UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROCKY BRANDS, INC., 39 East Canal Street Nelsonville, OH 45764, **and** **ROCKY BRANDS WHOLESALE LLC,** 39 East Canal Street Nelsonville, OH 45764, **Plaintiffs,** **v.** **GLEN A. BRATCHER,** 2919 Bragg Court Springhill, TN 37174, **and** **WESTWOOD FOOTWEAR AND ACCESSORIES, LLC,** 2016 8th Avenue South Nashville, TN 37204, **and** **NANTONG HONG YI WANG SHOES CO., LTD.** Yinquan Town, Rudong County Jiangsu Province, 226402 China **Defendants.**	:	**Case No. 2:08-cv-107** **Judge** _____ **Magistrate Judge** _____ **JURY DEMAND ENDORSED HEREON**

COMPLAINT

Plaintiffs, Rocky Brands, Inc. and Rocky Brands Wholesale LLC, a wholly owned subsidiary of Rocky Brands, Inc., pursuant to Rules 8, 9, and 65 of the Federal Rules of Civil Procedure, make the following allegations and assert the following claims against Defendants

Glen A. Bratcher, Westwood Footwear and Accessories, LLC, and Nantong Hong Yi Wang Shoes Co., Ltd.:

The Parties

1. Plaintiff Rocky Brands, Inc. is an Ohio corporation with its principal place of business in Nelsonville, Ohio. Plaintiff Rocky Brands Wholesale LLC is a Delaware limited liability corporation with its sole member as Rocky Brands, Inc. and is thus an Ohio citizen. (Rocky Brands, Inc. and Rocky Brands Wholesale LLC are referred to herein as "Rocky.") Rocky is, and has been for many years, a manufacturer and seller of among other things, high quality Western, occupational ("work"), and rugged outdoor footwear ("boots").

2. Defendant Glen A. Bratcher ("Bratcher") is a citizen and resident of Springhill, Tennessee. Bratcher is a former employee of Rocky, and worked and resided in Ohio. Upon information and belief, Bratcher is the President of Defendant Westwood Footwear and Accessories, LLC.

3. Defendant Westwood Footwear and Accessories, LLC ("Westwood") is a Tennessee limited liability company with its principal place of business in Franklin, Tennessee. Westwood is in the business of selling Western and work boots, and is marketing and offering for sale such boots throughout the United States, including the State of Ohio.

4. Nantong Hong Yi Wang Shoes Co., Ltd. (d/b/a, and hereafter referred to as "RAK") is, upon information and belief, a corporate entity operating under the laws of the nation of China. It is in the business of manufacturing and exporting footwear to the United States. It has manufactured boots for Rocky or Rocky's predecessors for nearly eight years, and since 2005, has shipped boots to Rocky in Ohio as well as to other parts of the United States.

Jurisdiction And Venue

5. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331 in that there is a federal question arising out of the violation of the Lanham Act as set forth below. More specifically, 15 U.S.C. § 1121 (Section 39) provides original jurisdiction in this Court over this matter. This Court also has subject matter jurisdiction based on 18 U.S.C. § 1964(c). In addition, this Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1332(a), as there is complete diversity of citizenship between the Plaintiffs and the Defendants, and the amount of controversy exceeds $75,000.00, exclusive of interests and costs.

6. Venue is proper with this Court under 28 U.S.C. § 1391(a), as the substantial part of the events or omissions giving rise to this litigation took place in this district. Further, one or more of the Defendants are subject to personal jurisdiction here.

Background Facts

A. Rocky and Bratcher

7. Rocky is an established leader in the design, manufacture, and sale of high quality rugged outdoor, work, and Western boots. Rocky is located in Nelsonville, Ohio, where it was founded in 1932 as the Wm. Brooks Shoe Company.

8. In 2005, Rocky purchased for over $100 million the entire membership/equity interests of EJ Footwear, LLC, Georgia Boot LLC, and Lehigh Safety Shoe Co. LLC, which three entities were commonly owned and managed under the EJ Footwear umbrella ("EJ"). Among EJ's brands were the Georgia Boot line of boots and the Durango line of boots. In December 2006, Rocky reorganized so that EJ Footwear LLC merged into Rocky Brands, Inc., Georgia Boot LLC was renamed Rocky Brands Wholesale LLC, and Lehigh Safety Shoe Co. LLC was renamed Rocky Brands Retail LLC.

9. Defendant Bratcher began working with EJ in 1986, and after Rocky's purchase of EJ's entire membership/equity interests in 2005, Bratcher became an employee of Rocky until Bratcher terminated his employment with Rocky on January 31, 2007. Through the 20 years Bratcher worked with EJ and Rocky, he came to know many of their confidential, commercially sensitive, and proprietary information ("Rocky's trade secrets" and/or "EJ's trade secrets") about, among other things, the unique design features of Rocky boots, certain important marketing strategies, and essential customer identification data. Bratcher signed one or more confidentiality agreements with EJ and Rocky during his employment with them, in which he agreed to maintain the confidentiality of EJ's and Rocky's trade secret information.

10. Bratcher's work with EJ and Rocky was in the area of Western footwear, including his role as VP, Product Development – Durango and Rocky Western. After 2005, Bratcher worked with Rocky's Western line of boots, including its "Rocky Ride" series.

11. On March 13, 2007, Bratcher filed the Articles of Organization with the Tennessee Secretary of State forming Defendant Westwood. According to Westwood's website (http://www.roadwolfboots.com (a copy of the Road Wolf Boots website is attached as Exhibit A to this Complaint)), Bratcher established Westwood in February 2007.

12. Upon information and belief, Bratcher functions as the chief executive officer of Westwood.

B. Rocky Entrusted RAK With Rocky's And EJ's Trade Secrets

13. As far back as 10 years ago, EJ had transferred some of its manufacturing obligations to RAK in China, though for footwear unrelated to this case. Then in 2000, EJ transferred much of the manufacturing of its Western boots to RAK, and in conjunction with this transfer, provided RAK with many trade secrets to enable RAK to manufacture EJ boots in a

manner consistent with EJ quality. Rocky continued dealing with RAK upon Rocky's acquisition of EJ.

14. In 2006, Rocky transferred another considerable portion of its manufacturing process to RAK in China. As part of that transfer, Rocky also provided RAK with certain, additional items of Rocky's trade secrets in order that RAK could properly undertake the manufacture of high quality boots, which consumers have come to expect from Rocky.

15. Rocky, and EJ before it, required as a condition of doing business with RAK that RAK agree to maintain the confidentiality of Rocky's trade secrets that EJ and Rocky provided. RAK agreed that it would not use such information to compete with or help anyone else compete with Rocky (or EJ previously).

16. Yet, despite these agreements to keep confidential Rocky's trade secrets and EJ's trade secrets and not use any trade secret information to compete against Rocky, RAK entered into discussions with Bratcher and/or Westwood to manufacture boots identical or virtually identical to select Rocky and Durango boots using the very trade secret information Bratcher and RAK gained and then misappropriated from Rocky (and EJ before it).

17. Upon information and belief, RAK is using the same molds, lasts, dies, stitching patterns and leathers in manufacturing Westwood's boots that Rocky confidentially provided or taught RAK to use in manufacturing Rocky's boots. In this manner, RAK is using Rocky's trade secrets for the benefit of manufacturing Westwood's boots.

18. Knowing that Westwood was intending, and is in fact now attempting, to compete against Rocky, RAK invested millions of dollars in Westwood. Both Bratcher and RAK have separately, and together, misappropriated Rocky's trade secrets, and they have unlawfully

provided such trade secret information to Westwood so that Westwood could attempt to compete against Rocky.

C. Westwood's Recent Marketing of "Road Wolf" Boots

19. Within the last two months, Westwood has begun marketing a line of boots under the brand name of "Road Wolf." Many of the boots Westwood is offering under this "Road Wolf" brand are identical in design and appearance to many of Rocky's most popular boots, which Westwood could know only through the receipt of Rocky's trade secrets that Bratcher and RAK misappropriated from Rocky and supplied to Westwood.

20. Further, Westwood has contacted, or has attempted to contact, a number of Rocky's best customers to solicit orders for "Road Wolf" boots. Westwood knows of those customers, however, and their needs, only through Rocky's trade secrets that Bratcher and possibly RAK disclosed to Westwood.

D. Rocky's Boots

21. At issue in this case are the Defendants' misappropriation of Rocky's trade secrets and the Defendants' infringement of Rocky's trademarks and trade dress for chiefly three series and lines of Western boots: Georgia Giant® and other Georgia Boot Western work boots; the "Rocky Ride" series of Western boots; and the top selling Durango boot line.

22. Georgia Boot is Rocky's moderately priced, high quality line of work boots. The Georgia Giant® is a best-selling series of Western work boots from the Georgia Boot product line. The Georgia Giant® series is known for its distinctive look, featuring a notched welt and rubber rand around the boot. The Georgia Giant® series often appeals to construction workers and those who work in industrial plants where special safety features are required for work environments that could be hazardous.

23. A representative boot from the Georgia Giant® series appears below:

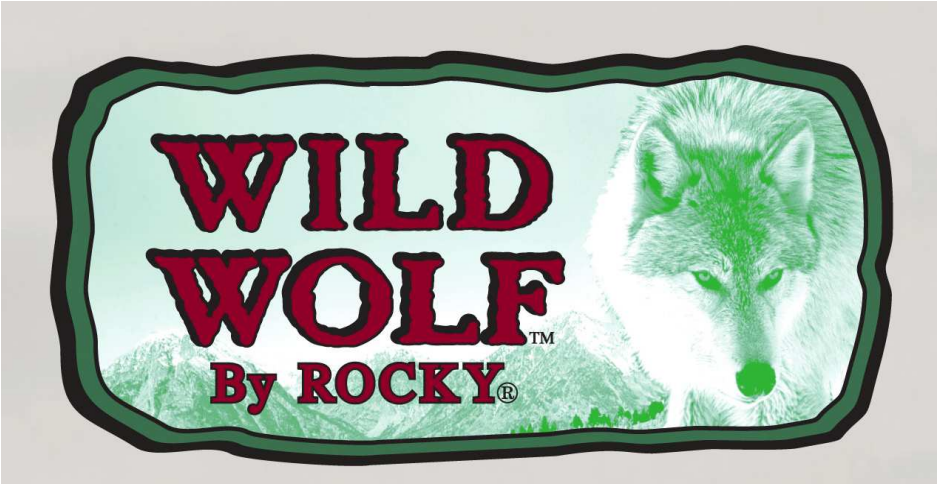
24. "Rocky Ride" boots are well known for their unique appearance. They share a common comfort system and outsole, which is distinct because of the dual density and dual color materials that are used in the outsole and which is quite distinguishable in side profile. Further, the unique, net-fit Goodyear welt construction of the boots sets the product apart from traditional Goodyear welt construction used on the majority of Western boots. The "Rocky Ride" boots have a very wide customer following, and represent one of Rocky's most popular boot lines.

25. One of the best selling boots in the "Rocky Ride" series, the Branson Roper, appears below:

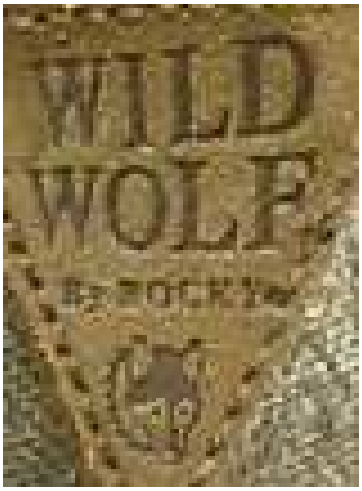
26. The Durango line represents Rocky's moderately priced, high quality Western boots. Over its 40 year history, the Durango brand has developed broad market appeal and has earned a reputation for authenticity and quality in the Western footwear market. Rocky's Durango line of boots primarily targets farm and ranch workers who live in the heartland where Western-influenced footwear and apparel is worn for work as well as casual wear. To a lesser extent, this line of boots also appeals to urban consumers enamored of Western-influenced fashion. Many of Durango's Western boots marketed to farm and ranch workers are designed to be durable, and include special leathers to maintain integrity of the uppers. Many of the boots incorporate Durango's proprietary system to increase ease of wear and reduce foot fatigue. Other products in the Durango line that target casual and fashion oriented consumers feature colorful leather uppers, and shafts with ornate stitch patterns. These are offered for men, women, and children.

27. Rocky also manufactures a separate line of boots under the label "Wild Wolf®." Rocky applied for registration of the "Wild Wolf®" word mark on August 17, 2001 and obtained registration on August 13, 2002 (Reg. No. 2,760,278) and October 29, 2002 (Reg. No. 2,642,990). Included within the "Wild Wolf®" brand are outdoor, pull-on, Western, and work boots. Rocky has chiefly marketed its "Wild Wolf®" line of boots to some of Rocky's largest customers, such as Wal-Mart and Mills Farm Fleet.

28. One of the "Wild Wolf®" logos Rocky uses is depicted below:



29. As a patch on its "Wild Wolf®" boots, Rocky uses the following embossed emblem featuring one of the "Wild Wolf®" marks:



E. RAK's Recent Actions Toward Rocky

30. As noted above, in order to enable RAK to manufacture Rocky's boots with the same high quality to which Rocky customers are accustomed, Rocky (and EJ before it) has provided RAK with a large number of Rocky's trade secrets.

31. Rocky provided RAK this information with the express agreement and implicit understanding that RAK would not share this information or use this information in any way to compete against Rocky.

32. It has been the usual practice between Rocky and RAK that Rocky submits purchase orders to RAK, which RAK fulfills within agreed-upon time periods. Until recently, RAK was generally reliable in fulfilling Rocky's purchase orders in a timely manner.

33. RAK has invested millions of dollars in Westwood to compete with Rocky. Recently, RAK has delayed fulfilling Rocky's purchase orders. For instance, RAK has advised Rocky that RAK will be unable to complete and ship a number of Rocky's purchase orders until several months after the time period with which RAK agreed to complete performance of the contract.

34. There is no coincidence between RAK's investment in Westwood and RAK's delayed performance for Rocky. Rocky has learned from Westwood representatives that RAK has produced, or is in the process of producing, thousands of pairs of boots to ship to Westwood in the United States by the Summer of 2008 – using Rocky's technology, sizing, designs, and even Rocky's leathers – instead of fulfilling Rocky's purchase orders. In other words, RAK is using Rocky trade secret information to construct and manufacture Westwood's knock-off "Road Wolf" boots, and intends to ship those boots to Westwood ahead of Rocky's earlier placed order.

35. Further, Rocky is informed and believes that RAK has shared with Westwood the volumes of specific Rocky boot lines and styles Rocky has ordered in the past – part of Rocky's trade secret information – so that Westwood may know which Rocky boots are most popular, and accordingly, which Rocky boots it would be most profitable for Westwood to copy and

market. In addition, during his employment with Rocky, Bratcher attended forecasting meetings where sales of Rocky's products were discussed.

F. The "Road Wolf" Line

36. Recently, Westwood constructed a website (http://www.roadwolfboots.com). On that website, Westwood announced that it would begin selling boots virtually identical to many Rocky boots under the label "Road Wolf."

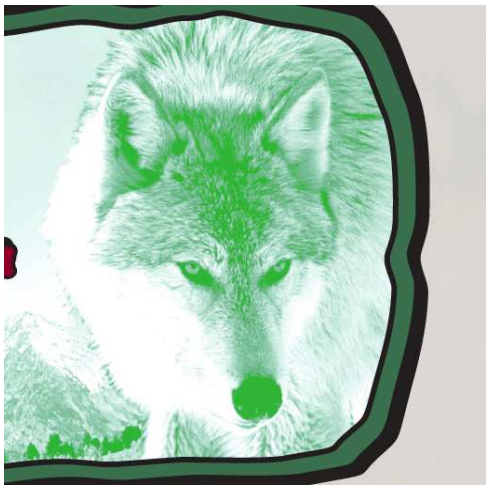
37. On its website, Westwood makes repeated reference to Rocky within the information provided on its website, including numerous comments that many members of Westwood's management team are former Rocky employees, implicitly suggesting that these people carry with them and are able and prepared to execute Rocky's trade secrets. (See Exhibit A.)

38. According to Westwood's website, the "Road Wolf" line will feature "165 new styles to choose from, including 124 Western boots and 41 work boots." As of February 4, 2008, that website does not show any of Westwood's boots – other than the following illustration, which features the silhouette of four boots – all of which appear to be copies of Rocky's boots:

39. In addition to the silhouette shown above, the artwork on Westwood's website adopts images and designs that are very similar to those that Rocky presently uses and has used for many years.

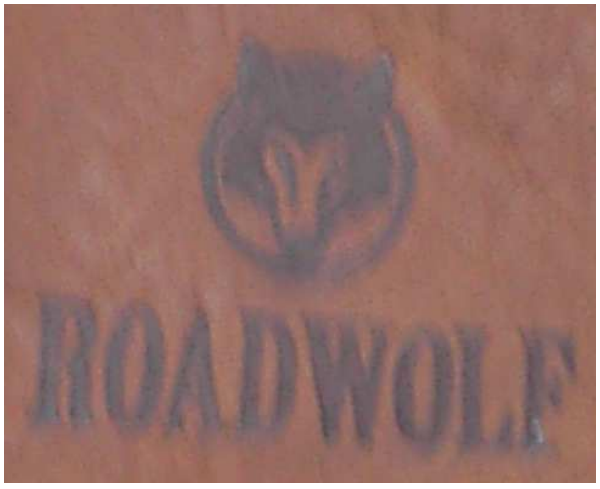
40. Immediately below is a side-by-side comparison of the Defendants' infringing "Road Wolf" mark and one of Rocky's "Wild Wolf®" marks.

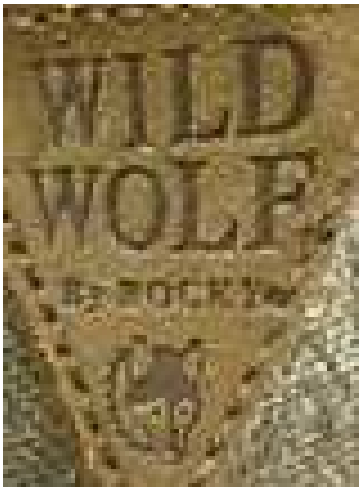
Westwood's "Road Wolf" mark



Rocky's "Wild Wolf®" mark

41. In addition, below is a side-by-side comparison of the Defendants' infringing "Road Wolf" marks embossed on a boot and one of Rocky's "Wild Wolf®" marks, which is embossed on a leather patch affixed to its boots:





42. Exhibit B, attached to the Complaint, shows some of Rocky's marketing uses of the "Wild Wolf®" marks.

43. The use of the "Road Wolf" label and the repeated references to Rocky are intended to cause confusion in the minds of customers, who will be unsure if the boots Westwood is marketing are Rocky boots or somehow sponsored by or affiliated with Rocky.

44. Westwood's use of the "Road Wolf" label is intended to cause confusion with respect to Rocky's "Wild Wolf®" line of boots.

45. Further, the use of the "Road Wolf" label infringes upon Rocky's "Wild Wolf®" trademarks.

46. Westwood, however, is not content with using a mark confusingly similar to Rocky's. Just as important and damaging, Westwood has also produced imitations or knock-offs of Rocky's best selling Western boots.

47. Though Rocky has been unable thus far to view any of Westwood's marketing materials featuring its boots, Rocky representatives have seen various samples of Westwood's offerings at two trade shows, which were not open to the public: the Denver International Western/English Apparel & Equipment Market ("WESA") show in early January 2008, and another trade show in Richmond, Virginia in late January 2008. Although no one from Rocky saw the entire line of "Road Wolf" boots at those shows, the Rocky representatives who have viewed the boots were shocked to discover that nearly all of the "Road Wolf" samples Westwood displayed look just like Rocky boots. In particular, Rocky representatives reported that two series of Westwood's boots look to be virtually identical copies of Rocky's offerings, namely Westwood's knock-offs of the Georgia Giant® line of boots and the "Rocky Ride" series

of boots. Moreover, Rocky representatives reported that Westwood was offering knock-offs of nearly all of Durango's top-selling boots.

48. At one show, Rocky was able to obtain photographs of some of the "Road Wolf" line. Based on those photographs, Westwood is offering numerous copies of Rocky's boots in Westwood's line.

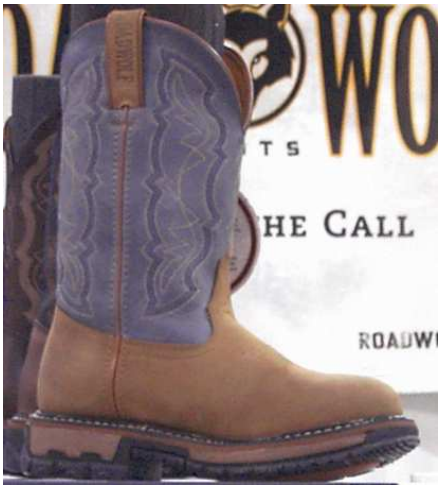
49. For example, Westwood is offering a series of boots nearly identical to the Georgia Giant® line of boots.

50. Below is a side-by-side comparison of Westwood's "Road Wolf" knock-off and a boot from Rocky's Georgia Giant® series:

Westwood's "Road Wolf" knock-off

Rocky's Georgia Giant® work boot

51. Next, below is a side-by-side comparison of Westwood's "Road Wolf" knock-off of Rocky's Branson Roper, part of the "Rocky Ride" series of boots:



Westwood's "Road Wolf" knock-off

Rocky's Branson Roper

52. And next, below is a side-by-side comparison of Westwood's "Road Wolf" knock-off of a popular Rocky Durango boot:

Westwood's "Road Wolf" knock-off

Rocky's Durango DB462 boot

53. Further examples of Westwood's knock-offs can be found in the exhibits attached to Rocky's Memorandum in Support of its Motion for Preliminary Injunction.

FIRST CAUSE OF ACTION
(Trade Secret Claim Against Bratcher)

54. Rocky incorporates by reference the allegations contained in Paragraphs 1 through 53.

55. Bratcher was employed by Rocky and its predecessors for over 20 years. During that time, Bratcher became familiar with Rocky's and EJ's unique designs, marketing strategies, sales information, and other proprietary information, which is not known in the trade or publicly available.

56. Bratcher knew that Rocky considered its proprietary information to be confidential.

57. In fact, Rocky took reasonable efforts to keep its proprietary information secret, including but not limited to, by enacting a Code of Business Conduct, which was given to every Rocky employee, including Bratcher.

58. Under the Code of Business Conduct, Rocky informed its employees that Rocky considered their work to be proprietary and confidential, and that all intellectual property, such as patents, trademarks, trade secrets, copyrights, designs, along with unpublished engineering and manufacturing know-how, and sales information were the trade secret property of Rocky.

59. Accordingly, Bratcher acquired this trade secret information under circumstances giving rise to a duty to maintain its secrecy or limit its use.

60. Rocky, and EJ before it, has invested substantial time and money in developing its proprietary, or trade secret information over the years, and it gives Rocky an advantage over its competitors.

61. By duplicating designs of Rocky's most popular boots, as well as using identical or similar materials and constituent parts that Rocky uses, adopting a mark that is very close in

name and style to Rocky's marks, and marketing these imitator or knock-off boots to Rocky retailers and customers whom Rocky has cultivated and served over the years, the Defendants are able to evade the burden and enormous cost of designing and marketing boots that appeal to customers. Further, the Defendants' actions permit them to benefit improperly from Rocky's years of industry, talent, and service – by purposely misleading the public about the source and sponsorship of the "Road Wolf" boots and by causing confusion among Rocky's customers and other consumers in the boot market.

62. Without the trade secret information Bratcher obtained from Rocky, the Defendants would not have been (or be) in the position to commence manufacturing and selling "Road Wolf" boots. Bratcher has misappropriated Rocky's trade secrets, namely the confidential information he received from Rocky, and is now purposely and improperly using that trade secret information to Rocky's detriment, in the Defendants' attempt to benefit from Rocky's "sweat-of-the-brow."

63. Bratcher's conduct constitutes a violation of the Ohio Trade Secrets Act, Ohio Rev. Code § 1333.61, *et seq.* and, to the extent that Bratcher, directly or through Westwood, has shared or disclosed that information with RAK, he has also violated 18 U.S.C. § 1831, *et seq.*

64. Bratcher's conduct was knowing, willful, and malicious.

65. As a direct and proximate result of Bratcher's past and continuing misappropriation and unlawful use of Rocky's trade secrets, Rocky has been and will be seriously and irreparably harmed, for which Rocky is entitled preliminary and permanent injunctive relief.

66. Unless restrained, Bratcher will continue to misappropriate the trade secrets of Rocky.

67. Bratcher's actions and omissions have caused or threaten to cause Rocky to suffer loss of business and potential future business, an injury for which there is no adequate remedy at law.

68. Pursuant to Ohio Rev. Code §§ 1333.63 and 1333.64, Rocky is also entitled to compensatory damages, treble damages, and attorneys' fees, in amounts not yet quantified.

SECOND CAUSE OF ACTION
(Breach of Contract Against Bratcher)

69. Rocky incorporates by reference the allegations set forth in Paragraphs 1 through 68.

70. As a condition of his employment, Bratcher executed one or more confidentiality agreements with EJ, Rocky's predecessor, which required Bratcher to keep confidential and not disclose sensitive commercial and company confidential information.

71. Bratcher has shared Rocky and EJ confidential and commercially sensitive information with Westwood.

72. Bratcher has also shared Rocky and EJ confidential and commercially sensitive information with RAK.

73. Bratcher's disclosure of such trade secret information constitutes an express breach of contract.

74. Rocky is the successor to EJ's rights with respect to the contractual obligations Bratcher had to EJ.

75. Bratcher's breaches have caused, and will continue to cause, Rocky immediate, substantial, and irreparable harm for which there is no adequate remedy at law. Bratcher's breaches of contract entitle Rocky to preliminary and permanent injunctive relief, enjoining Bratcher from: misappropriating, using, or continuing to possess Rocky's trade secret

information in his possession, custody or control; converting Rocky's trade secret information to his own personal gain or use or to the gain or use of Rocky competitor(s); and using or disclosing to third parties, including Westwood, the confidential and/or proprietary information contained in or derived from Rocky's trade secret information. Further, as a direct and proximate result of these breaches, Rocky has been seriously damaged, in an amount to be determined at trial.

THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty Against Bratcher)

76. Rocky incorporates by reference the allegations set forth in Paragraphs 1 through 75.

77. While employed by Rocky and EJ, Bratcher occupied a position of trust and confidence in which he was entrusted with significant confidential business information by Rocky and EJ, including sales and marketing information about Rocky's Western line of boots, Durango line of boots, Georgia Boot line of boots, and other trade secrets. For example, in reliance upon his position of trust and confidence, Rocky allowed Bratcher access to Rocky's sales and marketing strategies, as well as provided him with information about future ideas or models for Rocky's Western and other boots.

78. This fiduciary relationship imposed duties of good faith, loyalty, and honesty on Bratcher.

79. Bratcher breached his fiduciary duties to Rocky by misappropriating and/or wrongfully retaining Rocky's confidential documents, information, and other materials, and by converting these documents, information, and other materials to his own personal gain or use or the gain or use of Westwood and/or RAK.

80. Further, Bratcher breached his duty of loyalty to Rocky by divulging Rocky's confidential and/or proprietary information to Westwood and RAK.

81. Unless restrained, Bratcher will continue to breach his fiduciary duties to Rocky by committing the actions and omissions identified herein.

82. Bratcher's actions and omissions in breach of his duty of loyalty were and are intentional, malicious, willful, and made with reckless disregard of the probable adverse consequences to Rocky.

83. Bratcher's breaches have caused, and will continue to cause, Rocky immediate, substantial, and irreparable harm for which there is no adequate remedy at law.

84. Bratcher's breaches of his fiduciary duties entitle Rocky to preliminary and permanent injunctive relief, enjoining Bratcher from: misappropriating, using, or continuing to possess Rocky's trade secret information in his possession, custody or control; converting Rocky's trade secret information to his own personal gain or use or to the gain or use of Rocky competitor(s); and using or disclosing to third parties, including Westwood, the confidential and/or proprietary information contained in or derived from Rocky's trade secret information.

85. Bratcher's breaches of his fiduciary duties further entitle Rocky to an award of compensatory damages in an amount to be determined at trial, but which Rocky believes exceed the sum of $75,000. Rocky is also entitled to punitive damages due to Bratcher's purposeful and malicious intent in breaching his fiduciary duties.

FOURTH CAUSE OF ACTION
(Misappropriation of Trade Secrets Against RAK)

86. Rocky incorporates by reference the allegations set forth in Paragraphs 1 through 85.

87. Rocky and its predecessors contracted with RAK to manufacture certain Rocky footwear at least since 2000.

88. Over the course of the last eight years, Rocky has supplied technicians to RAK from time to time to help RAK develop its manufacturing capabilities.

89. This effort took many months and involved many man-hours sending Rocky employees who are also U.S. citizens to China to ensure that RAK would produce quality Western boots that met Rocky standards.

90. Included in this effort was the design and training of RAK's employees in making and using specific lasts for its Western boots.

91. Through Rocky's efforts, the boots RAK manufactures for Rocky with Rocky distinctive trademarks and trade dress are today known for their high-quality workmanship and good fit.

92. By training RAK and its employees on making high quality boots, Rocky imparted RAK with Rocky's highly technical and confidential and proprietary information and know-how, which is not generally known in the trade or publicly available.

93. Rocky specifically gave RAK only limited access to this Rocky trade secret information.

94. Rocky took reasonable precautions to protect the security and secrecy of its trade secret information and to prevent their misappropriation, including, but not limited to, limiting RAK's and others' access to Rocky's trade secret information.

95. Rocky's trade secret information constitutes a valuable and protectable "trade secret" pursuant to common law and Ohio Rev. Code §1333.61, *et seq*.

96. At all times mentioned herein, RAK knew, understood, and agreed that Rocky's trade secret information was the property of Rocky.

97. RAK has unfairly competed with Rocky by using Rocky's trade secret information for RAK's own benefit or the benefit of Rocky's competitor, Westwood, which has announced that it is a competitor of Rocky.

98. RAK wrongfully misappropriated and converted Rocky's trade secrets for its own use and commercial benefit in contravention of common law in Ohio and in contravention of Ohio Rev. Code § 1333.61, *et seq*., and in violation of 18 U.S.C. § 1832. RAK's misappropriation was knowing, willful, and malicious.

99. As a direct and proximate result of RAK's past and continuing misappropriation and unlawful use of Rocky's trade secrets, Rocky has been and will be seriously and irreparably harmed, for which Rocky is entitled preliminary and permanent injunctive relief.

100. Unless restrained, RAK will continue to misappropriate the trade secrets of Rocky.

101. RAK's actions and omissions have caused or threaten to cause Rocky to suffer loss of business and potential future business, an injury for which there is no adequate remedy at law.

102. Pursuant to Ohio Rev. Code §§ 1333.63 and 1333.64, Rocky is also entitled to compensatory damages, treble damages, and attorneys' fees, in amounts not yet quantified.

FIFTH CAUSE OF ACTION
(Breach of Express Contract Against RAK)

103. Rocky incorporates by reference the allegations set forth in Paragraphs 1 through 102.

104. In entering into its business relationship with RAK, Rocky (and EJ before it) made it expressly clear, and a condition of the relationship, that RAK was not to use any of the confidential and proprietary information that Rocky or EJ provided RAK regarding the design,

manufacturing, and marketing of its boots in any way to compete against Rocky, or to share that trade secret information with others.

105. RAK expressly agreed to this condition as a part of obtaining the manufacturing work from Rocky and EJ.

106. RAK has breached this agreement by using trade secret information Rocky or EJ provided it, and RAK is using that information to manufacture boots that are being marketed in competition against Rocky.

107. Further, RAK breached this express agreement by sharing Rocky's trade secret information with Bratcher and Westwood.

108. RAK's breaches have caused, and will continue to cause, Rocky immediate, substantial, and irreparable harm for which there is no adequate remedy at law. RAK's breaches of its express contract entitle Rocky to preliminary and permanent injunctive relief, enjoining RAK from: misappropriating, using, or continuing to possess Rocky's trade secret information in its possession, custody or control; converting Rocky's trade secret information to its own personal gain or use or to the gain or use of Rocky competitor(s); and using or disclosing to third parties, including Westwood, the confidential and/or proprietary information contained in or derived from Rocky's trade secret information. Further, as a direct and proximate result of RAK's breaches, Rocky has been seriously damaged, in an amount to be determined at trial.

SIXTH CAUSE OF ACTION
(Breach of Implied Agreement Against RAK)

109. Rocky incorporates by reference the allegations set forth in Paragraphs 1 through 108.

110. As set forth above, Rocky and EJ made it clear to RAK that as a condition of manufacturing Rocky or EJ boots, RAK would not use any Rocky or EJ trade secret information in competition against Rocky, or share any of their trade secret information with others.

111. RAK understood this condition of doing business with Rocky and EJ and implicitly agreed to it.

112. RAK breached this implied agreement by using Rocky and EJ trade secret information to manufacture boots in competition against Rocky, and by sharing their trade secret information with Bratcher and Westwood.

113. RAK's breaches have caused, and will continue to cause, Rocky immediate, substantial, and irreparable harm for which there is no adequate remedy at law. RAK's breaches of its implied agreement entitle Rocky to preliminary and permanent injunctive relief, enjoining RAK from: misappropriating, using, or continuing to possess Rocky's trade secret information in its possession, custody or control; converting Rocky's trade secret information to its own personal gain or use or to the gain or use of Rocky competitor(s); and using or disclosing to third parties, including Westwood, the confidential and/or proprietary information contained in or derived from Rocky's trade secret information. Further, as a direct and proximate result of RAK's breaches of this implied agreement, Rocky has been seriously damaged in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION
(Unfair Competition Under the Lanham Act Against the Defendants
Relating To "Road Wolf" Logo)

114. Rocky incorporates by reference the allegations contained in Paragraphs 1 through 113.

115. As set forth above, Rocky owns and has used the "Wild Wolf®" family of marks in connection with boots for over eight years.

116. Indeed, the "Wild Wolf®" family of marks includes distinctive marks, which Rocky has used throughout the United States to market an opening price-point brand of Western and work boots to men, women, and children.

117. Westwood has just begun to use the "Road Wolf" marks on its boots.

118. As described above, Westwood's conduct in using a mark confusingly similar to Rocky's is likely to cause confusion, mistake, or deception in the market.

119. On its website, Westwood contends that "Road Wolf" is "a collection of work and Western boots for men, women and children," that allow consumers to receive "high-quality footwear" and "authentic, finely crafted shoes at a reasonable price."

120. Upon information and belief, Rocky's and Westwood's markets are nearly identical. Both of their products include Western and work boots marketed towards consumers.

121. Because of the similarity between the "Road Wolf" and "Wild Wolf®" logos, it is likely that consumers will believe that Westwood's "Road Wolf" boots come from the same source, are somehow connected with, or sponsored by a common company, in this instance, Rocky.

122. RAK's Westwood's actions and Bratcher's contributions to Westwood constitute a violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125.

123. Under the Lanham Act, Rocky is entitled to an injunction against the Defendants' use of the confusingly similar marks.

124. As a direct and proximate result of the foregoing, Rocky has incurred damages in an amount to be determined at trial.

EIGHTH CAUSE OF ACTION
(Common Law Trademark Violation Against the Defendants)

125. Rocky incorporates by reference the allegations contained in Paragraphs 1 through 124.

126. As set forth above, above, Westwood's use of the "Road Wolf" logo constitutes a violation of Rocky's trademarks.

127. In particular, Rocky owns and has exclusively used the "Wild Wolf®" name and family of distinctive marks including a "front view wolf head design" in connection with boots for almost eight years. (See, for example, Paragraphs 40 and 41, above, and Exhibit B, attached to this Complaint.)

128. The "Wild Wolf®" family of marks includes distinctive marks Rocky has used throughout the United States to market an opening price-point brand of Rocky Western and work boots to men, women, and children.

129. On its website, Westwood boasts that "Road Wolf" is "a collection of work and Western boots for men, women and children" that allow consumers to receive "high-quality footwear" and "authentic, finely crafted shoes at a reasonable price."

130. As in Exhibits A and C accompanying this Complaint, Westwood also has used marks including a "front-view wolf head design" confusingly similar to the one used by Rocky for at least eight years in connection with Rocky boots in the same geographic territories in which Rocky promotes its "Wild Wolf®" boots.

131. For example, Westwood has used the front-view wolf head logo prominently in print advertisements, its website, and its displays at various trade shows, including the Denver WESA trade show.

132. Westwood's use of the front-view wolf head design for footwear is unauthorized by Rocky.

133. The Defendants' use of marks containing a front-view wolf head in connection with the footwear constitutes trademark infringement and is likely to cause confusion, to cause mistake, and to deceive the public as to the origin, source and sponsorship of the footwear.

134. In particular, Rocky's "Wild Wolf®" marks and Westwood's "Road Wolf'" marks are strikingly similar, and they are marketed for the same type of goods – boots. The "Road Wolf" marks compete against Rocky's historic usage of the "Wild Wolf®" mark and brand. And the boots Westwood is selling under the "Road Wolf" brand are marketed through similar marketing channels to the same consumers who are looking for reasonably priced quality footwear.

135. Upon seeing Westwood's marks, consumers have thought and will think that the footwear is produced by Rocky or is somehow sponsored by or affiliated with Rocky. Either result would be very damaging to Rocky, and is precisely what the trademark laws were designed to protect.

136. Coupled with the fact that Bratcher worked for Rocky and learned about Rocky's unique and successful marketing strategies and which styles of footwear sold well (constituting part of Rocky's trade secret information), and RAK also had knowledge of which styles of Rocky's boots sold well, the Defendants' infringement is willful and deliberate, with the intent to trade upon Rocky's goodwill in Rocky's trademarks.

137. RAK's and Westwood's actions have injured, and will continue to injure, Rocky's ability to maintain its competitive position in the marketplace with respect to its business reputation and rights in its marks.

138. Rocky's rights in its marks and the goodwill associated with its marks are of tremendous value, and Rocky will suffer irreparable harm if the Defendants' infringement is allowed to continue to the detriment of Rocky's reputation and goodwill.

139. As a direct and proximate result of the foregoing, Rocky has been damaged, irreparably harmed, and is entitled to an injunctive relief preventing the Defendants from infringing against Rocky's trademarks.

NINTH CAUSE OF ACTION
(Unfair Competition Under the Lanham Act Against the Defendants
Relating To Defendants' Knock-off Boots)

140. Rocky incorporates by reference the allegations contained in Paragraphs 1 through 139.

141. Over the years, Rocky has marketed distinctive designs for certain of its boots that distinguish these boots in the market place.

142. These distinctive designs are famous and well known by Rocky customers.

143. Rocky has spent extraordinary amounts of time, thought, and money to create these distinctive designs and to market them, and they have acquired secondary meaning through Rocky's exclusive and extensive use.

144. These designs are purely ornamental and are not functional.

145. The Defendants are marketing boots which feature designs that are identical to or virtually identical to the Rocky distinctive designs.

146. The Defendants are copying these designs from Rocky boots in order to confuse and mislead the consumers into thinking that the Defendants' boots are Rocky boots or are boots Rocky has approved or sponsored.

147. In fact, consumers have been and are being confused by the Defendants' imitator boots or "knock-offs," and consumers are likely to continue to be confused.

148. RAK's and Westwood's actions and Bratcher's contributions to Westwood constitute a violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125.

149. Under the Lanham Act, Rocky is entitled to an injunction against the Defendants' commercial use of the confusingly similar boots.

150. As a direct and proximate result of the foregoing, Rocky has incurred damages in an amount to be determined at trial.

TENTH CAUSE OF ACTION
(Common Law Trade Dress Against the Defendants)

151. Rocky incorporates by reference the allegations set forth in Paragraphs 1 through 150.

152. Over the years, Rocky has marketed distinctive designs for certain of its boots that distinguish these boots in the market place.

153. These distinctive designs are famous and well known by Rocky customers, and they have acquired secondary meaning through Rocky's exclusive and extensive use.

154. Rocky has spent considerable amounts of time, thought, and money to create these distinctive designs and to market them.

155. These designs are purely ornamental and are not functional.

156. The Defendants are marketing boots which feature designs that are identical to or virtually identical to the Rocky distinctive designs.

157. The Defendants are copying these designs from Rocky boots in order to confuse and mislead the consumers into thinking that the Defendants' boots are Rocky boots or are boots Rocky has approved or sponsored.

158. In fact, consumers have been and are being confused by the Defendants' imitator boots or "knock-offs," and consumers are likely to continue to be confused.

159. As a direct and proximate result of this intended confusion the Defendants are creating in the market by copying the designs of Rocky boots, Rocky has been and will be seriously and irreparably harmed.

ELEVENTH CAUSE OF ACTION
(Violation of Ohio's Deceptive Trade Practices Act Against the Defendants)

160. Rocky incorporates by reference the allegations contained in Paragraphs 1 through 159.

161. As set forth above, above, the Defendants' use of the "Road Wolf" logo constitutes infringement of Rocky's trademarks, as well as Rocky's distinctive trade dress.

162. Westwood's use of the front-view wolf head design for footwear is unauthorized by Rocky.

163. The Defendants' use of marks containing a front view wolf head in connection with the footwear constitutes trademark infringement, and the improper use is likely to cause confusion, to cause mistake, and to deceive the public as to the origin, source, and sponsorship of the footwear.

164. In particular, Rocky's "Wild Wolf®" marks and Westwood's "Road Wolf" marks are strikingly similar, and they are marketed for the same type of goods – boots. The "Road Wolf" marks compete against Rocky's historic usage of the "Wild Wolf®" mark and brand. And the boots Westwood is selling under the "Road Wolf" brand are marketed through similar marketing channels to the same consumers who are looking for reasonably priced quality footwear.

165. Upon seeing Westwood's marks, consumers have thought and will think that the boots are produced by Rocky or is somehow sponsored by or affiliated with Rocky. Either result

would be very damaging to Rocky, and is precisely what the trademark laws were designed to protect.

166. Coupled with the fact that Bratcher worked for Rocky and learned about Rocky's unique and successful marketing strategies and which styles of boots sold well (constituting part of Rocky's trade secret information), and RAK also had knowledge of which styles of Rocky's boots sold well, the Defendants' infringement is willful and deliberate, with the intent to trade upon Rocky's goodwill in its marks.

167. The Defendants' actions have injured, and will continue to injure, Rocky's ability to maintain its competitive position in the marketplace with respect to its business reputation and rights in its marks.

168. Rocky's rights in its marks and the goodwill associated with its marks are of tremendous value, and Rocky will suffer irreparable harm if the Defendants' infringement is allowed to continue to the detriment of Rocky's reputation and goodwill.

169. In addition, as set forth above, Rocky has marketed distinctive designs for certain of its boots that distinguish these boots in the market place. These distinctive designs are famous and well known by Rocky customers and have acquired secondary meaning through Rocky's exclusive and extensive use. These designs are purely ornamental and are not functional.

170. Two series of Westwood's boots look like virtually identical copies of Rocky's offerings, namely Westwood's knock-offs of the Georgia Giant® line of boots and the "Rocky Ride" series of boots. Moreover, Defendants appear to be offering knock-offs of nearly all of Durango's top-selling boots.

171. The Defendants are copying these designs from Rocky boots in order to confuse and mislead the consumers into thinking that the Defendants' boots are Rocky boots or are boots Rocky has approved or sponsored.

172. The Defendants' actions violate Ohio's Deceptive Trade Practices Act, Ohio Rev. Code § 4165.02(A).

173. Under Ohio Rev. Code § 4165.03(B), Rocky is entitled to monetary damages, in an amount to be determined at trial.

174. Additionally, under Ohio Rev. Code § 4165.03(A), Rocky is entitled to immediate injunctive relief preventing the Defendants from infringing against Rocky's trademarks.

TWELFTH CAUSE OF ACTION
(RICO Violation Against Defendants)

175. Rocky incorporates by reference the allegations set forth in Paragraphs 1 through 174.

176. Bratcher and RAK are "persons" within the meaning of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, *et seq.*

177. Westwood is an "enterprise" within the meaning of RICO, as it was formed by Bratcher and financially supported by RAK. Westwood exists separately from Bratcher and Westwood, and is separate from the pattern of racketeering activity in which the Defendants have engaged. Westwood is in the business of marketing and selling boots. Some of the boots Westwood markets and sells incorporate, or enjoy the benefit of, Rocky trade secrets that Bratcher and RAK misappropriated from Rocky in violation of Ohio law, Ohio Rev. Code § 1333.61, *et seq.*, and federal law, 18 U.S.C. § 1832.

178. Bratcher and RAK have violated 18 U.S.C. § 1962(b) in that they, through a pattern of racketeering activity, acquired or maintained, either directly or indirectly, an interest in or control of Westwood, which was and is engaged in interstate or foreign commerce.

179. Bratcher and RAK have violated 18 U.S.C. § 1962(c) in that they, being employed by or associated with Westwood – which was and is engaged in interstate or foreign commerce – conducted or participated in the conduct of Westwood's affairs through pattern of racketeering activity. Bratcher and RAK have also violated 18 U.S.C. § 1962(d) in that they conspired to violate 18 U.S.C. § 1962(b) and/or 18 U.S.C. § 1962(c).

180. Bratcher and RAK made multiple misrepresentations to Rocky in Ohio, through regular and electronic mail in violation of 18 U.S.C. §§ 1341 and 1343, that each would maintain the confidentiality of Rocky's trade secrets. Rocky relied upon these representations in providing (and continuing to provide) trade secret information to Bratcher and RAK to Rocky's commercial detriment – in that Bratcher and RAK used and disclosed Rocky's trade secrets to Westwood as part of the Defendants' pattern, scheme, and conspiracy to defraud Rocky. Further, as a part of this scheme, Bratcher and RAK concealed their fraudulent activity of using or disclosing Rocky's trade secret information while Rocky was continuing to supply RAK with additional trade secret information by electronic mail over the course of the last year, which RAK and Bratcher have disclosed to Westwood, and which Westwood has used to infringe Rocky's trademarks, trade dress, and to engage in unfair methods of competition in violation of federal and Ohio law.

181. Bratcher's and RAK's instances of misappropriation of Rocky's trade secrets and disclosure of them to Westwood affect both interstate and foreign commerce, as RAK is manufacturing boots in China that benefit from Rocky's trade secrets, and is shipping these boots

to the United States, and Westwood is marketing and has taken orders to sell these boots throughout the United States.

182. From at least March 2007, upon information and belief, the Defendants have committed at least two acts of racketeering activity as defined in 18 U.S.C. § 1962, *et seq.*, that constitute wire fraud in violation of 18 U.S.C. § 1343, and/or transportation in interstate or foreign commerce of property having a value in excess of $5,000 pursuant to a scheme or artifice to defraud, or to obtain money or property by false or fraudulent pretences in violation of 18 U.S.C. § 2314, being in particular the misappropriation and/or theft of Rocky's trade secrets.

183. Specifically, upon information and belief, from at least April 1, 2007 through the present, Bratcher has sent, across state and/or international lines, a series of electronic mail messages to and has received a series of electronic mail messages from representatives of Westwood, as well as representatives of RAK, in which Bratcher has wrongfully disclosed Rocky trade secret information to RAK and to Westwood, including trade secret information about distinctive designs of Rocky boots, information regarding which Rocky boots are the most popular, and information about Rocky's customers and Rocky's past marketing strategies.

184. This exchange of misappropriated trade secret information in documents by electronic mail across state and/or international lines violates 18 U.S.C. § 1343, in that the Defendants have knowingly and fraudulently furnished or exchanged misappropriated and/or stolen trade secret information without Rocky's assent.

185. Further, upon information and belief, Bratcher and RAK engaged in telephone communications across state and/or international lines with representatives/employees of Westwood over the period of time from at least April 2007 until the present in which Bratcher and RAK disclosed Rocky and EJ trade secret information to Westwood as described above.

186. This disclosure of misappropriated trade secret information by means of the telephone and/or electronic communications across state and/or international lines constitutes a violation of 18 U.S.C. § 1343, in that the Defendants have knowingly and fraudulently furnished or exchanged misappropriated and/or stolen trade secret information without Rocky's assent.

187. Upon information and belief, Bratcher, and/or representatives of Westwood, and representatives of RAK have transported, transmitted, or transferred across state and/or international lines misappropriated and/or stolen trade secrets – or goods incorporating those trade secrets – which have a value in excess of $5,000.00, knowing that the same to have been misappropriated, stolen, converted, or taken by fraud in violation of 18 U.S.C. § 2314, paragraph 1, or have devised a scheme to accomplish this, in violation of 18 U.S.C. § 2314, paragraph 2.

188. The Defendants have acted in this common scheme, that is Westwood has injured Rocky by wire fraud or transportation of Rocky's misappropriated trade secrets across state and/or international lines consisting of at least two acts of racketeering activity, over a period of nearly one year. By their actions in establishing and marketing the "Road Wolf" line of boots, which benefit from the use of misappropriated Rocky's trade secrets, the Defendants clearly intend to continue to carry out this scheme long into the future.

189. As a direct and proximate result of the Defendants' violations of 18 U.S.C. § 1962, Rocky has been seriously injured in its business or property through confusion in the marketplace, lost customers, lost sales, and lost profits.

190. Under 18 U.S.C. § 1964(c), Rocky is entitled to exemplary damages up to three times its actual damages and costs, and is also entitled to its reasonable attorneys' fees.

THIRTEENTH CAUSE OF ACTION
(Preliminary and Permanent Injunction)

191. Rocky incorporates by reference the allegation set forth in paragraphs 1 through 190.

192. RAK is exporting from China to the United States for sale in the United States boots that incorporate Rocky and EJ trade secrets in their design or construction.

193. Further, Bratcher and Westwood are marketing and selling boots through strategies that have been informed in whole or in part by trade secrets Bratcher and RAK misappropriated from Rocky.

194. RAK is also manufacturing and Westwood and Bratcher are also marketing boots that infringe Rocky's "Wild Wolf®" marks within the United States, including Ohio.

195. In addition, RAK is manufacturing and Westwood and Bratcher are marketing boots that infringe Rocky's trade dress within the United States, including Ohio.

196. The Defendants are undertaking these actions purposefully and willfully with the intent to cause confusion in the marketplace and to injure Rocky's business and good name.

197. If the Defendants are permitted to continue these actions, Rocky will be irreparably harmed in ways which payment of money damages could not entirely address.

198. In light of the facts set forth above, it is evident that Rocky will prevail on the merits of the case, and that the balance of hardships favors this injunction: Rocky has an established brand and distinctive trademarks and trade dress; the Defendants are new to this field and could inexpensively modify their designs and marketing strategy in a way that would allow them to function in the marketplace and not infringe or misappropriate Rocky's trade secrets, or infringe Rocky's trademarks, trade dress, or other intellectual property.

199. Moreover, a preliminary and permanent injunction is absolutely necessary to prevent consumers from being confused about the source and sponsorships of Westwood's "Road Wolf" boots, and to prevent the further misappropriation and use of Rocky's and EJ's trade secrets, which otherwise would injure the integrity of the boot industry, and could cause irremediable confusion in consumers and the marketplace generally.

FOURTEENTH CAUSE OF ACTION
(Breach of Contract Against Bratcher)

200. Rocky incorporates by reference the allegations set forth in Paragraphs 1 through 195.

201. After Rocky purchased EJ, Rocky requested that Bratcher relocate to Ohio to be closer to Rocky management in Nelsonville.

202. Bratcher agreed to do so on the condition that Rocky pay for Bratcher's house closing and other moving expenses, in the amount of $28,203.00, which Rocky did.

203. Bratcher, however, did not purchase or move into a house in Ohio, but instead simply rented an apartment in Lancaster for several months until he terminated his employment with Rocky. In fact, it was when Bratcher received the payment from Rocky noted above, that he terminated his employment with Rocky. Bratcher did not return this expense payment.

204. By accepting this closing and related moving expense payment and then terminating his employment, Bratcher failed to act in good faith, as is required of all parties to Ohio contracts.

205. Bratcher's actions with respect to this payment constituted a breach of the parties' agreement.

206. As a direct and proximate result of Bratcher's breach of this agreement, Rocky has been damaged in the amount of $28,203.00.

WHEREFORE, Plaintiffs, Rocky Brands, Inc. and Rocky Brands Wholesale LLC, respectfully request the following relief:

(1) An order for preliminary and permanent injunction enjoining and restraining Westwood and RAK (and any principal, agent, employee, employer, consultant, and stockholder of Westwood or RAK) and Bratcher, individually or as principal, agent, employee, employer, consultant, or stockholder, from misappropriating, using, or continuing to improperly use the "Road Wolf" mark. In particular, these Defendants should be enjoined and restrained from:

(a) displaying any signage or other materials including a front-view wolf head design (with or without a mountain background) in connection with the sale or promotion of boots;

(b) displaying or distributing any printed marketing or advertisement materials, including catalogs, line sheets, specification sheets, etc., including a front-view wolf head design (with or without a mountain background) in connection with the sale or promotion of boots;

(c) maintaining an electronic display, on a website or other electronic means, of a front-view wolf head design (with or without a mountain background) in connection with the sale or promotion of boots;

(d) creating print advertisements to be published that include a front-view wolf head design (with or without a mountain background) in connection with the sale or promotion of boots; and

(e) displaying or distributing any footwear products or footwear product samples having a front-view wolf head design (with or without a mountain

background) thereon without removing or permanently covering the front-view wolf head design.

(2) An order for preliminary and permanent injunction restraining and enjoining the Defendants from improper use of Rocky's and EJ's trade secrets;

(3) An order for preliminary and permanent injunction restraining and enjoining the Defendants from infringing Rocky's trade dress;

(4) An order for preliminary and permanent injunction restraining and enjoining the Defendants from engaging in unfair methods of competition by knocking-off and imitating Rocky's trade dress;

(5) Judgment for Rocky and against Bratcher for breach of the confidentiality agreements and for breach of the moving expense agreement;

(6) Judgment against RAK for breach of its express and/or implied agreement not to misappropriate, use, or disclose Rocky and EJ trade secrets;

(7) An award of compensatory damages in an amount to be determined at trial but which Rocky believes exceeds the sum of $75,000 and punitive damages;

(8) An award of treble damages as permitted under 18 U.S.C. § 1946(c);

(9) An award of pre- and post- judgment interest as permitted by law;

(10) An award to Rocky of its reasonable attorneys' fees; and

(11) An order or judgment granting all other such relief as this Court may find just and equitable.

Respectfully submitted,

/s/ David P. Shouvlin
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JURY DEMAND

Plaintiffs demand a trial by jury on all disputed issues in this case to which the right of trial by jury attaches.

/s/ David P. Shouvlin
David P. Shouvlin