, similarities in price and quantities, the same incorrect grammar and misspellings, and/or

the use of the same text and images. Additionally, Counterfeit Arc'teryx Products for sale by the Seller Aliases 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.

27. E-commerce store operators like Defendants are in constant communication with each other and regularly participate in QQ.com chat rooms and through websites such as sellerdefense.cn, kaidianyo.com and kuajingvs.com regarding tactics for operating multiple accounts, evading detection, pending litigation, and potential new lawsuits.

28. Counterfeeters such as Defendants typically operate under multiple seller aliases and payment accounts so that they can continue operation in spite of Arc'teryx's enforcement. E-commerce store operators like Defendants maintain off-shore bank accounts and regularly move funds from their financial accounts to off-shore accounts outside the jurisdiction of this Court to avoid payment of any monetary judgment awarded to Arc'teryx. Indeed, analysis of financial account transaction logs from previous similar cases indicates that off-shore counterfeiters regularly move funds from U.S.-based financial accounts to off-shore accounts outside the jurisdiction of this Court.

29. Defendants are working in active concert to knowingly and willfully manufacture, import, distribute, offer for sale, and sell Counterfeit Arc'teryx Products in the same transaction, occurrence, or series of transactions or occurrences. Defendants, without any authorization or license from Arc'teryx, have jointly and severally, 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.

30. Defendants' unauthorized 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)

31. Arc'teryx hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

32. 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.

33. 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.

34. 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. On 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.

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

36. 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.

37. 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))

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

39. 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.

40. 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.

41. 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.

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 Domain Names shall be changed from the current registrant to Arc'teryx, and that the domain name registries for the Domain Names, including, but not limited to, VeriSign, Inc., Neustar, Inc., Afilias Limited, CentralNic, Nominet, and the Public Interest Registry, shall unlock and change the registrar of record for the 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 Domain Names to a registrar account of Arc'teryx's selection; or that the same domain name registries shall disable the Domain Names and make them inactive and untransferable;
- 3) Entry of an Order that, upon Arc'teryx's request, those with notice of the injunction, including, without limitation, any online marketplace platforms such as eBay, AliExpress, Alibaba, Amazon, Wish.com and Dhgate (collectively, the "Third Party Providers") shall 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;

- 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 8th day of December 2021. Respectfully submitted,

/s/ Justin R. Gaudio
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