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 9 PATAGONIA, INC. and
 PATAGONIA PROVISIONS, INC.

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**UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION – LOS ANGELES**

PATAGONIA, INC. and
 PATAGONIA PROVISIONS, INC.,

Plaintiffs,

v.

ANHEUSER-BUSCH, LLC dba
 PATAGONIA BREWING CO.,

Defendant.

Case No. 2:19-cv-02702

**COMPLAINT FOR TRADEMARK
 INFRINGEMENT, UNFAIR
 COMPETITION, DILUTION,
 FRAUD, AND JUDICIAL
 DECLARATION THAT
 TRADEMARK REGISTRATION
 IS VOID (INJUNCTIVE RELIEF
 SOUGHT)**

JURY TRIAL DEMAND

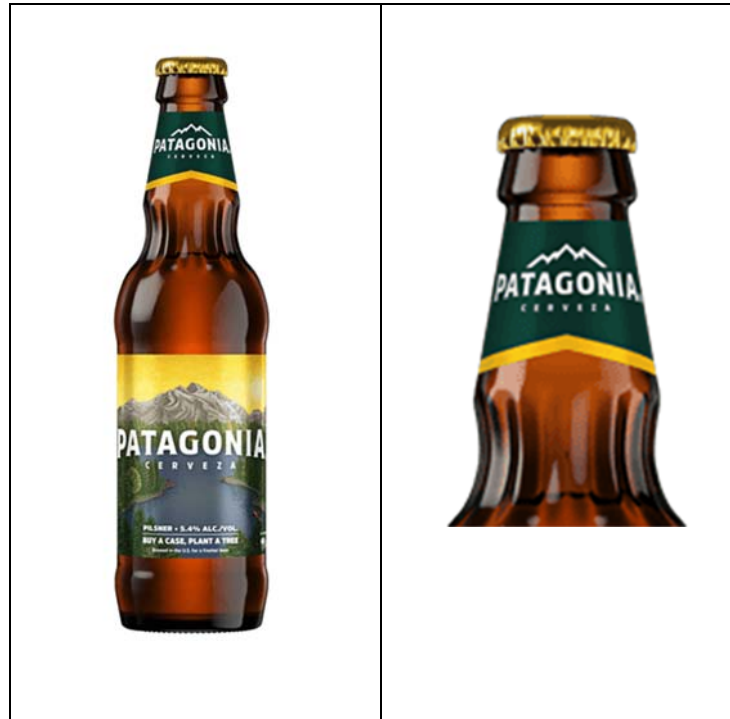
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INTRODUCTION

1. In 2012, Anheuser-Busch LLC (“AB”) submitted false evidence to the Trademark Office to unlawfully obtain a trademark for PATAGONIA on beer. After letting its fraudulently obtained trademark registration lie unused for six years, AB recently adopted the fictitious business name “Patagonia Brewing Co.” and launched an intensive marketing campaign to “introduce” its PATAGONIA beer to American consumers.



1 2. AB’s new beer bottle employs a logo including PATAGONIA beneath
2 a mountain silhouette, shown below (“AB’s PATAGONIA logo”).



15 AB recently launched its new beer at ski resorts in Colorado, where its sales people
16 dressed in black down jackets with AB’s PATAGONIA logo on the chest and gave
17 out beanies, scarves, and t-shirts all bearing the same PATAGONIA logo. At the
18 ski resorts, AB set up what looks like a pop-up store, including a booth made of
19 what AB called out to be reclaimed wood, featuring a large PATAGONIA logo
20 sign and a placard describing “Patagonia’s ‘tree positive’ mission.” Customers
21 were told AB will plant one tree for every case of beer purchased.

22 3. In launching its PATAGONIA beer, AB deliberately has attempted
23 to take advantage of the tremendous goodwill that Patagonia, Inc. and Patagonia
24 Provisions, Inc. (together, “Patagonia” or “Plaintiffs”) have cultivated in their brand,
25 and the hard-earned reputation that Patagonia, Inc. has built over the last forty years
26 as a company dedicated to environmental conservation. AB has gone as far as
27 creating a logo that is strikingly similar to Patagonia’s famous mountain silhouette
28 logo that has appeared continuously for decades on millions of products. AB has



1 tried to connect its beer with environmental conservation by claiming to plant a
2 tree for each case of beer sold, an initiative that Patagonia would welcome but for
3 the fact that AB is clearly attempting to copy Patagonia’s famous brand identity
4 to confuse consumers. AB has launched its copycat brand at ski resorts where
5 Patagonia, Inc.’s ski apparel is widely used and universally recognized in further
6 attempts to draft off Patagonia’s goodwill. And AB has dressed its sales people
7 in down jackets and given out beanies, t-shirts, and scarves bearing AB’s
8 PATAGONIA logo—all products that Patagonia sells, including in its stores in
9 the very towns where AB has launched its beer. In short, AB has done everything
10 possible to make it appear as though this PATAGONIA beer is sold by Patagonia.



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4. AB’s effort to look and feel like Patagonia is all the more confusing because Patagonia started a food business in 2012 called Patagonia Provisions, Inc. (“Provisions”), which was formed to challenge a broken food industry increasingly dependent on pesticides, chemicals, and emitting massive amounts of greenhouse gases. Provisions has been selling its own beer since 2016 using a perennial grain called Kernza[®] instead of traditional barley. Kernza has long roots that store carbon in the ground and using it in beer has served as an effective vehicle for Patagonia to introduce customers to carbon sequestration as a means of removing greenhouse gases from our atmosphere.

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5. Patagonia is filing this lawsuit to stop AB from maintaining its unlawful trademark registration, from selling PATAGONIA beer, and to prevent AB from going to such great lengths to pass itself off as Patagonia, all of which infringes, dilutes, and usurps the goodwill in Patagonia’s famous PATAGONIA trademarks, as well as the reputation it has built over the last four decades.

PARTIES, JURISDICTION, AND VENUE

6. Patagonia, Inc. is a California corporation headquartered at 259 West Santa Clara Street, Ventura, California 93001. For more than forty years, Patagonia, Inc. has been designing, developing, marketing, and retailing outdoor apparel, sportswear, and related products. For many years, Patagonia, Inc. and the PATAGONIA® brand have been famous in the United States and around the world for innovative apparel designs, quality products, and environmental and corporate responsibility.

7. Patagonia, Inc. was founded in the late 1960s to design and sell climbing clothes and other active sportswear. The company adopted the brand

1 “PATAGONIA” to differentiate another business that designed and manufactured
2 climbing gear and tools. PATAGONIA was chosen as the trademark to call to mind
3 romantic visions of glaciers tumbling into fjords, jagged windswept peaks, gauchos,
4 and condors. Since at least 1973, the PATAGONIA brand has appeared on a multi-
5 colored label inspired by a silhouette of the jagged peaks of the Mt. Fitz Roy skyline
6 (the “P-6 logo”).

7 8. In the more than forty years since Patagonia, Inc.’s business started,
8 the PATAGONIA brand and its P-6 logo have become among the most identifiable
9 brands in the world. Patagonia, Inc.’s products now include a wide range of apparel
10 products and equipment, including technical products designed for climbing, skiing
11 and snowboarding, surfing, fly fishing, and trail running, as well as sportswear,
12 which are sold around the world.

13 9. Over the years, Patagonia, Inc. has been recognized and honored for
14 its business initiatives, including receiving the Sustainable Business Counsel’s first
15 “Lifetime Achievement Award.” In 1996, with an increased awareness of the
16 dangers of pesticide use and synthetic fertilizers used in conventional cotton
17 growing, Patagonia, Inc. began the exclusive use of organically grown cotton and
18 has continued that use for more than twenty years. It was a founding member of
19 the Fair Labor Association[®], which is an independent multi-stakeholder verification
20 and training organization that audits apparel factories. Additionally, since 1985
21 Patagonia, Inc. has pledged 1% of sales to environmental groups to preserve and
22 restore our natural environment, donating more than \$100 million to date. In 2002,
23 Patagonia, Inc.’s founder, Yvon Chouinard, along with others, created a non-profit
24 called 1% For the Planet[®] to encourage other businesses to do the same. Today,
25 more than 1200 member companies have donated more than \$150 million to more
26 than 3,300 nonprofits through 1% For the Planet. In 2012, Patagonia, Inc. became
27 one of California’s first registered Benefit Corporations, ensuring Patagonia, Inc.
28 could codify into its corporate charter consideration of its workers, community,



1 and the environment. In 2016, Patagonia, Inc. pledged to donate all revenue from
2 sales on Black Friday, donating \$10 million to environmental grantees in response
3 to customers' purchases on that day. In 2018, Patagonia, Inc. pledged an additional
4 \$10 million in grants to environmental groups in response to recent tax cuts given
5 to businesses.

6 10. Patagonia Provisions, Inc. is a California corporation headquartered
7 at 259 West Santa Clara Street, Ventura, California 93001. For several years,
8 Provisions has developed, marketed, and sold socially and environmentally
9 responsible food items under the PATAGONIA PROVISIONS® Mark, including
10 buffalo jerky, salmon, fruit and almond bars, and soup mixes. Patagonia and
11 Provisions are related companies.

12 11. Anheuser-Busch, LLC ("AB") is a limited liability company that,
13 in its corporate filings, alleges its principal place of business is One Busch Place,
14 St. Louis, Missouri 63118. AB is a global producer of beer and other products and
15 services under a multitude of brands. Patagonia is informed and believes that AB
16 maintains a sophisticated department of trademark attorneys and an array of outside
17 counsel to procure, maintain, and enforce these brands and trademarks. Although
18 the primary products sold by AB are beers, AB and, on information and belief, its
19 parent corporation, Anheuser-Busch Inbev S.A., use and maintain trademarks for
20 additional products categories, including for apparel under the STELLA ARTOIS,
21 HOEGARDEN, and LEFFE marks, among others, and for educational and
22 charitable services under the OCTOBER, LA SAVOIR, and THE SIMPLE
23 COMPLEXITIES OF BEER brands. Among its brands is AB's PATAGONIA beer,
24 newly launched in the United States. Though AB has not made any effort to obtain
25 a PATAGONIA registration for apparel products or educational or charitable
26 services—presumably because it knows such applications would be futile in light
27 of Patagonia's broad rights—AB is also producing and distributing such products
28 and services.



1 15. Venue is proper in this Court under 28 U.S.C. § 1391(b) because AB
2 transacts business in this district and a substantial part of the events giving rise to
3 the claims asserted arose in this district.

4 **AB Unlawfully Obtained the PATAGONIA Registration for Beer**

5 16. AB purports to own U.S. Trademark Registration No. 4,226,102. That
6 registration issued from an intent to use application originally filed by Warsteiner
7 Importers Agency, Inc. (“Warsteiner”), a German brewer and, on information and
8 belief, competitor of AB. Patagonia is informed and believes that the registration
9 was procured unlawfully and is void from its inception.

10 17. Plaintiffs’ investigation, to date, of AB’s unlawful acquisition of
11 Warsteiner’s intent to use application reveals as follows:

12 18. On June 8, 2006, Warsteiner filed an “intent to use” application for
13 PATAGONIA in International Class 32 for beer, declaring a bona fide intention
14 to use the mark in interstate commerce.

15 19. On July 12, 2006, Warsteiner petitioned to cancel a then-existing
16 United States registration for PATAGONIA for beer belonging to Cerveceria Y
17 Malteria Quilmes S.A.I.C.A.G. (“Quilmes”). The U.S. Patent and Trademark Office
18 (“Trademark Office”) cancelled the Quilmes registration on November 17, 2006.

19 20. On January 1, 2007, AB acquired a Luxembourg-based holding
20 company that controlled 93% of Quilmes International, which owned the Argentine
21 Quilmes entity that previously owned the United States trademark registration for
22 PATAGONIA that Warsteiner had cancelled one month earlier.

23 21. On July 21, 2009, after opposition proceedings from a third party, the
24 Notice of Allowance for Warsteiner’s intent to use application was issued, inviting
25 Warsteiner to secure its registration by showing commercial use of the mark.

26 22. On January 18, 2010, Warsteiner requested an extension of time to file
27 its statement of use. For the next two years there was no activity on Warsteiner’s
28 intent to use application, except that it filed similar extensions every six months to



1 keep the application alive. On January 5, 2012, Warsteiner filed its fifth and final
 2 permissible extension to show use, which was set to expire July 21, 2012.

3 23. On May 14, 2012, Andrea K. Cannon, a trademark attorney employed
 4 by AB, substituted in as the correspondent and attorney of record, representing
 5 Warsteiner in the proceeding involving its intent to use application.

6 24. At the same time that AB’s lawyer took over Warsteiner’s trademark
 7 application, AB submitted labels to the Alcohol and Tobacco Tax and Trade Bureau
 8 (TTB) for COLA approval, a prerequisite to selling beer in the United States. On
 9 July 17, 2012, four days before Warsteiner’s intent to use application was set to
 10 fall abandoned for failure to use the mark, AB’s attorney filed a statement of use
 11 *on behalf of Warsteiner*, showing a single bottle as a specimen that used the same
 12 “Patagonia” label that AB had recently submitted to the TTB for approval. The
 13 label used for both AB’s COLA Application and Warsteiner’s statement of use
 14 are shown below.

AB’s COLA Filing Label	Warsteiner’s Evidence of Use
 <p>The image shows two versions of the Patagonia beer label. The top one is a green neck label with a white vertical strip containing the word 'PATAGONIA' and 'CERVEZA' below it. The bottom one is a full front label with a green border, a mountain range illustration, and the text 'PATAGONIA Cerveza AMBER LAGER'.</p>	 <p>The image shows a photograph of a dark glass bottle of Patagonia Amber Lager beer. The bottle has a green neck label and a full front label that matches the design shown in the adjacent column.</p>



1 25. In the statement of use submitted to the Trademark Office, Warsteiner
2 swore—through AB’s attorney—that the bottle of AB beer showed *Warsteiner’s* use
3 of PATAGONIA in interstate commerce, and that it had first sold beer in the United
4 States under the mark one day earlier, on July 16, 2012. But Warsteiner owns no
5 COLA for the label shown in the statement of use and, on information and belief,
6 could not legally have sold the beer in this form. In short, there is no evidence
7 that Warsteiner actually used the applied-for trademark and, it appears, simply
8 acquiesced in AB’s misrepresentation to the Trademark Office that Warsteiner
9 had used the mark in the United States. The specimen did not show AB’s beer in
10 a commercial context, such as a store shelf. Instead, the submission consisted of
11 two photos of a single bottle of PATAGONIA-labeled beer on a table in a white-
12 walled room.

13 26. On October 16, 2012, Warsteiner’s purported trademark registration
14 for PATAGONIA was issued by the Trademark Office.

15 27. On February 8, 2013, AB’s lawyer recorded that Warsteiner
16 had assigned the registration to AB. A “corrected” assignment was filed on
17 February 22, 2013. The document verifying the assignment states it “assigns ...
18 all right, title, in and to the PATAGONIA *Application* and Mark, together with the
19 goodwill of the business symbolized by the PATAGONIA mark *and any resulting*
20 *registration,*” revealing, on information and belief, that the assignment was drafted
21 *before* any registration had issued and purporting to assign the application:

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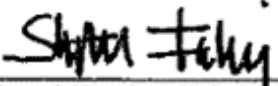
Appendix III

MODEL FORM OF ASSIGNMENT OF U.S. TRADEMARK

Whereas WARSTEINER IMPORTERS AGENCY, INC. ("WIA") with a principal place of business at 9359 Allen Road, West Chester, Ohio 45609 has filed an application for registration with the U.S. Trademark Office (Serial No. 78/903,572) (the "PATAGONIA Application") for the mark PATAGONIA (the „Mark“) ; and

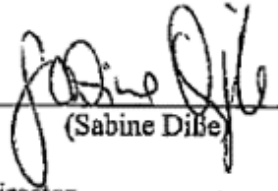
Whereas ANHEUSER-BUSCH, LLC , with a principal place of business at One Busch Place, St. Louis, Missouri 63118 („Buyer“) wishes to acquire the PATAGONIA Application and Mark and any resulting registration.

Now, therefore, for good and valuable consideration, WIA hereby assigns to ANHEUSER-BUSCH, LLC all right, title, and interest in and to the PATAGONIA Application and Mark, together with the goodwill of the business symbolized by the PATAGONIA mark and any resulting registration.



Signed (Stephan Fahrigr)

Director
Title



(Sabine Dibe)

Director

WARSTEINER IMPORTERS AGENCY, INC.

Dated: 20.12.2012

28. Intent to use trademark applications cannot be assigned unless the assignor also transfers the existing business unit which owns the application and goodwill associated with the mark (which only can be created through use). There is no evidence that Warsteiner became part of AB as part of this transaction; indeed, Warsteiner continues to exist as an independent entity to this day. Knowing that Warsteiner could not lawfully assign the intent to use trademark application to AB, and knowing that Warsteiner could not show the use needed to obtain the trademark registration, AB and Warsteiner, on information and belief, colluded to deceive the Trademark Office—seeking to show that Warsteiner was responsible for



1 commercial use of the PATAGONIA beer shown in the statement of use. While the
2 ostensible reason for this collusion is not reflected in the public record, Patagonia is
3 informed and believes that the only purpose for AB’s attorney to have appeared
4 before the Trademark Office on behalf of its competitor to complete an application
5 and file a statement of use—using AB-produced beer and AB-owned labels and
6 packaging—was to create the illusion that Warsteiner was entitled to perfect its
7 registration while, under a transaction that remained undisclosed to the Trademark
8 Office, Warsteiner’s non-use of the PATAGONIA trademark was disguised. Absent
9 this subterfuge, the Trademark Office would have deemed Warsteiner’s application
10 abandoned.

11 **AB’s False Section 8 & 15 Filing**

12 29. After obtaining the PATAGONIA registration, Patagonia is informed
13 and believes that AB made no commercial use of the mark in the United States until
14 its recent campaign. Indeed, the use complained of in this complaint is AB’s *first*
15 bona fide use of the PATAGONIA mark in the United States, more than six years
16 after the registration issued.

17 30. Despite this, on October 5, 2018, AB made the following sworn
18 statement to the Trademark Office, to renew and preserve its registration: “The
19 mark has been in continuous use in commerce for five consecutive years after the
20 date of registration ... and is still in use in commerce on or in connection with all
21 goods/services.” The filing itself warned AB that any willfully false statement
22 would jeopardize the validity of the trademark registration.

23 31. AB’s current press releases and promotional statements—together with
24 its disclosures in its public filings—indicate that AB made no bona fide commercial
25 use of its unlawful PATAGONIA trademark in the five years following issuance
26 of the registration, and contradict AB’s sworn statement to the Trademark Office.
27 AB’s annual reports up to and including the 2017 report identify PATAGONIA as
28 a “local craft brand” in the “Latin America South” category. The brand is only



1 mentioned once in the company’s 2016 report, together with dozens of other beers
2 under a lengthy list of “Local Brands” in the report’s trademark notice. Similarly,
3 in 2015, the brand is described as only available in the Latin America South market,
4 and even within that market, distinguished from “global brands” such as Corona and
5 Stella Artois, and “international brands” Hoegarden and Leffe.

6 32. The February 28, 2019, press release announcing AB’s 2018 financial
7 results stated that AB is “identifying opportunities to *introduce* existing brands into
8 *new* markets. Examples of this practice include Argentina’s Patagonia in certain
9 regions of the U.S. ...” (emphasis added).

10 33. AB’s recent promotional statements follow suit. A Beer Business
11 Daily trade journal article in which Harry Lewis, AB’s Vice President of New
12 Brands, is heavily quoted, explains that AB “quietly began testing” the
13 PATAGONIA beer “stateside” in 2018, and more recently launched a “pilot
14 program” in Colorado.




15 34. The net effect of Warsteiner’s intent to use application, the mis-
16 reported assignment to AB, and AB’s covert maintenance of the registration while
17 it waited for the additional protections provided by the five-year renewal filing
18 follow: AB effectively reserved the PATAGONIA trademark for more than a
19 decade before the mark appears genuinely to have been used in conjunction
20 with AB’s recent launch of its PATAGONIA-branded beer. During this interval,
21 Provisions’ own application to register the mark PATAGONIA PROVISIONS for
22 wine was refused, partly on the strength of Warsteiner’s trademark, then owned
23 by AB. The registration continues to harm Plaintiffs, including because AB has
24 cautioned Patagonia against using Plaintiffs’ PATAGONIA trademark in connection
25 with beer on the strength of AB’s supposed rights in its registration.

26 **The PATAGONIA Trademarks**

27 35. Plaintiffs own numerous registrations for and including the
28 PATAGONIA trademark and P-6 logo, both together and alone, and the



1 PATAGONIA PROVISIONS trademark, for a wide-ranging assortment of products
2 and services. Among these are the following U.S. trademark registrations:

Trademark	Reg. No. / Reg. Date	Goods	Date of First Use
PATAGONIA	1189402 / Feb. 9, 1982	Men's and Women's Clothing – Namely, Sweaters, Rugby Shirts, Walking Shorts, Trousers, Jackets, Mittens, Hoods, and Rainwear.	08/1974
	1294523 / Sept. 11, 1984	Men's, Women's, and Children's Clothing – Namely, Jackets, Pants, Vests, Gloves, Pullovers, Cardigans, Socks, Sweaters, Underwear, Shirts, Shorts, Skirts, and Belts.	08/1974- 1981
	1547469 / July 11, 1989	Men's, Women's, and Children's Clothing – Namely, Jackets, Pants, Shirts, Sweaters, Vests, Skirts, Underwear Tops and Bottoms, Socks, Gloves, Mittens, Hats, Face Masks, Balaclava, Gaiters, and Belts.	08/1974
	1775623 / June 8, 1993	Luggage, Back Packs, and All-Purpose Sports Bags.	08/1988
PATAGONIA	1811334 / Dec. 14, 1993	Luggage, Back Packs, Fanny Packs, and All- Purpose Sport Bags, Footwear, Ski Bags, and Ski Gloves.	08/1990
PATAGONIA	2260188 / July 13, 1999	Computerized on-line ordering activities in the field of clothing and accessories; providing information in the field of technical clothing and accessories for use in	10/1995



Trademark	Reg. No. / Reg. Date	Goods	Date of First Use
		recreational, sporting, and leisure activities; providing information in the field of existing and evolving environmental issues.	
PATAGONIA.COM	2392685 / Oct. 10, 2000	On-line retail store and mail order services featuring technical clothing, footwear, and accessories; computer services in the nature of on-line information related to the environment and clothing.	10/1995
PATAGONIA	2662619 / Dec. 17, 2002	Retail store services featuring clothing, footwear, luggage, and a wide variety of sporting goods and accessories.	06/1986
PATAGONIA PROVISIONS <i>(owned by Provisions)</i>	4894914 / Feb. 2, 2012	Salmon, not live.	08/2013
PATAGONIA PROVISIONS <i>(owned by Provisions)</i>	4168329 / July 3, 2012	Salmon jerky.	04/2012
PATAGONIA PROVISIONS <i>(owned by Provisions)</i>	4,786,172 / Aug. 4, 2015	Mugs all for use in camping and outdoor events; mugs used to keep food and drink cold, drink bottles sold empty; camping gear dinnerware and cook-ware, namely, pots.	09/2014
PATAGONIA PROVISIONS <i>(owned by Provisions)</i>	4,795,759 / Aug. 18, 2015	Tsampa (Tibetan porridge) and mixes for making tsampa comprising processed roasted grains.	09/2014
PATAGONIA PROVISIONS <i>(owned by Provisions)</i>	4,809,079 / Sept. 8, 2015	Snack bars containing primarily dried fruit and nuts; mixes for making soup comprising roasted	09/2014



Trademark	Reg. No. / Reg. Date	Goods	Date of First Use
		grains, flour, olive oil, and spices; soup mixes.	
PATAGONIA PROVISIONS <i>(owned by Provisions)</i>	4822430/ Sept. 29, 2015	Bison jerky, buffalo jerky.	08/2015
PATAGONIA PROVISIONS <i>(owned by Provisions)</i>	4917049 / Mar. 15, 2016	Online retail store services featuring food, namely, bison jerky, buffalo jerky, salmon jerky, snack bars containing primarily dried fruit and nuts, mixes for making soup comprising roasted grains, flour, olive oil and spices; providing current events news related to topics of general interest; provid- ing on-line publications in the nature of periodical columns and blogs in the field of food, recipes, lifestyle, the environment, and topics of general interest; providing information, news and commentary related to recipes; providing information, news, and commentary regarding food, namely, information, news, and commentary related to cooking food (among others).	11/2013
PATAGONIA WORKS	4791042 / Aug. 11, 2015	Capital investment services for research and development projects; providing grants and seed money to environmentally and socially conscious companies and projects.	05/2013

/ / /



1 36. These registrations are in full force and effect. Many have become
2 incontestable under 15 U.S.C. § 1065. Plaintiffs also have common law rights
3 in their trademarks covering other apparel and food products, and charitable and
4 educational services in a broad array of environmental issues, including agricultural
5 issues related to the food and grain supply chain.

6 37. For example, the Provisions website explains the process and benefits
7 related to brewing beer with a perennial grain called Kernza[®]. Kernza is a grain
8 with long roots and perennial growth that allow it to thrive without tilling or pesti-
9 cides; it uses less water than conventional wheat, prevents erosion, and removes
10 more carbon from the atmosphere than annual grains. Provisions, since 2013,
11 has, in collaboration with others, produced beer and educated consumers about the
12 importance to the environment of the agricultural choices made in producing beer.
13 For example, Provisions reports regarding its LONG ROOT ALE products:

14 We believe the future of farming—and our planet—lies
15 in something called organic regenerative agriculture.
16 Organic regenerative agriculture restores soil biodiversity,
17 sequesters carbon, and efficiently grows crops without
18 chemical fertilizers or pesticides. Researchers at the Rodale
19 Institute have found that a switch to organic regenerative
20 techniques could actually store enough carbon in the soil
21 to reverse global climate change.

22 38. Collectively, when referring to marks owned by Patagonia or
23 Provisions, these marks, including Plaintiffs’ registered trademarks and their
24 common law marks, are referred to as the “PATAGONIA” brand or trademarks.
25 The PATAGONIA trademarks are distinctive, arbitrary, and fanciful, entitled to
26 the broadest scope of protection, and certain of the PATAGONIA trademarks are
27 registered in ninety countries.

28 / / /



1 39. For many years prior to the events giving rise to this Complaint
2 and continuing to the present, Plaintiffs annually have spent enormous amounts
3 of time, money, and effort advertising and promoting the products and services on
4 which their PATAGONIA trademarks are used. PATAGONIA brand products are
5 advertised in print and on the Internet. In addition to advertising by Plaintiffs, the
6 PATAGONIA trademarks are also advertised and promoted and presented at point
7 of sale by numerous retailers. Consumers, accordingly, are exposed to the
8 PATAGONIA trademarks in a variety of shopping and post-sale contexts.

9 40. Plaintiffs have sold their PATAGONIA brand products all over
10 the world, including throughout the United States and California. Through their
11 promotion and investment in the PATAGONIA brand—combined with extensive
12 sales, publicity, awards, and leadership in sustainable sourcing practices—Plaintiffs
13 have acquired enormous goodwill in their PATAGONIA trademarks.

14 41. The PATAGONIA mark is famous within the meaning of the
15 Trademark Dilution Revision Act, and has been since long before AB began
16 selling PATAGONIA beer in the United States. The mark enjoys strong consumer
17 recognition, is used as a household term to refer to Patagonia or its products, and
18 is recognized around the world and throughout the United States by consumers as
19 signifying high quality products and services from a responsible company.

20 **AB's Infringement and Dilution of Patagonia's Trademark Rights**

21 42. Consistent with the comments from AB's Vice President of New
22 Brands, quoted above, AB recently has launched its PATAGONIA branded beer
23 in various U.S. markets. AB has surrounded its promotion of the beer products
24 with PATAGONIA branded apparel and a plant-a-tree initiative in an attempt
25 to draw upon the same associations that consumers have with Patagonia's
26 PATAGONIA brand.

27 43. As described above, AB made token use, if any, of the PATAGONIA
28 beer prior to the U.S. launch of the brand in late 2018. AB has not accumulated any



1 trademark rights by way of this token use, and will not, unless consumers come to
2 secondarily associate PATAGONIA beer exclusively with AB.

3 44. When it launched PATAGONIA beer, AB modified the neck label
4 to create a new “housemark” for its products consisting of a mountain silhouette
5 above the PATAGONIA name (defined above as “AB’s PATAGONIA logo”). This
6 mimics Patagonia’s P-6 logo and reinforces consumers’ associations between AB’s
7 PATAGONIA beer and Patagonia. The new label is being used on billboards, signs,
8 apparel, packaging, and advertisements. On the billboard below, this new label is
9 used in an advertisement “introducing” the product and pairing this introduction
10 with the slogan “you buy a case, we plant a tree”:

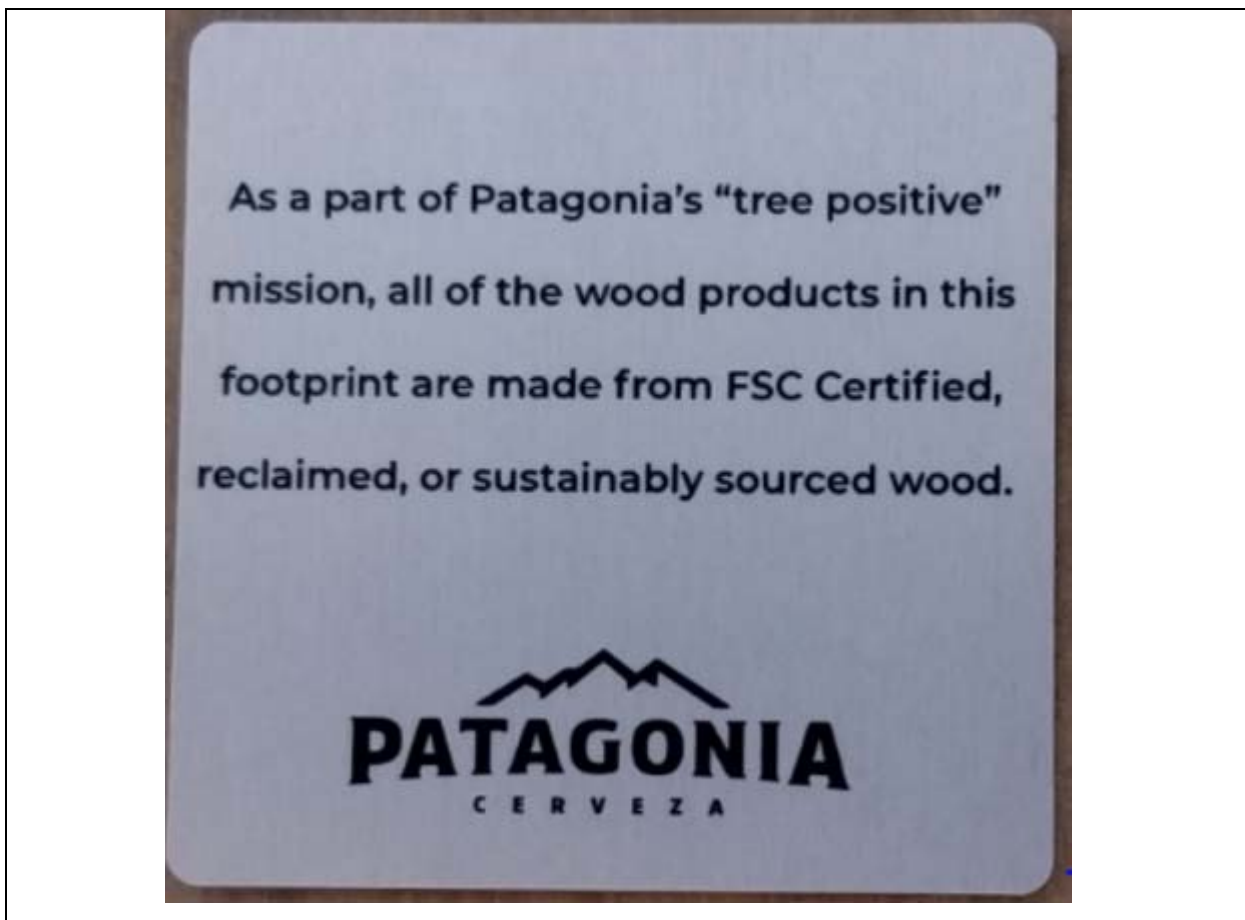


21 45. Southern Eagle Distributing now has AB’s PATAGONIA Cerveza on
22 its website, introducing the U.S. launch of this beer with no indication it has been
23 used continuously for the last six years: “Originally from the Patagonia region in
24 South America, they’ve decided to start their next adventure in the U.S.”

25 46. In a January 2019 interview, AB’s Chief U.S. Sales Officer, Brendan
26 Whitworth, stated “AB InBev owns a brand in Argentina called Patagonia which
27 research indicated could have potential in the Colorado market,” again indicating
28 AB had not previously sold the beer in the U.S.



1 47. In the following signage, AB announces “Patagonia’s ‘tree positive’
2 mission,” referring to its new beer brand and to an entity, all at once usurping
3 Patagonia’s famous mark and its corporate identity, and again using AB’s
4 PATAGONIA logo as a “housemark.”



20 48. The same “housemark” was used on a variety of apparel products
21 that AB representatives were wearing and distributing to consumers in a recent
22 promotion. Side by side comparisons of the parties’ respective marks in use follow.



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49. There is no question that AB is well aware of Patagonia’s prior rights, or that it is using this array of promotional tools to try and capture Patagonia’s hard-earned goodwill for itself. AB has surrounded its launch of PATAGONIA beer with the goods and services, including apparel and sustainability, that are most responsible for making Patagonia’s brand famous. If there were any question remaining that AB intends to draft on Patagonia’s reputation and consumer associations with its brand, an AB representative recently contacted Provisions seeking an “interview” about the Kernza grain use in Provisions’ Long Root Ale.

50. Consumers’ longstanding association of the PATAGONIA brand with Patagonia will likely be substantially diminished and eroded if AB continues to use Patagonia’s brand to market AB’s products. Further, consumers will doubtless acquire negative associations with the PATAGONIA brand of beer from discovering the truth behind AB’s pretense that PATAGONIA beer is made in California at a small craft brewery, rather than by one of the largest beer producers in the world. Even if consumers come away from AB’s products with a positive

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1 experience, Patagonia’s famous brand will be eroded and diminished by AB’s use
2 of the PATAGONIA trademark.

3 **Harm to Patagonia**

4 51. AB’s activities have caused consumer confusion in the marketplace.
5 Consumers have, for example, attributed AB’s PATAGONIA beer to Plaintiffs,
6 causing a range of damages including depriving Plaintiffs of their right to control
7 the reputation associated with their brands and marks. On information and belief,
8 AB intended this outcome when it tailored its launch of the PATAGONIA beer to
9 target Patagonia’s consumers.

10 52. AB’s actions have caused and will cause irreparable harm to Plaintiffs
11 for which money damages and other remedies are inadequate. Unless AB is
12 restrained by this Court, it will continue to cause irreparable damage and injury
13 to Plaintiffs by, among other things:

14 a. Depriving Plaintiffs of their statutory rights to obtain
15 registrations for, use, and control use of their trademarks;

16 b. Creating a likelihood of confusion, mistake, and deception
17 among consumers and the trade as to the source of the infringing
18 products and services, including beer, apparel, sustainability education,
19 and charitable environmental programs;

20 c. Creating a likelihood of confusion among potential
21 partners with whom Plaintiffs have or may produce beer products,
22 about a Patagonia or Patagonia Provisions partnership with AB, such
23 that Plaintiffs’ ability to secure the services of or collaborate with high
24 quality craft brewers is diminished or eliminated;

25 d. Causing the public falsely to associate Plaintiffs with AB
26 and/or its products, or vice versa;

27 / / /

28 / / /



1 e. Causing incalculable and irreparable damage to Plaintiffs’
2 goodwill and diluting the capacity of the famous PATAGONIA
3 trademark to differentiate its products from those of its competitors;

4 f. Causing incalculable and irreparable damage to
5 Patagonia’s famous PATAGONIA trademark by creating negative
6 associations with AB’s PATAGONIA beer products, apparel products,
7 and sustainability and philanthropic programs;

8 g. Causing Plaintiffs to lose sales of their genuine
9 PATAGONIA brand products and services; and

10 h. Causing AB to capture profits, premiums and goodwill
11 that are only available due to its exploitation of the PATAGONIA
12 brand, all to the detriment of deceived consumers and Patagonia.

13 Accordingly, in addition to damages and recovery of AB’s profits, Plaintiffs are
14 entitled to injunctive relief against AB and all persons acting in concert with it.

15 **FIRST CLAIM**

16 **FEDERAL TRADEMARK INFRINGEMENT**

17 **(15 U.S.C. §§ 1114-1117)**

18 53. Plaintiffs reallege and incorporate by reference each of the allegations
19 contained in paragraphs 1 through 52 of this Complaint as if fully set forth here.

20 54. AB has used—in connection with the sale, offering for sale, distribu-
21 tion, or advertising of its apparel products—words and symbols that infringe upon
22 Plaintiffs’ registered trademarks, including the PATAGONIA trademark and the
23 P-6 logo.

24 55. AB’s use of the registered PATAGONIA trademarks on apparel creates
25 a likelihood of consumer confusion that AB is authorized to produce and distribute
26 PATAGONIA products, or is associated or affiliated with Patagonia, when it is not.

27 / / /

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1 68. Patagonia and the public will suffer irreparable harm if AB's dilution
2 of the famous PATAGONIA word mark continues and Patagonia is entitled to an
3 injunction pursuant to 15 U.S.C. §§ 1116(a) and 1125(c) that requires AB to stop
4 use of any PATAGONIA marks and any other mark or design that diminishes or
5 disparages the PATAGONIA word mark or diminishes the association consumers
6 have between Patagonia and the PATAGONIA word mark.

7 **FOURTH CLAIM**

8 **TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION**

9 **UNDER CALIFORNIA STATUTORY LAW**

10 **(Cal. Bus. & Prof. Code §§ 14320, 14335, and 17200 et seq.)**

11 69. Plaintiffs reallege and incorporate by reference each of the allegations
12 contained in paragraphs 1 through 68 of this Complaint.

13 70. Plaintiffs are the owners of numerous registrations as well as common
14 law rights for the PATAGONIA trademarks.

15 71. To enhance the commercial value of its offerings, AB has used the
16 PATAGONIA trademarks on its beer, apparel, educational, and charitable and
17 philanthropic goods and services. AB's conduct is likely to cause confusion,
18 mistake, or deception by or in the public as to the affiliation, connection, associa-
19 tion, origin, sponsorship, or approval of the infringing products and services to
20 the detriment of Plaintiffs and the PATAGONIA trademarks, and in violation of
21 California Business & Professions Code §§14320 *et seq.* and §§ 14335 *et seq.*

22 72. AB's conduct also constitutes an "unlawful, unfair or fraudulent
23 business act[s] or practice[s] and unfair, deceptive, untrue or misleading
24 advertising" within the meaning of California Business & Professions Code
25 §§ 17200 *et seq.*

26 73. Plaintiffs are entitled to monetary and injunctive relief. The public and
27 Plaintiffs will suffer irreparable harm if AB's infringements continue. Therefore,
28 Plaintiffs are entitled to an injunction that requires AB to stop use of any



1 PATAGONIA trademarks and to stop using any other mark or design that is likely
2 to cause confusion about the origin of products or services bearing the PATAGONIA
3 trademarks or about whether Plaintiffs have sponsored or authorized AB in its use
4 of the PATAGONIA mark.

5 74. Because AB's actions have been committed willfully, maliciously, and
6 intentionally, Patagonia is entitled to reasonable attorneys' fees, and compensatory
7 and punitive damages pursuant to California Business & Professions Code
8 §§ 14320, 14330, and 14340.

9 **FIFTH CLAIM**

10 **CANCELLATION OF TRADEMARK REGISTRATION**

11 **(15 U.S.C. §§ 1060, 1119)**

12 75. Plaintiffs reallege and incorporate by reference each of the allegations
13 contained in paragraphs 1 through 74 of this Complaint.

14 76. Section 10(a) of the Lanham Act, 15 U.S.C. § 1060(a), provides in
15 relevant part as follows:

16 [N]o application to register a mark under section 1051(b)
17 of this title shall be assignable prior to the filing of an
18 amendment under section 1051(c) of this title to bring the
19 application into conformity with section 1051(a) of this title
20 or the filing of the verified statement of use under section
21 1051(d) of this title, except for an assignment to a successor
22 to the business of the applicant, or portion thereof, to which
23 the mark pertains

24 77. This means that Warsteiner could not assign the intent to use applica-
25 tion to AB without selling Warsteiner Imports Agency, or the relevant part of it,
26 to AB.

27 78. Plaintiffs are informed and believe and the transactional documents
28 recorded in the Trademark Office confirm that Warsteiner made no such sale of any



1 part of its business to AB and instead, solely in a pro-forma manner purported
2 to assign to AB its non-existent goodwill in the PATAGONIA mark for beer.
3 Section 10(a) of the act makes it clear that an assignment of so-called goodwill
4 in an intent to use application is insufficient to support its assignment.

5 79. Because Warsteiner never made any use of the PATAGONIA trade-
6 mark, the registration was void ab initio. Accordingly, the Court should order
7 Registration No. 4,226,102 to be cancelled and, pursuant to regulations, should
8 address its certified order to the USPTO, Office of the Solicitor, Mail Stop 8,
9 Director of the United States Patent and Trademark Office, P.O. Box 1450,
10 Alexandria, Virginia 22313-1450.

11 **SIXTH CLAIM**

12 **CANCELLATION OF TRADEMARK REGISTRATION**

13 **(15 U.S.C. § 1119)**

14 80. Plaintiffs reallege and incorporate by reference each of the allegations
15 contained in paragraphs 1 through 79 of this Complaint.

16 81. AB, when it assumed control over Warsteiner's intent to use applica-
17 tion, knew that Warsteiner never had used the PATAGONIA mark for beer, but
18 nonetheless swore to the Trademark Office that Warsteiner had, in fact, made
19 sufficient use in U.S. commerce to support a statement of use under 15 U.S.C.
20 § 1051(d). Had AB not made these false filings on Warsteiner's behalf, the
21 Trademark Office would have deemed Warsteiner's application abandoned
22 and would not have issued the registration.

23 82. Plaintiffs are informed and believe that AB already had engaged in
24 a transaction with Warsteiner in which Warsteiner's interest in the PATAGONIA
25 trademark application had been sold or transferred to AB as of May 2012, when its
26 attorney substituted for the correspondent Warsteiner attorney. AB made further
27 false statements to the Trademark Office when it continued to prosecute the applica-
28 tion on Warsteiner's ostensible behalf and stated later to the Trademark Office that



1 the assignment to AB did not occur until after the registration was issued when, in
2 fact, the improper assignment of the intent to use application already had occurred.

3 83. AB knew that its statements to the Trademark Office were false, but
4 made them with the intention to deceive the Trademark Office so that it would,
5 unaware of the improper assignment and non-use by Warsteiner, issue the registra-
6 tion for PATAGONIA on beer. The Trademark Office acted in reliance on these
7 fraudulent statements when it issued Registration No. 4,226,102 to Warsteiner.

8 84. Because AB, on Warsteiner's behalf, procured the registration by fraud,
9 and/or never made any use of the PATAGONIA trademark, the registration must be
10 cancelled. Accordingly, the Court should order Registration No. 4,226,102 to be
11 cancelled and, pursuant to regulations, should address its certified order to the
12 USPTO, Office of the Solicitor, Mail Stop 8, Director of the United States Patent
13 and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313-1450.

14 **SEVENTH CLAIM**

15 **RECTIFICATION OF TRADEMARK REGISTRATION**

16 **(15 U.S.C. § 1119)**

17 85. Plaintiffs reallege and incorporate by reference each of the allegations
18 contained in paragraphs 1 through 84 of this Complaint.

19 86. Plaintiffs are informed and believe that AB has not made genuine,
20 continuous use of the PATAGONIA trademark for beer in interstate commerce
21 over the past five years as recited in AB's statement of incontestability filed with
22 the Trademark Office on October 5, 2018.

23 87. Plaintiffs base these allegations on multiple published reports from AB
24 to the effect that the PATAGONIA product line is being introduced or launched as
25 of 2018, and by AB distributors who have stated that they expect to be receiving
26 access to PATAGONIA beer soon.

27 88. Because AB falsely declared that its registration was entitled to incon-
28 testable status, the Court should order rectification of Registration No. 4,226,102 by



1 striking the affidavit of incontestability from the register. The Court, pursuant to
2 regulations, should address its certified order to the USPTO, Office of the Solicitor,
3 Mail Stop 8, Director of the United States Patent and Trademark Office, P.O.
4 Box 1450, Alexandria, Virginia 22313-1450.

5 **PRAYER FOR JUDGMENT**

6 WHEREFORE, Plaintiffs pray that this Court grant it the following relief:

7 1. Adjudge that the PATAGONIA trademarks have been infringed by
8 AB in violation of Plaintiffs' rights under 15 U.S.C. § 1114;

9 2. Adjudge that the PATAGONIA trademarks have been infringed by
10 AB in violation of California statutory law;

11 3. Adjudge that Plaintiffs' common law rights in the PATAGONIA
12 trademarks have been infringed;

13 4. Adjudge that AB has falsely described the source of its products and
14 services in violation of Plaintiffs' rights under 15 U.S.C. § 1125(a);

15 5. Adjudge that AB has competed unfairly with Plaintiffs in violation
16 of California statutory law;

17 6. Adjudge that AB's activities are likely to dilute Patagonia's famous
18 PATAGONIA trademark in violation of Patagonia's rights under 15 U.S.C.
19 § 1125(c);

20 7. Adjudge that AB and its agents, employees, attorneys, successors,
21 assigns, affiliates, and joint venturers, and any person(s) in active concert or
22 participation with it, and/or any person(s) acting for, with, by, through, or under it,
23 be enjoined and restrained at first during the pendency of this action and thereafter
24 permanently from:

25 a. Manufacturing, producing, sourcing, importing, selling, offering
26 for sale, distributing, advertising, or promoting any goods or services that copy or
27 display any words or symbols that so resemble Plaintiffs' PATAGONIA trademarks
28 as to be likely to cause confusion, mistake, or deception, on or in connection with



1 any product or service that is not authorized by or for Plaintiffs, including, without
2 limitation, any product or service that (i) bears the PATAGONIA trademarks,
3 (ii) bears AB's mountain silhouette logo, or (iii) otherwise approximates Plaintiffs'
4 trademarks;

5 b. Using any word, term, name, symbol, device, or combination
6 that (i) causes or is likely to cause confusion, mistake, or deception as to the affilia-
7 tion or association of AB or its products or services with Plaintiffs, or as to the
8 origin of AB's products or services, (ii) contains any false designation of origin,
9 false or misleading description or representation of fact, (iii) contains any false or
10 misleading advertising, or (iv) causes likely dilution of the distinctiveness of the
11 PATAGONIA trademark or degrades it;

12 c. Further infringing the rights of Plaintiffs in and to their
13 PATAGONIA trademark, or otherwise damaging Plaintiffs' goodwill or business
14 reputation;

15 d. Further diluting the famous PATAGONIA trademark;

16 e. Otherwise competing unfairly with Plaintiffs in any manner; or

17 f. Continuing to perform in any manner whatsoever any of the
18 other acts complained of in this Complaint;

19 8. Order that Registration No. 4,226,102 shall be cancelled and address
20 its certified order to the USPTO, Office of the Solicitor, Mail Stop 8, Director of the
21 United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia
22 22313-1450;

23 9. Order that Registration No. 4,226,102 shall be rectified to strike AB's
24 statement of incontestability under section 15 of the Lanham Act, and address its
25 certified order to the USPTO, Office of the Solicitor, Mail Stop 8, Director of the
26 United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia
27 22313-1450;

28 / / /



1 10. Adjudge that AB, within thirty (30) days after service of the Court’s
2 judgment, be required to file with this Court and serve upon Patagonia’s counsel a
3 written report under oath setting forth in detail the manner in which it has complied
4 with the judgment;

5 11. Adjudge that Plaintiffs recover from AB its damages and lost profits,
6 and AB’s profits, in an amount to be proven at trial;

7 12. Adjudge that AB be required to account for any profits that are
8 attributable to its illegal acts, and that Plaintiffs be awarded (1) AB’s profits and
9 (2) all damages sustained by Plaintiffs, under 15 U.S.C. § 1117, plus prejudgment
10 interest;

11 13. Adjudge that the amounts awarded to Plaintiffs pursuant to 15 U.S.C.
12 § 1117 shall be trebled;

13 14. Adjudge that AB be obligated to pay punitive damages to Plaintiffs;

14 15. Adjudge that this is an exceptional case and that Plaintiffs be awarded
15 its costs and disbursements incurred in connection with this action, including
16 Plaintiffs’ reasonable attorneys’ fees and investigative expenses; and

17 16. Adjudge that all such other relief be awarded to Plaintiffs as this Court
18 deems just and proper.

19

20 DATED: April 9, 2019

Respectfully submitted,

21

KILPATRICK TOWNSEND & STOCKTON LLP

22

23

By: /s/ Gregory S. Gilchrist

24

GREGORY S. GILCHRIST

25

RYAN T. BRICKER

26

SOPHY MANES

27

ALEXANDRA N. MARTINEZ

28

Attorneys for Plaintiffs
PATAGONIA, INC. and
PATAGONIA PROVISIONS, INC.



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DEMAND FOR JURY TRIAL

Plaintiffs Patagonia, Inc. and Patagonia Provisions, Inc. demand that this action be tried to a jury.

DATED: April 9, 2019

Respectfully submitted,
KILPATRICK TOWNSEND & STOCKTON LLP

By: /s/ Gregory S. Gilchrist
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