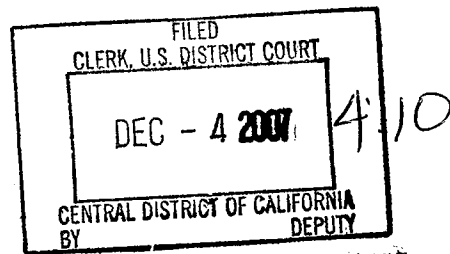


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16 ROLEX WATCH U.S.A., INC.

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA
19 WESTERN DIVISION

20 ROLEX WATCH U.S.A., INC.,

21 Plaintiff,

22 v.

23 BOYU ZHOU and BING FA ZHOU,
24 individually and d/b/a
XJEWELRYCENTER.COM,
25 GLOBALREPLICACENTER.COM,
WORLDREPLICASTORE.COM,
26 XLUXURYSTORE.COM, and
EDELUXECENTER.COM,

27 Defendants.
28

Case No.: **FCV07-07900**

COMPLAINT FOR:

- 1. FEDERAL TRADEMARK COUNTERFEITING (15 U.S.C. § 1114);
- 2. FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C. § 1114);
- 3. FEDERAL FALSE DESIGNATION OF ORIGIN, FALSE DESCRIPTION AND UNFAIR COMPETITION (15 U.S.C. § 1125 (a));
- 4. STATE STATUTORY AND COMMON LAW TRADEMARK

FMC
(JCx)

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- DILUTION;**
- 5. STATE STATUTORY AND COMMON LAW TRADEMARK INFRINGEMENT;**
- 6. STATE STATUTORY AND COMMON LAW UNFAIR COMPETITION; AND**
- 7. DECEPTIVE, FALSE AND MISLEADING ADVERTISING.**

1 Plaintiff Rolex Watch U.S.A., Inc. (“Rolex” or “Plaintiff”), through its
2 attorneys, alleges as follows:

3 **STATEMENT OF THE CASE**

4 1. This is an action by Rolex against defendants Boyu Zhou and Bing Fa
5 Zhou individually (the “Defendants”) and d/b/a www.xjewelrycenter.com,
6 www.globalreplicacenter.com, www.worldreplicastore.com, www.xluxurystore.com
7 and www.edeluxecenter.com (collectively the “Websites”) for injunctive relief,
8 statutory damages, treble damages and/or profits, compensatory damages, punitive
9 damages, pre-judgment interest, attorneys fees, investigators fees and costs from the
10 Defendants for each of Plaintiff’s trademarks that the Defendants have willfully and
11 maliciously counterfeited under the Lanham Act and the common law. Defendants
12 are being sued by Rolex as a result of Defendants’ offering for sale and sale over the
13 Internet of watches bearing counterfeits of the Rolex trademarks (as defined herein),
14 promoting the sale of watches bearing counterfeits of the Rolex trademarks, and
15 hosting websites that promote for sale and sell watches bearing counterfeits of the
16 Rolex trademarks. As set forth below, the unlawful acts of the Defendants constitute
17 federal trademark infringement and counterfeiting, false designation of origin and
18 false description, and unfair competition.

19 **SUBJECT MATTER JURISDICTION AND VENUE**

20 2. This Court has subject matter jurisdiction over the claims in this
21 Complaint relating to trademark counterfeiting and infringement, false designation of
22 origin, false description and unfair competition pursuant to 15 U.S.C. §§ 1121, and 28
23 U.S.C. §§ 1331 and 1338.

24 3. This Court has supplemental jurisdiction over the claims in this
25 Complaint arising under the statutory and common law of the State of California
26 pursuant to 28 U.S.C. § 1367(a), because the state law claims are so related to the
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1 federal claims that they form part of the same case or controversy and derive from a
2 common nucleus of operative fact.

3 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), in that the
4 Defendants reside in this State and in this District, and because a substantial part of
5 the events or omissions giving rise to Plaintiff's claims occurred in this District.

6 **PARTIES AND PERSONAL JURISDICTION**

7 5. Plaintiff Rolex Watch U.S.A., Inc. is a corporation duly organized and
8 existing under the laws of the State of New York, having an office and principal place
9 of business at 665 Fifth Avenue, New York, NY 10022.

10 6. Upon information and belief, Defendants are California residents residing
11 and doing business at 363 South Arroyo Drive #B, San Gabriel, CA 91776.

12 7. Upon information and belief, Defendants are and have been doing
13 business under the fictitious names of the Websites (www.xjewelrycenter.com,
14 www.globalreplicacenter.com, www.worldreplicastore.com, www.xluxurystore.com
15 and www.edeluxcenter.com).

16 8. Upon information and belief, Defendants are the registrants of the
17 domain names and/or the owners, operators and controlling forces behind the
18 Websites.

19 9. Upon information and belief, the Defendants use the names Gonza
20 Norbales and Blake Gonza as aliases.

21 10. Upon information and belief, the Defendants have established e-mail
22 addresses at sales@xjewelrycenter.com, byz2824@hotmail.com,
23 support@jewelrycenter.com, service@worldreplicastore.com,
24 marketing@worldreplicastore.com, sales@edeluxcenter.com and
25 support@edeluxcenter.com.

26 11. Defendants are subject to the jurisdiction of this Court because they are
27 domiciled in and conduct business within this District.

FACTS COMMON TO ALL CLAIMS FOR RELIEF


Rolex’s Famous Trademarks

12. Rolex is the exclusive distributor of Rolex watches in the United States, all of which bear one or more of the Rolex Registered Trademarks, as defined *infra*. Rolex watches are identified by the trade name and trademark ROLEX and one or more of Rolex’s trademarks.

13. Rolex is responsible for assembling, finishing, marketing and selling in interstate commerce high quality Rolex watches, watch bracelets, and related products (hereinafter referred to as “Rolex Watches”).


14. Rolex is responsible for maintaining control over the quality of Rolex products and services in this country.

15. Rolex has developed an outstanding reputation because of the uniform high quality of Rolex Watches.

16. Rolex Watches are identified by the trade name “Rolex” and one or more of, but not limited to, the following trademarks owned by Rolex: ROLEX, PRESIDENT, CROWN DEVICE  , DATEJUST, OYSTER, OYSTER PERPETUAL, GMT-MASTER, GMT-MASTER II, ROLEX, YACHT-MASTER, SEA-DWELLER, SUBMARINER, ROLEX DAYTONA, DAYTONA, EXPLORER, EXPLORER II, and AIR-KING.

17. Rolex is the owner of the following trademarks registered in the U.S. Patent and Trademark Office:

<u>Trademark</u>	<u>Reg. No.</u>	<u>Date</u>	<u>Goods</u>
ROLEX (Stylized Text)	101,819	1/12/15	Watches, clocks, parts of watches and clocks, and their cases.
OYSTER	239,383	3/6/28	Watches, movements, cases, dials, and other parts of watches.
PRESIDENT	520,309	1/24/50	Wristbands and bracelets for watches made wholly or in part or plated with precious metals, sold separately from watches.

1		657,756	1/28/58	Timepieces of all kinds and parts thereof.
2	CROWN DEVICE			
3	DATEJUST	674,177	2/17/59	Timepieces and parts thereof.
4	GMT-MASTER	683,249	8/11/59	Watches.
5	SEA-DWELLER	860,527	11/19/68	Watches, clocks and parts thereof.
6	OYSTER PERPETUAL	1,105,602	11/7/78	Watches and parts thereof.
7	YACHT-MASTER	1,749,374	1/26/93	Watches.
8	ROLEX	1,753,843	2/23/93	Jewelry.
9	SUBMARINER	1,782,604	7/20/93	Watches.
10	ROLEX DAYTONA	1,960,768	3/5/96	Watches.
11	DAYTONA	2,331,145	3/21/00	Watches.
12	EXPLORER II	2,445,357	4/24/01	Watches.
13	EXPLORER	2,518,894	12/18/01	Watches.
14	AIR-KING	2,953,542	5/17/05	Watches and parts thereof.
15	GMT-MASTER II	2,985,308	8/16/06	Watches and parts thereof.

16 Correct and true copies of these federal trademarks (hereinafter collectively referred
17 to as the "Rolex Registered Trademarks") are attached as **Exhibit 1**.

18 18. The Rolex Registered Trademarks are in full force and effect and many
19 have become incontestable pursuant to 15 U.S.C. § 1065.

20 19. Rolex has gone to great lengths to protect its name and enforce the Rolex
21 Registered Trademarks.

22 20. The Rolex Registered Trademarks are arbitrary and fanciful marks that
23 are entitled to the highest level of protection afforded by law. The Rolex Registered
24 Trademarks are associated with Rolex in the minds of consumers, the public and the
25 trade.

1 21. Rolex and/or its predecessors have used the Rolex Registered
2 Trademarks for many years on and in connection with Rolex Watches and other
3 related products.

4 22. The Rolex Registered Trademarks are distinctive marks used to identify
5 high quality products originating with Rolex.

6 23. By virtue of Plaintiff's long use of the marks, registrations, high quality
7 products, and substantial advertising and publicity for the marks, the Rolex Registered
8 Trademarks are now famous and have been famous since well prior to the activities of
9 Defendants complained of herein.

10 **DEFENDANTS' WEBSITES**

11 24. Rolex hereby incorporates all prior allegations by reference.

12 25. Long after Rolex's adoption and use of the Rolex Registered
13 Trademarks, and use of the Rolex Registered Trademarks on its products and after
14 Rolex's federal registration of the Rolex Registered Trademarks, Defendants began
15 selling, offering for sale, distributing, promoting and advertising watches in interstate
16 commerce, through the Websites, bearing counterfeits and infringements of the Rolex
17 Registered Trademarks as those marks appear on Rolex's products and as shown in
18 the Rolex Registered Trademarks attached hereto as **Exhibit 1**. Representative
19 samples of Websites offering replica Rolex Watches for sale are attached as **Exhibit 2**
20 and are incorporated herein by this reference.

21 **Defendants d/b/a XJEWELRYCENTER.COM**

22 26. Upon information and belief, Defendants own, operate and are the
23 controlling forces behind the website www.xjewelrycenter.com ("Xjewelry").

24 27. Xjewelry has been used to advertise, distribute, promote, offer for sale,
25 and sell watches bearing counterfeits of one or more of the Rolex Registered
26 Trademarks. Printouts from Xjewelry are attached as part of **Exhibit 2**.

1 28. In March of 2007, the existence of Xjewelry came to the attention of
2 Rolex.

3 29. Xjewelry listed two phone numbers: 877-953-9355 and 626-293-7575.
4 Upon information and belief, the latter is a landline registered to defendant Bing Fa
5 Zhou at 363 S. Arroyo Drive, San Gabriel, California 91776.

6 30. According to the Whois database entry for Xjewelry, defendant Boyu
7 Zhou is listed under the same address as defendant Bing Fa Zhou at 363 S. Arroyo
8 Drive, San Gabriel, California 91776.

9 31. On April 4, 2007 Rolex's investigator attempted to order a "replica"
10 Rolex Submariner from Xjewelry but was unable to complete the order because the
11 PayPal link was not in operation. The investigator called the phone number 626-293-
12 7575 and was told that Xjewelry would be up and running soon.

13 32. During this phone conversation, the person who answered the phone
14 verified that Xjewelry sells replica Rolex products.

15 33. On April 5, 2007, Rolex's counsel wrote to Xjewelry via e-mail to
16 sales@xjewelrycenter.com, byz2824@hotmail.com and support@xjewelrycenter.com
17 and via first class mail to Boyu Zhou, 363 S. Arroyo Road, #B, San Gabriel, CA
18 91776, informing defendant Boyu Zhou of the illegality and potential penalties for the
19 sale of merchandise bearing counterfeits of the Rolex Registered Trademarks through
20 Xjewelry. A copy of this correspondence is attached as **Exhibit 3**.

21 34. At the time of this correspondence, defendant Boyu Zhou was the
22 registrant of the xjewelrycenter.com domain.

23 35. On April 5, 2007, Rolex's counsel received an e-mail response to its cease
24 and desist letter of that date. The response stated that the Rolex Registered Trademarks
25 on the site would be taken down, along with the website and that the website was just
26 an advertisement and was not selling watches. A copy of this correspondence is
27 attached as **Exhibit 4**.

28

1 36. Rolex's counsel's office received numerous phone calls from Boyu Zhou
2 regarding the cease and desist letter from the phone number 310-997-0061, an unlisted
3 California-based mobile telephone number.

4 37. On April 9, 2007, Rolex's investigator received a confirmation e-mail that
5 his payment for the "replica" Rolex purchase was sent to xjewelrycenter.com.

6 38. On April 16, 2007, Rolex's investigator received an e-mail signed by
7 Bingfa Zhou from storepaymentcenter@yahoo.com stating that the ordered watch
8 should arrive in three to four days. A copy of this correspondence is attached as
9 **Exhibit 5**.

10 39. On April 23, 2007, Rolex's investigator received a package containing a
11 watch bearing counterfeits of the Rolex Registered Trademarks, including ROLEX,
12 Crown Device and SUBMARINER, from a Chinese return address ("Counterfeit Watch
13 One"). A digital image of Counterfeit Watch One and its packaging is attached as
14 **Exhibit 6**.

15 40. Rolex technical personnel have examined Counterfeit Watch One and
16 determined that none of its parts, including the dial, bracelet links, bezel and movement
17 are of Rolex origin.

18 **Defendants d/b/a GLOBALREPLICACENTER.COM**

19 41. Upon information and belief, Defendants own, operate and are the
20 controlling forces behind the website www.globalreplicacenter.com ("Global").

21 42. Global has been used to advertise, distribute, promote, offer for sale, and
22 sell watches bearing counterfeits of one or more of the Rolex Registered Trademarks.
23 Printouts from Global are attached as part of **Exhibit 2**.

24 43. On June 1, 2007, Rolex's investigator discovered Global.

25 44. Global has a similar web page design to that of Xjewelry.

26 45. Global listed two phone numbers: 310-997-0061 and 415-912-1340.
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1 46. The phone number 310-997-0061 is the same unlisted California-based
2 mobile telephone number that Boyu Zhou used to call Rolex's counsel's office
3 multiple times in response to the cease and desist letter dated April 5, 2007 regarding
4 Xjewelry.

5 47. On July 9, 2007, Rolex's investigator placed an order for a "replica"
6 Rolex watch from Global.

7 48. On July 19, 2007, Rolex's investigator received a package containing a
8 watch bearing counterfeits of the Rolex Registered Trademarks, including ROLEX,
9 Crown Device and DATEJUST, from a Chinese return address ("Counterfeit Watch
10 Two"). A digital image of Counterfeit Watch Two and its packaging is attached as
11 Exhibit 7.

12 49. Rolex technical personnel have examined Counterfeit Watch Two and
13 determined that none of its parts, including the dial, bracelet links, bezel and movement
14 are of Rolex origin.

15 50. According to the Whois database the registrant's information for the
16 globalreplicacenter.com domain is blocked due to the privacy protection instituted by
17 Gandi Sas, the domain's foreign registrar.

18 **Defendants d/b/a WORLDREPLICASTORE.COM**

19 51. Upon information and belief, Defendants own, operate and are the
20 controlling forces behind the website www.worldreplicastore.com ("World").

21 52. World has been used to advertise, distribute, promote, offer for sale, and
22 sell watches bearing counterfeits of one or more of the Rolex Registered Trademarks.
23 Printouts from World are attached as part of Exhibit 2.

24 53. On June 1, 2007, Rolex's investigator discovered World.

25 54. World has a similar web page design to those of Xjewelry and Global.

26 55. World listed two phone numbers: 310-997-0061 and 415-912-1340.
27 Both of these numbers were also listed on Global.

28

1 56. The phone number 310-997-0061 is the same unlisted California-based
2 mobile telephone number that Boyu Zhou used to call Rolex's counsel's office
3 multiple times in response to the cease and desist letter dated April 5, 2007, regarding
4 Xjewelry.

5 57. On June 28, 2007, Rolex's investigator placed an order for a "replica"
6 Rolex watch from World.

7 58. On July 7, 2007, Rolex's investigator received a package containing a
8 watch bearing counterfeits of the Rolex Registered Trademarks, including ROLEX,
9 Crown Device and SEA DWELLER, from a Chinese return address ("Counterfeit
10 Watch Three"). A digital image of Counterfeit Watch Three and its packaging is
11 attached as **Exhibit 8**.

12 59. Rolex technical personnel have examined Counterfeit Watch Three and
13 determined that none of its parts, including the dial, bracelet links, bezel and movement
14 are of Rolex origin.

15 60. On July 19, 2007, Rolex's counsel wrote to the registrant of the website
16 via e-mail to service@worldreplicastore.com and marketing@worldreplicastore.com
17 informing the registrant of the illegality and potential penalties for the sale of
18 merchandise bearing counterfeits of the Rolex Registered Trademarks through World.
19 A copy of this correspondence is attached as **Exhibit 9**.

20 61. According to the Whois database, the registrant of the
21 worldreplicastore.com domain was Gonza Norbales. A copy of the Whois report is
22 attached as **Exhibit 10**.

23 62. Upon information and belief, the name Gonza Nobales is a fictional name
24 created by the Defendants.

25 63. To date no response has been received from Rolex's counsel's
26 correspondence with World.

1 **Defendants d/b/a EDELUXECENTER.COM**

2 64. Upon information and belief, Defendants own, operate and are the
3 controlling forces behind the website www.edeluxecenter.com (“Deluxe”).

4 65. Deluxe has been used to advertise, distribute, promote, offer for sale, and
5 sell watches bearing counterfeits of one or more of the Rolex Registered Trademarks.
6 Printouts of Deluxe are attached as part of **Exhibit 2**.

7 66. On June 1, 2007, Rolex’s investigator discovered Deluxe.

8 67. Deluxe has a similar web page design to those of Xjewelry, Global and
9 World.

10 68. Deluxe listed two phone numbers: 310-997-0061 and 702-979-3583.

11 69. The phone number 310-997-0061 is the same unlisted California-based
12 mobile telephone number that Boyu Zhou used to call Rolex’s counsel’s office
13 multiple times in response to the cease and desist letter dated April 5, 2007 regarding
14 Xjewelry. The phone number was also listed on World and Global.

15 70. On June 1, 2007, Rolex’s investigator called the phone number 702-979-
16 3583. A recorded voice message stated, “Thank you for calling...we are unable to
17 take your call because we are busy helping other customers...”

18 71. On August 15, 2007, Rolex’s counsel wrote to Deluxe via e-mail to
19 support@edeluxecenter.com and sales@edeluxecenter.com informing the registrant of
20 the illegality and potential penalties for the sale of merchandise bearing counterfeits of
21 the Rolex Registered Trademarks through Deluxe. A copy of this correspondence is
22 attached as **Exhibit 11**.

23 72. An automated response indicating receipt of the correspondence was
24 received by Rolex’s counsel from service@edeluxecenter.com, but to date no further
25 response has been received from Rolex’s counsel’s correspondence with Deluxe.

26 73. At the time of the August 15, 2007 correspondence, the registrant of the
27 edeluxecenter.com domain was edeluxcenter.com, a foreign registrant.
28

1 **Defendants d/b/a XLUXURYSTORE.COM**

2 74. Upon information and belief, Defendants own, operate and are the
3 controlling forces behind the website www.xluxurystore.com (“Luxury”).

4 75. Luxury has been used to advertise, distribute, promote, offer for sale, and
5 sell watches bearing counterfeits of one or more of the Rolex Registered Trademarks.
6 Printouts of Luxury are attached as part of **Exhibit 2**.

7 76. On June 1, 2007, Rolex’s investigator discovered Luxury.

8 77. Luxury has a similar web page design to those of Xjewelry, Global,
9 World and Deluxe.

10 78. Luxury listed the phone number 702-979-3583. This phone number was
11 also listed on Deluxe.

12 79. According to the Whois database, Luxury was registered to Blake Gonza.
13 A copy of the Whois report is attached as **Exhibit 12**.

14 80. Upon information and belief, the name Blake Gonza is a fictional name
15 created by the Defendants.

16 **SUMMARY OF DEFENDANTS’ ILLEGAL ACTIVITIES**

17 81. Through the Websites, Defendants have been intentionally, maliciously
18 and willfully selling, offering for sale, distributing, promoting and advertising watches
19 bearing counterfeits of one or more of the Rolex Registered Trademarks, despite
20 knowledge that such sales are illegal.

21 82. The Defendants’ acts as aforesaid are deliberately calculated to confuse
22 and to deceive the public and are performed with full knowledge of Plaintiff’s rights.

23 83. The Defendants are not now, nor have they ever been, associated,
24 affiliated or connected with, endorsed, or sanctioned by the Plaintiff.

25 84. Rolex has never authorized or consented in any way to the use by
26 Defendants of the Rolex Registered Trademarks and/or copies thereof.

1 85. The use by Defendants of the Rolex Registered Trademarks and/or copies
2 thereof on Defendants' products is likely to cause consumers, the public and the trade
3 to erroneously believe that the goods sold by Defendants emanate or originate from
4 Rolex, or that said items are authorized, sponsored, or approved by Rolex, even
5 though they are not. This confusion causes irreparable harm to Rolex and weakens
6 the distinctive quality of the Rolex Registered Trademarks.

7 86. Upon information and belief, Defendants' acts will continue unless
8 enjoined by this Court.

9 87. As a consequence of the Defendants' conduct, Plaintiff has suffered
10 irreparable damage.

11 88. Plaintiff has no adequate remedy at law and has suffered and will
12 continue to suffer irreparable harm and damage as a result of Defendants' acts in an
13 amount not thus far determined.

14 **FIRST CLAIM FOR RELIEF**

15 **Trademark Counterfeiting**

16 **(15 U.S.C. § 1114)**

17 89. Plaintiff incorporates by reference all prior allegations as though fully set
18 forth herein.

19 90. The Defendants have used spurious designations that are identical with,
20 or substantially indistinguishable from, the Rolex Registered Trademarks on goods
21 covered by registrations for the Rolex Registered Trademarks.

22 91. The Defendants have intentionally used these spurious designations,
23 knowing they are counterfeit, in connection with the advertising, sale, offering for
24 sale, and distribution of goods.

25 92. Defendants' use of the Rolex Registered Trademarks to advertise, offer
26 for sale, distribute, and sell Defendants' counterfeit watches was and is without the
27 consent of Plaintiff.

28

1 93. Defendants' unauthorized use of the Rolex Registered Trademarks on
2 and in connection with their advertising and sale of counterfeit merchandise through
3 the World Wide Web constitutes Defendants' use of the Rolex Registered Trademarks
4 in commerce.

5 94. Defendants' unauthorized use of the Rolex Registered Trademarks as set
6 forth above is likely to:

7 (a) cause confusion, mistake, and deception;

8 (b) lead to the passing off of Defendants' merchandise as Plaintiff's
9 watches and/or cause the public to believe that Defendants' merchandise is the same
10 as Plaintiff's watches and/or that Defendants are authorized, sponsored or approved by
11 Plaintiff or that Defendants are affiliated, connected, or associated with or in some
12 way related to Plaintiff;

13 (c) result in Defendants unfairly benefiting from Plaintiff's advertising
14 and promotion and profiting from the reputation of Plaintiff and its Trademarks, all to
15 the substantial and irreparable injury of the public, Plaintiff, and Plaintiff's Rolex
16 Registered Trademarks and the substantial goodwill represented thereby.

17 95. Defendants' acts as aforesaid constitute trademark counterfeiting in
18 violation of Section 32 of the Lanham Act, 15 U.S.C. §1114.

19 96. By reason of the foregoing, the Defendants are liable to Plaintiff for: (a)
20 statutory damages in the amount of up to \$1,000,000 for each mark counterfeited as
21 provided by 15 U.S.C. § 1117(c) of the Lanham Act, or, at Rolex's election, an
22 amount representing three (3) times Rolex's damage and/or Defendants' illicit profits;
23 and (b) reasonable attorney's fees, investigative fees and pre-judgment interest
24 pursuant to 15 U.S.C. §1117(b).

SECOND CLAIM FOR RELIEF

Trademark Infringement

(15 U.S.C. § 1114)

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4 97. Plaintiff incorporates by reference all prior allegations as though fully set
5 forth herein.

6 98. Based on Rolex's extensive advertising under the Rolex Registered
7 Trademarks, its extensive sales and the wide popularity of Rolex Watches, the Rolex
8 Registered Trademarks have acquired a secondary meaning so that any product and
9 advertisement bearing such trademarks is immediately associated by purchasers and
10 the public as being a product and affiliate of Rolex.

11 99. Defendants' activities constitute Defendants' use in commerce of the
12 Rolex Registered Trademarks. Defendants use the Rolex Registered Trademarks in
13 connection with the Defendants' sale, offers of sale, distribution, promotion and
14 advertisement of their goods bearing infringements and/or counterfeits of the Rolex
15 Registered Trademarks.

16 100. Defendants have used the Rolex Registered Trademarks, knowing they
17 are the exclusive property of Rolex, in connection with Defendants' sale, offers for
18 sale, distribution, promotion and advertisement of their goods.

19 101. Defendants' activities create the false and misleading impression that
20 Defendants are sanctioned, assigned or authorized by Rolex to use the Rolex
21 Registered Trademarks to advertise, manufacture, distribute, appraise, offer for sale or
22 sell watches bearing the Rolex Registered Trademarks when Defendants are not so
23 authorized.

24 102. The marks used on the goods that Defendants sell, offer to sell, distribute,
25 promote and advertise are confusingly similar to the Rolex Registered Trademarks.

26 103. Defendants engage in the aforementioned activity with the intent to
27 confuse and deceive the public into believing that Defendants and the watches they sell
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1 are in some way sponsored, affiliated or associated with Rolex, when in fact they are
2 not.

3 104. Defendants' use of one or more of the Rolex Registered Trademarks has
4 been without the consent of Rolex, is likely to cause confusion and mistake in the
5 minds of the public and, in particular, tends to and does falsely create the impression
6 that the goods advertised, promoted, distributed and sold by the Defendants are
7 warranted, authorized, sponsored or approved by Rolex when, in fact, they are not.

8 105. Defendants unauthorized use of the Rolex Registered Trademarks has
9 resulted in Defendants unfairly benefiting from Rolex's advertising and promotion, and
10 profiting from the reputation of Rolex and the Rolex Registered Trademarks, to the
11 substantial and irreparable injury of the public, Rolex and the Rolex Registered
12 Trademarks and the substantial goodwill represented thereby.

13 106. Defendants' aforesaid acts also constitute infringement of the Rolex
14 Registered Trademarks in violation of Section 32 of the Lanham Act, 15 U.S.C. §1114.

15 107. By reason of the foregoing, the Defendants are liable to Rolex for: (a) an
16 amount representing three (3) times Rolex's damage and/or Defendants' illicit profits;
17 and (b) reasonable attorneys' fees, investigative fees and pre-judgment interest
18 pursuant to 15 U.S.C. § 1117.

19 **THIRD CLAIM FOR RELIEF**

20 **False Designation of Origin,**

21 **False or Misleading Descriptions and Representations,**

22 **and Unfair Competition**

23 **(15 U.S.C. § 1125(a))**

24 108. Plaintiff incorporates by reference all prior allegations as though fully set
25 forth herein.

26 109. Defendants' conduct as described above constitutes the use in commerce
27 of false designations of origin and/or false or misleading descriptions or
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1 representations of fact, which are likely to cause confusion, mistake, and deception
2 and/or create the misleading impression that Defendants' products are manufactured
3 by, endorsed by, or in some way associated with Plaintiff.

4 110. Defendants' conduct as described above also constitutes the use in
5 commerce of false designations of origin and/or false or misleading descriptions or
6 representations of fact, which misrepresent the nature, characteristics, and qualities of
7 Defendants' goods.

8 111. Plaintiff believes that it is likely to be damaged by the use of such false
9 designations of origin and false or misleading descriptions and/or representations of
10 fact, all in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

11 **FOURTH CLAIM FOR RELIEF**

12 **State Statutory and Common Law Trademark Dilution**

13 **(Cal. Bus. & Prof. Code § 14330)**

14 112. Plaintiff incorporates by reference all prior allegations as though fully set
15 forth herein.

16 113. This claim arises under California Business and Professions Code §
17 14330 and the common law of the state. This Court has jurisdiction over the subject
18 matter of this claim pursuant to the provisions of 28 U.S.C. § 1367.

19 114. The acts of Defendants complained of herein have caused a likelihood of
20 injury to Plaintiff's goodwill and business reputation, impaired the effectiveness of
21 Plaintiff's Trademarks, and diluted the distinctive trade names and marks of Plaintiff,
22 in violation of the trademark laws of the State of California, and specifically
23 California Business and Professions Code §14330.

24 115. Plaintiff has no adequate remedy at law. The conduct of Defendants has
25 caused and, if not enjoined, will continue to cause, irreparable damage to the rights of
26 Plaintiff in its Trademarks, and to Plaintiff's business reputation and goodwill.

FIFTH CLAIM FOR RELIEF

**State Statutory and Common Law Trademark and/or Trade Name Infringement
(Cal. Bus. & Prof. Code § 14335)**

116. Plaintiff incorporates by reference all prior allegations as though fully set forth herein.

117. This claim arises under California Business and Professions Code section 14335 and the common law of this state. This Court has jurisdiction over the subject matter of this claim pursuant to the provisions of 28 U.S.C. § 1367.

118. Plaintiff is the owner of all rights, title, and interest in and to the Rolex Registered Trademarks and the distinctive trade names, trademarks, designs, symbols, and logos used by Plaintiff by virtue of its extensive manufacture and sales of Watches bearing such trade names, trademarks, designs, symbols, and logos (collectively "Plaintiff's Common Law Trademarks"), as set forth in the preceding paragraphs of this Complaint.

119. The counterfeit products sold by Defendants incorporate matter constituting replicas and imitations of the Rolex Registered Trademarks and Plaintiff's Common Law Trademarks. Defendants' unauthorized use of the Rolex Registered Trademarks and Plaintiff's Common Law Trademarks constitutes trademark and/or trade name infringement, and is likely to cause confusion and mistake in the minds of the trade and the purchasing public as to the source of the products and to cause purchasers to believe such products are authentic products of Plaintiff when, in fact, they are not.

120. Upon information and belief, Defendants have intentionally appropriated one or more of the Rolex Registered Trademarks and/or Plaintiff's Common Law Trademarks with the intent of causing confusion, mistake, and deception as to the source of their goods and with the intent to palm off their goods as those of Plaintiff, and to place others in the position to palm off their goods as those of Plaintiff.

1 121. By the aforesaid actions, Defendants are improperly trading upon the
2 enviable reputation and goodwill of Plaintiff, and are impairing Plaintiff's valuable
3 rights in and to its trademarks.

4 122. The acts of Defendants complained of herein constitute willful and
5 intentional acts of infringement of the Rolex Registered Trademarks and Plaintiff's
6 Common Law Trademarks, in violation of the trademark laws of the State of
7 California, and specifically California Business and Professions Code section 14335.

8 123. Plaintiff has no adequate remedy at law. The conduct of Defendants has
9 caused and, if not enjoined, will continue to cause irreparable damage to the rights of
10 Plaintiff in its Common Law Trademarks and to its business reputation and goodwill.

11 **SIXTH CLAIM FOR RELIEF**

12 **State Statutory and Common Law Unfair Competition**

13 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

14 124. Plaintiff incorporates by reference all prior allegations as though fully set
15 forth herein.

16 125. By their wrongful conduct as set forth above, Defendants have engaged
17 in and continue to engage in unfair competition, as that term is defined in California
18 Business and Professions Code section 17200 and the common law of this State. This
19 Court has jurisdiction over the subject matter of this claim pursuant to the provisions
20 of 28 U.S.C. § 1338, this being a claim of unfair competition joined with a substantial
21 and related claim under the Trademark Laws of the United States, and under 28
22 U.S.C. § 1367.

23 126. For purposes of Plaintiff's claim under section 17200, "unfair
24 competition" means: (1) an unlawful, unfair, or fraudulent business act or practice; (2)
25 unfair, deceptive, untrue, or misleading advertising; and/or (3) an act prohibited by
26 Chapter 1 (commencing with section 17500) of Part 3 of Division 7 of the Business
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1 and Professions Code. Defendants' conduct violates each of these aforesaid prongs of
2 section 17200 and is, accordingly, unlawful.

3 127. Upon information and belief, Defendants have intentionally appropriated
4 one or more of the Rolex Registered Trademarks and/or Plaintiff's Common Law
5 Trademarks with the intent of causing confusion, mistake, and deception as to the
6 source of their goods and with the intent to palm off their goods as those of Plaintiff
7 and to place others in the position to palm off their goods as those of Plaintiff.

8 128. By the aforesaid actions, Defendants are improperly trading upon the
9 enviable reputation and goodwill of Plaintiff, and is impairing Plaintiff's valuable
10 rights in and to its trademarks.

11 129. Upon information and belief, Defendants intended to cause injury to
12 Plaintiff and acted with a willful and conscious disregard of Plaintiff's rights.

13 130. Pursuant to California Business and Professions Code section 17203,
14 Plaintiff seeks an order of this Court enjoining Defendants from continuing their
15 unlawful, unfair, fraudulent and deceptive business practices and advertising.
16 Defendants' conduct has caused and, if not enjoined, will continue to cause irreparable
17 harm to the rights of Plaintiff in its Rolex Registered Trademarks and Common Law
18 Trademarks and to its business reputation and goodwill.

19 131. Pursuant to California Civil Code section 3294, Plaintiff further seeks an
20 award of punitive damages for Defendants' willful and malicious acts of common law
21 unfair competition.

22 **SEVENTH CLAIM FOR RELIEF**

23 **Deceptive, False, and Misleading Advertising**

24 **(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)**

25 132. Plaintiff incorporates by reference all prior allegations as though fully set
26 forth herein.

1 133. By their wrongful conduct as set forth above, Defendants have engaged
2 in and continue to engage in deceptive, false, and misleading advertising, as defined in
3 California Business and Professions Code section 17500. This Court has jurisdiction
4 over the subject matter of this claim pursuant to the provisions of 28 U.S.C. § 1367.

5 134. Defendants, with the intent to dispose of their counterfeit products and
6 web services, publicly disseminated and continue to disseminate from this State
7 advertising containing statements as to the source and authenticity of Defendants'
8 goods, which Defendants know or in the exercise of reasonable care should know are
9 untrue and/or misleading. Defendants further disseminated and continue to
10 disseminate advertising containing such statements with the intent to sell their goods
11 and services as advertised, and to encourage others to advertise and pass off
12 counterfeit goods as genuine. Defendants' advertising has deceived, and is likely to
13 deceive, members of the consuming public.

14 135. Pursuant to California Business and Professions Code sections 17203 and
15 17535, Plaintiff seeks an order of this Court enjoining Defendants from continuing
16 their wrongful advertising practices. Defendants' conduct has caused and, if not
17 enjoined, will continue to cause irreparable harm to the rights of Plaintiff in its
18 Trademarks and Common Law Trademarks and to its business reputation and
19 goodwill.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff respectfully requests that the Court order the following
22 relief:

23 I. That the Court enter an injunction ordering that the Defendants, their
24 agents, servants, employees, and all other persons in privity or acting in concert with
25 Defendants be preliminarily and permanently enjoined and restrained from:
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1 a) using any reproduction, counterfeit, copy, or colorable
2 imitation of the Rolex Registered Trademarks to identify any goods or
3 the rendering of any services not authorized by Plaintiff;

4 b) engaging in any course of conduct likely to cause confusion,
5 deception or mistake, or injure Plaintiff's business reputation or dilute the
6 distinctive quality of the Rolex Registered Trademarks;

7 c) using a false description or representation including words
8 or other symbols tending to falsely describe or represent Defendants'
9 unauthorized goods as being those of Plaintiff or sponsored by or
10 associated with Plaintiff and from offering such goods in commerce;

11 d) further infringing the Rolex Registered Trademarks by
12 manufacturing, producing, distributing, circulating, selling, marketing,
13 offering for sale, advertising, promoting, displaying or otherwise
14 disposing of any products not authorized by Rolex bearing any
15 simulation, reproduction, counterfeit, copy or colorable imitation of the
16 Rolex Registered Trademarks;

17 e) using any simulation, reproduction, counterfeit, copy or
18 colorable imitation of the Rolex Registered Trademarks in connection
19 with the promotion, advertisement, display, sale, offering for sale,
20 manufacture, production, circulation or distribution of any unauthorized
21 products in such fashion as to relate or connect, or tend to relate or
22 connect, such products in any way to Rolex, or to any goods sold,
23 manufactured, sponsored or approved by, or connected with Rolex;

24 f) hosting or acting as Internet Service Provider for, or
25 operating any websites, that offer for sale any products bearing
26 counterfeits of the Rolex Registered Trademarks;

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1 g) using any e-mail addresses to offer for sale any nongenuine
2 products bearing counterfeits of the Rolex Registered Trademarks;

3 h) having any connection whatsoever with any websites that
4 offer for sale any merchandise bearing counterfeits of the Rolex
5 Registered Trademarks;

6 i) effecting assignments or transfers, forming new entities or
7 associations or utilizing any other device for the purpose of
8 circumventing or otherwise avoiding the prohibitions set forth in
9 subparagraphs (a) through (h).

10 II. That Defendants, within ten (10) days of judgment, take all steps
11 necessary to remove from any and all websites owned or operated by the Defendants,
12 including, but not limited to the Websites, all text and graphics in connection with the
13 offering for sale of counterfeit Rolex products.

14 III. That Defendants, within thirty (30) days of Judgment, file and serve
15 Plaintiff with a sworn statement setting forth in detail the manner and form in which
16 Defendants have complied with this injunction pursuant to 15 U.S.C. § 1116(a).

17 IV. That Defendants be required to account to the Plaintiff for all profits
18 resulting from Defendants' sale of counterfeit merchandise bearing each of the Rolex
19 Registered Trademarks and that the award to Plaintiff be trebled as provided for under
20 15 U.S.C. § 1117; alternatively, that Plaintiff be awarded statutory damages under 15
21 U.S.C. § 1117(c) of up to \$1,000,000 for each mark Defendants have counterfeited.

22 V. That Plaintiff recover from Defendants Plaintiff's reasonable counsel and
23 investigator fees and the costs and disbursements of this action pursuant to 15 U.S.C.
24 § 1117.

25 VI. That Defendants be required to deliver up for destruction to Plaintiff all
26 material bearing the Rolex Registered Trademarks in association with unauthorized
27 goods or services and the means for production of same pursuant to 15 U.S.C. § 1118.

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1 VII. That Defendants not operate, control or traffick in any websites that offer
2 for sale any merchandise bearing the Rolex Registered Trademarks.

3 VIII. That Plaintiff be awarded punitive damages for Defendants' willful and
4 malicious acts of common law unfair competition.

5 IX. That Plaintiff has all such additional and further relief as the Court may
6 deem just and proper under the circumstances.

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9 KEATS McFARLAND & WILSON LLP

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12 Dated: December 4, 2007

By: 

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