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File No. 12140

PONANI SUKUMAR,

Plaintiffs,

vs.

THE SWATCH GROUP (U.S.) INC. a
Delaware corporation; and DOES 1-20,
inclusive,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
COUNTY OF ESSEX
DOCKET NO.

Civil Action

COMPLAINT AND JURY DEMAND

Plaintiff Ponani Sukumar, by and through his attorneys, PinilisHalpern, LLP and
Rowe Mullen, LLP (of the California Bar) allege in support of his Complaint, as follows:

PARTIES

1. Plaintiff Ponani Sukumar (hereinafter "Plaintiff"), at all relevant times is, an individual residing in San Diego County, California.

2. Upon information and belief, Defendant, The Swatch Group (U.S.) Inc., is a Delaware corporation, with its principal place of business located at 1200 Harbor Blvd., Weehawken, New Jersey. Among other business locations Omega has an "official" retail "boutique" where it conducts business at 1200 Morris Turnpike, Short Hills, New Jersey. Plaintiff is further informed and believes that Defendant, The Swatch Group (U.S.) Inc., operates as a subsidiary of The Swatch Group AG, a Swiss business entity concentrating on the manufacture of luxury timepieces, jewelry, and leather goods.

3. Upon information and belief, Defendant, The Swatch Group (U.S.) Inc., includes Omega USA and the Omega Retail Division, which is the operator of Omega retail boutique stores nationwide, including the Omega Boutique store in San Diego, California. (Defendant The Swatch Group (U.S.) Inc. is hereinafter referred to as “Omega.”)

4. DOES 1 through 20 are fictitious names for parties, the specific identity of which are not currently known to Plaintiff, but which can be more specifically described as individuals or business entities (most likely agents and/or employees of Omega), who engaged in the tortious conduct alleged herein causing Plaintiff damages.

FACTUAL ALLEGATIONS MATERIAL TO ALL COUNTS

5. Plaintiff is a collector of Omega timepieces. In 2013, Plaintiff was solicited by Omega to purchase a limited edition and collectible commemorative replica gold Olympic stopwatch. According to Omega’s website, the stopwatch is a limited edition replica of the original Olympic 1932 Rattrapante chronograph used as the official timekeeper of the Olympic Games in Los Angeles.

6. The cost of the stopwatch was approximately \$110,000. The stopwatch came with a storage pouch. Plaintiff made it clear to Omega that he was not interested in purchasing the stopwatch unless he could have certain custom engraving, and a high quality protective leather “pouch” with ribbons that would allow him to wear the watch around his neck. Plaintiff inquired of Omega about the specialized engraving on the stopwatch, and also about Omega designing a custom storage pouch, and related ribbons, that would allow Plaintiff to actually wear and operate the stopwatch while it was in the pouch (as opposed to the standard pouch that was only for storage).

7. Omega initially indicated that it would fulfill the requested customization. Based upon Omega’s agreement to do so, Plaintiff agreed to purchase the stopwatch, and paid a deposit toward the purchase. Later, Omega determined that it was unwilling, or unable, to provide the

customization. Plaintiff required the customization as a precondition to purchasing. Thus, Omega returned the deposit. The transaction was cancelled.

8. After apparently realizing that there were not enough (or any) other purchasers willing to buy these highly unique and costly watches, Omega agreed that it would meet Plaintiff's customization requirements. To that end, Omega contacted Plaintiff and confirmed that it would both engrave the watch, and have what it describes on its website to be its "Fine Leather" division create the "pouch."

9. Based upon Omega's promises to meet Plaintiff's specifications, Plaintiff purchased the Olympic stopwatch in red (Rose) gold.

10. In further reliance upon Omega's representation that it would customize the stopwatches, including the creation of customized pouches and ribbons, in July 2014 Plaintiff agreed to purchase two additional commemorative replica gold Olympic stopwatches (one in white gold and the other in yellow gold).

11. The total purchase price for the three (3) stopwatches, inclusive of the customization, and taxes, was more than \$350,000.

12. In addition to soliciting Plaintiff to purchase the stopwatches, Omega also solicited Plaintiff to purchase many other products. In connection with such solicitations, Omega specifically promised Plaintiff that Plaintiff would receive desirable "special benefits" if Plaintiff became one of Omega's "best customers." Omega specifically advertises that it has the "honour" of a special relationship with the Olympic Games. Omega promised to use its special relationship to provide Plaintiff substantial special access to Olympic tickets, parties, and athletes.

13. On its website, Omega boasts that "[o]n 27 occasions since 1932, Omega has fulfilled the role of Official Timekeeper at the Olympic Games." Omega touts that in 1932, the Sports Technical Director of the Olympics, William Henry, wrote: "[i]t is impossible to contemplate the wonderfully successful Olympic Games without recognizing the part played by OMEGA in this great international event." Omega asserts that "[a] great partnership had begun" after the 1932 Olympic Games. Omega repeatedly told Plaintiff that it could leverage this

longstanding relationship with the Olympics to provide him with the aforementioned access and benefits.

GENERAL SUMMARY OF PROMISES BY OMEGA

14. Omega used its purported “great partnership” with the Olympics as a “come on” to induce Plaintiff to purchase the aforementioned stopwatches – which its website says are “enhanced replica[s] of a 1932 pocket chronograph – the very stopwatch that had timed the Los Angeles 1932 Olympic Games.”

15. In late 2013 and into early 2014, Dagmar Jouni, West Coast Manager of Omega, Danielle Longo, Manager of Omega’s San Diego boutique, and Nick Lesic, sales associate at Omega’s San Diego boutique, made repeated promises to Plaintiff that his purchase of a commemorative replica gold Olympic stopwatch would result in an invitation from Omega to attend the 2014 Sochi Winter Olympics and the 2016 Rio Summer Olympics.

16. In 2014, Dagmar Jouni, West Coast Manager of Omega, and Danielle Longo, Manager of Omega’s San Diego boutique, promised Plaintiff that if he bought more Omega items, including special pieces and numbered watches, he would receive special privileges from Omega, including invitations to special and exclusive events in, among other places, San Francisco, New York and Texas.

17. In 2014, Brice Le Troadec, the Omega Brand President USA, promised Plaintiff that his Omega purchases would garner Plaintiff an invitation from Omega to attend Baselworld, the annual trade show for the international watch and jewelry industry in Switzerland. Mr. Le Troadec also promised that as a result of Plaintiff’s Omega purchases, Plaintiff would be introduced to other high-value Omega purchasers for networking.

18. As Plaintiff’s Omega purchases increased, Brice Le Troadec promised Plaintiff he would receive a special invitation from Omega to attend the Olympics, all expenses paid by Omega, where Plaintiff could watch the games from Omega’s private boxes.

19. From February to July 2014, based on Omega’s promised benefits, and in an effort to become a “special customer,” Plaintiff purchased approximately 40 other items from Omega at

a total additional cost in excess of \$850,000. According to Omega, Plaintiff became Omega's top retail client. Notwithstanding, Omega never delivered on any of its promises to provide any of the aforementioned benefits.

20. Worse, when the stopwatches were delivered with the custom pouches and ribbons, the special pouches and ribbons for the watches were substandard and did not meet the specifications.

21. During 2013, 2014 and 2015, Plaintiff exchanged communications with Omega regarding the customized pouches and ribbons for the commemorative replica gold Olympic stopwatches. Those communications included specification documents.

22. In May 2015, Omega delivered its first prototype of the pouches. That prototype was not satisfactory, and photos and specifications were marked up by Omega and Plaintiff in August 2015 with respect to required revisions to the pouches and ribbons.

23. In early 2016, Omega produced a second prototype of the pouch, but Omega itself acknowledged it was not satisfactory, and that prototype was taken back by Omega for further reworking.

24. In late October 2016, Omega delivered its latest version of the pouches and ribbons. Unfortunately, it was as substandard, unacceptable, and non-compliant as the other previous iterations. This was particularly troubling because Omega was not supposed to produce all three pouches until Plaintiff had approved the design based on the initial production of one pouch.

25. Plaintiff attempted to pursue the informal resolution of the issues regarding the quality and workmanship of the pouches and ribbons, including obtaining a detailed description from an expert designer as to the specific deficiencies in the design and production and a proposed action plan to resolve those deficiencies. Omega rejected those overtures, and refused to honor its promises. It has likewise refused to refund the purchase.

26. Omega has failed to provide Plaintiff with the customized pouches and ribbons that were promised as a material part of Plaintiff's purchase of the three commemorative replica gold

Olympic stopwatches from Omega. Omega likewise failed to provide any of the other "Olympic benefits" that it promised.

27. Plaintiff purchased not only the stopwatches but additional Omega products in reliance upon Omega's promise to provide him with customized pouches and ribbons for the three commemorative replica gold Olympic stopwatches, as well as the aforementioned access and benefits relating to the Olympic Games.

FIRST CAUSE OF ACTION

(For Violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-2)

28. Plaintiff realleges and incorporates by reference paragraphs 1 through 27, inclusive, of this complaint.

29. In connection with the sale or advertisement of merchandise, the Defendants violated the Consumer Fraud Act, N.J.S.A. 56:8-2 (the "Act").

30. The foregoing unconscionable commercial practices, deceptions, false pretenses, false promises and/or misrepresentations constitute violations of the Act.

31. As a result, Plaintiffs have suffered an ascertainable loss.

SECOND CAUSE OF ACTION

(For Breach of Contract)

32. Plaintiff realleges and incorporates by reference paragraphs 1 through 31, inclusive, of this complaint.

33. As alleged herein, as material part of Plaintiff's purchase of the three commemorative replica gold Olympic stopwatches, Omega agreed to provide Plaintiff with customized pouches and ribbons for those stopwatches.

34. Omega has failed and refused to honor its agreement with Plaintiff to provide the customized pouches and ribbons for the three commemorative replica gold Olympic stopwatches.

35. Plaintiff has made repeated demands upon Omega for performance regarding the customized pouches and ribbons. Omega has failed and refused, and continues to fail and refuse,

to provide Plaintiff with the agreed-to customized pouches and ribbons for the three commemorative replica gold Olympic stopwatches.

36. Plaintiff has performed all covenants, conditions and promises of its agreement with Omega, except those obligations Plaintiff was prevented or excused from performing.

37. As a direct and foreseeable result of Omega's breach of its agreement, Plaintiff has suffered damages

THIRD CAUSE OF ACTION

(For Breach of Implied Covenant of Good Faith and Fair Dealing)

38. Plaintiff realleges and incorporates by reference paragraphs 1 through 37, inclusive, of this complaint.

39. Under the purchase agreement alleged above, Omega agreed to provide Plaintiff with customized pouches and ribbons for the three (3) commemorative replica gold Olympic stopwatches purchased by Plaintiff. Omega also promised to provide Plaintiff with special 'Olympic benefits' as set forth above in connection with Plaintiff's purchase of approximately \$850,000 worth of Omega products.

40. Implied in the purchase agreement, as with all contracts, was a covenant of good faith and fair dealing obligating Omega to deal fairly with Plaintiff and in good faith in carrying out the obligation of the agreement.

41. Through the acts and conduct described herein, Omega has failed to perform its obligations under the purchase agreement. In so doing, Omega breached the covenant of good faith and fair dealing implied in the purchase agreement.

42. As a direct and foreseeable result of Omega's breach of the covenant of good faith and fair dealing, Plaintiff has suffered damages.

FOURTH CAUSE OF ACTION

(For Breach of Contract and Specific Performance)

43. Plaintiff realleges and incorporates by reference paragraphs 1 through 42, inclusive, of this complaint.

44. Under the purchase agreement alleged above, Omega agreed to provide Plaintiff with customized pouches and ribbons for the three (3) commemorative replica gold Olympic stopwatches purchased by Plaintiff.

45. Plaintiff relied on Omega's promise and contractual representation and agreement in that regard, and all parties knew that Omega's fulfillment of that promise and agreement was a material and essential element of the purchase agreement.

46. Through the acts and conduct described herein, Omega has failed to perform its obligations under the purchase agreement to provide Plaintiff with customized pouches and ribbons for the three (3) commemorative replica gold Olympic stopwatches purchased by Plaintiff.

47. Plaintiff seeks an order of this Court compelling Omega to perform its obligations under the purchase agreement, and specifically, to provide Plaintiff with customized pouches and ribbons for the three (3) commemorative replica gold Olympic stopwatches purchased by Plaintiff.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For rescission of the subject transactions and restitution in the form of return of all consideration provided to Defendants;
2. For specific performance;
2. For compensation damages trebled;
3. For interest thereon at the legal rate per annum from the date of breach and/or conversion, according to proof, until paid;
4. For attorneys' fees and costs; and
5. For costs of suit herein incurred, including attorneys' fees; and
6. For such other and further relief as the Court deems just and proper.

PINILISHALPERN, LLP
Attorneys for Ponani Sukumar

By: 

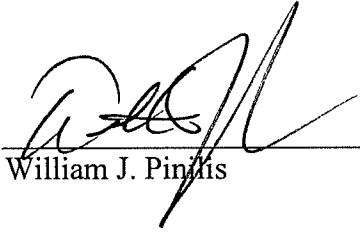
William J. Pinilis

Date: February 27, 2018

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, William J. Pinilis is hereby designated as trial counsel for Plaintiff, Ponani Sukumar, in this matter.

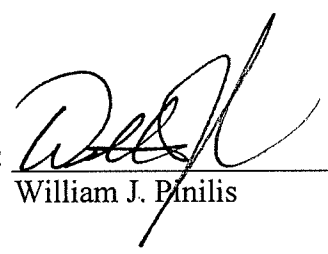
Date: February 27, 2018

By: 
William J. Pinilis

JURY DEMAND

Defendants demand a jury trial on all issues so triable contained herein.

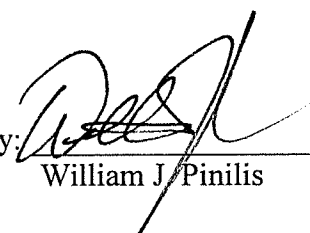
Date: February 27, 2018

By: 
William J. Pinilis

CERTIFICATION PURSUANT TO R. 1:38-7(c)

I hereby certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

Date: February 27, 2018

By: 
William J. Pinilis