

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

SOLAR X EYEWEAR, LLC)	CASE NO.
35490 Lorain Road)	
North Ridgeville, Ohio 44039,)	
)	
Plaintiff,)	
)	
v.)	
)	
TUCKER BOWYER)	
4269 Cass Street, Unit 50)	
San Diego, California 92109,)	
)	
and)	
)	
HEATHER BOWYER)	
4269 Cass Street, Unit 50)	
San Diego, California 92109,)	
)	
and)	
)	
MIAMI WHOLESALE SUNGLASSES)	
4269 Cass Street, Unit 50)	
San Diego, California 92109,)	
)	
and)	
)	
VARIOUS JOHN DOES, individuals,)	
VARIOUS JANE DOES, individuals,)	
AND XYZ COMPANY, business entity)	
form unknown, inclusive.)	
)	
Defendants.)	

**COMPLAINT FOR TRADEMARK INFRINGEMENT, UNFAIR COMPETITION,
PASSING OFF, FALSE ADVERTISING, AND FRAUD**

Plaintiff Solar X Eyewear, LLC (hereinafter “Plaintiff” or “Solar X,”) by and through undersigned counsel, for its Complaint against defendants, alleges as follows:

1. This is an action for trademark infringement under the Lanham Act, 15 U.S.C. §1051 et seq; 15 U.S.C. §1114(a); unfair competition, passing off, false advertising and false designation of origin under the Lanham Act, 15 U.S.C. §1125(a), arising from Defendants' unauthorized use of Solar X's trademark and trade name. This action also sounds in common law fraud.

2. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. §1221 and 28 U.S.C. §§1338(a) and (b). Personal jurisdiction in this district is proper inasmuch as Defendants have solicited and conducted business within the State of Ohio via their online advertising and promotional activities, and through their use of the United States mails for delivery of their materials and product to the State of Ohio, thereby purposely availing themselves of the privilege of acting in the State of Ohio. Likewise, personal jurisdiction is proper under Ohio's long-arm statute, Ohio Rev. Code §2307.382(A)(4) because Defendants regularly do or solicit business in the State of Ohio Venue in this district is proper under 28 U.S.C. § 1391(b)(2).

3. Plaintiff Solar X is an Ohio limited liability company with its principal place of business located as above-captioned.

4. Upon information and belief, Defendants Tucker Bowyer and Heather Bowyer are adult individuals who reside in California and who transact business at the above-captioned address.

5. Upon information and belief, Defendants Miami Wholesale Sunglasses is an entity that exists in an incorporated or limited liability form, although the precise form is presently unknown to Plaintiff, as is the state through which this entity legally was formed. This entity is believed to transact business at the above-captioned address.

6. Defendants John Does, Jane Does and XYZ Company are sued herein under fictitious names because their true names and capacities are unknown at this time. This complaint will be amended when their true names and capacities are ascertained.

7. Solar X is engaged in the manufacture, sale and distribution of various types of merchandise sold and distributed throughout the United States through wholesale and retail sales, notably including sunglasses bearing the mark and name of “Solar X Eyewear” and “Solar X Sunglasses.”

8. Solar X annually derives substantial income from the sale of its products, including sunglasses, and hundreds of thousands of such items have been sold throughout the United States.

9. Solar X has retained, and has neither licensed nor assigned to any of the Defendants, the exclusive right to market its products, including Solar X sunglasses.

10. Solar X has submitted for registration its trade name and mark with the United States government, asserting its ownership of the marks and exclusive right to use the marks in commerce in connection with the goods and services specified in the certificates of registration under 15 U.S.C. §1115.

11. During 2011 and for some time period prior thereto, the full extent of which presently is unknown, Defendants maintained a paid advertisement for Miami Wholesale Sunglasses on the Google search engine, that referenced the availability for sale by Miami Wholesale Sunglasses of Solar X Sunglasses. Upon typing “solar x sunglasses” in Google, an advertisement for Miami Wholesale Sunglasses would and does appear at the top of the search results within a pink box. This box, known as a “sponsored link,” is a listing for paid

advertisements. The first line of the paid advertisement is “Solar X Sunglasses - Only \$24 per dozen/\$2 per piece.”

12. Miami Wholesale Sunglasses, during the pertinent period of time, and contemporaneous with the paid advertisement on the Google search engine as described in the preceding paragraph of this Complaint, did not, and does not sell or offer within its inventory of merchandise, Solar X Sunglasses.

Count I - Federal Trademark Infringement

13. Solar X realleges and incorporates by reference herein the allegations contained in paragraphs 1 through 12 of this Complaint.

14. Defendants aforementioned acts constitute trademark infringement in violation of the Lanham Act, 15 U.S.C. §1114.

15. Defendants’ wrongful use and misappropriation of the Solar X Sunglasses mark is likely to cause confusion in the marketplace, and as to sponsorship or authorization of the defendants to purvey Solar X products, or otherwise induce inquiries and communications from potential customers of sunglasses to the Defendants through telephone contact or communication through the website url: www.miamiwholesalesunglasses.com. Defendants’ actions constitute trademark infringement in violation of section 32(a) of the Lanham Act, 15 U.S.C. §1114.

16. As a proximate result of Defendants’ actions, Solar X has suffered and will continued to suffer damage to its business, goodwill, reputation, profits and the strength of its trademark. The injury to Solar X is and continues to be ongoing and irreparable. An award of monetary damages alone cannot fully compensate Solar X for its injuries and Solar X lacks an adequate remedy at law.

17. The foregoing acts of infringement have been and continue to be deliberate, willful and wanton, making this an exceptional case within the meaning of 15 U.S.C. §1117.

18. Solar X is entitled to a permanent injunction against Defendants, as well as all other remedies available under the Lanham Act, including, but not limited to, compensatory damages, treble damages, disgorgement of profits, and costs and attorneys fees.

**Count II: Federal Unfair Competition, False Designation of
Origin, Passing Off and False Advertising**

19. Solar X realleges and incorporates by reference herein the allegations contained in paragraphs 1 through 18 of this Complaint.

20. The Solar X name and marks, as used by Solar X and its licensees in connection with providing goods and services related to Solar X sunglasses are distinctive marks and have become associated with Solar X and thus exclusively identify Solar X's business, products and services.

21. Because of Defendants' wrongful use of Solar X marks, consumers are deceptively led to believe that the Solar X sunglasses originate with Defendants, are available for purchase from the Defendants, or that the Defendants otherwise are authorized to use the Solar X mark, or otherwise will cause patrons to believe that the Solar X marks are generic, thus destroying the goodwill and value Solar X has built with its products.

22. The foregoing acts and conduct by Defendants constitute false designation of origin, passing off, bait and switch, and false advertising in connection with the products and services distributed in interstate commerce, in violation of §43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

23. Defendants' acts, as set forth hereinabove, have caused irreparable injury to Solar X's goodwill and reputation. The injury to SolarX is and continues to be ongoing and

irreparable. An award of monetary damages alone cannot fully compensate Solar X for its injuries and Solar X lacks an adequate remedy at law.

24. Solar X is entitled to a permanent injunction against Defendants, as well as all other remedies available under the Lanham Act, including, but not limited to, compensatory damages, treble damages, disgorgement of profits, and costs and attorneys fees.

Count III - Fraud

25. Solar X realleges and incorporates by reference herein the allegations contained in paragraphs 1 through 24 of this Complaint.

26. Based on the foregoing, above-described actions, Defendants engaged in the issuance of statements and representations concerning Solar X products that were untrue and that Defendants knew were untrue.

27. Defendants' false statements were made with the intent of misleading and deceiving potential customers so as to induce them to contact Defendants with inquiries pertinent to the purchase of Solar X sunglasses. Since Defendants did not sell Solar X products, the inquiries from potential customers led to redirection to other products that were available for purchase from the Defendants.

28. The misleading and fraudulent promotion and use by Defendants of Solar X name and mark resulted in sales to customers otherwise available to Solar X and inherently interested in the purchase of Solar X products, resulting in recovery and receipt of monies by Defendants as a direct result of these actions, and to the loss and detriment of Solar X.

WHEREFORE Solar X prays for judgment against Defendants as follows:

(A) that Defendants and those persons in active concert or participation with them who receive actual notice of the court's order by personal service or otherwise, be permanently

enjoined from using the Solar X name and mark or any variation thereof including, but not limited to Solar X Sunglasses and Solar X Eyewear in connection with the promotion, marketing, advertising, public relations and operations of the Defendants' businesses; and

(B) that Defendants, in accordance with 15 U.S.C. §1116(a), be directed to file with this Court and serve upon Solar X within thirty days after service of the permanent injunction a report in writing under oath, setting forth in detail the manner and form in which the Defendants have complied with the permanent injunction; and

(C) that Solar X recover its actual damages sustained as a result of Defendants' wrongful actions; and

(D) that Solar X recover Defendants' profits made as a result of Defendants' wrongful actions; and

(E) that Solar X recover three times Defendants' profits made as a result of Defendants' wrongful actions or three times Solar X's damages, whichever is greater; and

(F) that this case be deemed an exceptional case under 15 U.S.C. §§ 1117(a) and (b) and that Defendants be deemed liable for and order to reimburse Solar X for its reasonable attorneys fees; and

(G) that Solar X be awarded exemplary damages for Defendants' willful and intentional acts; and

(H) that Solar X recover its costs of suit; and

(I) that Solar X be granted and awarded such other and further relief as this Court deems appropriate for which it may be entitled.

COWDEN & HUMPHREY CO. LPA

/s/James D. Wilson

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