

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

ROLEX WATCH U.S.A., INC.

Plaintiff,

V.

§
§
§
§
§

CIVIL ACTION NO. _____

MICHAEL ANTHONY CANALES
a/k/a ANTHONY CANALES,
GLORIA CANALES a/k/a GLORIA
CAMPBELL, LUIS CANALES and
IRMA CANALES, individually and
d/b/a MACSSWISSTIMESHOP.COM,
H2SO4MAC.COM, H2SMAC.COM,
MACSSTS.COM, and MAC2616.COM,

Defendants.

§
§
§
§
§
§
§
§
§

COMPLAINT

Plaintiff Rolex Watch U.S.A., Inc. ("Plaintiff" or "Rolex") hereby complains of defendants Michael Anthony Canales a/k/a Anthony Canales, Gloria Canales a/k/a Gloria Campbell, Luis Canales and Irma Canales, individually (collectively the "Defendants") and d/b/a macsswisstimeshop.com, h2so4mac.com, h2smac.com, macssts.com and mac2616.com (collectively the "Websites") as follows:

I. NATURE OF ACTION

1. This is a suit by Rolex against Defendants for statutory damages, treble damages, injunctive relief and/or profits, compensatory damages, punitive damages, pre- and post-judgment interest, attorney's fees, investigator's fees, costs and expenses from the Defendants for each of Plaintiff's marks that the Defendants have willfully and maliciously

counterfeited under the Lanham Act. Defendants are being sued by Rolex as a result of their sale, offers for sale, distribution, promotion and advertisement of watches over the Internet bearing counterfeits and infringements of the federally registered Rolex Trademarks identified below, and for hosting websites that promote for sale and sell watches bearing the federally registered Rolex Trademarks. As set forth below, Defendants' unlawful acts constitute, among other things, federal trademark counterfeiting, infringement, false designation of origin and false description, and unfair competition.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the federal trademark claims asserted in this action under 15 U.S.C. §1121, 28 U.S.C. §1331 and 28 U.S.C. §1338.

3. This Court has supplemental jurisdiction over the claims in this Complaint which arise under the statutory and common law of the State of Texas pursuant to 28 U.S.C. § 1367(a), since the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

4. Defendants reside and do business in the Southern District of Texas and have committed the acts complained of herein in this District.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

6. The Defendants are subject to the jurisdiction of this Court pursuant to and in accordance with the laws of the State of Texas and Rule 4 of the Federal Rules of Civil Procedure.

III. THE PARTIES

7. Plaintiff Rolex is a corporation duly organized and existing under the laws of New York, having an office and principal place of business at 665 Fifth Avenue, New York, New York 10022.

8. Upon information and belief, defendant Michael Anthony Canales a/k/a Anthony Canales (sometimes referred to herein as “Michael Canales” or “Anthony Canales”) is a resident of the State of Texas residing and doing business at 4901 Saratoga Boulevard #1114, Corpus Christi, Texas 78413.

9. Upon information and belief, defendant Gloria Canales a/k/a Gloria Campbell (sometimes referred to herein as “Gloria Canales” or “Gloria Campbell”) is a resident of the State of Texas residing at 4021 Dublin Drive, Corpus Christi, Texas 78413.

10. Upon information and belief, defendants Michael Canales and Gloria Canales were once married and are business partners who do business and operate the Websites in Corpus Christi, Texas.

11. Upon information and belief, Defendants also do business in the state of Texas at 6917 Meadowbreeze Parkway, Corpus Christi, Texas 78414.

12. Upon information and belief, defendants Luis Canales and Irma Canales are the parents of defendant Michael Canales and reside at 6917 Meadowbreeze Parkway, Corpus Christi, Texas 78414.

13. Upon information and belief, Defendants are the registrants, owners, operators and/or controlling forces behind the Websites:

- www.macsswisstimeshop.com (“Macsswiss”)

- www.h2so4mac.com (“4mac”)
- www.h2smac.com (“H2smac”)
- www.macssts.com (“Macsst”)
- www.mac2616.com (“Mac2616”)

14. Upon information and belief, Defendants have established e-mail addresses at: mac2616@hotmail.com, glo82late@hotmail.com, and mcanales35@stx.rr.com.

15. Defendants are subject to the jurisdiction of this Court because they are domiciled in and conduct substantial business within this District.

IV. FACTUAL ALLEGATIONS

(i) Rolex's Famous Products and Trademarks

16. Rolex is the exclusive distributor and warrantor in the United States of Rolex watches, all of which bear one or more of the Rolex Registered Trademarks as defined below.

17. Rolex watches are identified by the trade name and trademark ROLEX and one or more of the Rolex Registered Trademarks.


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

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

20. Rolex has developed an outstanding reputation because of the uniform high quality of Rolex Watches and the Rolex Registered Trademarks are distinctive marks used to identify these high quality products originating with Rolex.

21. Rolex owns numerous trademarks, including, but not limited to, the trademarks and trade names ROLEX, PRESIDENT, CROWN DEVICE (design), DATEJUST, SEA-DWELLER, OYSTER, OYSTER PERPETUAL, GMT-MASTER, YACHT-MASTER, SUBMARINER, ROLEX DAYTONA, DAYTONA, EXPLORER II, TURN-O-GRAPH and GMT-MASTER II.

22. Rolex is the owner of the following federal trademark registrations in the U.S. Patent and Trademark Office:

<u>Trademark</u>	<u>Reg. No.</u>	<u>Date</u>	<u>Goods</u>
ROLEX	101,819	1/12/15	Watches, clocks, parts of watches and clocks, and their cases.
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.
 CROWN DEVICE	657,756	1/28/58	Timepieces of all kinds and parts thereof.
DATEJUST	674,177	2/17/59	Timepieces and parts thereof.
GMT-MASTER	683,249	8/11/59	Watches.
SEA-DWELLER	860,527	11/19/68	Watches, clocks and parts thereof.
OYSTER	239,383	3/6/28	Watches, movements, cases, dials, and other parts of watches.
OYSTER PERPETUAL	1,105,602	11/7/78	Watches and parts thereof.
YACHT-MASTER	1,749,374	1/26/93	Watches.
SUBMARINER	1,782,604	7/20/93	Watches.
ROLEX DAYTONA	1,960,768	3/5/96	Watches.
DAYTONA	2,331,145	3/21/00	Watches.
EXPLORER II	2,445,357	4/24/01	Watches.
TURN-O-GRAPH	2,950,028	5/10/05	Watches and parts thereof.
GMT-MASTER II	2,985,308	8/16/06	Watches and parts thereof.

True and correct copies of these federal trademark registrations (hereinafter collectively referred to as the "Rolex Registered Trademarks") are attached hereto as Exhibits 1(1)-(15), respectively (collectively "Exhibit 1"), and are incorporated herein by reference.

23. The Rolex Registered Trademarks are arbitrary and fanciful and are entitled to the highest level of protection afforded by law.

24. Rolex and its predecessors have used the Rolex Registered Trademarks for many years on and in connection with Rolex Watches and related products.

25. Based on Rolex's extensive advertising, sales and the wide popularity of Rolex products, the Rolex Registered Trademarks are now famous and have been famous since well prior to the activities of the Defendants complained of herein. Rolex Registered Trademarks have acquired secondary meaning so that any product or advertisement bearing such marks is immediately associated by consumers, the public and the trade as being a product or affiliate of Rolex.

26. Rolex has gone to great lengths to protect its name and enforce the Rolex Registered Trademarks.

27. The Rolex Registered Trademarks are valid and subsisting and in full force and effect and have become incontestable pursuant to 15 U.S.C. § 1065 with the exception of Turn-O-Graph and GMT Master II.

(ii) Defendants' Illegal Activities

28. Upon information and belief, long after Rolex's adoption and use of the Rolex Registered Trademarks on its products and after Rolex's federal registration of the Rolex Registered Trademarks, Defendants began selling, offering for sale, distributing, promoting

and advertising watches in interstate commerce, through the Websites, bearing counterfeits and infringements of the Rolex Registered Trademarks, as those marks appear on Rolex's products and are shown in the Rolex Registered Trademarks that are attached hereto as **Exhibit 1**. Representative samples of the Websites offering replica Rolex Watches for sale are attached hereto as **Exhibits 2(1)-(7)** (collectively "**Exhibit 2**"), and are incorporated herein by reference.

29. Upon information and belief, Defendants are all acting in concert to offer for sale and sell merchandise bearing counterfeits of the Rolex Registered Trademarks.

(iii) Defendants' Auctions on iOffer.com

30. Prior to April 2006, Rolex discovered several auction listings, under the iOffer.com account "h2so4," offering for sale and selling watches bearing counterfeits of one or more of the Rolex Registered Trademarks. Printouts of samples from the iOffer.com listings are attached hereto as **Exhibit 3** and incorporated herein by reference.

31. iOffer.com is a website that allows its users to buy and sell items online through negotiation, rather than auctions.

32. Rolex's counsel contacted iOffer.com, which revealed that the registrant of the account "h2so4" was defendant Michael Canales, having an address at 6917 Meadowbreeze Parkway, Corpus Christi, Texas 78414, and the e-mail address mac2616@hotmail.com. A copy of the iOffer.com registrant report is attached hereto as **Exhibit 4** and incorporated herein by reference.

33. On April 18, 2006, Rolex's counsel wrote to defendant Michael Canales via e-mail to mac2616@hotmail.com and via first class mail to 6917 Meadowbreeze Parkway,

Corpus Christi, Texas 78414, informing him of the illegality and potential penalties for the sale of merchandise bearing counterfeits of the Rolex Registered Trademarks through iOffer.com. A copy of this correspondence is attached hereto as **Exhibit 5** and incorporated herein by reference.

34. On May 8, 2006, Rolex's counsel wrote to defendant Michael Canales again via e-mail to mac2616@hotmail.com and via first class mail to 6917 Meadowbreeze Parkway, Corpus Christi, Texas 78414, repeating the demands of the April 18, 2006 correspondence. A copy of this correspondence is attached hereto as **Exhibit 6** and incorporated herein by reference.

35. On May 18, 2006, the iOffer.com account "h2so4" was terminated by iOffer.com due to reports of the registrant's repeated violations and failure to comply with Rolex's demands.

36. On May 22, 2006, defendant Michael Canales contacted Rolex's counsel via e-mail from mac2616@hotmail.com stating he understands Rolex's "... rights and followed [Rolex's] procedures by ending all the listings ..." and added that he would "... make sure this [would] not happen again." A copy of this e-mail is attached hereto as **Exhibit 7** and incorporated herein by reference.

37. In late May, 2006, Rolex became aware of another iOffer.com account, "hcl," offering for sale and selling watches bearing counterfeits of one or more of the Rolex Registered Trademarks. Printouts of samples from the iOffer.com listings are attached hereto as **Exhibit 8** and incorporated herein by reference.

38. Rolex's counsel contacted iOffer.com, which revealed that the registrant of the account "hcl" was defendant Gloria Canales a/k/a Gloria Campbell, having an address at 6917 Meadowbreeze Parkway, Corpus Christi, Texas 78414, and the e-mail address glo82late@hotmail.com. This is the same street address used by registrant Michael Canales. A copy of the iOffer.com registrant report is attached hereto as **Exhibit 9** and incorporated herein by reference.

39. On May 23, 2006, Rolex's counsel wrote to defendant Gloria Canales via e-mail to glo82late@hotmail.com and via first class mail to 6917 Meadowbreeze Parkway, Corpus Christi, Texas 78414, informing her of the illegality and potential penalties for the sale of merchandise bearing counterfeits of the Rolex Registered Trademarks through iOffer.com. A copy of this correspondence is attached hereto as **Exhibit 10** and incorporated herein by reference.

40. On June 2, 2006, Rolex's counsel wrote to defendant Gloria Canales again via e-mail to glo82late@hotmail.com and via first class mail to 6917 Meadowbreeze Parkway, Corpus Christi, Texas 78414, repeating the demands of the May 23, 2006 correspondence. A copy of this correspondence is attached hereto as **Exhibit 11** and incorporated herein by reference.

41. To date, there has been no response to any of the correspondence that Rolex's counsel sent to defendant Gloria Canales.

42. In late May, 2006, Rolex encountered another iOffer.com account, "h2so4-131," offering for sale and selling watches bearing counterfeits of one or more of the Rolex

Registered Trademarks. Printouts of samples from the iOffer.com listings are attached hereto as **Exhibit 12** and incorporated herein by reference.

43. Rolex's counsel contacted iOffer.com, which revealed that the registrant of the account "h2so4-131" was Anthony Canales, having an address at 6917 Meadowbreeze Parkway, Corpus Christi, Texas 78414, and the e-mail address mcanales35@stx.rr.com. This is the same street address used by registrants Michael Canales and Gloria Canales. A copy of the iOffer.com registrant report is attached hereto as **Exhibit 13** and incorporated herein by reference.

44. Upon information and belief, Anthony Canales is an alias of defendant Michael "Anthony" Canales.

45. On May 31, 2006, Rolex's counsel wrote to defendant "Anthony" Canales via e-mail to mcanales35@stx.rr.com and via first class mail to 6917 Meadowbreeze Parkway, Corpus Christi, Texas 78414, informing him of the illegality and potential penalties for the sale of merchandise bearing counterfeits of the Rolex Registered Trademarks through iOffer.com. A copy of this correspondence is attached hereto as **Exhibit 14** and incorporated herein by reference.

46. On June 12, 2006, Rolex's counsel wrote to defendant "Anthony" Canales again via e-mail to mcanales35@stx.rr.com and via first class mail to 6917 Meadowbreeze Parkway, Corpus Christi, Texas 78414, repeating the demands of the May 31, 2006 correspondence. A copy of this correspondence is attached hereto as **Exhibit 15** and incorporated herein by reference.

47. To date, there has been no response to the correspondence that Rolex's counsel sent to defendant "Anthony" Canales.

(iv) Defendants d/b/a macsswisstimeshop.com

48. Upon information and belief, Defendants own, operate and/or are the controlling forces behind the website www.macsswisstimeshop.com ("Macsswiss").

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

50. On May 29, 2007, the existence of Macsswiss came to the attention of Rolex.

51. According to the Whois database, the registrant of the [macsswisstimeshop.com](http://www.macsswisstimeshop.com) domain is defendant Michael Canales at 6917 Meadowbreeze Parkway, Corpus Christi, Texas 78414.

52. On June 1, 2007, Rolex's counsel wrote to defendant Michael Canales via e-mail to mac2616@hotmail.com and via first class mail to 6917Meadowbreeze Parkway, Corpus Christi, Texas 78414, informing him of the illegal and potential penalties for the sale of merchandise bearing counterfeits of the Rolex Registered Trademarks through Macsswiss. A copy of this correspondence is attached hereto as **Exhibit 16** and incorporated herein by reference.

53. To date, there has been no response to the June 1, 2007 correspondence that Rolex's counsel sent to defendant Michael Canales.

54. On June 26, 2007, Rolex's investigator placed an order for a "replica" Rolex watch from Macsswiss.

55. On June 26, 2007, and June 27, 2007, Rolex's investigator received e-mails from "MAC" at e-mail address mac2616@hotmail.com, verifying the model and quantity of watches to be purchased. In those e-mails, "MAC" included photographs of two different watches bearing counterfeits of the Rolex trademarks, including ROLEX, Crown Device, OYSTER, DATEJUST and SUBMARINER. Copies of the foregoing correspondence and photographs are attached hereto as **Exhibit 17** and **Exhibits 17(1)-(4)**, respectively, and are incorporated herein by reference.

56. Upon information and belief, "MAC" is an acronym used by defendant Michael Anthony Canales.

57. On June 27, 2007, Rolex's investigator received an electronic receipt from PayPal confirming the payment of the replica Rolex watch. The charge on Rolex's investigator's credit card appeared as "MC."

58. On June 26, 2007, Rolex's investigator discovered a trade board/advertisement on the Internet, indicating that "Mac Jewelers" of 6917 Meadowbreeze Parkway, Corpus Christi was offering for sale Rolex hologram stickers. Besides the trade board activity, June 28, 1996, was the last date for any confirmed business operations performed by "Mac Jewelers." A printout of the trade board is attached hereto as **Exhibit 18** and incorporated herein by reference.

59. Upon information and belief, Mac Jewelers was once a legitimate business owned and operated by defendant Michael Canales' father.

60. The address listed on the trade board is the same address used by the registrants of the iOffer.com listings and the website Macsswiss.

61. On June 30, 2007, Rolex's investigator received a package containing a watch bearing counterfeits of the Rolex Registered Trademarks, including ROLEX, Crown Device and DATEJUST, with the return address 4901 Saratoga Boulevard #1114, Corpus Christi, Texas 78413. A digital image of the watch and its packaging is attached hereto as **Exhibit 19** and incorporated herein by reference.

62. Rolex technical personnel have examined the watch and determined that none of its parts, including the dial, bracelet links, bezel, and movement are of Rolex origin.

63. On or about July 26, 2007, Rolex's investigator also received an e-mail from defendant Michael Canales, stating, "Hi, here are my new websites: Don't loose them: www.h2smac.com, www.macsswisstimeshop.com and www.macsst.com." A copy of this e-mail is attached hereto as **Exhibit 20** and incorporated herein by reference.

64. On July 3, 2007, Rolex's investigator visited 4901 Saratoga Boulevard, #1114 Corpus Christi and confirmed that this address was defendant Michael Canales's residence.

(v) Defendants d/b/a h2so4mac.com

65. Upon information and belief, Defendants own, operate and/or are the controlling forces behind the website www.h2so4mac.com ("4mac").

66. 4mac has been used to advertise, distribute, promote, offer for sale, and sell watches bearing counterfeits of one or more of the Rolex Registered Trademarks. Printouts from 4mac are attached as **Exhibit 2(5)**.

67. On June 29, 2007, the existence of 4mac came to the attention of Rolex.

68. According to the Whois database, the registrant of the h2so4mac.com domain is defendant Michael Canales at 6917 Meadowbreeze Parkway, Corpus Christi, Texas 78414.

69. On July 3, 2007, Rolex's counsel wrote to defendant Michael Canales via e-mail to mac2616@hotmail.com and via first class mail to 6917 Meadowbreeze Parkway, Corpus Christi, Texas 78414, informing him of the illegal and potential penalties for the sale of merchandise bearing counterfeits of the Rolex Registered Trademarks through [4mac](http://4mac.com). A copy of this correspondence is attached hereto as **Exhibit 21** and incorporated herein by reference.

70. To date, there has been no response to the July 3, 2007 correspondence that Rolex's counsel sent to defendant Michael Canales.

71. However, the h2so4mac.com domain transfers the internet user right to [Macswiss](http://Macswiss.com), "Mac's Swiss Time Shop," as shown in **Exhibit 2(5)**.

(vi) Defendants d/b/a h2smac.com & macssts.com

72. Upon information and belief, Defendants own, operate and/or are the controlling forces behind the websites www.h2smac.com ("H2smac") and www.macssts.com ("Macssts").

73. H2smac and Macssts have been used to advertise, distribute, promote, offer for sale, and sell watches bearing counterfeits of one or more of the Rolex Registered Trademarks. Printouts from H2smac and Macssts are attached as **Exhibits 2(6)** and **2(7)**, respectively.

74. On or about July 26, 2007, the existence of both H2smac and Macssts came to the attention of Rolex, when Rolex's investigator received an e-mail from defendant Michael Canales "sharing" his new websites. Again, a copy of this correspondence is attached hereto as **Exhibit 20**.

75. According to the Whois database, the registrant of the macssts.com domain is defendant Michael Canales at 6917 Meadowbreeze Parkway, Corpus Christi, Texas 78414.

76. On August 21, 2007, Rolex's counsel wrote to defendant Michael Canales via e-mail to mac2616@hotmail.com and via first class mail to 6917 Meadowbreeze Parkway, Corpus Christi, Texas 78414, informing him of the illegal and potential penalties for the sale of merchandise bearing counterfeits of the Rolex Registered Trademarks through Macssts. A copy of this correspondence is attached hereto as **Exhibit 22** and incorporated herein by reference.

77. The registrant information for the h2smac.com domain was not available to Rolex. Again, however, Rolex's investigator received an e-mail directly from defendant Michael Canales indicating his control and operation of this website. A copy of this correspondence is attached hereto as **Exhibit 20**.

78. Also, the h2smac.com domain transfers the internet user right to Macswiss, "Mac's Swiss Time Shop," as shown in **Exhibit 2(6)**.

(vii) Defendants d/b/a mac2616.com

79. Upon information and belief, Defendants own, operate and/or are the controlling forces behind the website www.mac2616.com ("Mac2616").

80. Mac2616 has been used to advertise, distribute, promote, offer for sale, and sell watches bearing counterfeits of one or more of the Rolex Registered Trademarks. Printouts from Mac2616 are attached as **Exhibit 2(4)**.

81. On September 25, 2007, the existence of Mac2616 came to the attention of Rolex.

82. According to the Whois database, the registrant's information for the mac2616.com domain is unknown because the registrant's privacy is being protected by its registrar, HostMonster.com, Inc.

83. However, the mac2616.com domain transfers the internet user right to Macswiss, "Mac's Swiss Time Shop," as shown in **Exhibit 2(4)**.

V. SUMMARY OF DEFENDANTS' ILLEGAL ACTIVITIES AND CORPUS CHRISTI RESIDENCES

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

85. The Defendants' acts described herein are deliberately calculated to confuse and to deceive the public, and are performed with full knowledge of Plaintiff's rights.

86. The spurious marks or designations used by Defendants in interstate commerce are identical with, or substantially indistinguishable from, the Rolex Registered Trademarks on goods covered by the Rolex Registered Trademarks.

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

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

89. The use by Defendants of the Rolex Registered Trademarks and/or copies thereof on Defendants' products is likely to cause consumers, the public and the trade to erroneously believe that the goods sold by Defendants emanate or originate from Rolex, or that said items are authorized, sponsored, or approved by Rolex, when in fact, they are not. This confusion causes irreparable harm to Rolex and weakens the distinctive quality of the Rolex Registered Trademarks.

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

91. As a consequence of the Defendants' conduct, Plaintiff has suffered irreparable damage.

92. Plaintiff has no adequate remedy at law, and Plaintiff has suffered and will continue to suffer irreparable harm and damage as a result of Defendants' acts in an amount not yet determined.

93. On October 23, 2007, Rolex's investigator contacted defendant Gloria Campbell a/k/a Gloria Canales at telephone number, 361-857-8392, and spoke with her. During this conversation, defendant Gloria Campbell confirmed that defendant Michael Canales continues to reside at 4901 Saratoga Boulevard, #1114, Corpus Christi, Texas

78413, and that he spends a large amount of his time at his parents' house located at 6917 Meadowbreeze Parkway, Corpus Christi, Texas 78414.

94. Defendant Gloria Campbell also confirmed that she currently resides in Corpus Christi, Texas at 4021 Dublin Drive, Corpus Christi, Texas 78413, which corresponds with her address listed on yellowpages.com.

V. CLAIMS FOR RELIEF

1. Trademark Counterfeiting (15 U.S.C. §1114)

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

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

97. Defendants have intentionally used these spurious designations, knowing they are counterfeit, in connection with the advertisement, promotion, sale, offering for sale and distribution of goods.

98. Defendants' use of the Rolex Registered Trademarks to advertise, promote, offer for sale, distribute and sell watches bearing counterfeits was and is without the consent of Plaintiff.

99. Defendants' unauthorized use of the Rolex Registered Trademarks on and in connection with their advertisement, promotion, sale, offering for sale, and distribution of watches through the World Wide Web constitutes Defendants' use of the Rolex Registered Trademarks in commerce.

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

(a) cause confusion, mistake and deception;

(b) cause the public to believe that the Defendants' watches are the same as Rolex's watches and/or that they are authorized, sponsored or approved by Rolex, or that they are otherwise affiliated, connected or associated with, or in some way related to, Rolex, when in fact, they are not; and

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

101. Defendants' acts constitute willful trademark counterfeiting in violation of Section 32 of the Lanham Act, 15 U.S.C. §1114.

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

2. Trademark Infringement (15 U.S.C. § 1114 and Texas Common Law)

103. Rolex hereby incorporates by reference all prior allegations as though fully set forth herein.

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

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

106. Defendants have used the Rolex Registered Trademarks, knowing they are the exclusive property of Rolex, in connection with their sale, offers for sale, distribution, promotion and advertisement of their goods bearing counterfeits or infringements of the Rolex Registered Trademarks.

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

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

109. Defendants' use of one or more of the Rolex Registered Trademarks has been without the consent of Rolex, is likely to cause confusion and mistake in the minds of the

public and, in particular, tends to and does falsely create the impression that the goods advertised, promoted, distributed and sold by Defendants are warranted, authorized, sponsored or approved by Rolex when, in fact, they are not.

110. Defendants' unauthorized use of the Rolex Registered Trademarks has resulted in Defendants unfairly benefiting from Rolex's advertising and promotion, and unfairly profiting from the reputation of Rolex and the Rolex Registered Trademarks, all to the substantial and irreparable injury of the public, Rolex, and the Rolex Registered Trademarks and the substantial goodwill represented thereby.

111. Defendants' acts constitute willful trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. §1114, as well as trademark infringement under Texas common law.

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

3. False Designation of Origin & False Description (15 U.S.C. § 1125(a))

113. Rolex hereby incorporates by reference all prior allegations as though fully set forth herein.

114. In connection with Defendants' advertisement, promotion, distribution, offers of sales and sale of their goods, Defendants have used the Rolex Registered Trademarks in commerce.

115. In connection with Defendants' advertisement, promotion, distribution, offers of sales and sales of their goods, Defendants have affixed, applied and/or used false

designations of origin and false and misleading descriptions and representations, including the Rolex Registered Trademarks, which tend to falsely describe the origin, sponsorship, association or approval by Rolex of the goods Defendants sell.

116. Defendants have used one or more of the Rolex Registered Trademarks with full knowledge of the falsity of such designations of origin, descriptions and representations, all to the detriment of Rolex.

117. Defendants' use of the Rolex Registered Trademarks on the Websites and on their goods bearing counterfeits or infringements of the Rolex Registered Trademarks constitutes false descriptions and representations tending to falsely describe or represent Defendants and their products as being authorized, sponsored, affiliated or associated with Rolex.

118. Defendants have used one or more of the Rolex Registered Trademarks on their Websites and goods with the express intent to cause confusion and mistake, to deceive and mislead the public, to trade upon the reputation of Rolex, and to improperly appropriate to themselves the valuable trademark rights of Rolex.

119. Defendants' acts constitute the use in commerce of false designations of origin and false and/or misleading descriptions or representations, tending to falsely or misleadingly describe and/or represent their products as those of Rolex in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

4. Injury to Business Reputation & Trademarks (Tex. Bus. & Com. Code §16.29)

120. Rolex hereby incorporates by reference all prior allegations as though fully set forth herein.

121. As described in more detail above, Defendants' use of the Rolex Registered Trademarks in advertising unauthorized products results in a likelihood of injury to Plaintiff's reputation.

122. Defendants' acts described herein have damaged and will continue to damage Rolex's respective goodwill and business reputation by diluting the distinctive quality of Plaintiff's famous Trademarks in violation of Texas Business & Commerce Code §16.29, causing irreparable harm for which there is no adequate remedy at law.

5. Misappropriation and Unfair Competition (Texas Common Law)

123. Rolex hereby incorporates by reference all prior allegations as though fully set forth herein.

124. Defendants, with full knowledge of the fame of the Rolex Registered Trademarks and the exclusive nature of those proprietary rights, intended to and did trade on and misappropriate Rolex's respective goodwill and business reputation, all for Defendants' unjust enrichment.

125. Defendants' acts are likely to diminish and erode the value of the Rolex Registered Trademarks and Rolex's reputation for carefully controlling the quality of all goods and services associated therewith.

126. Defendants' acts described herein constitute misappropriation and infringement of Plaintiff's Trademark rights, goodwill and reputation, as well as unfair competition under the common law of Texas.

VI. PRAYER FOR RELIEF

WHEREFORE, Rolex respectfully requests that the Court order the following relief:

I. That the Court enter an injunction ordering that Defendants, their agents, servants, employees, and all other persons in privity or acting in concert with them be enjoined and restrained from:

(a) using any reproduction, counterfeit, copy, or colorable imitation of the Rolex Registered Trademarks to identify any goods or services not authorized by Rolex;

(b) engaging in any course of conduct likely to cause confusion, deception or mistake, or injure Rolex's business reputation or weaken the distinctive quality of the Rolex Registered Trademarks, or Rolex's name, reputation or goodwill;

(c) using a false description or representation including words or other symbols tending to falsely describe or represent their unauthorized goods as being those of Rolex or sponsored by or associated with Rolex and from offering such goods in commerce;

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

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

(f) hosting or acting as Internet Service Provider for, or operating or engaging in the business of selling, any web site or other enterprise that offers for sale any products bearing the Rolex Registered Trademarks;

(g) using any email addresses to offer for sale any nongenuine products bearing counterfeits of the Rolex Registered Trademarks;

(h) having any connection whatsoever with any web sites that offer for sale any merchandise bearing counterfeits of the Rolex Registered Trademarks;

(i) secreting, destroying, altering, removing, or otherwise dealing with any unauthorized products or any books or records which contain any information relating to the importing, manufacturing, producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, or displaying of any unauthorized products which infringe the Rolex Registered Trademarks; and

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

II. That Defendants, within ten (10) days of judgment, take all steps necessary to remove from all websites owned, operated or controlled by the Defendants, all text or other media offering for sale any merchandise bearing the Rolex Registered Trademarks, or marks substantially indistinguishable therefrom.

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

IV. That Defendants be required to deliver up for destruction to Rolex all unauthorized materials bearing any of the Rolex Registered Trademarks in association with unauthorized goods or services and the means for production of same pursuant to 15 U.S.C. §1118.

V. That Defendants not operate any websites that offer for sale any merchandise bearing Rolex Registered Trademarks.

VI. Requiring Defendants to pay to Rolex all damages that Rolex has sustained as a consequence of their counterfeiting and infringement of the Rolex Registered Trademarks, and to account for all gains, profits and advantages derived by Defendants from the sale of their infringing merchandise bearing the Rolex Registered Trademarks, and that the award to Rolex be trebled as provided for under 15 U.S.C. §1117; or, alternatively, that Rolex be awarded statutory damages pursuant to 15 U.S.C. §1117(c) of up to \$1,000,000 for each trademark that Defendants have willfully counterfeited and infringed.

VII. Ordering that Rolex recover the costs of this action, together with reasonable attorney's fees, investigator's fees, and prejudgment interest in accordance with 15 U.S.C. §1117.

VIII. Directing that this Court retain jurisdiction of this action for the purpose of enabling Rolex to apply to the Court at any time for such further orders and interpretation or execution of any Order entered in this action, for the modification of any such Order, for the enforcement or compliance therewith, and/or for the punishment of any violations thereof.

IX. That Rolex be awarded punitive damages for Defendants' willful and malicious acts of common law misappropriation and/or unfair competition.

X. Awarding to Rolex such other and further relief as the Court deems just and proper, together with the costs and disbursements which Rolex has incurred in connection with this action.

Dated: February 14, 2008.

Respectfully submitted,

BY: s/Steven M. Abbott

Steven M. Abbott

State Bar No. 00797825

Attorney-in-charge for Plaintiff

Rolex Watch U.S.A., Inc.

2727 Allen Parkway, Suite 1675

Houston, Texas 77019

Telephone: (713) 467-1669

Facsimile: (713) 467-4936

E-mail: abbottsteven@hotmail.com

OF COUNSEL:

GIBNEY, ANTHONY & FLAHERTY, LLP

Brian W. Brokate (BB 5830)

John Macaluso (JM 2058)

Matthew W. Carlin (MC 4902)

Christina L. Gardner (CG 9983)

665 Fifth Avenue

New York, NY 10022

Telephone: (212) 688-5151

Facsimile: (212) 688-8315

Attorneys for the Plaintiff

Rolex Watch U.S.A., Inc.