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10 OAKLEY, INC.

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12
13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

15 '13CV1635 AJB WMC

16 OAKLEY, INC., a Washington
corporation,

17 Plaintiff,

18 v.

19 GO-OPTIC INC., a Delaware corporation,
20 and DUCAL TRADING
21 CORPORATION, a Florida corporation

22 Defendants.
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) Civil Action No.

) **COMPLAINT FOR PATENT
INFRINGEMENT**

) **DEMAND FOR JURY TRIAL**

1 Plaintiff Oakley, Inc. (“Oakley”) hereby complains of Defendants Go-
2 Optic Inc. (“Go-Optic”) and Ducal Trading Corporation (“Ducal”) (collectively,
3 “Defendants”) 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 Defendants because
9 Defendants have a continuous, systematic, and substantial presence within this
10 judicial district including by selling and offering for sale infringing products for
11 sale in this judicial district, and by committing acts of patent infringement in
12 this judicial district, including but not limited to selling infringing eyewear
13 directly to consumers and/or retailers in this district and selling into the stream
14 of commerce knowing such products would be sold in California and this
15 district, which acts form a substantial part of the events or omissions giving rise
16 to 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. Plaintiff Oakley is a corporation organized and existing under the
21 laws of the State of Washington, having its principal place of business at One
22 Icon, Foothill Ranch, California 92610.

23 5. Plaintiff is informed and believes, and thereon alleges, that
24 Defendant Go-Optic is a corporation organized and existing under the laws of
25 the state of Delaware, having its principal place of business at 3422 Old Capital
26 Trail, Suite 718, Wilmington, Delaware 19808.

27 6. Plaintiff is informed and believes, and thereon alleges, that
28 Defendant Ducal is a corporation organized and existing under the laws of the

1 state of Florida, having its principal place of business at 5291 N.W. 161st Street,
2 Miami Gardens, Florida 33014-6221.

3 7. Oakley is informed and believes, and thereon alleges, that
4 Defendants have each committed the acts alleged herein within this judicial
5 district.

6 **III. GENERAL ALLEGATIONS**

7 8. Oakley has been actively engaged in the manufacture and sale of
8 high quality eyewear since at least 1985. Oakley is the manufacturer and
9 retailer of several lines of eyewear that have enjoyed substantial success and are
10 protected by various intellectual property rights owned by Oakley.

11 9. On February 7, 2006, the United States Patent and Trademark
12 Office duly and lawfully issued United States Design Patent No. D514,613 (“the
13 D613 Patent”), entitled “EYEGLASS AND EYEGLASS COMPONENTS.”
14 Oakley is the owner by assignment of all right, title, and interest in the D613
15 Patent. A true and correct copy of the D613 Patent is attached hereto as Exhibit
16 A.

17 10. On May 15, 2007, the United States Patent and Trademark Office
18 duly and lawfully issued United States Patent No. 7,216,973 (“the ’973 Patent”),
19 entitled “EYEGLASS WITH MP3 PLAYER.” Oakley is the owner by
20 assignment of all right, title, and interest in the ’973 Patent. A true and correct
21 copy of the ’973 Patent is attached hereto as Exhibit B.

22 11. On September 4, 2007, the United States Patent and Trademark
23 Office duly and lawfully issued United States Patent No. 7,264,350 (“the ’350
24 Patent”), entitled “MULTI-DIRECTIONAL ADJUSTMENT DEVICES FOR
25 SPEAKER MOUNTS FOR EYEGLASS WITH MP3 PLAYER.” Oakley is the
26 owner by assignment of all right, title, and interest in the ’350 Patent. A true
27 and correct copy of the ’350 Patent is attached hereto as Exhibit C.

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1 12. On February 28, 2006, the United States Patent and Trademark
2 Office duly and lawfully issued United States Patent No. 7,004,582 (“the ’582
3 Patent”), entitled “ELECTRONICALLY ENABLED EYEWEAR.” Oakley is
4 the owner by assignment of all right, title, and interest in the ’582 Patent. A true
5 and correct copy of the ’582 Patent is attached hereto as Exhibit D.

6 13. On December 12, 2006, the United States Patent and Trademark
7 Office duly and lawfully issued United States Patent No. 7,147,324 (“the ’324
8 Patent”), entitled “SPEAKER MOUNTS FOR EYEGLASS WITH MP3
9 PLAYER.” Oakley is the owner by assignment of all right, title, and interest in
10 the ’324 Patent. A true and correct copy of the ’324 Patent is attached hereto as
11 Exhibit E.

12 14. On May 22, 2007, the United States Patent and Trademark Office
13 duly and lawfully issued United States Patent No. 7,219,994 (“the ’994 Patent”),
14 entitled “EYEGLASS WITH MP3 PLAYER.” Oakley is the owner by
15 assignment of all right, title, and interest in the ’994 Patent. A true and correct
16 copy of the ’994 Patent is attached hereto as Exhibit F.

17 15. On November 22, 2005, the United States Patent and Trademark
18 Office duly and lawfully issued United States Patent No. 6,966,647 (“the ’647
19 Patent”), entitled “TELECOMMUNICATIONS ENABLED EYEGLASS.”
20 Oakley is the owner by assignment of all right, title, and interest in the ’647
21 Patent. A true and correct copy of the ’647 Patent is attached hereto as Exhibit
22 G.

23 16. Defendants manufacture, use, sell, offer for sale and/or import into
24 the United States eyewear that infringe Oakley’s intellectual property rights.

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

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1 **IV. CLAIM FOR RELIEF**

2 (Patent Infringement)
3 (35 U.S.C. § 271)

4 18. Oakley repeats and re-alleges the allegations of paragraphs 1-17 of
5 this complaint as if set forth fully herein.

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

7 20. Defendants, through their agents, employees and servants, have,
8 and continue to, knowingly, intentionally and willfully infringe the D613 Patent
9 by making, using, selling, offering for sale and/or importing eyewear that are
10 covered by the claim of the D613 Patent, including Defendants' Ducal 1401
11 Talk & Tunes to go Bluetooth MP3 Sunglass.

12 21. Defendants' acts of infringement of the D613 Patent were
13 undertaken without permission or license from Oakley. Defendants had
14 knowledge of the D613 Patent and their actions constitute willful and
15 intentional infringement of the D613 Patent. Defendants infringed the D613
16 Patent with reckless disregard of Oakley's patent rights. Defendants knew or it
17 was so obvious that Defendants should have known, that their actions
18 constituted infringement of the D613 Patent. Defendants' acts of infringement
19 of the D613 Patent were not consistent with the standards for their industry.

20 22. Defendants, through their agents, employees and servants, have,
21 and continue to, knowingly, intentionally and willfully infringe the '973 Patent
22 by making, using, selling, offering for sale and/or importing eyewear that are
23 covered by at least claim 1 of the '973 Patent, including Defendants' Ducal
24 1401 Talk & Tunes to go Bluetooth MP3 Sunglass.

25 23. Defendants' acts of infringement of the '973 Patent were
26 undertaken without permission or license from Oakley. Defendants had
27 knowledge of the '973 Patent and their actions constitute willful and intentional
28 infringement of the '973 Patent. Defendants infringed the '973 Patent with

1 reckless disregard of Oakley's patent rights. Defendants knew or it was so
2 obvious that Defendants should have known, that their actions constituted
3 infringement of the '973 Patent. Defendants' acts of infringement of the '973
4 Patent were not consistent with the standards for their industry.

5 24. Defendants, through their agents, employees and servants, have,
6 and continue to, knowingly, intentionally and willfully infringe the '350 Patent
7 by making, using, selling, offering for sale and/or importing eyewear that are
8 covered by at least claim 1 of the '350 Patent, including Defendants' Ducal
9 1401 Talk & Tunes to go Bluetooth MP3 Sunglass.

10 25. Defendants' acts of infringement of the '350 Patent were
11 undertaken without permission or license from Oakley. Defendants had
12 knowledge of the '350 Patent and their actions constitute willful and intentional
13 infringement of the '350 Patent. Defendants infringed the '350 Patent with
14 reckless disregard of Oakley's patent rights. Defendants knew or it was so
15 obvious that Defendants should have known, that their actions constituted
16 infringement of the '350 Patent. Defendants' acts of infringement of the '350
17 Patent were not consistent with the standards for their industry.

18 26. Defendants, through their agents, employees and servants, have,
19 and continue to, knowingly, intentionally and willfully infringe the '582 Patent
20 by making, using, selling, offering for sale and/or importing eyewear that are
21 covered by at least claim 1 of the '582 Patent, including Defendants' Ducal
22 1401 Talk & Tunes to go Bluetooth MP3 Sunglass.

23 27. Defendants' acts of infringement of the '582 Patent were
24 undertaken without permission or license from Oakley. Defendants had
25 knowledge of the '582 Patent and their actions constitute willful and intentional
26 infringement of the '582 Patent. Defendants infringed the '582 Patent with
27 reckless disregard of Oakley's patent rights. Defendants knew or it was so
28 obvious that Defendants should have known, that their actions constituted

1 infringement of the '582 Patent. Defendants' acts of infringement of the '582
2 Patent were not consistent with the standards for their industry.

3 28. Defendants, through their agents, employees and servants, have,
4 and continue to, knowingly, intentionally and willfully infringe the '324 Patent
5 by making, using, selling, offering for sale and/or importing eyewear that are
6 covered by at least claim 1 of the '324 Patent, including Defendants' Ducal
7 1401 Talk & Tunes to go Bluetooth MP3 Sunglass.

8 29. Defendants' acts of infringement of the '324 Patent were
9 undertaken without permission or license from Oakley. Defendants had
10 knowledge of the '324 Patent and their actions constitute willful and intentional
11 infringement of the '324 Patent. Defendants infringed the '324 Patent with
12 reckless disregard of Oakley's patent rights. Defendants knew or it was so
13 obvious that Defendants should have known, that their actions constituted
14 infringement of the '324 Patent. Defendants' acts of infringement of the '324
15 Patent were not consistent with the standards for their industry.

16 30. Defendants, through their agents, employees and servants, have,
17 and continue to, knowingly, intentionally and willfully infringe the '994 Patent
18 by making, using, selling, offering for sale and/or importing eyewear that are
19 covered by at least claim 1 of the '994 Patent, including Defendants' Ducal
20 1401 Talk & Tunes to go Bluetooth MP3 Sunglass.

21 31. Defendants' acts of infringement of the '994 Patent were
22 undertaken without permission or license from Oakley. Defendants had
23 knowledge of the '994 Patent and their actions constitute willful and intentional
24 infringement of the '994 Patent. Defendants infringed the '994 Patent with
25 reckless disregard of Oakley's patent rights. Defendants knew or it was so
26 obvious that Defendants should have known, that their actions constituted
27 infringement of the '994 Patent. Defendants' acts of infringement of the '994
28 Patent were not consistent with the standards for their industry.

1 32. Defendants, through their agents, employees and servants, have,
2 and continue to, knowingly, intentionally and willfully infringe the '647 patent
3 by making, using, selling, offering for sale and/or importing eyewear that are
4 covered by at least claim 1 of the '647 patent, including Defendants' Ducal
5 1401 Talk & Tunes to go Bluetooth MP3 Sunglass.

6 33. Defendants' acts of infringement of the '647 Patent were
7 undertaken without permission or license from Oakley. Defendants had
8 knowledge of the '647 Patent and their actions constitute willful and intentional
9 infringement of the '647 Patent. Defendants infringed the '647 Patent with
10 reckless disregard of Oakley's patent rights. Defendants knew or it was so
11 obvious that Defendants should have known, that their actions constituted
12 infringement of the '647 Patent. Defendants' acts of infringement of the '647
13 Patent were not consistent with the standards for their industry.

14 34. Pursuant to 35 U.S.C. § 289, Oakley is entitled to Defendants' total
15 profits from Defendants' infringement of the D613 Patent.

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

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

21 37. Due to the aforesaid infringing acts, Oakley has suffered great and
22 irreparable injury, for which Oakley has no adequate remedy at law.

23 38. Defendants will continue to infringe Oakley's patent rights to the
24 great and irreparable injury of Oakley, unless enjoined by this Court.

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

3 A. An Order adjudging Defendants to have willfully infringed the
4 D613 Patent, the '973 Patent, the '350 Patent, the '582 Patent, the '324 Patent,
5 the '994 Patent, and the '647 Patent under 35 U.S.C. § 271;

6 B. A preliminary and permanent injunction enjoining Defendants,
7 their respective officers, directors, agents, servants, employees and attorneys,
8 and those persons in active concert or participation with Defendants, from
9 infringing the D613 Patent, the '973 Patent, the '350 Patent, the '582 Patent, the
10 '324 Patent, the '994 Patent, and the '647 Patent;

11 C. That under 35 U.S.C. § 284, Defendants account for all gains,
12 profits, and advantages derived by Defendants' infringement of the D613
13 Patent, the '973 Patent, the '350 Patent, the '582 Patent, the '324 Patent, the
14 '994 Patent, and the '647 Patent in violation of 35 U.S.C. § 271, and that
15 Defendants pay to Oakley all damages suffered by Oakley;

16 D. That Oakley have and recover Defendants' total profits under 35
17 U.S.C. § 289 for Defendants' infringement of the D613 Patent;

18 E. An Order for a trebling of damages and/or exemplary damages
19 because of Defendants' willful conduct pursuant to 35 U.S.C. § 284;

20 F. An Order adjudging that this is an exceptional case;

21 G. An award to Oakley of the attorneys' fees and costs incurred by
22 Oakley in connection with this action pursuant to 35 U.S.C. § 285;

23 H. An award of pre-judgment and post-judgment interest and costs of
24 this action against Defendants;

25 I. That Oakley have and recover the costs of this civil action,
26 including reasonable attorneys' fees.

27 J. An award of pre-judgment and post-judgment interest and costs of
28 this action against Defendants;

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K. Such other and further relief as this Court may deem just and proper.

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: June 12, 2013 By: /s/ Ali S. Razai
Michael K. Friedland
Ali S. Razai
Samantha Y. Hsu
Attorneys for Plaintiff
OAKLEY, INC.

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DEMAND FOR JURY TRIAL

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

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: June 12, 2013 By: /s/ Ali S. Razai
Michael K. Friedland
Ali S. Razai
Samantha Y. Hsu
Attorneys for Plaintiff
OAKLEY, INC.

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