

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

MAHINDRA & MAHINDRA LTD. and  
MAHINDRA AUTOMOTIVE NORTH  
AMERICA, INC.,

Plaintiffs,

v.

FCA US LLC,

Defendant.

Case No. \_\_\_\_-cv-\_\_\_\_

The Honorable

**JURY TRIAL DEMANDED**

**COMPLAINT FOR DECLARATORY JUDGMENT**

1. By this Complaint, plaintiffs Mahindra and Mahindra Ltd. (“M&M”) and its affiliate Mahindra Automotive North America, Inc. and its subsidiaries (“MANA”) (together, “Mahindra”) seek an injunction to prevent FCA US LLC (“Fiat”) from asserting trademark and trade dress claims against MANA’s new ROXOR off-road-only vehicle, and for a declaration that the ROXOR does not infringe Fiat’s claimed intellectual property.

2. Fiat claims trademark rights in a vehicle grille design with seven parallel vertical slots. In 2009, the parties signed a contract memorializing Fiat’s agreement that a new M&M grille design with certain distinctive elements that were very different from the Fiat seven-slot grille (the “Approved Grille Design”) did not infringe Fiat’s claimed trademark rights. The contract also expressly stated

that Fiat would not assert any intellectual property infringement claims against vehicles made or sold by M&M or any of its affiliates, provided the vehicles used the Approved Grille Design.

3. MANA's new ROXOR uses the Approved Grille Design.

4. Despite the parties' contract, Fiat recently filed a complaint against Mahindra in the International Trade Commission ("ITC") making trademark and trade dress claims against the ROXOR—*claims that it expressly agreed never to assert*. Fiat's bad faith in filing the ITC action is made plain by the fact that its primary claim seeks to ban the importation of the ROXOR grille notwithstanding the fact that the ROXOR grille is not imported. It was designed in Michigan; it is made in Michigan by a third-party manufacturer; and is used in MANA's Michigan-based ROXOR manufacturing process.

5. Fiat's filing constitutes a material breach of the contract, which has caused Mahindra substantial monetary and irreparable harm. Among other relief, Mahindra requests a preliminary injunction requiring Fiat to withdraw its ITC complaint immediately, and a declaration that the ROXOR does not violate any Fiat intellectual property.

## **PARTIES**

6. M&M is an Indian multinational family of diversified companies which include vehicle manufacturing and distribution entities. M&M's principal place of business in Mumbai, Maharashtra, India.

7. MANA is a Delaware corporation with its principal place of business in Auburn Hills, Michigan. MANA is a subsidiary of M&M.

8. Upon information and belief, Fiat is a Delaware limited liability company with its principal place of business in Auburn Hills, Michigan.

## **JURISDICTION AND VENUE**

9. This action arises and is brought under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking a declaration of the rights and/or other legal relations of the parties to this litigation with respect to an actual controversy arising under the trademark laws of the United States, 15 U.S.C. § 1051, *et seq.* This action also arises and is brought under the Lanham Act, 15 U.S.C. § 1119, seeking cancellation of Fiat's federal trademark U.S. Reg. Nos. 2,794,553, 2,892,487, 2,161,779, and 4,043,984. Thus, the Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338, and 2201. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1338, and this Court's supplemental jurisdiction under 28 U.S.C. § 1367.

10. Upon information and belief, venue is proper in this Court pursuant to

28 U.S.C. § 1391(b) and (c) because this is the judicial district where (i) Defendant resides; (ii) a substantial part of the events or omissions giving rise to the claim occurred and (iii) where Defendant is subject to personal jurisdiction. Upon information and belief, Defendant maintains offices in the judicial district, and advertises and sells its goods in Michigan.

### **FACTS**

11. M&M is a diversified family of companies that has done business in the U.S. for nearly a quarter century. It is one of the largest suppliers of small tractors to farmers in the U.S., employs thousands of people in numerous states, and has committed to investing more than a billion dollars in its U.S. operations by the end of 2020.

12. Plaintiff MANA, a subsidiary of M&M, is part of that commitment. MANA is a U.S. company that manufactures off-road-only vehicles in the United States at the first vehicle manufacturing/assembly plant built in Southeast Michigan in the last quarter century. It has hundreds of employees in Michigan and a network of more than 300 dealers located throughout the country.

13. Upon information and belief, Defendant Fiat is the U.S. Subsidiary of Fiat Chrysler Automobiles, N.V., a Netherlands company and multinational automobile manufacturer. Fiat is the most recent in a long line of owners of the JEEP brand of automobiles.

14. M&M has a long history with the JEEP brand. Beginning in the late 1940s, M&M built a general purpose vehicle, now known as a “JEEP” for military use under license from Fiat’s predecessors in interest (going back to the original licensor, Willy’s-Overland). Since that time, M&M has manufactured and sold rugged, off-road capable vehicles in India that are similar to the classic military JEEP among its vehicle offerings. As a result, M&M has developed a strong brand associated with off-road capable vehicles.

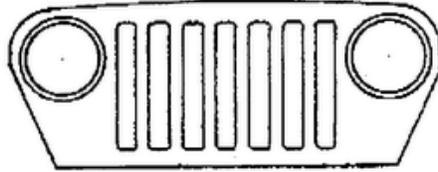
15. Upon information and belief, Fiat and its predecessors in interest coexisted in India for more than forty years and in many other markets around the world where M&M and its affiliates manufactured and distributed Jeep-style vehicles. The M&M vehicle which bears the name “Thar” is the vehicle from which the ROXOR was derived. The Thar has been manufactured and distributed in India for decades and continues in production today.

### **The Contract**

16. In 2008, M&M planned to launch a new truck primarily for on-road use in the United States named the SCORPIO that included a grille with seven vertical slots.

17. Chrysler Group LLC (“Chrysler”), which was renamed FCA US LLC following completion of Italian automaker Fiat S.p.A.’s acquisition of 100% of the shares of Chrysler Group LLC, objected to the design of M&M’s new SCORPIO

vehicle because Chrysler claimed a trademark in grilles with seven parallel vertical slots. For example:



*See* U.S. Regis. No. 2,794,553 (“The mark consists of the three-dimensional configuration of the front grille of an automobile, ***comprising seven vertical slots*** with two round headlight openings which are shown for position and are not a feature of the mark.”) (Emphasis added).

18. Throughout 2008 and 2009, Chrysler and M&M engaged in substantial negotiations to resolve Chrysler’s objections.

19. Eventually, M&M agreed to incur the costs of a redesign and change to the distinctive Approved Grille Design. The new design used four and a half angled vertical slots with the “half” slot applied to a raised center panel and the federally-registered Mahindra MILLENNIUM logo trademark above it:



20. In return, Chrysler agreed that the Approved Grille Design did not infringe any of Chrysler’s intellectual property, and that it would never assert any

intellectual property claims against M&M or any of its affiliates provided their vehicles used the Approved Grille Design.

21. The parties memorialized their agreement in a written contract. The contract states in relevant part:

Chrysler consents to the use and incorporation of the grille design shown in Exhibit A (hereinafter the “Approved Grille Design”) in vehicles sold and advertised in the United States by Mahindra and/or its affiliates and authorized dealers. ***Chrysler agrees and warrants that it will not assert against Mahindra, its affiliates, authorized dealers, or customers, or anyone else, any claim for infringement of Chrysler’s trade dress, trademark, or other intellectual property rights in the United States based on: (1) a grille having the Approved Grille Design; or (2) a vehicle containing or using the Approved Grille Design.***

See Exhibit 1 ¶ 1.<sup>1</sup>

22. The contract binds Fiat because Chrysler Group LLC was simply renamed FCA US LLC upon completion of the acquisition by Fiat S.p.A. of 100% of the shares of Chrysler. To the extent that Fiat purports to be the successor to Chrysler (rather than a continuation of the same company) as the current owner of the same JEEP-related trademarks, the contract still binds Fiat. By its express terms, the contract between M&M and Chrysler is binding on the parties’ successors. *Id.* ¶ 4.

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<sup>1</sup> The example “Approved Grill Design” included in the contract is shown in paragraph 19.

23. Ultimately, M&M never introduced its SCORPIO vehicle into the United States.

**MANA's New Off-Road-Only Vehicle**

24. In 2015 MANA decided to design and manufacture an off-road-only vehicle for sale in the United States. Given Fiat's historic (and overly aggressive) design concerns, MANA's designers were instructed to use the Approved Grille Design on the new off-road-only vehicles, eventually named ROXOR.

25. The Mahindra ROXOR was launched in March 2018.

26. As manufactured, advertised, and sold, the ROXOR incorporates the Approved Grille Design which consists of a four and a half angled vertical slot design, with the "half" slot applied to a raised center panel and the federally-registered oval-shaped stylized "M" logo trademark (referred to by Mahindra as the "Millennium" logo) prominently featured in the center of the grille above it:



*See generally* <https://www.roxoroffroad.com/>, visited August 17, 2018.

27. The ROXOR grille is not imported. It is manufactured by a Michigan-based third-party manufacturer.

28. The ROXOR is an off-road-only vehicle—it does not have a VIN and is not designed or sold for use on public roads. The ROXOR creates an entirely new category within the ATV, UTV, and Side-by-Side powersports market. The existing market is largely comprised of plastic-bodied, belt-driven vehicles. For the first time, the Mahindra ROXOR offers a simple, hard worn vehicle offering, featuring a steel body on a boxed steel frame, a heavy-duty turbo-diesel 4-cylinder engine, and an automotive style 5-speed manual transmission.

29. The ROXOR was an instant success. In less than four months, MANA signed up 215 new dealers to distribute the vehicle. According to Don Musick, Founder/CEO of Genesys Technology Solutions, and a well-respected powersports industry analyst with over 25 years industry experience: “In the 15 years that we have been monitoring powersports dealer networks, no other OEM has achieved this level of net dealer signups annually, let alone in 4 months. Their plan has gained a lot of traction very quickly.”

30. The reviews of the ROXOR have been overwhelmingly positive. For example, AutoWeek described the ROXOR as “extremely fun to drive and quite capable off-road,” and “nearly invincible off-road.” *See* <https://autoweek.com/article/car-reviews/roxor-road-only>. And FourWheeler.com

noted that, “The robust construction sets the Mahindra apart from other UTVs, which usually get plastic body panels over a tube frame.” See <http://www.fourwheeler.com/news/1802-first-look-mahindra-roxor-off-highway-vehicle/>

31. Since launching in Spring 2018, demand has exceed original projections by more than 50%. If its business is not improperly interfered with, MANA now projects demand to continue to grow at a rapid pace in 2019 due to the high levels of expressed interest by both the public and private (corporate/leisure) customers of off-road vehicles.

32. M&M and MANA have made an enormous investment in the development, manufacture, and assembly of the ROXOR. The ROXOR was developed at MANA’s Troy, Michigan technical center and is built at MANA’s new manufacturing facility in Auburn Hills, Michigan. MANA also occupies office and warehouse space in both Troy and Pontiac, Michigan in support of the manufacturing facility and for the supply of engineering services to both MANA and M&M (collectively occupying more than 600,000 square feet office/industrial space). The only vehicle manufactured at this facility is the ROXOR. There are more than 400 full-time autoworkers, professionals, and support staff supporting production of the ROXOR, all of whom would have their livelihoods placed in jeopardy by Fiat’s request to the ITC to ban the importation of parts for the

ROXOR and to issue a cease and desist order for ROXOR products and parts already in the U.S. MANA expects to further expand its manufacturing and support workforce for the side-by-side off-road vehicles by adding additional shifts and other full-time workers over the next several months as MANA increases production. M&M has committed to investing more than a billion dollars in its U.S. operations by the end of 2020.

### **Fiat's Breach of Contract and Unlawful Conduct**

33. On August 1, 2018, Fiat filed a complaint with the ITC against Mahindra. *See* Exhibit 2. Fiat alleged that Mahindra's new ROXOR vehicle infringes Fiat's JEEP-related intellectual property. Specifically, Fiat alleged that Mahindra infringes four JEEP-related trademarks in a grille design with seven vertical slots (emphasis added below):

- U.S. Regis. No. 2,862,487 (“The mark consists of the three-dimensional configuration of the front grille of an automobile, ***comprising seven vertical slots*** with two round headlight openings and two round running lamps or fog lamps which are shown for position and are not a feature of the mark.”)
- U.S. Regis. No. 2,161,779 (“The mark consists of a grill for a motor vehicle ***comprising seven vertical slots*** with two round headlights.”)
- U.S. Regis. No. 2,794,553 (“The mark consists of the three-dimensional configuration of the front grille of an automobile, ***comprising seven vertical slots*** with two round headlight openings which are shown for position and are not a feature of the mark.”)

- U.S. Regis. No. 4,043,984 (“The mark consists of a stylized front grille of an automobile, **comprising seven vertical slots** with two round headlight openings.”)

See Exhibit 2 ¶¶ 44-49. Fiat has asserted these claims in the ITC, purporting to seek an exclusion order banning the importation of the ROXOR grille, notwithstanding the fact that the ROXOR grille is not imported. It is made in Michigan.

34. Fiat also alleged that the same Mahindra ROXOR vehicle infringes other JEEP-related trademarks, specifically a federally-registered logo mark (U.S. Regis. No. 4,272,873) and unregistered common law trade dress comprised of a combination of six design elements making up the overall look of an historic JEEP vehicle. See Exhibit 2 ¶¶ 37-42.

35. Fiat’s act of filing its ITC Complaint constitutes a material breach of the contract. Fiat’s predecessor expressly and unambiguously “agree[d] and warrant[ed]” that it would not assert against M&M or its affiliates “**any claim for infringement of Chrysler’s trade dress, trademark, or other intellectual property rights** in the United States based on: (1) a grille having the Approved Grille Design; or (2) **a vehicle containing or using the Approved Grille Design.**”

36. Mahindra relied upon Chrysler’s representations and used the Approved Grille Design on its ROXOR. Mahindra invested significant financial and personnel resources in the design and development of the grille and vehicle

design and manufacture of the ROXOR off-road-only vehicle so that it is in conformance with its contract with Fiat. Despite Mahindra's compliance with the contract, Fiat breached the contract by asserting claims for infringement of "trade dress, trademark, or other intellectual property rights" in its complaint filed with the ITC. Fiat requested the ITC to ban the import of parts used to manufacture the ROXOR and to order Mahindra to cease and desist the manufacture and distribution of ROXOR vehicles in the U.S.

37. Fiat's breach caused monetary and intangible harm to Mahindra. Mahindra has already been forced to expend significant financial and personnel resources in addressing the ITC Complaint and this declaratory judgment action. This financial harm will continue to escalate and will likely total well into the millions of dollars if Fiat is permitted to pursue its ITC Complaint in violation of its contractual obligations.

38. In addition, the impact of the ITC Complaint on a new product launch in the U.S. is to arrest and halt the positive momentum of signing up new dealers and customers. It is also damaging the Mahindra and ROXOR brands in the minds of dealers and consumers in ways that would be difficult or impossible to fully measure and which could mean the difference between a successful and profitable vehicle launch and a failed vehicle launch.

39. Fiat knew or should with reasonable diligence have known of the existence of the contract at the time it filed the ITC complaint. The contract was signed by Michael Manley, who was President & CEO of Jeep in 2009. Today, Mr. Manley is the CEO of defendant Fiat.

40. Upon information and belief, Fiat filed the ITC complaint with the improper purpose to interfere with Mahindra's product launch because it "agree[d] and warrant[ed]" not to bring the claims it asserted. The ROXOR vehicle launch was well received in the off-road vehicle world and more generally in the automotive press. Media reports commented favorably on the rugged steel body construction, back-to-basics simplicity, and overall authenticity of the ROXOR design.

**MANA's Use is Non-Infringing**

41. The Court should issue a declaration of non-infringement because Fiat's claimed trademark and trade dress rights are invalid. And, in any event, MANA's use does not infringe.

42. Fiat's trademark registrations for an automobile grille with seven vertical slots (U.S. Regis. Nos. 2,862,487; 2,161,779; 2,794,553; and 4,043,984) are invalid. The vertical slots are functional and cannot act as an indicator of source. Among other evidence of functionality, Fiat's predecessors filed utility

patents expressly touting the seven slotted grille design as functional. *See, e.g.*, U.S. Patent No. 2,378,504.

43. Fiat's predecessors also filed utility patents expressly touting the overall design of the historic JEEP as functional. *See, e.g.*, U.S. Patent No. 2,278,450. As a result, its registered logo trademark, U.S. Regis. No. 4,272,873, is invalid and its unregistered claimed common law trade dress is invalid. Moreover, Fiat does not assert that Mahindra uses any two-dimensional trademark incorporating the silhouette of an automobile, or that any of Mahindra's trademarks are confusingly similar to the '873 Mark. Thus, Mahindra cannot and does not infringe the '873 Mark.

44. Fiat's trademark registrations for an automobile grille with seven vertical slots (U.S. Regis. Nos. 2,862,487; 2,161,779; 2,794,553; and 4,043,984), registered logo trademark (U.S. Regis. No. 4,272,873), and its unregistered claimed common law trade dress are also invalid because they are generic and incapable of indicating source. Upon information and belief, numerous third parties use the designs or substantially similar designs to generically indicate a "4x4" or "off-road" vehicle without reference to source.

45. Fiat's registered logo trademark, U.S. Regis. No. 4,272,873, and unregistered common law trade dress are also invalid because they lack secondary meaning. Consumers do not understand the primary purpose of the claimed mark

and/or trade dress to indicate Jeep as source because Fiat is not the substantially exclusive user of the claimed designs. Upon information and belief, numerous third parties use the designs or substantially similar designs to either identify themselves or to indicate a generic “4x4” or “off-road” vehicle without reference to source.

46. Fiat’s registered logo trademark, U.S. Regis. No. 4,272,873, and unregistered common law trade dress are also invalid because they have been abandoned due to non-use and/or acquiescence. Upon information and belief, Fiat’s claimed trademarks and trade dress are no longer used by Fiat and have not been used for more than three years.

47. Even if Fiat’s trademarks and trade dress are valid, Mahindra’s ROXOR vehicle does not infringe because:

- a. By virtue of the 2009 contract between the Mahindra and Fiat, Fiat admitted that the “consent[ed] to” grille design is non-infringing;
- b. Mahindra acted in the utmost good faith by using a “consent[ed] to” grille design and otherwise relying on its contract with Chrysler;
- c. The ROXOR designs differ from the asserted marks and dress in material respects (including, but not limited to, overall size, shape, and orientation), a central feature of the Approved Grille Design is the Mahindra Millennium logo, and the grille designs are always

accompanied by the prominent and distinctive word marks

MAHINDRA and ROXOR prominently displayed on every ROXOR vehicle;

- d. The parties' goods differ insofar as the ROXOR is an off-road-only vehicle—it cannot be registered for on-road use in any state;
- e. The marketing channels differ because the JEEP products are marketed as street-legal automobiles and the ROXOR is not;
- f. The sales channels differ because the parties' products are sold by their authorized dealers and those dealers are materially different insofar as Jeep products are sold at automobile dealerships and ROXOR off-road-only vehicles are sold at powersports dealers who sell ATVs, UTVs, and snowmobiles;
- g. The price and nature of the goods is such that consumers are likely to be keenly aware of what they are purchasing and from whom;
- h. Despite nearly six months of sales, there are no incidents of actual confusion; and
- i. Mahindra acted in good faith with no intent to cause consumer confusion.

48. As a result of the foregoing, Mahindra has and will suffer irreparable harm and monetary harm in an amount to be determined at trial.

**CLAIMS FOR RELIEF**

**COUNT I**  
**(Breach of Contract)**

49. Mahindra repeats and re-alleges the allegations contained in paragraphs 1 through 48 above as if fully set forth herein.

50. As described above, the parties have a valid and subsisting contract.

51. As described above, Fiat has breached and continues to breach its contractual obligations to Mahindra.

52. As described above, Fiat's breaches of the contract have caused, and will continue to cause, Mahindra monetary harm, including loss of income and profits.

53. As described above, Fiat's breaches of the contract have caused, and will continue to cause, Mahindra irreparable harm, including loss of goodwill, harm to reputation, and loss of fair competition and competitive advantage.

54. Mahindra is entitled to injunctive relief, as well as damages resulting from Fiat's breaches of the contract.

**COUNT II**  
**(Tortious Interference with Business Expectancies)**

55. Mahindra repeats and re-alleges the allegations contained in paragraphs 1 through 54 above as if fully set forth herein.

56. MANA has legitimate business expectancies in its continued relationships and goodwill with current and potential dealers and customers and sales to such dealers and customers.

57. Fiat is aware of MANA's relationships and expectancies in those relationships for future sales, revenue, and business.

58. Fiat has knowingly and intentionally interfered, and continues to knowingly and intentionally interfere, with MANA's business expectancies by, among other things, asserting contractually barred and baseless claims in the ITC and communicating to the public that MANA imports "knock down kits" and is not a manufacturer of vehicles.

59. Fiat has intentionally engaged in a per se wrongful act and/or has engaged in lawful acts with malice and unjustified in law for the purpose of invading MANA's business expectancies.

60. Fiat's actions are improper and without justification.

61. Fiat's conduct has resulted, and will continue to result, in irreparable harm and damage to MANA, including, but not limited to, loss of its competitive advantage, loss of business, loss of goodwill, loss of income, and/or damage to its reputation.

**COUNT III**  
**(Unfair Competition—Michigan Common Law)**

62. Mahindra repeats and re-alleges the allegations contained in paragraphs 1 through 61 above as if fully set forth herein.

63. The parties both conduct business in Michigan and the acts of Fiat described above substantially occurred in Michigan.

64. As described above, Fiat's intentional breach of the parties' contract, assertion of contractually barred and baseless intellectual property claims in the ITC, and tortious interference with Mahindra's reasonable business expectancies, constitute common law unfair competitive acts in Michigan.

65. Fiat's conduct has resulted, and will continue to result, in irreparable harm and damage to Mahindra, including, but not limited to, loss of its competitive advantage, loss of business, loss of goodwill, loss of income, and/or damage to its reputation.

**COUNT IV**  
**(Declaratory Judgment of Non-Infringement—Federal Lanham Act)**

66. Mahindra repeats and re-alleges the allegations contained in paragraphs 1 through 65 above as if fully set forth herein.

67. This is an action for declaratory judgment and further relief against Fiat pursuant to 28 U.S.C. §§ 2201 and 2202.

68. Fiat has alleged, and Mahindra denies, that Mahindra's ROXOR vehicle design infringes Fiat's alleged federally-registered and common law trademark and trade dress rights.

69. There exists an actual and justiciable controversy between Mahindra and Fiat as to whether Mahindra infringes any of Fiat's alleged trademarks.

70. As set forth above, Mahindra seeks a declaration of non-infringement for several alternative reasons:

- a. Fiat ratified, acquiesced, is estopped, or is otherwise legally or equitably barred from seeking to enjoin the sale of Mahindra's ROXOR vehicle;
- b. Fiat does not own the trademark and trade dress rights it asserts;
- c. Fiat's claimed trademark and trade dress rights are invalid; and/or
- d. There is no likelihood of confusion between Mahindra's use of these non-source identifying elements and Fiat's use of the same.

71. Mahindra also seeks a declaration that so long as Mahindra's ROXOR vehicle uses Mahindra's house marks, either on the vehicle or in connection with its marketing or sale, the parties' products are sufficiently distinct so as to preclude any cognizable consumer confusion or harm to Fiat's claimed goodwill.

72. This is an exceptional case within the meaning of 15 U.S.C. § 1117 sufficient to warrant the award of attorneys' fees to Mahindra because Fiat has

knowingly asserted trademarks against Mahindra that it has no right to assert based upon the 2009 Approved Grille Design Agreement, Fiat knows that its asserted trademarks are not infringed by the ROXOR design, and Fiat knows that its alleged trade dress does not constitute a distinctive or protected trade dress.

**COUNT V**  
**(Cancellation of U.S. Reg. Nos. 2,862,487; 2,161,779; 2,794,553;  
4,043,984)**

73. Mahindra repeats and re-alleges the allegations contained in paragraphs 1 through 72 above as if fully set forth herein.

74. This is an action pursuant to 15 U.S.C. §§ 1064 and 1119 for cancellation of Fiat's trademark registrations U.S. Regis. Nos. 2,862,487; 2,161,779; 2,794,553; and 4,043,984 for automobile grilles with seven parallel vertical slots.

75. The registrations are subject to cancellation because the claimed features of the mark are merely ornamental and functional and are thus incapable of serving as a trademark, and therefore ineligible for registration under Section 2 and 45 of the Act (15 USC 1052 & 1127).

76. In the alternative, the registrations are subject to cancellation because the claimed marks are generic.

77. In the alternative, the registrations are subject to cancellation because Fiat has abandoned the claimed marks through non-use and/or acquiescence.

78. Registration of the claimed trademarks is causing, and will continue to cause, damage to Mahindra and others because it unfairly provides Fiat with *prima facie* evidence of the exclusive right to use claimed trademarks in connection with Fiat's goods.

79. Based on the foregoing, Mahindra is entitled to an order pursuant to 15 U.S.C. § 1119 directing the Director of the Trademark Office to cancel U.S. Reg. Nos. 2,862,487; 2,161,779; 2,794,553; and 4,043,984.

### **PRAYERS FOR RELIEF**

WHEREFORE, Mahindra respectfully requests that this Court enter judgment in its favor and against Fiat:

- a. Finding that the parties' contract is valid and subsisting and that Fiat's conduct constitutes a material breach;
- b. Issuing preliminary and permanent injunctive relief requiring Fiat to withdraw its ITC complaint with prejudice;
- c. Declaring that Mahindra's ROXOR design does not infringe, and at all times has not infringed, Fiat's claimed rights;
- d. Declaring that so long as Mahindra's ROXOR design bears Mahindra's house marks, either on the vehicle or in connection with its marketing or sale, the parties' products are sufficiently distinct so as to preclude any cognizable consumer confusion or harm to Fiat's claimed goodwill.

e. Declaring that Fiat's claimed trademarks (i) lack the requisite legal requirements to be protectable under the Lanham Act and (ii) are not entitled to registration on the Principal Register;

f. Ordering that U.S. Reg. Nos. 2,862,487; 2,161,779; 2,794,553; and 4,043,984 be cancelled and directing the Clerk of Court to transmit notice of the Order to the Director of the Trademark Office of the United States Patent and Trademark Office;

g. Declaring that Fiat's conduct makes this an "exceptional case" pursuant to 15 U.S.C. § 1117.

h. Awarding Mahindra its damages caused by Fiat's conduct;

i. Awarding Mahindra treble damages;

j. Awarding Mahindra equitable monetary relief;

k. Awarding Mahindra its costs and attorneys' fees; and

l. Granting Mahindra such further relief as the Court deems just and proper.

**JURY DEMAND**

Mahindra demands a trial by jury of all claims so triable.

Respectfully submitted,

MAHINDRA & MAHINDRA LTD. and  
MAHINDRA AUTOMOTIVE NORTH  
AMERICA, INC.,

By their attorneys,

By: /s/ Leigh C. Taggart

Leigh C. Taggart (P63765)

HONIGMAN MILLER SCHWARTZ  
AND COHN LLP

39400 Woodward Ave., Ste. 101

Bloomfield Hills, MI 48304-5151

(248) 566-8490

ltaggart@honigman.com

Ka'Nea K. Brooks (P82092)

HONIGMAN MILLER SCHWARTZ  
AND COHN LLP

315 East Eisenhower Parkway, Suite 100

Ann Arbor, MI 48108-3330

(734) 418-4200

kbrooks2@honigman.com

and

R. David Hosp (applying for admission in  
the E.D. Michigan)

Mark S. Puzella (applying for admission  
in the E.D. Michigan)

Sheryl K. Garko (applying for admission  
in the E.D. Michigan)

FISH & RICHARDSON P.C.

One Marina Park Drive

Boston, Massachusetts 02210

Tel.: (617) 368-2125

Fax: (617) 542-8906

hosp@fr.com  
puzella@fr.com  
garko@fr.com

Dated: August 23, 2018