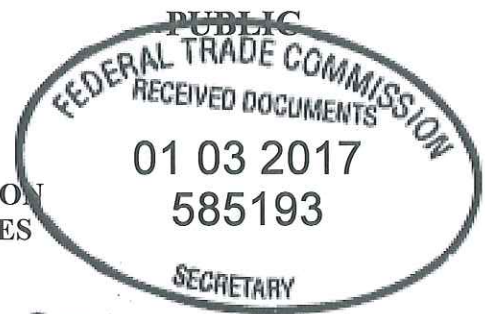


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of

1-800 Contacts, Inc.,
a corporation

Docket No. 9372

ORIGINAL

**RESPONDENT 1-800 CONTACTS' OPPOSITION TO COMPLAINT COUNSEL'S
MOTION TO COMPEL RESPONSE TO INTERROGATORY NO. 8**

I. INTRODUCTION

Complaint Counsel's motion to compel a further response to their Interrogatory No. 8 should be denied for three distinct reasons. First, the motion is untimely. As Complaint Counsel have acknowledged, Respondent declined on November 7, 2016, to further supplement its response to Interrogatory No. 8. In Complaint Counsel's words at the time, "[w]e have reached impasse on Interrogatories 8, 9, and 12." Declaration of Gregory P. Stone in Support of Respondent's Opposition To Complaint Counsel's Motion To Compel Response To Interrogatory No. 8 ("Stone Decl."), Exhibit A. Complaint Counsel thus were required under the Scheduling Order to file a motion to compel a further response to Interrogatory No. 8 no later than December 7, 2016, which they failed to do.

Second, Complaint Counsel can as readily as Respondent identify the communications Respondent had with Settling Parties in which Respondent identified particular advertisements as infringing. Complaint Counsel have access to an electronic database containing communications from Respondent to a Settling Party that attach advertisements, and the necessary searches can

be performed just as readily by Complaint Counsel as by Respondent. As a consequence, Respondent's reliance on Rule 3.35(c) was appropriate. *See* Order on Complaint Counsel's Motion to Compel Responses to Interrogatories and to Reschedule Deposition, *In the Matter of North Texas Specialty Physicians*, Docket No. 9312, 2004 WL 318270 at *2 (Jan. 22, 2004) (rejecting challenge to Respondent's reliance on Rule 3.35(c) where "Complaint Counsel's interrogatories ask Respondent to identify specific documents from the documents that Respondent has already produced to Complaint Counsel that Respondent contends support certain contentions" and "Respondent has demonstrated that the burden of deriving or ascertaining the answers from the documents produced is substantially the same for Complaint Counsel as it is for Respondent.").

Third, Interrogatory No. 8 also seeks a description of the thought process by which counsel for 1-800 Contacts determined that there was a factual basis to believe that the advertisements in question were infringing. That thought process is quite clearly protected from discovery by the work product privilege and, to the extent the process was communicated to Respondent's officers or employees by its inside or outside counsel, by the attorney-client privilege. These issues were most recently addressed in the deposition of one of Respondent's outside counsel, Bryan Pratt, who testified to the information that was available to him to review in order to make a determination of whether an advertisement was or appeared to be infringing, and who asserted privilege over the thought process that he went through in making that determination. Complaint Counsel's effort to pierce or avoid these well-settled privileges should be rejected.

II. ARGUMENT**A. Complaint Counsel's Motion To Compel Is Untimely And Should Be Denied On That Ground**

Complaint Counsel filed their motion to compel on December 22, 2016, fifty-two (52) days after Respondent 1-800 Contacts served the response to Interrogatory No. 8 that is the subject of the motion. The motion is therefore untimely under paragraph 10 of the Scheduling Order. Moreover, even if the thirty-day deadline for motions to compel begins to run on the date on which the parties' meet-and-confer efforts reached an impasse, *see* Order on Respondent's Motion to Compel Documents Requested from Connecticut Life Insurance Company, *In the Matter of OSF Healthcare System*, Docket No. 9349, 2012 WL 588757 at *1 (Feb. 13, 2012), Complaint Counsel's motion to compel is still untimely.

Complaint Counsel's Statement Regarding Meet and Confer acknowledges that the *final* meet and confer regarding Respondent's Response to Interrogatory No. 8 took place on November 7, 2016, and that no further discussions regarding 1-800 Contacts' response to Interrogatory No. 8 occurred *after* that date. *See* Statement By Daniel J. Matheson Regarding Meet and Confer, attached to Complaint Counsel's Motion to Compel Response to Interrogatory No. 8. That same day, Mr. Matheson sent an email to Respondent's counsel that accurately stated "[w]e have reached impasse on Interrogatories 8, 9 and 12." Stone Decl., ex. A. Thus, Complaint Counsel were required to file their motion to compel by no later than December 8, 2016. The motion, filed on December 22, should be denied as untimely.¹

¹ Complaint Counsel appear to believe, because Respondent agreed in the November 7, 2016 call to amend its responses to two *other* interrogatories, that their 30-day clock was reset as to *all* of Respondent's interrogatory responses, even those where the parties had clearly "reached [an] impasse." Stone Decl., ex. A. There is no logical basis or precedential support for such an (footnote continued)

B. Respondent's Invocation Of Rule 3.35(c) In Responding To Interrogatory No. 8 Was And Is Clearly Appropriate Given The Subject Matter Of That Interrogatory

Complaint Counsel state that “[t]he principal question presented” by their motion to compel is whether 1-800 Contacts properly relied on Rule 3.35(c) in responding to Interrogatory No. 8. Motion to Compel at 1. Even if Complaint Counsel’s motion to compel was timely filed, it should nevertheless be denied, because Respondent’s invocation of Rule 3.35(c) was appropriate given the nature of Interrogatory No. 8 and the status of discovery in this matter.

Complaint Counsel’s Interrogatory No. 8 contained three subparts. The interrogatory sought: (1) the identity of the advertisements that 1-800 Contacts had identified to any of the Settling Parties as infringing 1-800 Contacts’ trademark rights; (2) a description of the “process” used by 1-800 Contacts to determine that the advertisements infringed 1-800 Contacts’ trademark rights; and (3) a description of the factual basis for 1-800 Contacts’ conclusion that the infringements had occurred. Declaration of Kathleen M. Clair, ex. 1, Interrogatory No. 8.

Respondent invoked Rule 3.35(c) in response to subpart (1) of the interrogatory, which sought the identity of “the allegedly infringing advertisements that Respondent previously *specifically identified* in communications with rivals – rather than . . . *all* allegedly infringing advertisements.” Complaint Counsel’s Motion to Compel at 1 (emphasis in original). In its response, 1-800 Contacts did not merely tell Complaint Counsel to review the entire set of produced documents, as Complaint Counsel suggest. Instead, Respondent pointed Complaint Counsel to the particular advertisements attached to letters or emails between 1-800 Contacts and one or more of the Settling Parties (*e.g.*, cease-and-desist letters sent by 1-800 Contacts), as well

interpretation, which would delay, rather than encourage, prompt judicial review of discovery disputes.

as the advertisements attached to pleadings filed by 1-800 Contacts in litigation against a Settling Party. Complaint Counsel can identify those documents just as easily as counsel for 1-800 Contacts could do so.

As a result of the CIDs, subpoenas *duces tecum*, and document requests that Complaint Counsel have served on the Settling Parties and 1-800 Contacts over the past eighteen months, Complaint Counsel have possessed all of those letters, emails, pleadings and attachments for a considerable period of time.² Complaint Counsel can readily search for such letters, emails and pleadings in their electronic database of produced documents in the very same way that counsel for 1-800 Contacts would – by using the names of the Settling Parties, the names of 1-800 Contacts’ lawyers, and other relevant terms as search tools. Complaint Counsel did not claim otherwise in their motion, nor could they. It was thus appropriate for 1-800 Contacts to rely on Rule 3.35(c). *See North Texas Specialty Physicians*, 2004 WL 318270 at *2 (rejecting challenge to Respondent’s reliance on Rule 3.35(c) where “Respondent has demonstrated that the burden of deriving or ascertaining the answers from the documents produced is substantially the same for Complaint Counsel as it is for Respondent”).

C. **The Thought Processes Of 1-800 Contacts Counsel Regarding The Potentially Infringing Nature Of Various Advertisements Are Privileged And Not A Proper Subject Of Discovery**

The second subpart of Interrogatory No. 8 asked 1-800 Contacts to describe the process by which it determined that the advertisements attached to 1-800 Contacts cease-and-desist letters and complaints infringed 1-800 Contacts’ trademarks. Clair Decl., ex. 1 at 2. The third

² Respondent produced many of these materials during the underlying Investigation (nearly all of the complaints and other pleadings are publicly available from the courts’ electronic filing systems), and Respondent completed production of all such communications months ago in response to Complaint Counsel’s initial requests for production. (Complaint Counsel has not raised any issues with the completeness of Respondent’s production of these materials.)

subpart of Interrogatory No. 8 sought the “factual basis for those determinations.” *Id.* 1-800 Contacts responded that, to the extent information responsive to these subparts of Interrogatory No. 8 were not privileged, the information was contained in correspondence or emails between 1-800 Contacts and the Settling Parties, pleadings filed by 1-800 Contacts in litigation with the Settling Parties, and the transcripts of Investigational Hearings of 1-800 Contacts’ employees. *See Clair Decl.*, ex. 6 at 23-24.³ 1-800 Contacts specifically asserted privilege over the process and thought processes used by it and its attorneys to make these determinations. *See id.*

There can be no dispute that the thought processes of counsel are privileged and not subject to discovery. For example, “[t]he doctrine of work-product immunity shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client's case. . . . Protecting attorneys’ work product promotes the adversary system by enabling attorneys to prepare cases without fear that their work product will be used against their clients.” *LabMD, Inc. v. Tiversa Holding Corp.*, No. CIV.A. 15-92, 2015 WL 1213043, at *4 (W.D. Pa. Mar. 17, 2015) (internal citations and quotation marks omitted). *See also Richard v. Caliber Home Loans, Inc.*, No. 2:15-CV-2647, 2016 WL 6573847, at *3 (S.D. Ohio Nov. 4, 2016) (the work product doctrine protects “the attorney’s mental impressions, including thought processes, opinions, conclusions, and legal theories.”); *In the Matter of Olin Corp.*, Docket No. 9196, 1985 WL 668861, at *2 (Nov. 26, 1985) (explaining that the work product doctrine “has an ‘inner core’ that protects the mental impressions, conclusions, opinions, or legal theories of counsel”). Material that reflects “an attorney’s mental impressions, conclusions, opinions, or

³ *See, e.g.*, Investigation Hearing Transcript of Bryce F. Craven at 126:16-23; 128:13-23; 134:7 – 135:3 (Sep. 3, 2015) (explaining the process used by 1-800 Contacts’ employees to identify sponsored advertisements that appeared in response to an Internet search for 1-800 Contacts’ trademarks in order to send to the “legal team”), attached as Stone Decl., ex. B.

legal theories, is referred to as ‘opinion work product,’” which “enjoys a nearly absolute immunity and can be discovered only in very rare and extraordinary circumstances.” *Cox v. Administrator U.S. Steel & Carnegie*, 17 F.3d 1386, 1422 (11th Cir. 1994).

As one of 1-800 Contacts’ outside counsel testified recently, he and/or other counsel for 1-800 Contacts would consider various advertisements by third parties that appeared in response to Internet searches for 1-800 Contacts’ trademarks. *See, e.g.*, Dep. Tr. Bryan G. Pratt, at 19:19 – 21:24, 27:12 – 30:8, attached as Stone Decl., ex. C; CX1185, attached as Stone Decl., ex. D. Counsel would then exercise his or her legal judgment to make a determination as to whether that third party was infringing on Respondent’s trademark or other rights and, if so, what particular advertisements to identify to that third party as evidencing the infringement. *See id.* The thought process by which counsel came to those legal judgments is protected by the work product privilege and, to the extent that process was communicated to Respondent, the attorney-client privilege. Complaint Counsel do not explain why counsel’s thought process in coming to a determination about whether a particular claim should be asserted is *not* privileged; they simply say that “a high-level description need not reveal privileged information.” Motion to Compel at 8. But to the extent a high level description that is not privileged can be provided, it has been provided. *See* Stone Decl., exs. C and D.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁴ 1-800 Contacts filed a complaint in federal court that set forth factual bases

⁴ As asserted in 1-800 Contacts’ Answer to the Complaint, one of the agreements at issue is a “sourcing and fulfillment agreement,” not a settlement agreement of litigation. Respondent 1- (footnote continued)

for the claims asserted. Stone Decl., exs. E – R. [REDACTED]

[REDACTED] *Id.*, exs. S

– CC. While the thought process of 1-800 Contacts’ counsel in determining which facts supported the asserted claims is certainly privileged, it is clear that it was objectively reasonable to assert that the advertisements in question supported such claims.⁵

Although a detailed discussion of the relevant case law is unnecessary here, there are numerous cases where motions to dismiss or motions for summary judgment have been denied in cases challenging the use of competitors’ trademarks in paid search advertising on grounds that would be equally applicable to the cases filed by 1-800 Contacts. Indeed, 1-800 Contacts provided a separate interrogatory response (which Complaint Counsel has chosen not to mention or challenge in their motion) that presents this information in more detail. Interrogatory No. 13 asked 1-800 Contacts to state the factual basis for its assertion in its answer that the lawsuits that resulted in the challenged settlement agreement constituted “*bona fide* trademark litigation.” In its response, 1-800 Contacts explained that (1) “the use of a trademark as a Search Engine Keyword that triggers the display of a competitor’s advertisement is a use in commerce under the Lanham Act,” *see, e.g., Network Automation, Inc. v. Advanced Sys. Concepts, Inc.*, 638 F.3d 1137, 1144 (9th Cir. 2011); *Rescuecom Corp. v. Google Inc.*, 562 F.3d 123, 128-41 (2d Cir.

800 Contacts, Inc.’s Answer and Defenses to Administrative Complaint, at 1 (filed Aug. 29, 2016).

⁵ In the litigation filed by 1-800 Contacts against Memorial Eye and Lens.com, the courts rejected arguments that the cases were not *bona fide* trademark litigations. *See 1-800 Contacts, Inc. v. Lens.com, Inc.*, 722 F.3d 1229, 1256 (10th Cir. 2013); Order, *Lens.com, Inc. v. 1-800 Contacts, Inc.*, No. 2:12CV00352 DS, (D. Utah Mar. 3, 2014), ECF No. 91; *1-800 Contacts, Inc. v. Lens.com*, No. 2:07-CV-591 CW, 2012 WL 113812, at *3 (D. Utah Jan. 13, 2012); and *1-800Contacts, Inc. v. Memorial Eye, P.A.*, No. 2:08-CV-983 TS, 2010 WL 988524, *1 (D. Utah, Mar. 15, 2010).

2009), (2) the analysis under the Lanham Act depends on a highly fact-specific inquiry that involves balancing a number of different factors (which differ by jurisdiction), and (3) “numerous courts have recognized the *bona fides* of trademark infringement and trademark dilution claims in analogous circumstances to those asserted by 1-800 Contacts.” Clair Decl., ex. 2, at 23-27 (1-800 Contacts’ Response to Interrogatory No. 13).

. . . .

For the reasons set forth above, Complaint Counsel’s motion to compel a further response to Interrogatory No. 8 should be denied.

DATED: January 3, 2017

Respectfully submitted,

/s/ Gregory M. Sergi

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Counsel for Respondent 1-800 Contacts, Inc.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

1-800 Contacts, Inc.,
a corporation

Docket No. 9372

**DECLARATION OF GREGORY P. STONE IN SUPPORT OF RESPONDENT'S
OPPOSITION TO COMPLAINT COUNSEL'S MOTION TO COMPEL
RESPONSE TO INTERROGATORY NO. 8**

I, Gregory P. Stone, declare as follows:

1. I am a member of the law firm of Munger, Tolles & Olson LLP, counsel for Respondent 1-800 Contacts, Inc. in this matter. I am duly licensed to practice law before the courts of the State of California and have appeared in this action pursuant to Rule 4.1 of the Commission's Rules of Practice.

2. I submit this declaration in support of Respondent's Opposition to Complaint Counsel's Motion to Compel Response to Interrogatory No. 8. I have personal knowledge of the facts stated in this declaration and, if called as a witness, could competently testify to them.

3. Attached hereto as Exhibit A is a true and correct copy of an email communication sent to me by Daniel J. Matheson on November 7, 2016.

4. Attached hereto as Exhibit B is a true and correct copy of excerpts from the Investigation Hearing of Bryce F. Craven taken on September 3, 2015.

5. Attached hereto as Exhibit C is a true and correct copy of excerpts from the deposition of Bryan G. Pratt taken on December 15, 2016.

6. Attached hereto as Exhibit D is a true and correct copy of CX1185, which describes the “monitoring” activity of Messrs. Pratt and Miller and that was the subject of testimony at Mr. Pratt’s deposition.

7. Attached hereto as Exhibits E-R are true and correct copies of complaints filed by 1-800 Contacts in federal courts against [REDACTED]: Complaint filed against Arlington Contact Lens Service, Inc., d/b/a Discount Contact Lenses (Ex. E); Complaint filed against Coastal Contacts, Inc. (Ex. F); Complaint filed against Contact Lens King, Inc. (Ex. G); Complaint filed against Empire Vision Center, Inc., d/b/a Lens123 (Ex. H); Complaint filed against Lenses for Less (Ex. I); Complaint filed against Lensfast, L.L.C. d/b/a ContactLens.com, Lensfast.com, and E-Contacts.com (Ex. J); Complaint filed against Memorial Eye, PA d/b/a Shipmycontacts.com, Ship-My-Contacts.com, and IWantContacts.com (Ex. K); Complaint filed against Premier Holdings, Inc., d/b/a Filmart, Eugene Lefkowitz, Sholomo Lefkowitz, and Judith Lefkowitz, d/b/a EZ Contacts USA (Ex. L); Complaint filed against Standard Optical Company (Ex. M); Complaint filed against Tram Data, LLC, d/b/a ReplaceMyContacts.com (Ex. N); Complaints filed against Vision Direct in 2002 and 2008 (Exs. O and P); Complaint filed against Walgreen Co. (Ex. Q); and Complaint filed against Web Eye Care, Inc. (Ex. R).

8. Attached hereto as Exhibits S-CC are true and correct copies of cease-and-desist letters sent by counsel for 1-800 Contacts [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PUBLIC

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on January 3, 2017 at Los Angeles, California.

/s/ Gregory P. Stone
Gregory P. Stone

EXHIBIT A

From: Matheson, Daniel <dmatheson@ftc.gov>
Sent: Monday, November 07, 2016 2:23 PM
To: Stone, Gregory; Beach, Julian
Cc: Blank, Barbara; Loughlin, Chuck; Slaiman, Charlotte; Green, Geoffrey; Chiarello, Gustav; Gray, Joshua Barton; Clair, Kathleen; Taylor, Mark; Hopkin, Nathaniel; Brock, Thomas H.
Subject: RE: Amended Responses to First Set of Interrogatories

Greg and Julian,

Thank you for speaking with Katie and me this afternoon. As we discussed, Respondent will provide amended responses to Interrogatories 1 and 7. We have reached impasse on Interrogatories 8, 9, and 12.

Regards,

Dan

From: Matheson, Daniel
Sent: Wednesday, November 02, 2016 1:07 PM
To: 'Stone, Gregory'
Cc: Blank, Barbara; Loughlin, Chuck; Slaiman, Charlotte; Green, Geoffrey; Chiarello, Gustav; Gray, Joshua Barton; Clair, Kathleen; Taylor, Mark; Hopkin, Nathaniel; Brock, Thomas H.
Subject: RE: Amended Responses to First Set of Interrogatories

Greg,

Monday morning works for us. How about 9:00 Pacific, 12:00 Eastern? If that works we can use my dial-in: (877)336-1831, passcode 3262075.

Our principal issues with your Interrogatory responses are the following:

- Interrogatory 1 – Your response does not identify each Settlement Agreement that produced a supposed benefit. This is an important part of the Interrogatory. It is a straightforward request that 1-800 identify the complete universe of Settlement Agreements. For example, I note that your response to Interrogatory 5 identifies correspondence with Johnson & Johnson and Ciba/Alcon that suggests the existence of a Settlement Agreement with 1-800 Contacts.
- Interrogatory 7 – Your response states that you will produce documents sufficient to show. That is not sufficient, as the Rule allows a reference to records only if the records are specifically identified.
- Interrogatory 8 – We do not agree that the factual basis for a contention made in a lawsuit is privileged, and we do not agree that a request to describe the process requires the disclosure of privileged information. Also, your reference to documents is not sufficient as the Rule allows a reference to records only if the records are specifically identified.

PUBLIC

- Interrogatory 9 – Your response suggests that your response to Interrogatory to 8 provides “representative examples of advertisements . . . that were likely to cause Consumer Confusion.” However, your response to 8 actually identifies zero advertisements.
- Interrogatory 12 – Your response provides more specificity than your initial response, which is very helpful. However, your response still refers to your document production without specifying the records pursuant to the Rule.
- Interrogatory 13 – Your response refers to documents without identifying the records.

Regards,

Dan

From: Stone, Gregory [<mailto:Gregory.Stone@mta.com>]

Sent: Tuesday, November 01, 2016 4:54 PM

To: Matheson, Daniel

Cc: Blank, Barbara; Loughlin, Chuck; Slaiman, Charlotte; Green, Geoffrey; Chiarello, Gustav; Gray, Joshua Barton; Clair, Kathleen; Taylor, Mark; Hopkin, Nathaniel; Brock, Thomas H.

Subject: RE: Amended Responses to First Set of Interrogatories

It seems most efficient to first meet and confer. Could you send me a short email outlining the issues you want to discuss? My schedule is a pretty booked up the rest of this week, but I can make time Monday morning if that would work.

From: Matheson, Daniel [<mailto:dmatheson@ftc.gov>]

Sent: Tuesday, November 01, 2016 12:14 PM

To: Stone, Gregory

Cc: Blank, Barbara; Loughlin, Chuck; Slaiman, Charlotte; Green, Geoffrey; Chiarello, Gustav; Gray, Joshua Barton; Clair, Kathleen; Taylor, Mark; Hopkin, Nathaniel; Brock, Thomas H.

Subject: RE: Amended Responses to First Set of Interrogatories

Greg,

The redactions appear appropriate, thank you. We have several substantive objections to your responses regarding which we request a meet and confer. Would you prefer to present this version to your client for verification prior to discussing our objections, or would it be more efficient to meet and confer to attempt to resolve our objections first? Please let us know how you wish to proceed, we are generally available to meet and confer this week.

Regards,

Dan

From: Stone, Gregory [<mailto:Gregory.Stone@mta.com>]

Sent: Monday, October 31, 2016 4:47 PM

To: Matheson, Daniel

Cc: Blank, Barbara; Loughlin, Chuck; Slaiman, Charlotte; Green, Geoffrey; Chiarello, Gustav; Gray, Joshua Barton; Clair, Kathleen; Taylor, Mark; Hopkin, Nathaniel; Brock, Thomas H.

Subject: Amended Responses to First Set of Interrogatories

Dan,

I attach for your review a copy of the current version of our Amended Responses to Complaint Counsel's First Set of Interrogatories. The information in italics and brackets is intended to be redacted or blacked out before the document is reviewed and verified by our client. Once you confirm that our redactions are correct, we will provide this to our client for its review and verification and then will serve a signed and verified copy on you.

Thank you,

Greg

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EXHIBIT B

IN CAMERA

SUBMITTED IN CAMERA

EXHIBIT C

IN CAMERA

SUBMITTED IN CAMERA

EXHIBIT D

IN CAMERA

SUBMITTED IN CAMERA

EXHIBIT E

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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

<p>1-800 CONTACTS, INC., a Delaware corporation;</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>ARLINGTON CONTACT LENS SERVICE, INC., d/b/a DISCOUNT CONTACT LENSES, an Ohio corporation,</p> <p style="text-align: center;">Defendant.</p>	<p>COMPLAINT</p> <p>Case No. 2:10-cv-131</p> <p>Judge Clark Waddoups</p> <p>(JURY DEMAND)</p>
--	---

Plaintiff 1-800 Contacts, Inc. ("1-800 Contacts" or "Plaintiff"), by and through counsel, alleges and complains against Defendant Arlington Contact Lens Service, Inc., d/b/a Discount Contact Lenses ("Defendant") as follows:

JURISDICTION AND VENUE

1. This is an action for trademark infringement and unfair competition under §§ 32 and 43 of the Lanham Act (a.k.a. Trademark Act of 1946, 15 U.S.C. §§ 1051-1127, as amended), and state law infringement and false advertising claims.

4734363_1.DOC

2. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (trademarks), and 15 U.S.C. § 1121 (trademarks). This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367(a), because those claims arise from the common nucleus of operative facts alleged in Plaintiff's federal claims.

3. This Court has personal jurisdiction over Defendant because, on information and belief, Defendant has transacted business in Utah and has caused damage to Plaintiff in Utah. Defendant has purposefully availed itself of the privilege of transacting business in this District by, *inter alia*, advertising its contact lens products via the Internet in this District, offering an interactive websites at www.discountcontactlenses.com and www.aclens.com accessible to consumers throughout the country, including in this District, which permits the consumer to create an account and order contact lenses to be shipped to the consumer in this District. Defendant has used Plaintiff's trademarks in connection with its Internet advertising, including in this District, without the authorization or consent of Plaintiff.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because there is personal jurisdiction over Defendant, and because a substantial part of Defendant's acts and omissions giving rise to Plaintiff's claims occurred in this judicial district.

PARTIES

5. Plaintiff 1-800 Contacts, Inc. is a Delaware corporation having its principal place of business at 66 East Wadsworth Park Drive, Draper, Utah 84020. Plaintiff is engaged in retail sales of contact lenses, including marketing and selling contact lenses via the Internet.

6. Upon information and belief, Defendant is an Ohio corporation having a place of business at 4265 Diplomacy Drive, Columbus, Ohio 43228. Upon information and belief,

Defendant is also engaged in retail sales of contact lenses, including marketing and selling contact lenses via the Internet in direct competition with Plaintiff.

7. Upon information and belief, Defendant owns and operates the website www.lensesforless.com, and possibly others, relating to its business of offering and selling contact lenses and vision-related products.

GENERAL ALLEGATIONS

8. For over a decade, Plaintiff has been, and continues to be, engaged in the business of advertising, offering for sale, selling and distributing contact lenses and eye care products via telephone, fax, Internet, and mail orders (the "Goods and Services"). 1-800 Contacts is the market leader, having filled over ten million orders for millions customers. Plaintiff's contact lens and eye care products can be ordered via the Internet at Plaintiff's website: www.1800contacts.com.

9. Plaintiff owns common law and federally registered trademark rights in the marks 1-800 CONTACTS, 1800 CONTACTS (U.S. Registration No. 2,731,114) and 1800CONTACTS (U.S. Registration No. 2,675,866) (the "1-800 Contacts marks").

10. Since at least as early as 1995, Plaintiff has advertised and offered its Goods and Services using one or more of the 1-800 Contacts marks in interstate commerce throughout the United States. The 1-800 Contacts marks have been used extensively in advertising and promotional media, including the Internet, radio, television, trade shows, various printed media, and direct mail.

11. Plaintiff has expended hundreds of millions of dollars advertising and marketing its Goods and Services using the 1-800 Contacts marks over many years. As a result, the 1-800 Contacts marks and Goods and Services have achieved significant commercial success and

widespread consumer fame and recognition. In addition, the consuming public has come to regard the 1-800 Contacts marks as symbols of Plaintiff, of Plaintiff's quality Goods and Services, and of Plaintiff's goodwill as the leader in the retail contact lens industry.

12. Like Plaintiff, Defendant advertises and offers contact lenses over the Internet through its www.discountcontactlenses.com and www.aclens.com websites in direct competition with Plaintiff. Defendant does so via keyword advertising campaigns through various search engines such as, for example, Google, Yahoo, and Bing.

13. On information and belief, Defendant is aware of the strong consumer recognition enjoyed by the 1-800 Contacts marks and the significant goodwill Plaintiff has created in those marks.

14. In order to trade off of Plaintiff's goodwill and capitalize on the fame and recognition of the 1-800 Contacts marks, Defendant has purchased, continues to purchase, and has caused to be purchased, the 1-800 Contacts marks and/or confusingly similar variations or misspellings thereof as keywords that trigger the display of sponsored advertisements for Defendant's competitive goods and services.

15. On information and belief, the keyword advertising programs offered by the various search engines give control to the user, such as Defendant, to (a) select the keywords it wishes to purchase to trigger its sponsored advertisements, and (b) implement "negative keywords" that will ensure such advertisements are not triggered in response to a search for such negative keywords.

16. On information and belief, Defendant is aware of the control it has over the keyword advertising programs offered by the various search engines with respect to Defendant's advertisements. In particular, Defendant is aware that it can easily implement the 1-800 Contacts

marks and confusingly similar variations or misspellings thereof as “negative keywords” in its Internet advertising campaigns to ensure that Defendant’s directly competitive advertisements are not displayed in response to a consumer searching for Plaintiff and/or Plaintiff’s Goods and Services.

17. Notwithstanding the foregoing, Defendant has not sufficiently implemented the 1-800 Contacts marks (and confusingly similar variations or misspellings thereof) as negative keywords, but has instead voluntarily and consciously participated in causing its competitive advertisements to be displayed in response to consumers searching for the 1-800 Contacts marks and Plaintiff’s Goods and Services.

18. Defendant’s unauthorized use of the 1-800 Contacts marks as keywords in its Internet advertising campaigns and Defendant’s participation in causing its sponsored advertisements to be displayed in response to searches for Plaintiff and Plaintiff’s Goods and Services has caused, and will continue to cause, confusion and mistake, including initial interest confusion, as to the source or origin of Defendant’s goods and services and is likely to falsely suggest a sponsorship, connection, license, endorsement or association by Plaintiff with Defendant’s goods and services, thereby injuring Plaintiff and the consuming public.

19. Defendant’s actions also unjustly enrich Defendant by wrongfully directing consumers searching for Plaintiff and Plaintiff’s Goods and Services on the Internet to Defendant’s competitive website where such consumers purchase contact lenses from Defendant rather than Plaintiff.

20. Despite Plaintiff repeatedly providing Defendant with notice of its infringing activities, Defendant’s actions of infringement have not ceased.

CAUSES OF ACTION**COUNT I****(TRADEMARK INFRINGEMENT UNDER SECTION 43(a) OF THE LANHAM ACT – 35 U.S.C. § 1125)**

21. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

22. Defendant's acts as alleged herein with respect to its infringement of Plaintiff's marks are likely to cause public confusion, mistake, or deception as to the affiliation, connection, or association of Plaintiff with Defendant. Defendant's acts are also likely to cause public confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods and services by Plaintiff. Accordingly, Defendant's acts constitute trademark infringement in violation of 15 U.S.C. § 1125(a).

23. To the extent Defendant utilizes affiliates to conduct keyword advertising on its behalf, Defendant is secondarily liable for the infringing acts of its affiliates that likewise purchase the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as keywords (and fail to implement corresponding negative keywords) in order to display advertisements for Defendant's competitive goods and services in response to searches for Plaintiff and Plaintiff's Goods and Services.

24. Plaintiff has been and will continue to be damaged by such wrongful acts.

25. Because Defendant's actions, on information and belief, were intentional, willful and/or deliberate, Plaintiff is entitled to an award of treble damages under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

26. This is an exceptional case, and thus Plaintiff is entitled to an award of attorneys' fees under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

27. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief and monetary damages against Defendant.

COUNT II

(TRADEMARK INFRINGEMENT UNDER SECTION 32 OF THE LANHAM ACT – 35 U.S.C. § 1114)

28. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

29. Defendant's acts as alleged herein with respect to its infringement of Plaintiff's marks are likely to cause public confusion, mistake, or deception and, therefore, constitute trademark infringement in violation of 15 U.S.C. § 1114.

30. To the extent Defendant utilizes affiliates to conduct keyword advertising on its behalf, Defendant is secondarily liable for the infringing acts of its affiliates that likewise purchase the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as keywords (and fail to implement corresponding negative keywords) in order to display advertisements for Defendant's competitive goods and services in response to searches for Plaintiff and Plaintiff's Goods and Services.

31. Plaintiff has been and will continue to be damaged by such wrongful acts.

32. Because Defendant's actions, on information and belief, were intentional, willful and/or deliberate, Plaintiff is entitled to an award of treble damages under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

33. This is an exceptional case, and thus Plaintiff is entitled to an award of attorneys' fees under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

34. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief and monetary damages against Defendant.

COUNT III

(CONTRIBUTORY TRADEMARK INFRINGEMENT UNDER SECTIONS 43(A) AND 32 OF THE LANHAM ACT)

35. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

36. On information and belief, the search engines through which Defendant conducts its advertising use the 1-800 Contacts marks in order to display Defendant's competitive advertisements and links to Defendant's competitive websites. Such use is a use in commerce in connection with the advertisement of Defendant's competitive goods and services which is likely to cause public confusion, mistake, or deception as to the affiliation, connection, or association of Plaintiff with Defendant. Such use is also likely to cause public confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods and services by Plaintiff. Accordingly, the search engines' acts constitute trademark infringement in violation of 15 U.S.C. §§ 1114 and 1125(a).

37. Defendant's actions as alleged above, and particularly Defendant's failure to implement appropriate negative keywords in connection with its internet advertising campaigns through the search engines to ensure that Defendant's advertisements and/or links to Defendant's competitive websites are not displayed in response to or as a result of a search for Plaintiff's trademarks and/or Goods and Services, demonstrate a willful blindness to the infringement of the 1-800 Contacts marks and the consumer confusion being caused by its participation in its internet advertising campaigns. Such actions constitute contributory infringement, whether or not Defendant affirmatively purchases any of Plaintiff's trademarks as keywords.

38. Plaintiff has been and will continue to be damaged by such wrongful acts.

39. Plaintiff is, therefore, entitled to all damages and relief set forth under Counts I and II above due to Defendant's contributory trademark infringement.

COUNT IV

(COMMON LAW UNFAIR COMPETITION, MISAPPROPRIATION, AND TRADEMARK INFRINGEMENT – UTAH UNFAIR COMPETITION ACT, UTAH CODE ANN. §13-5a-101 *et. seq.*)

40. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

41. The 1-800 Contacts marks are distinctive of Plaintiff's Goods and Services and of Plaintiff as the source for those Goods and Services.

42. Defendant's actions, as alleged above, were intentional business acts that infringe and diminish the value of Plaintiff's trademark rights under federal common law and Utah common law and, therefore, constitute acts of unfair competition under Utah Code Ann. §13-5a-102(4)(a).

43. By reason of the foregoing, Plaintiff is entitled to injunctive relief and monetary damages against Defendant.

44. The infringing activities of Defendant, on information and belief, are willful and intentional, thereby justifying an award of exemplary and/or punitive damages.

**COUNT V
(UNJUST ENRICHMENT)**

45. Plaintiff realleges and incorporates by this reference all of the foregoing paragraphs.

46. Defendant has benefited from the improper, unfair, and unauthorized use of the 1-800 Contacts marks in its Internet advertising and its unauthorized trading off of Plaintiff's goodwill attendant thereto, as alleged above.

47. Defendant has knowledge and fully appreciates the benefits it has received from Plaintiff's trademark rights, consumer recognition, and goodwill as a result of such actions.

48. Defendant would be unjustly enriched if it were permitted to retain the proceeds obtained from such actions.

49. Equity and good conscience dictate that Defendant be required to account for and turn over to Plaintiff an amount equal to the value of the benefits involuntarily conferred upon it.

JURY DEMAND

Plaintiff demands that all claims and causes of action raised in this complaint against Defendant be tried to a jury to the fullest extent possible under the United States and Utah Constitutions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

A. Preliminarily and permanently enjoining Defendant, its affiliates, and all other persons participating or acting in concert with it, from infringing any of Plaintiff's rights in the 1-800 Contacts marks.

B. Preliminarily and permanently enjoining Defendant, its affiliates, and all other persons participating or acting in concert with it, from purchasing or using the 1-800 Contacts marks or any marks confusingly similar to the 1-800 Contacts marks as keywords in Internet search engine advertising programs and from otherwise using such marks in any manner that is likely to cause confusion or mistake as to whether Defendant and its goods and services are authorized by, affiliated with, sponsored by, or endorsed by Plaintiff;

C. Ordering Defendant, its affiliates, and all other persons participating or acting in concert with it to implement the 1-800 Contacts marks and all confusingly similar variations and misspelling thereof as negative keywords in all of their search engine advertising campaigns;

D. Ordering Defendant to provide an accounting of all revenues and profits gained by Defendant while engaging in the acts complained of in this complaint;

E. Ordering Defendant to promulgate corrective advertising pursuant to Utah Code Ann. § 13-11a-4(3);

F. Awarding Plaintiff its actual damages, and awarding Plaintiff any additional damages that the Court deems just and equitable under the circumstances of the case; but in no case less than the statutory damages mandated under Utah Code Ann. § 13-11a-4(2)(b);

G. Awarding Plaintiff, at its election, either treble or statutory damages in accordance with § 35 of the Lanham Act (15 U.S.C. § 1117) on all claims asserted under § 43 of the Lanham Act (15 U.S.C. § 1125);

H. Awarding Plaintiff damages to which it is entitled based upon Defendant's unjust enrichment;

I. Awarding Plaintiff prejudgment interest at the rate established under 26 U.S.C. § 6621(a)(2) from the date of service of the Complaint through the date of judgment;

J. Awarding Plaintiff its allowable costs and attorneys fees; and

K. Awarding Plaintiff such other and/or further relief as is just and equitable.

DATED this 18th day of February, 2010.

Respectfully submitted,

/s/ Mark A. Miller
Mark A. Miller (9563)
Bryan G. Pratt (9924)
Brett L. Foster (6089)

Plaintiff's Address:
66 East Wadsworth Park Drive
Draper, Utah 84020

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

1-800 CONTACTS, INC., a Delaware corporation,

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) Mark A. Miller, Holland & Hart, 60 E. South Temple, Suite 2000, SLC, UT 84111 (801) 799-5800

DEFENDANTS

ARLINGTON CONTACT LENS SERVICE, INC. dba DISCOUNT CONTACT LENSES, an Ohio corporation,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): USC sections 1051-1127. Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 02/18/2010 SIGNATURE OF ATTORNEY OF RECORD /s/ Mark A. Miller

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

- Print, Save As..., Export as FDF, Retrieve FDF File, Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT F

Paxton R. Guymon (8188)
MILLER MAGLEBY & GUYMON, P.C.
170 South Main, Suite 350
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Telephone: (801) 363-5600
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FILED
18 MAR 2004 1:03
DISTRICT OF UTAH
BY: _____
FBI

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Washington, D.C. 20036
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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

1-800 CONTACTS, INC., a Delaware corporation,	COMPLAINT
Plaintiff,	
vs.	
COASTAL CONTACTS, INC.,	Judge Dale A. Kimball DECK TYPE: Civil DATE STAMP: 03/18/2004 @ 13:08:51 CASE NUMBER: 2:04CV00249 DAK
Defendant.	

Plaintiff 1-800 Contacts, Inc. ("1-800 Contacts" or "Plaintiff"), by their undersigned attorneys, for their Complaint allege against Defendant, Coastal Contacts, Inc. ("Coastal Contacts" or "Defendant") as follows:

1

NATURE OF THE ACTION

1. This action is for permanent injunctive relief, damages, and attorney's fees and costs arising out of Defendant's acts of trademark infringement, unfair competition, false designation of origin, trademark dilution, copyright infringement, and contributory copyright infringement.

THE PARTIES

2. Plaintiff 1-800 Contacts was incorporated in Utah in 1995 and is presently incorporated in Delaware. Its principle place of business is in Draper, Utah. 1-800 Contacts is the world's largest contact lens distributor, having delivered over 10 million orders to more than 5 million customers in the last seven years. 1-800 Contacts is a publicly traded company listed on NASDAQ.

3. 1-800 Contacts revolutionized the way in which consumers purchase contact lenses by providing easy and convenient methods of purchase via its Internet website, located at <http://www.1800Contacts.com>, as well as through its toll-free telephone number, "1-800 Contacts," and by mail.

4. Upon information and belief, Defendant Coastal Contacts is a Canadian corporation with its principle place of business in Vancouver, British Columbia. Defendant Coastal Contacts sells contact lenses through its Internet website, located at <http://www.coastalcontacts.com>, as well as by telephone and mail, and endeavors to compete with the Plaintiff.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action under 15 U.S.C. §1121, 28 U.S.C. §1331, and 28 U.S.C. § 1338(a) and (b). This Court has supplemental jurisdiction

over the state law claims pursuant to 28 U.S.C. §1367(a) because those claims are so related to the federal claims brought herein as to form part of the same case or controversy.

6. Venue is proper in this district under 28 U.S.C. §1391(b) and 28 U.S.C. §1400(a) because Defendants reside in this district within the meaning of 28 U.S.C. §1391(c).

7. Coastal Contacts is subject to personal jurisdiction in this district because it practices the unlawful conduct complained of herein, in part, within the State of Utah and this district; because the unlawful conduct complained of herein causes injury, in part, within the State of Utah and this district; and because Coastal Contacts regularly does or solicits business, engages in other persistent courses of conduct, and/or derives substantial revenue from goods used or consumed or services rendered within the State of Utah and this district.

8. Moreover, Coastal Contacts regularly and systematically has directed electronic activity into the State of Utah with the manifested intent of engaging in business within the State and that activity has resulted in causes of action cognizable within the State. Coastal Contacts' actions in this regard include causing the regular placement of pop-up advertisements upon the screens of numerous PCs within the State; the offering of contact lens products to PC users within the State, many of whom purchased such products; and entry into contracts with residents of the State. Upon information and belief, these actions by Coastal Contacts were the means by which actual business was conducted by Coastal Contacts within the State and which resulted in cognizable causes of action within the State.

PLAINTIFF'S TRADEMARKS

9. On July 8, 1999, 1-800 Contacts filed to register the service mark "1-800 CONTACTS" with the United States Patent and Trademark Office ("USPTO") for use in connection with retail sales via electronic retailing services using a computer, by mail order and by telephone order, for the field of contact lenses and related products. On January 21, 2003, the

USPTO issued a registered service mark. *See* Federal Trademark Reg. No. 2,675,866 (appended hereto as Exhibit A).

10. On August 29, 2000, 1-800 Contacts registered the service mark "WE DELIVER. YOU SAVE." with the USPTO for use in connection with retail sales via electronic retailing services using a computer, by mail order and by telephone order, for the field of contact lenses and related products. On April 9, 2002, the USPTO issued a registered service mark. *See* Federal Trademark Reg. No. 2,558,233 (appended hereto as Exhibit B.)

11. On October 2, 2000, 1-800 Contacts registered the service mark "1-800 Contacts" and associated design logo with the USPTO for use in connection with retail sales via electronic retailing services using a computer, by mail order and by telephone order, for the field of contact lenses and related products. On July 1, 2003, the USPTO issued a registered service mark (Federal Trademark Reg. No. 2,731,114).

12. 1-800 Contacts has continuously promoted and advertised the above-described trademarks in interstate commerce in the United States and throughout the world since at least as early as July 1995. Plaintiff has spent significant sums promoting these marks over the last seven years.

13. Through Plaintiff's actions, and because of widespread and favorable public acceptance and recognition, the Plaintiff's trademarks have become a distinctive designation of the source of origin of Plaintiff's goods and services. The Plaintiff's trademarks have become uniquely associated with, and hence identify, the Plaintiff. These marks are an asset of incalculable value as a symbol of the Plaintiff, its quality services, and its goodwill.

14. Accordingly, the Plaintiff's trademarks have developed secondary meaning and are famous marks.

PLAINTIFF'S COPYRIGHT

15. Plaintiff is the sole owner of the 1-800Contacts.com website and holds a valid copyright on the 1-800Contacts.com website.

16. Plaintiff registered its copyright to the 1-800Contacts.com website with the Copyright Office of the United States Library of Congress ("Copyright Office") on October 2, 2000. *See* Certificate of Registration No. VA-1-032-662 (appended hereto as Exhibit C).

17. Plaintiff grants visitors to its website a non-exclusive, non-transferable, limited right to access, use and display the website and its content for the viewers' personal, non-commercial use. Visitors are explicitly prohibited from modifying any of the website content or the manner in which the content is displayed.

FACTUAL BACKGROUND

A. The Internet And The World Wide Web

18. The Internet is a global network of millions of interconnected computers. The World Wide Web is a portion of the Internet especially suited to displaying images and sound, in addition to text. Much of the information on the World Wide Web is stored in the form of "webpages," which can be accessed through a computer connected to the Internet (available through commercial Internet service providers or "ISPs"), and viewed using a computer program called a "browser," such as Microsoft Internet Explorer and Netscape Navigator. "Websites" are locations on the World Wide Web containing a collection of webpages. A webpage is identified by its own unique Uniform Resource Locator ("URL") (*e.g.*, <http://www.1800contacts.com>), which ordinarily incorporates its site's "domain name" (*e.g.*, 1-800 Contacts).

19. Internet use in the United States has grown substantially in the last few years. More than half of the nation, roughly 53.9 million households, are now online. Internet use in

the United States continues to grow at an astonishing rate of two million new Internet users per month.

20. The Internet has revolutionized commercial sales activities in the United States and throughout the world. Using the Internet, consumers now have the power to comparatively shop multiple, worldwide vendors without leaving the comforts of their homes.

21. Among Internet users in the United States, 39 percent currently use the Internet to make online purchases.

22. As a result, Internet sales, or "e-commerce" reached an estimated \$48.28 billion by 2000.

B. The Business Of Plaintiff 1-800 Contacts

23. Plaintiff 1-800 Contacts has established and operates a website for the purpose of advertising and selling contact lenses and related products. Plaintiff prominently displays its "1-800 Contacts" and "We Deliver. You Save." trademarks on its website. Plaintiff also sells its products through its easy to remember toll-free "1-800 Contacts" telephone number and by mail. Plaintiff is recognized as the leading distributor of contact lenses.

24. 1-800 Contacts has achieved such success in part because 1-800 Contacts offers consumers a simple, convenient, and efficient method for purchasing contact lenses. In support of this goal, 1-800 Contacts has invested in excess of \$45 million in its contact lens inventory. In addition, 1-800 Contacts has invested substantially in the information systems and Internet infrastructure necessary to support customer sales.

25. Plaintiff derives a substantial portion of its sales from e-commerce. Therefore, great care and enormous efforts are undertaken by the Plaintiff to present its webpage content with a specific "look and feel" that will encourage site visitors to remain at the site, to purchase Plaintiff's products and to return to Plaintiff's website for future purchases. Plaintiff deliberately

designs its website to display and advertise its products and related information in a manner that will be visually attractive and easy to navigate for site visitors.

26. Plaintiff offers users the ability to personalize the services available on or through its website. For example, customers may "store" their purchase details, such as their contact lens prescription or billing information, by registering on Plaintiff's website.

27. As a result of these design efforts, millions of customers have developed strong relationships with 1-800 Contacts, and return to the 1-800Contacts.com website repeatedly to purchase their contact lenses.

28. 1-800 Contacts uses its website to advertise and to sell exclusively its products. Plaintiff does not permit other advertising on its website. Moreover, the Plaintiff's website does not utilize pop-up advertisements.

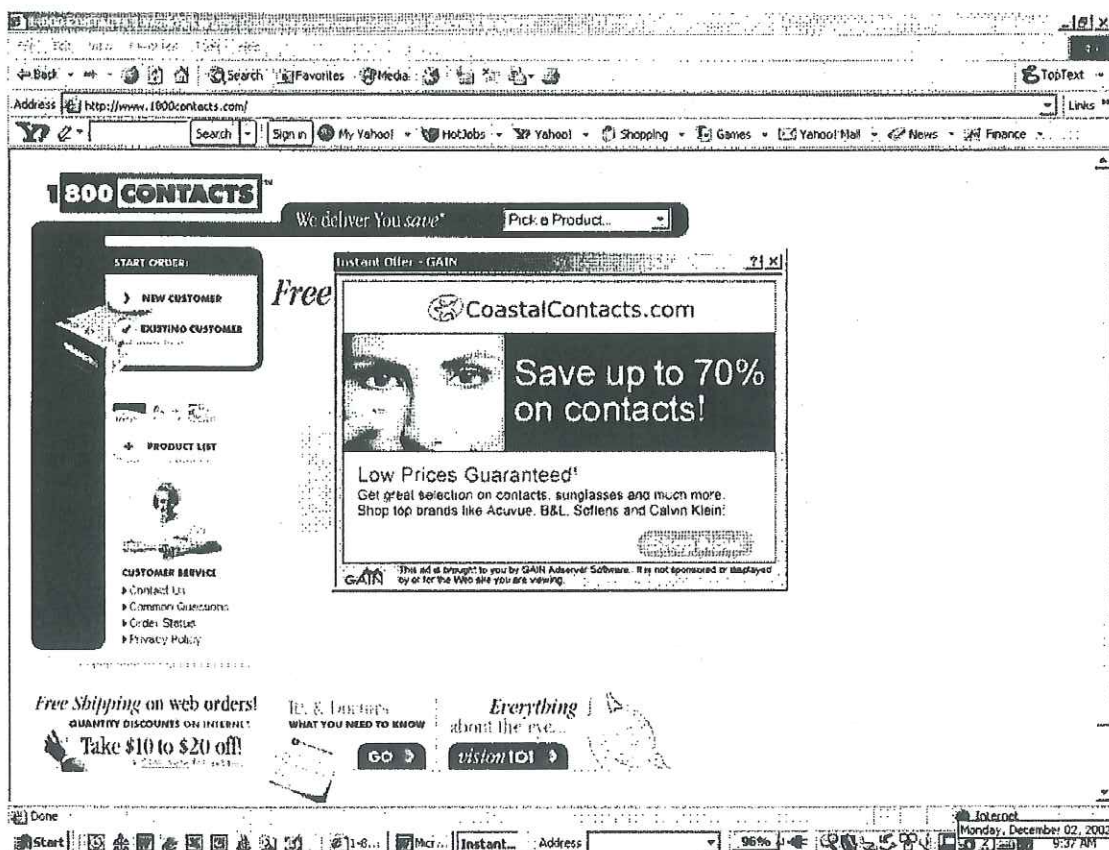
DEFENDANT'S ACTIONS

C. The Business of Coastal Contacts

29. Defendant Coastal Contacts is in the business of selling contact lenses via its Internet website, located at <http://www.coastalcontacts.com> by telephone and by mail. Upon information and belief, Coastal Contacts endeavors to compete with the Plaintiff by engaging in aggressive advertising schemes that target customers visiting Plaintiff's website.

30. Upon information and belief, beginning in at least the fall of 2002, Coastal Contacts, without Plaintiff's authorization, caused Coastal Contacts advertisements to appear over top of some viewers' copies of the 1-800Contacts.com webpage. These unauthorized advertisements changed the appearance of the 1-800Contacts.com website.

31. An example of such an unauthorized Coastal Contacts advertisement, as placed onto the 1-800Contacts.com web page, is set forth below:



32. These unauthorized Coastal Contacts advertisements alter the appearance of the 1-800Contacts.com webpage. These unauthorized modifications also constitute a derivative work of the 1-800Contacts.com website.

33. Upon information and belief, Coastal Contacts has also, without Plaintiff's authorization, caused Coastal Contacts advertisements to appear over top of some viewers' copies of the 1-800 Contacts, Inc.'s "CTAC" webpage on the Yahoo! financial site.

E. Harm To Plaintiff

34. Since at least the fall of 2002, Coastal Contacts has specifically targeted, and continues to target, the Plaintiff's website for the delivery of unauthorized pop-up advertising.

35. Upon information and belief, Coastal Contacts has already delivered hundreds of thousands of unauthorized pop-up advertisements to Plaintiff's website.

36. Plaintiff has not given Coastal Contacts permission or a license to place advertisements on to the 1-800Contacts.com website or copies of the webpage.

37. Coastal Contacts is not licensed or otherwise authorized to use, alter, modify, change the appearance of, or add to the 1-800Contacts.com website or copies of the webpage, nor is Coastal Contacts licensed to create derivative works based on the 1-800Contacts.com website.

38. All of the pop-up advertisements that Coastal Contacts has displayed on the Plaintiff's website have been displayed without the authorization or permission of the Plaintiff.

39. Upon information and belief, Coastal Contacts knew or should have known of Plaintiff's rights in its trademarks and the 1-800Contacts.com website.

40. Upon information and belief, Coastal Contacts nevertheless caused advertisements to be added on to viewers' copies of the 1-800Contacts.com website.

41. Upon information and belief, Coastal Contacts caused these advertisements to be added on to viewers' copies of the 1-800Contacts.com website with the intent to confuse and deceive customers as to the source of Coastal Contact's services and to trade upon the goodwill and substantial customer recognition associated with the 1-800 Contacts marks.

42. The Coastal Contacts advertisements on the 1-800Contacts.com website blur the Plaintiff's trademarks and dilute the marks' ability to identify Plaintiff as a source of goods and services.

43. Plaintiff's current customers have been and will likely continue to be confused about the origin and sponsorship of Coastal Contacts services. Potential customers, as well as members of the general public, are also likely to be confused.

44. Confusion regarding Defendant Coastal Contact's implied affiliation with Plaintiff has damaged and will continue to damage Plaintiff's reputation and customer relationships.

45. Upon information and belief, Coastal Contacts caused these advertisements to be added on to viewers' copies of the 1-800Contacts.com website with the intent to infringe and to cause viewers to infringe Plaintiff's copyright in the website. Alternatively, Coastal Contacts acted with reckless disregard for Plaintiff's copyright.

46. In the short term, Coastal Contacts' actions steal customers from Plaintiff, erode the attractiveness of shopping on the Plaintiff's website and disrupt Plaintiff's efforts to create a "user friendly" site. In the long term, if left unchecked, Coastal Contacts' actions imperil the economic viability of the Plaintiff's business.

47. Coastal Contacts' actions have caused damage and irreparable injury to the Plaintiff. Further damage and irreparable injury will result if Coastal Contacts is allowed to continue to violate Plaintiff's rights.

48. Plaintiff has no adequate remedy at law.

**FIRST CLAIM FOR RELIEF
FOR FEDERAL TRADEMARK INFRINGEMENT**

49. Paragraphs 1 through 48 are repeated and realleged as if fully set forth herein.

50. Plaintiff owns valid, federally registered trademarks entitled to protection under the Lanham Act.

51. Coastal Contacts' unauthorized use of Plaintiff's marks in commerce has caused and is likely to continue to cause consumer confusion.

52. Coastal Contacts' conduct constitutes trademark infringement in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

**SECOND CLAIM FOR RELIEF
FOR UNFAIR COMPETITION UNDER THE LANHAM ACT**

53. Paragraphs 1 through 52 are repeated and realleged as if fully set forth herein.

54. Plaintiff owns valid common law and federally registered trademarks entitled to protection under the Lanham Act.

55. Coastal Contacts' unauthorized use of the Plaintiff's marks in commerce has caused and is likely to continue to cause consumer confusion as to the origin or sponsorship of Defendant Coastal Contacts' products and services and the association of Coastal Contacts' products and services with Plaintiff or Plaintiff's products and services.

56. Coastal Contacts' conduct constitutes a false designation of origin and a false description and representation, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

**THRID CLAIM FOR RELIEF
FOR COMMON LAW UNFAIR COMPETITION**

57. Paragraphs 1 through 56 are repeated and realleged as if fully set forth herein.

58. Coastal Contacts' unauthorized use of the Plaintiff's marks in commerce has caused and is likely to continue to cause consumer confusion and induce consumers to believe that the Plaintiff and Coastal Contacts or their products or services are affiliated.

59. Coastal Contacts has misappropriated Plaintiff's marks, reputation, and good will through their actions.

60. Coastal Contacts has acted deliberately and with bad faith.

61. Coastal Contacts has engaged in unfair methods of competition in violation of the common law.

62. As a result of Coastal Contacts' conduct, Plaintiff is suffering, and will continue to suffer, damage to its reputation because of consumer confusion as to the origin or sponsorship of Defendant Coastal Contacts' products and services and the association of Defendant Coastal Contacts' products and services with Plaintiff or Plaintiff's products and services, and loss of profits.

**FOURTH CLAIM FOR RELIEF
FOR FALSE DESIGNATION OF ORIGIN**

63. Paragraphs 1 through 62 are repeated and realleged as if fully set forth herein.

64. Coastal Contacts' conduct constitutes false designation of origin and false description and representation, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

**FIFTH CLAIM FOR RELIEF
FOR DILUTION UNDER THE FEDERAL TRADEMARK DILUTION ACT**

65. Paragraphs 1 through 64 are repeated and realleged as if fully set forth herein.

66. Plaintiff owns valid common law and federally registered trademarks entitled to protection under the Lanham Act. These marks are famous within the meaning of 15 U.S.C. § 1125(c).

67. Coastal Contacts' pop-up advertising scheme has the effect of blurring Plaintiff's trademarks and thereby diluting the marks' ability to identify Plaintiff as a source of goods or services.

68. Coastal Contacts has made unauthorized commercial use of Plaintiff's marks in commerce.

69. Coastal Contacts' conduct has diluted the distinctive quality of Plaintiff's famous marks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

**SIXTH CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT**

70. Paragraphs 1 through 69 are repeated and realleged as if fully set forth herein.

71. Plaintiff owns a valid copyright in the 1-800Contacts.com website.

72. Plaintiff has registered this copyright with the United States Copyright Office.

73. Coastal Contacts' conduct, including causing advertisements to be added on to or over top of viewers' copies of the 1-800Contacts.com web page violates Plaintiff's exclusive rights in its copyright.

74. Coastal Contacts' conduct constitutes an unauthorized display of the Plaintiff's copyrighted work and the unauthorized preparation of a derivative work based upon the copyrighted work in violation of Plaintiff's exclusive rights in its copyright.

75. Coastal Contacts' conduct constitutes copyright infringement under the Federal Copyright Act, 17 U.S.C. §§101, *et seq.*

**SEVENTH CLAIM FOR RELIEF
CONTRIBUTORY COPYRIGHT INFRINGEMENT**

76. Paragraphs 1 through 75 are repeated and realleged as if fully set forth herein.

77. Plaintiff owns a valid copyright in the 1-800Contacts.com website.

78. Plaintiff has registered this copyright with the United States Copyright Office.

79. Coastal Contacts has knowingly (or with reckless disregard for Plaintiff's rights) induced, caused, or materially contributed to conduct by third parties, which violates Plaintiff's exclusive rights in its copyright.

80. Coastal Contacts' conduct facilitates the unauthorized and infringing public display of the Plaintiff's copyrighted work by third parties as well as the creation of unauthorized derivative works by those same third parties. Coastal Contacts has engaged in this pop-up advertising scheme knowingly, or with reckless disregard, that it was inducing, causing or materially contributing to conduct by third parties that infringed the Plaintiff's exclusive rights in its copyright.

81. Defendants' conduct constitutes contributory copyright infringement under the Federal Copyright Act, 17 U.S.C. §§101, *et seq.*

**EIGHTH CLAIM FOR RELIEF
TORTIOUS INTERFERENCE
WITH PROSPECTIVE ECONOMIC ADVANTAGE**

82. Paragraphs 1 through 81 are repeated and realleged as if fully set forth herein.

83. Many of the Plaintiff's customers regularly purchase contact lenses from Plaintiff's website. It is probable that such customers and others will continue to visit Plaintiff's website and purchase Plaintiff's goods and services in the future. Upon information and belief, Defendant was aware of the existence of Plaintiff's reasonable expectancy of future transactions with Plaintiff's returning customers.

84. Absent Defendant's intentional and improper interference through its pop-up advertising scheme, it is reasonably certain that Plaintiff would realize additional sales from existing customers and/or new customers. Defendant's pop-up advertising scheme, however, damages Plaintiff.

85. Defendant's pop-up advertising scheme constitutes improper interference with the Plaintiff's prospective economic advantage.

WHEREFORE, Plaintiff prays for judgment in its favor and against Defendant as follows:

- A. A preliminary and a permanent injunction, prohibiting Defendant, its agents, servants, employees, officers, attorneys, and all other persons in active concert or participation with them, from:
1. placing, or causing any other entity to place, advertisements of any kind on any copy of the 1-800Contacts.com website, without the express consent of the Plaintiff;
 2. altering or modifying, or causing any other entity to alter or modify, any copy of the 1-800Contacts.com website in any way, including its appearance or how it is displayed;

3. infringing, or causing any other entity to infringe, Plaintiff's copyright;
 4. making any designations of origin, descriptions, representations, or suggestions that Plaintiff is the source, sponsor or in any way affiliated with Defendant Coastal Contacts' website and services;
 5. acting in any manner that causes Defendant's products, services, website, or advertisements to be in any way associated with Plaintiff's products, services, or website, including, but not limited to, any means of marketing, advertising, or agreements with third parties likely to induce the belief that Defendant or Defendant's website, advertisements, products, or services are in any way associated, connected, or affiliated with, or licensed or authorized by Plaintiff;
 6. infringing, or causing any other entity to infringe, Plaintiff's trademarks and/or service marks rights;
 7. unfairly designating the origin of Defendant Coastal Contacts' website and services, or otherwise creating confusion regarding the origin of Defendant Coastal Contacts' website and services;
 8. unfairly competing with Plaintiff in any manner whatsoever;
 9. acting, or causing another entity to act, in any manner likely to dilute, tarnish, or blur the distinctiveness of the 1-800 Contacts marks;
 10. causing a likelihood of confusion or injuries to Plaintiff's business reputation; and
 11. interfering with Plaintiff's reasonable business expectations.
- B. An order directing Defendant, its agents, servants, employees, franchisees, licensees, attorneys, and all others in active concert or participation with Defendant to deliver to Plaintiff any agreements between Defendant and any other

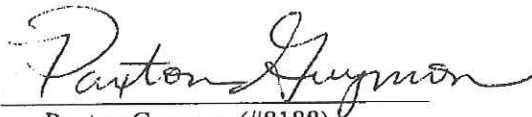
- party or parties that relate to the use of any means by which advertisements are added on to the 1-800Contacts.com website or viewers' copies thereof;
- C. An order directing Defendant to file with this Court and serve on Plaintiff within thirty (30) days after the service of the injunction, a report in writing, under oath, that describes in detail the manner and form in which Defendant has complied with the orders of this Court;
 - D. An order directing an accounting to determine all gains, profits, savings, and advantages obtained by Defendant as a result of its wrongful actions;
 - E. Awarding restitution to Plaintiff of all gains, profits, savings, and advantages obtained by Defendant as a result of its wrongful actions;
 - F. Awarding Plaintiff all damages caused by Defendant's wrongful actions;
 - G. Awarding Plaintiff treble the amount of its damages, together with the costs of this suit, including reasonable attorneys' fees and expenses and prejudgment interest;
 - H. Awarding Plaintiff an amount sufficient to conduct a corrective advertising campaign to dispel the effects of Defendant's wrongful conduct and confusing and misleading advertising;
 - I. An order directing Defendant to post on its website corrective advertising in a manner and form to be established by the Court;
 - J. Awarding Plaintiff punitive damages in an amount sufficient to deter other and future similar conduct by Defendant and others; and
 - K. Granting Plaintiff such other and further relief as the Court may deem just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues and claims so triable.

DATED: March 19, 2004

MILLER MAGLEBY & GUYMON P.C.

By: 
Paxton Guymon (#8188)

Attorneys for Plaintiff 1-800 Contacts, Inc.

Of Counsel:

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Amy E. Barrier
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Exhibits/
Attachments
to this document
have **not** been
scanned.

Please see the
case file.

EXHIBIT G

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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

<p>1-800 CONTACTS, INC., a Delaware corporation;</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>CONTACT LENS KING, INC., a Nevada corporation,</p> <p style="text-align: center;">Defendant.</p>	<p>COMPLAINT</p> <p>Case No. 2:10-cv-205</p> <p>Judge Dale A. Kimball</p> <p>(JURY DEMAND)</p>
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Plaintiff 1-800 Contacts, Inc. ("1-800 Contacts" or "Plaintiff"), by and through counsel, alleges and complains against Defendant Contact Lens King, Inc., ("Defendant") as follows:

JURISDICTION AND VENUE

1. This is an action for trademark infringement and unfair competition under §§ 32 and 43 of the Lanham Act (a.k.a. Trademark Act of 1946, 15 U.S.C. §§ 1051-1127, as amended), and state law infringement and false advertising claims.

2. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (trademarks), and 15 U.S.C. § 1121 (trademarks). This

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Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367(a), because those claims arise from the common nucleus of operative facts alleged in Plaintiff's federal claims.

3. This Court has personal jurisdiction over Defendant because, on information and belief, Defendant has transacted business in Utah and has caused damage to Plaintiff in Utah. Defendant has purposefully availed itself of the privilege of transacting business in this District by, *inter alia*, advertising its contact lens products via the Internet in this District, offering an interactive website www.contactlensking.com accessible to consumers throughout the country, including in this District, which permits the consumer to create an account and order contact lenses to be shipped to the consumer in this District. Defendant has used Plaintiff's trademarks in connection with its Internet advertising, including in this District, without the authorization or consent of Plaintiff.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because there is personal jurisdiction over Defendant, and because a substantial part of Defendant's acts and omissions giving rise to Plaintiff's claims occurred in this judicial district.

PARTIES

5. Plaintiff 1-800 Contacts, Inc. is a Delaware corporation having its principal place of business at 66 East Wadsworth Park Drive, Draper, Utah 84020. Plaintiff is engaged in retail sales of contact lenses, including marketing and selling contact lenses via the Internet.

6. Upon information and belief, Defendant is a New York corporation having a place of business at 2921 Erie Blvd. East, Syracuse, New York 13224. Upon information and belief, Defendant is also engaged in retail sales of contact lenses, including marketing and selling contact lenses via the Internet in direct competition with Plaintiff.

7. Upon information and belief, Defendant owns and operates the website www.contactlensking.com, and possibly others, relating to its business of offering and selling contact lenses and vision-related products.

GENERAL ALLEGATIONS

8. For over a decade, Plaintiff has been, and continues to be, engaged in the business of advertising, offering for sale, selling and distributing contact lenses and eye care products via telephone, fax, Internet, and mail orders (the "Goods and Services"). 1-800 Contacts is the market leader, having filled over ten million orders for millions customers. Plaintiff's contact lens and eye care products can be ordered via the Internet at Plaintiff's website: www.1800contacts.com.

9. Plaintiff owns common law and federally registered trademark rights in the marks 1-800 CONTACTS, 1800 CONTACTS (U.S. Registration No. 2,731,114) and 1800CONTACTS (U.S. Registration No. 2,675,866) (the "1-800 Contacts marks").

10. Since at least as early as 1995, Plaintiff has advertised and offered its Goods and Services using one or more of the 1-800 Contacts marks in interstate commerce throughout the United States. The 1-800 Contacts marks have been used extensively in advertising and promotional media, including the Internet, radio, television, trade shows, various printed media, and direct mail.

11. Plaintiff has expended hundreds of millions of dollars advertising and marketing its Goods and Services using the 1-800 Contacts marks over many years. As a result, the 1-800 Contacts marks and Goods and Services have achieved significant commercial success and widespread consumer fame and recognition. In addition, the consuming public has come to

regard the 1-800 Contacts marks as symbols of Plaintiff, of Plaintiff's quality Goods and Services, and of Plaintiff's goodwill as the leader in the retail contact lens industry.

12. Like Plaintiff, Defendant advertises and offers contact lenses over the Internet through its www.contactlensking.com website in direct competition with Plaintiff. Defendant does so via keyword advertising campaigns through various search engines such as, for example, Google, Yahoo, Ask, AOL, and Bing.

13. On information and belief, Defendant is aware of the strong consumer recognition enjoyed by the 1-800 Contacts marks and the significant goodwill Plaintiff has created in those marks.

14. In order to trade off of Plaintiff's goodwill and capitalize on the fame and recognition of the 1-800 Contacts marks, Defendant has purchased, continues to purchase, and has caused to be purchased, the 1-800 Contacts marks and/or confusingly similar variations or misspellings thereof as keywords that trigger the display of sponsored advertisements for Defendant's competitive goods and services.

15. On information and belief, the keyword advertising programs offered by the various search engines give control to the user, such as Defendant, to (a) select the keywords it wishes to purchase to trigger its sponsored advertisements, and (b) implement "negative keywords" that will ensure such advertisements are not triggered in response to a search for such negative keywords.

16. On information and belief, Defendant is aware of the control it has over the keyword advertising programs offered by the various search engines with respect to Defendant's advertisements. In particular, Defendant is aware that it can easily implement the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as "negative keywords" in its

Internet advertising campaigns to ensure that Defendant's directly competitive advertisements are not displayed in response to a consumer searching for Plaintiff and/or Plaintiff's Goods and Services.

17. Notwithstanding the foregoing, Defendant has not sufficiently implemented the 1-800 Contacts marks (and confusingly similar variations or misspellings thereof) as negative keywords, but has instead voluntarily and consciously participated in causing its competitive advertisements to be displayed in response to consumers searching for the 1-800 Contacts marks and Plaintiff's Goods and Services.

18. Defendant's unauthorized use of the 1-800 Contacts marks as keywords in its Internet advertising campaigns and Defendant's participation in causing its sponsored advertisements to be displayed in response to searches for Plaintiff and Plaintiff's Goods and Services has caused, and will continue to cause, confusion and mistake, including initial interest confusion, as to the source or origin of Defendant's goods and services and is likely to falsely suggest a sponsorship, connection, license, endorsement or association by Plaintiff with Defendant's goods and services, thereby injuring Plaintiff and the consuming public.

19. Defendant's actions also unjustly enrich Defendant by wrongfully directing consumers searching for Plaintiff and Plaintiff's Goods and Services on the Internet to Defendant's competitive website where such consumers purchase contact lenses from Defendant rather than Plaintiff.

20. Despite Plaintiff repeatedly providing Defendant with notice of its infringing activities, Defendant's actions of infringement have not ceased.

CAUSES OF ACTION

COUNT I

(TRADEMARK INFRINGEMENT UNDER SECTION 43(a) OF THE LANHAM ACT – 35 U.S.C. § 1125)

21. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

22. Defendant's acts as alleged herein with respect to its infringement of Plaintiff's marks are likely to cause public confusion, mistake, or deception as to the affiliation, connection, or association of Plaintiff with Defendant. Defendant's acts are also likely to cause public confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods and services by Plaintiff. Accordingly, Defendant's acts constitute trademark infringement in violation of 15 U.S.C. § 1125(a).

23. To the extent Defendant utilizes affiliates to conduct keyword advertising on its behalf, Defendant is secondarily liable for the infringing acts of its affiliates that likewise purchase the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as keywords (and fail to implement corresponding negative keywords) in order to display advertisements for Defendant's competitive goods and services in response to searches for Plaintiff and Plaintiff's Goods and Services.

24. Plaintiff has been and will continue to be damaged by such wrongful acts.

25. Because Defendant's actions, on information and belief, were intentional, willful and/or deliberate, Plaintiff is entitled to an award of treble damages under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

26. This is an exceptional case, and thus Plaintiff is entitled to an award of attorneys' fees under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

27. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief and monetary damages against Defendant.

COUNT II

(TRADEMARK INFRINGEMENT UNDER SECTION 32 OF THE LANHAM ACT – 35 U.S.C. § 1114)

28. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

29. Defendant's acts as alleged herein with respect to its infringement of Plaintiff's marks are likely to cause public confusion, mistake, or deception and, therefore, constitute trademark infringement in violation of 15 U.S.C. § 1114.

30. To the extent Defendant utilizes affiliates to conduct keyword advertising on its behalf, Defendant is secondarily liable for the infringing acts of its affiliates that likewise purchase the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as keywords (and fail to implement corresponding negative keywords) in order to display advertisements for Defendant's competitive goods and services in response to searches for Plaintiff and Plaintiff's Goods and Services.

31. Plaintiff has been and will continue to be damaged by such wrongful acts.

32. Because Defendant's actions, on information and belief, were intentional, willful and/or deliberate, Plaintiff is entitled to an award of treble damages under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

33. This is an exceptional case, and thus Plaintiff is entitled to an award of attorneys' fees under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

34. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief and monetary damages against Defendant.

COUNT III
(CONTRIBUTORY TRADEMARK INFRINGEMENT UNDER SECTIONS 43(A) AND 32 OF THE
LANHAM ACT)

35. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

36. On information and belief, the search engines through which Defendant conducts its advertising use the 1-800 Contacts marks in order to display Defendant's competitive

advertisements and links to Defendant's competitive websites. Such use is a use in commerce in connection with the advertisement of Defendant's competitive goods and services which is likely to cause public confusion, mistake, or deception as to the affiliation, connection, or association of Plaintiff with Defendant. Such use is also likely to cause public confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods and services by Plaintiff. Accordingly, the search engines' acts constitute trademark infringement in violation of 15 U.S.C. §§ 1114 and 1125(a).

37. Defendant's actions as alleged above, and particularly Defendant's failure to implement appropriate negative keywords in connection with its internet advertising campaigns through the search engines to ensure that Defendant's advertisements and/or links to Defendant's competitive websites are not displayed in response to or as a result of a search for Plaintiff's trademarks and/or Goods and Services, demonstrate a willful blindness to the infringement of the 1-800 Contacts marks and the consumer confusion being caused by its participation in its internet advertising campaigns. Such actions constitute contributory infringement, whether or not Defendant affirmatively purchases any of Plaintiff's trademarks as keywords.

38. Plaintiff has been and will continue to be damaged by such wrongful acts.

39. Plaintiff is, therefore, entitled to all damages and relief set forth under Counts I and II above due to Defendant's contributory trademark infringement.

COUNT IV

(COMMON LAW UNFAIR COMPETITION, MISAPPROPRIATION, AND TRADEMARK INFRINGEMENT – UTAH UNFAIR COMPETITION ACT, UTAH CODE ANN. §13-5a-101 *et. seq.*)

40. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

41. The 1-800 Contacts marks are distinctive of Plaintiff's Goods and Services and of Plaintiff as the source for those Goods and Services.

42. Defendant's actions, as alleged above, were intentional business acts that infringe and diminish the value of Plaintiff's trademark rights under federal common law and Utah common law and, therefore, constitute acts of unfair competition under Utah Code Ann. §13-5a-102(4)(a).

43. By reason of the foregoing, Plaintiff is entitled to injunctive relief and monetary damages against Defendant.

44. The infringing activities of Defendant, on information and belief, are willful and intentional, thereby justifying an award of exemplary and/or punitive damages.

**COUNT V
(UNJUST ENRICHMENT)**

45. Plaintiff realleges and incorporates by this reference all of the foregoing paragraphs.

46. Defendant has benefited from the improper, unfair, and unauthorized use of the 1-800 Contacts marks in its Internet advertising and its unauthorized trading off of Plaintiff's goodwill attendant thereto, as alleged above.

47. Defendant has knowledge and fully appreciates the benefits it has received from Plaintiff's trademark rights, consumer recognition, and goodwill as a result of such actions.

48. Defendant would be unjustly enriched if it were permitted to retain the proceeds obtained from such actions.

49. Equity and good conscience dictate that Defendant be required to account for and turn over to Plaintiff an amount equal to the value of the benefits involuntarily conferred upon it.

JURY DEMAND

Plaintiff demands that all claims and causes of action raised in this complaint against Defendant be tried to a jury to the fullest extent possible under the United States and Utah Constitutions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

A. Preliminarily and permanently enjoining Defendant, its affiliates, and all other persons participating or acting in concert with it, from infringing any of Plaintiff's rights in the 1-800 Contacts marks.

B. Preliminarily and permanently enjoining Defendant, its affiliates, and all other persons participating or acting in concert with it, from purchasing or using the 1-800 Contacts marks or any marks confusingly similar to the 1-800 Contacts marks as keywords in Internet search engine advertising programs and from otherwise using such marks in any manner that is likely to cause confusion or mistake as to whether Defendant and its goods and services are authorized by, affiliated with, sponsored by, or endorsed by Plaintiff;

C. Ordering Defendant, its affiliates, and all other persons participating or acting in concert with it to implement the 1-800 Contacts marks and all confusingly similar variations and misspelling thereof as negative keywords in all of their search engine advertising campaigns;

D. Ordering Defendant to provide an accounting of all revenues and profits gained by Defendant while engaging in the acts complained of in this complaint;

E. Ordering Defendant to promulgate corrective advertising pursuant to Utah Code Ann. § 13-11a-4(3);

F. Awarding Plaintiff its actual damages, and awarding Plaintiff any additional damages that the Court deems just and equitable under the circumstances of the case; but in no case less than the statutory damages mandated under Utah Code Ann. § 13-11a-4(2)(b);

G. Awarding Plaintiff, at its election, either treble or statutory damages in accordance with § 35 of the Lanham Act (15 U.S.C. § 1117) on all claims asserted under § 43 of the Lanham Act (15 U.S.C. § 1125);

H. Awarding Plaintiff damages to which it is entitled based upon Defendant's unjust enrichment;

I. Awarding Plaintiff prejudgment interest at the rate established under 26 U.S.C. § 6621(a)(2) from the date of service of the Complaint through the date of judgment;

J. Awarding Plaintiff its allowable costs and attorneys fees; and

K. Awarding Plaintiff such other and/or further relief as is just and equitable.

DATED this 8th day of March, 2010.

Respectfully submitted,

/s/ Mark A. Miller
Mark A. Miller (9563)
Bryan G. Pratt (9924)
Brett L. Foster (6089)

Plaintiff's Address:
66 East Wadsworth Park Drive
Draper, Utah 84020

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
1-800 CONTACTS

DEFENDANTS

Contact Lens King, Inc., a Nevada corporation,

(b) County of Residence of First Listed Plaintiff Salt Lake
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Mark A. Miller, Holland & Hart, 60 E. South Temple, #2000, SLC, UT 84111
801-799-5800

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation
PTF DEF
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, Labor, etc.

V. ORIGIN

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. sections 1051-1127
Brief description of cause:
trademark infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 03/08/2010 SIGNATURE OF ATTORNEY OF RECORD /s/ Mark A. Miller

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

- Print Save As... Export as FDF Retrieve FDF File Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**
 Example: U.S. Civil Statute: 47 USC 553
 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT H

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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

<p>1-800 CONTACTS, INC., a Delaware corporation;</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>EMPIRE VISION CENTER, INC., d/b/a LENS123, a New York corporation,</p> <p style="text-align: center;">Defendant.</p>	<p>COMPLAINT</p> <p>Case No. 2:10-cv-173</p> <p>Judge Dale A. Kimball</p> <p>(JURY DEMAND)</p>
--	--

Plaintiff 1-800 Contacts, Inc. ("1-800 Contacts" or "Plaintiff"), by and through counsel, alleges and complains against Defendant Empire Vision Center, Inc., d/b/a Lens123 ("Defendant") as follows:

JURISDICTION AND VENUE

1. This is an action for trademark infringement and unfair competition under §§ 32 and 43 of the Lanham Act (a.k.a. Trademark Act of 1946, 15 U.S.C. §§ 1051-1127, as amended), and state law infringement and false advertising claims.

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2. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (trademarks), and 15 U.S.C. § 1121 (trademarks). This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367(a), because those claims arise from the common nucleus of operative facts alleged in Plaintiff's federal claims.

3. This Court has personal jurisdiction over Defendant because, on information and belief, Defendant has transacted business in Utah and has caused damage to Plaintiff in Utah. Defendant has purposefully availed itself of the privilege of transacting business in this District by, *inter alia*, advertising its contact lens products via the Internet in this District, offering an interactive website www.lens123.com accessible to consumers throughout the country, including in this District, which permits the consumer to create an account and order contact lenses to be shipped to the consumer in this District. Defendant has used Plaintiff's trademarks in connection with its Internet advertising, including in this District, without the authorization or consent of Plaintiff.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because there is personal jurisdiction over Defendant, and because a substantial part of Defendant's acts and omissions giving rise to Plaintiff's claims occurred in this judicial district.

PARTIES

5. Plaintiff 1-800 Contacts, Inc. is a Delaware corporation having its principal place of business at 66 East Wadsworth Park Drive, Draper, Utah 84020. Plaintiff is engaged in retail sales of contact lenses, including marketing and selling contact lenses via the Internet.

6. Upon information and belief, Defendant is a New York corporation having a place of business at 2921 Erie Blvd. East, Syracuse, New York 13224. Upon information and

belief, Defendant is also engaged in retail sales of contact lenses, including marketing and selling contact lenses via the Internet in direct competition with Plaintiff.

7. Upon information and belief, Defendant owns and operates the website www.lens123.com, and possibly others, relating to its business of offering and selling contact lenses and vision-related products.

GENERAL ALLEGATIONS

8. For over a decade, Plaintiff has been, and continues to be, engaged in the business of advertising, offering for sale, selling and distributing contact lenses and eye care products via telephone, fax, Internet, and mail orders (the "Goods and Services"). 1-800 Contacts is the market leader, having filled over ten million orders for millions customers. Plaintiff's contact lens and eye care products can be ordered via the Internet at Plaintiff's website: www.1800contacts.com.

9. Plaintiff owns common law and federally registered trademark rights in the marks 1-800 CONTACTS, 1800 CONTACTS (U.S. Registration No. 2,731,114) and 1800CONTACTS (U.S. Registration No. 2,675,866) (the "1-800 Contacts marks").

10. Since at least as early as 1995, Plaintiff has advertised and offered its Goods and Services using one or more of the 1-800 Contacts marks in interstate commerce throughout the United States. The 1-800 Contacts marks have been used extensively in advertising and promotional media, including the Internet, radio, television, trade shows, various printed media, and direct mail.

11. Plaintiff has expended hundreds of millions of dollars advertising and marketing its Goods and Services using the 1-800 Contacts marks over many years. As a result, the 1-800 Contacts marks and Goods and Services have achieved significant commercial success and

widespread consumer fame and recognition. In addition, the consuming public has come to regard the 1-800 Contacts marks as symbols of Plaintiff, of Plaintiff's quality Goods and Services, and of Plaintiff's goodwill as the leader in the retail contact lens industry.

12. Like Plaintiff, Defendant advertises and offers contact lenses over the Internet through its www.lens123.com website in direct competition with Plaintiff. Defendant does so via keyword advertising campaigns through various search engines such as, for example, Google, Yahoo, Ask, AOL, and Bing.

13. On information and belief, Defendant is aware of the strong consumer recognition enjoyed by the 1-800 Contacts marks and the significant goodwill Plaintiff has created in those marks.

14. In order to trade off of Plaintiff's goodwill and capitalize on the fame and recognition of the 1-800 Contacts marks, Defendant has purchased, continues to purchase, and has caused to be purchased, the 1-800 Contacts marks and/or confusingly similar variations or misspellings thereof as keywords that trigger the display of sponsored advertisements for Defendant's competitive goods and services.

15. On information and belief, the keyword advertising programs offered by the various search engines give control to the user, such as Defendant, to (a) select the keywords it wishes to purchase to trigger its sponsored advertisements, and (b) implement "negative keywords" that will ensure such advertisements are not triggered in response to a search for such negative keywords.

16. On information and belief, Defendant is aware of the control it has over the keyword advertising programs offered by the various search engines with respect to Defendant's advertisements. In particular, Defendant is aware that it can easily implement the 1-800 Contacts

marks and confusingly similar variations or misspellings thereof as “negative keywords” in its Internet advertising campaigns to ensure that Defendant’s directly competitive advertisements are not displayed in response to a consumer searching for Plaintiff and/or Plaintiff’s Goods and Services.

17. Notwithstanding the foregoing, Defendant has not sufficiently implemented the 1-800 Contacts marks (and confusingly similar variations or misspellings thereof) as negative keywords, but has instead voluntarily and consciously participated in causing its competitive advertisements to be displayed in response to consumers searching for the 1-800 Contacts marks and Plaintiff’s Goods and Services.

18. Defendant’s unauthorized use of the 1-800 Contacts marks as keywords in its Internet advertising campaigns and Defendant’s participation in causing its sponsored advertisements to be displayed in response to searches for Plaintiff and Plaintiff’s Goods and Services has caused, and will continue to cause, confusion and mistake, including initial interest confusion, as to the source or origin of Defendant’s goods and services and is likely to falsely suggest a sponsorship, connection, license, endorsement or association by Plaintiff with Defendant’s goods and services, thereby injuring Plaintiff and the consuming public.

19. Defendant’s actions also unjustly enrich Defendant by wrongfully directing consumers searching for Plaintiff and Plaintiff’s Goods and Services on the Internet to Defendant’s competitive website where such consumers purchase contact lenses from Defendant rather than Plaintiff.

20. Despite Plaintiff repeatedly providing Defendant with notice of its infringing activities, Defendant’s actions of infringement have not ceased.

CAUSES OF ACTION**COUNT I****(TRADEMARK INFRINGEMENT UNDER SECTION 43(a) OF THE LANHAM ACT – 35 U.S.C. § 1125)**

21. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

22. Defendant's acts as alleged herein with respect to its infringement of Plaintiff's marks are likely to cause public confusion, mistake, or deception as to the affiliation, connection, or association of Plaintiff with Defendant. Defendant's acts are also likely to cause public confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods and services by Plaintiff. Accordingly, Defendant's acts constitute trademark infringement in violation of 15 U.S.C. § 1125(a).

23. To the extent Defendant utilizes affiliates to conduct keyword advertising on its behalf, Defendant is secondarily liable for the infringing acts of its affiliates that likewise purchase the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as keywords (and fail to implement corresponding negative keywords) in order to display advertisements for Defendant's competitive goods and services in response to searches for Plaintiff and Plaintiff's Goods and Services.

24. Plaintiff has been and will continue to be damaged by such wrongful acts.

25. Because Defendant's actions, on information and belief, were intentional, willful and/or deliberate, Plaintiff is entitled to an award of treble damages under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

26. This is an exceptional case, and thus Plaintiff is entitled to an award of attorneys' fees under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

27. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief and monetary damages against Defendant.

COUNT II

(TRADEMARK INFRINGEMENT UNDER SECTION 32 OF THE LANHAM ACT – 35 U.S.C. § 1114)

28. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

29. Defendant's acts as alleged herein with respect to its infringement of Plaintiff's marks are likely to cause public confusion, mistake, or deception and, therefore, constitute trademark infringement in violation of 15 U.S.C. § 1114.

30. To the extent Defendant utilizes affiliates to conduct keyword advertising on its behalf, Defendant is secondarily liable for the infringing acts of its affiliates that likewise purchase the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as keywords (and fail to implement corresponding negative keywords) in order to display advertisements for Defendant's competitive goods and services in response to searches for Plaintiff and Plaintiff's Goods and Services.

31. Plaintiff has been and will continue to be damaged by such wrongful acts.

32. Because Defendant's actions, on information and belief, were intentional, willful and/or deliberate, Plaintiff is entitled to an award of treble damages under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

33. This is an exceptional case, and thus Plaintiff is entitled to an award of attorneys' fees under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

34. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief and monetary damages against Defendant.

COUNT III

(CONTRIBUTORY TRADEMARK INFRINGEMENT UNDER SECTIONS 43(A) AND 32 OF THE LANHAM ACT)

35. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

36. On information and belief, the search engines through which Defendant conducts its advertising use the 1-800 Contacts marks in order to display Defendant's competitive advertisements and links to Defendant's competitive websites. Such use is a use in commerce in connection with the advertisement of Defendant's competitive goods and services which is likely to cause public confusion, mistake, or deception as to the affiliation, connection, or association of Plaintiff with Defendant. Such use is also likely to cause public confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods and services by Plaintiff. Accordingly, the search engines' acts constitute trademark infringement in violation of 15 U.S.C. §§ 1114 and 1125(a).

37. Defendant's actions as alleged above, and particularly Defendant's failure to implement appropriate negative keywords in connection with its internet advertising campaigns through the search engines to ensure that Defendant's advertisements and/or links to Defendant's competitive websites are not displayed in response to or as a result of a search for Plaintiff's trademarks and/or Goods and Services, demonstrate a willful blindness to the infringement of the 1-800 Contacts marks and the consumer confusion being caused by its participation in its internet advertising campaigns. Such actions constitute contributory infringement, whether or not Defendant affirmatively purchases any of Plaintiff's trademarks as keywords.

38. Plaintiff has been and will continue to be damaged by such wrongful acts.

39. Plaintiff is, therefore, entitled to all damages and relief set forth under Counts I and II above due to Defendant's contributory trademark infringement.

COUNT IV

(COMMON LAW UNFAIR COMPETITION, MISAPPROPRIATION, AND TRADEMARK INFRINGEMENT – UTAH UNFAIR COMPETITION ACT, UTAH CODE ANN. §13-5a-101 *et. seq.*)

40. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

41. The 1-800 Contacts marks are distinctive of Plaintiff's Goods and Services and of Plaintiff as the source for those Goods and Services.

42. Defendant's actions, as alleged above, were intentional business acts that infringe and diminish the value of Plaintiff's trademark rights under federal common law and Utah common law and, therefore, constitute acts of unfair competition under Utah Code Ann. §13-5a-102(4)(a).

43. By reason of the foregoing, Plaintiff is entitled to injunctive relief and monetary damages against Defendant.

44. The infringing activities of Defendant, on information and belief, are willful and intentional, thereby justifying an award of exemplary and/or punitive damages.

**COUNT V
(UNJUST ENRICHMENT)**

45. Plaintiff realleges and incorporates by this reference all of the foregoing paragraphs.

46. Defendant has benefited from the improper, unfair, and unauthorized use of the 1-800 Contacts marks in its Internet advertising and its unauthorized trading off of Plaintiff's goodwill attendant thereto, as alleged above.

47. Defendant has knowledge and fully appreciates the benefits it has received from Plaintiff's trademark rights, consumer recognition, and goodwill as a result of such actions.

48. Defendant would be unjustly enriched if it were permitted to retain the proceeds obtained from such actions.

49. Equity and good conscience dictate that Defendant be required to account for and turn over to Plaintiff an amount equal to the value of the benefits involuntarily conferred upon it.

JURY DEMAND

Plaintiff demands that all claims and causes of action raised in this complaint against Defendant be tried to a jury to the fullest extent possible under the United States and Utah Constitutions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

A. Preliminarily and permanently enjoining Defendant, its affiliates, and all other persons participating or acting in concert with it, from infringing any of Plaintiff's rights in the 1-800 Contacts marks.

B. Preliminarily and permanently enjoining Defendant, its affiliates, and all other persons participating or acting in concert with it, from purchasing or using the 1-800 Contacts marks or any marks confusingly similar to the 1-800 Contacts marks as keywords in Internet search engine advertising programs and from otherwise using such marks in any manner that is likely to cause confusion or mistake as to whether Defendant and its goods and services are authorized by, affiliated with, sponsored by, or endorsed by Plaintiff;

C. Ordering Defendant, its affiliates, and all other persons participating or acting in concert with it to implement the 1-800 Contacts marks and all confusingly similar variations and misspelling thereof as negative keywords in all of their search engine advertising campaigns;

D. Ordering Defendant to provide an accounting of all revenues and profits gained by Defendant while engaging in the acts complained of in this complaint;

E. Ordering Defendant to promulgate corrective advertising pursuant to Utah Code Ann. § 13-11a-4(3);

F. Awarding Plaintiff its actual damages, and awarding Plaintiff any additional damages that the Court deems just and equitable under the circumstances of the case; but in no case less than the statutory damages mandated under Utah Code Ann. § 13-11a-4(2)(b);

G. Awarding Plaintiff, at its election, either treble or statutory damages in accordance with § 35 of the Lanham Act (15 U.S.C. § 1117) on all claims asserted under § 43 of the Lanham Act (15 U.S.C. § 1125);

H. Awarding Plaintiff damages to which it is entitled based upon Defendant's unjust enrichment;

I. Awarding Plaintiff prejudgment interest at the rate established under 26 U.S.C. § 6621(a)(2) from the date of service of the Complaint through the date of judgment;

J. Awarding Plaintiff its allowable costs and attorneys fees; and

K. Awarding Plaintiff such other and/or further relief as is just and equitable.

DATED this 25th day of February, 2010.

Respectfully submitted,

/s/ Mark A. Miller

Mark A. Miller (9563)

Bryan G. Pratt (9924)

Brett L. Foster (6089)

Plaintiff's Address:
66 East Wadsworth Park Drive
Draper, Utah 84020

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

1-800 CONTACTS, INC., a Delaware corporation,

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) Mark A. Miller, Holland & Hart, 60 E. South Temple, Suite 2000, SLC, UT 84111 (801) 799-5800

DEFENDANTS

EMPIRE VISION CENTER, INC. dba LENS123, a New York Corp.,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-sections like REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS.

V. ORIGIN

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): USC sections 1051-1127. Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23. DEMAND \$. CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 02/25/2010 SIGNATURE OF ATTORNEY OF RECORD /s/ Mark A. Miller

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Print Save As... Export as FDF Retrieve FDF File Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephonic number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

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V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

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Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT I

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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

1-800 CONTACTS, INC., a Delaware corporation;

Plaintiff,

vs.

LENSES FOR LESS, an Ohio company,

Defendant.

COMPLAINT

Case No. 2:10-cv-41

Judge Ted Stewart

(JURY DEMAND)

Plaintiff 1-800 Contacts, Inc. ("1-800 Contacts" or "Plaintiff"), by and through counsel, alleges and complains against Defendant Lenses For Less ("Defendant") as follows:

JURISDICTION AND VENUE

1. This is an action for trademark infringement and unfair competition under §§ 32 and 43 of the Lanham Act (a.k.a. Trademark Act of 1946, 15 U.S.C. §§ 1051-1127, as amended), and state law infringement and false advertising claims.

2. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (trademarks), and 15 U.S.C. § 1121 (trademarks). This

Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367(a), because those claims arise from the common nucleus of operative facts alleged in Plaintiff's federal claims.

3. This Court has personal jurisdiction over Defendant because, on information and belief, Defendant has transacted business in Utah and has caused damage to Plaintiff in Utah. Defendant has purposefully availed itself of the privilege of transacting business in this District by, *inter alia*, advertising its contact lens products via the Internet in this District, offering an interactive website at www.lensesforless.com accessible to consumers throughout the country, including in this District, which permits the consumer to create an account and order contact lenses to be shipped to the consumer in this District. Defendant has used Plaintiff's trademarks in connection with its Internet advertising, including in this District, without the authorization or consent of Plaintiff.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because there is personal jurisdiction over Defendant, and because a substantial part of Defendant's acts and omissions giving rise to Plaintiff's claims occurred in this judicial district.

PARTIES

5. Plaintiff 1-800 Contacts, Inc. is a Delaware corporation having its principal place of business at 66 East Wadsworth Park Drive, Draper, Utah 84020. Plaintiff is engaged in retail sales of contact lenses, including marketing and selling contact lenses via the Internet.

6. Upon information and belief, Defendant is an Ohio company having a place of business at 2525 Far Hills Avenue, Dayton, Ohio 45419. Upon information and belief, Defendant is also engaged in retail sales of contact lenses, including marketing and selling contact lenses via the Internet in direct competition with Plaintiff.

7. Upon information and belief, Defendant owns and operates the website www.lensesforless.com, and possibly others, relating to its business of offering and selling contact lenses and vision-related products.

GENERAL ALLEGATIONS

8. For over a decade, Plaintiff has been, and continues to be, engaged in the business of advertising, offering for sale, selling and distributing contact lenses and eye care products via telephone, fax, Internet, and mail orders (the "Goods and Services"). 1-800 Contacts is the market leader, having filled millions of orders for several million customers. Plaintiff's contact lens and eye care products can be ordered via the Internet at Plaintiff's website: www.1800contacts.com.

9. Plaintiff owns common law and federally registered trademark rights in the marks 1-800 CONTACTS, 1800 CONTACTS (U.S. Registration No. 2,731,114) and 1800CONTACTS (U.S. Registration No. 2,675,866) (the "1-800 Contacts marks").

10. Since at least as early as 1995, Plaintiff has advertised and offered its Goods and Services using one or more of the 1-800 Contacts marks in interstate commerce throughout the United States. The 1-800 Contacts marks have been used extensively in advertising and promotional media, including the Internet, radio, television, trade shows, various printed media, and direct mail.

11. Plaintiff has expended hundreds of millions of dollars advertising and marketing its Goods and Services using the 1-800 Contacts marks over many years. As a result, the 1-800 Contacts marks and Goods and Services have achieved significant commercial success and widespread consumer fame and recognition. In addition, the consuming public has come to

regard the 1-800 Contacts marks as symbols of Plaintiff, of Plaintiff's quality Goods and Services, and of Plaintiff's goodwill as the leader in the retail contact lens industry.

12. Like Plaintiff, Defendant advertises and offers contact lenses over the Internet through its www.lensesforless.com website in direct competition with Plaintiff. Defendant does so via keyword advertising campaigns through various search engines such as, for example, Google, Yahoo, and Bing.

13. On information and belief, Defendant is aware of the strong consumer recognition enjoyed by the 1-800 Contacts marks and the significant goodwill Plaintiff has created in those marks.

14. In order to trade off of Plaintiff's goodwill and capitalize on the fame and recognition of the 1-800 Contacts marks, Defendant has purchased, continues to purchase, and has caused to be purchased, the 1-800 Contacts marks and/or confusingly similar variations or misspellings thereof as keywords that trigger the display of sponsored advertisements for Defendant's competitive goods and services.

15. On information and belief, the keyword advertising programs offered by the various search engines give control to the user, such as Defendant, to (a) select the keywords it wishes to purchase to trigger its sponsored advertisements, and (b) implement "negative keywords" that will ensure such advertisements are not triggered in response to a search for such negative keywords.

16. On information and belief, Defendant is aware of the control it has over the keyword advertising programs offered by the various search engines with respect to Defendant's advertisements. In particular, Defendant is aware that it can easily implement the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as "negative keywords" in its

Internet advertising campaigns to ensure that Defendant's directly competitive advertisements are not displayed in response to a consumer searching for Plaintiff and/or Plaintiff's Goods and Services.

17. Notwithstanding the foregoing, Defendant has not implemented the 1-800 Contacts marks (and confusingly similar variations or misspellings thereof) as negative keywords, but has instead voluntarily and consciously participated in causing its competitive advertisements to be displayed in response to consumers searching for the 1-800 Contacts marks and Plaintiff's Goods and Services.

18. Defendant's unauthorized use of the 1-800 Contacts marks as keywords in its Internet advertising campaigns and Defendant's participation in causing its sponsored advertisements to be displayed in response to searches for Plaintiff and Plaintiff's Goods and Services has caused, and will continue to cause, confusion and mistake, including initial interest confusion, as to the source or origin of Defendant's goods and services and is likely to falsely suggest a sponsorship, connection, license, endorsement or association by Plaintiff with Defendant's goods and services, thereby injuring Plaintiff and the consuming public.

19. Defendant's actions also unjustly enrich Defendant by wrongfully directing consumers searching for Plaintiff and Plaintiff's Goods and Services on the Internet to Defendant's competitive website where such consumers purchase contact lenses from Defendant rather than Plaintiff.

20. Due to Defendant's infringement of Plaintiff's trademarks rights, Plaintiff sent Defendant a letter on November 9, 2009 demanding that Defendant cease and desist from purchasing the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as keywords in its Internet advertising campaigns.

21. Plaintiff received no response from Defendant to the demand letter.

22. Defendant's actions of infringement have not ceased.

CAUSES OF ACTION

COUNT I

(TRADEMARK INFRINGEMENT UNDER SECTION 43(a) OF THE LANHAM ACT – 35 U.S.C. § 1125)

23. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

24. Defendant's acts as alleged herein with respect to its infringement of Plaintiff's marks are likely to cause public confusion, mistake, or deception as to the affiliation, connection, or association of Plaintiff with Defendant. Defendant's acts are also likely to cause public confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods and services by Plaintiff. Accordingly, Defendant's acts constitute trademark infringement in violation of 15 U.S.C. § 1125(a).

25. To the extent Defendant utilizes affiliates to conduct keyword advertising on its behalf, Defendant is secondarily liable for the infringing acts of its affiliates that likewise purchase the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as keywords (and fail to implement corresponding negative keywords) in order to display advertisements for Defendant's competitive goods and services in response to searches for Plaintiff and Plaintiff's Goods and Services.

26. Plaintiff has been and will continue to be damaged by such wrongful acts.

27. Because Defendant's actions, on information and belief, were intentional, willful and/or deliberate, Plaintiff is entitled to an award of treble damages under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

28. This is an exceptional case, and thus Plaintiff is entitled to an award of attorneys' fees under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

29. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief and monetary damages against Defendant.

COUNT II
(TRADEMARK INFRINGEMENT UNDER SECTION 32 OF THE LANHAM ACT – 35 U.S.C. § 1114)

30. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

31. Defendant's acts as alleged herein with respect to its infringement of Plaintiff's marks are likely to cause public confusion, mistake, or deception and, therefore, constitute trademark infringement in violation of 15 U.S.C. § 1114.

32. To the extent Defendant utilizes affiliates to conduct keyword advertising on its behalf, Defendant is secondarily liable for the infringing acts of its affiliates that likewise purchase the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as keywords (and fail to implement corresponding negative keywords) in order to display advertisements for Defendant's competitive goods and services in response to searches for Plaintiff and Plaintiff's Goods and Services.

33. Plaintiff has been and will continue to be damaged by such wrongful acts.

34. Because Defendant's actions, on information and belief, were intentional, willful and/or deliberate, Plaintiff is entitled to an award of treble damages under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

35. This is an exceptional case, and thus Plaintiff is entitled to an award of attorneys' fees under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

36. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief and monetary damages against Defendant.

COUNT III
(CONTRIBUTORY TRADEMARK INFRINGEMENT UNDER SECTIONS 43(A) AND 32 OF THE
LANHAM ACT)

37. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

38. On information and belief, the search engines through which Defendant conducts its advertising use the 1-800 Contacts marks in order to display Defendant's competitive advertisements and links to Defendant's competitive websites. Such use is a use in commerce in connection with the advertisement of Defendant's competitive goods and services which is likely to cause public confusion, mistake, or deception as to the affiliation, connection, or association of Plaintiff with Defendant. Such use is also likely to cause public confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods and services by Plaintiff. Accordingly, the search engines' acts constitute trademark infringement in violation of 15 U.S.C. §§ 1114 and 1125(a).

39. Defendant's actions as alleged above, and particularly Defendant's failure to implement appropriate negative keywords in connection with its internet advertising campaigns through the search engines to ensure that Defendant's advertisements and/or links to Defendant's competitive websites are not displayed in response to or as a result of a search for Plaintiff's trademarks and/or Goods and Services, demonstrate a willful blindness to the infringement of the 1-800 Contacts marks and the consumer confusion being caused by its participation in its internet advertising campaigns. Such actions constitute contributory infringement, whether or not Defendant affirmatively purchases any of Plaintiff's trademarks as keywords.

40. Plaintiff has been and will continue to be damaged by such wrongful acts.

41. Plaintiff is, therefore, entitled to all damages and relief set forth under Counts I and II above due to Defendant's contributory trademark infringement.

COUNT IV

(COMMON LAW UNFAIR COMPETITION, MISAPPROPRIATION, AND TRADEMARK INFRINGEMENT – UTAH UNFAIR COMPETITION ACT, UTAH CODE ANN. §13-5a-101 *et. seq.*)

42. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

43. The 1-800 Contacts marks are distinctive of Plaintiff's Goods and Services and of Plaintiff as the source for those Goods and Services.

44. Defendant's actions, as alleged above, were intentional business acts that infringe and diminish the value of Plaintiff's trademark rights under federal common law and Utah common law and, therefore, constitute acts of unfair competition under Utah Code Ann. §13-5a-102(4)(a).

45. By reason of the foregoing, Plaintiff is entitled to injunctive relief and monetary damages against Defendant.

46. The infringing activities of Defendant, on information and belief, are willful and intentional, thereby justifying an award of exemplary and/or punitive damages.

COUNT V

(UNJUST ENRICHMENT)

47. Plaintiff realleges and incorporates by this reference all of the foregoing paragraphs.

48. Defendant has benefited from the improper, unfair, and unauthorized use of the 1-800 Contacts marks in its Internet advertising and its unauthorized trading off of Plaintiff's goodwill attendant thereto, as alleged above.

49. Defendant has knowledge and fully appreciates the benefits it has received from Plaintiff's trademark rights, consumer recognition, and goodwill as a result of such actions.

50. Defendant would be unjustly enriched if it were permitted to retain the proceeds obtained from such actions.

51. Equity and good conscience dictate that Defendant be required to account for and turn over to Plaintiff an amount equal to the value of the benefits involuntarily conferred upon it.

JURY DEMAND

Plaintiff demands that all claims and causes of action raised in this complaint against Defendant be tried to a jury to the fullest extent possible under the United States and Utah Constitutions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

A. Preliminarily and permanently enjoining Defendant, its affiliates, and all other persons participating or acting in concert with it, from infringing any of Plaintiff's rights in the 1-800 Contacts marks.

B. Preliminarily and permanently enjoining Defendant, its affiliates, and all other persons participating or acting in concert with it, from purchasing or using the 1-800 Contacts marks or any marks confusingly similar to the 1-800 Contacts marks as keywords in Internet search engine advertising programs and from otherwise using such marks in any manner that is likely to cause confusion or mistake as to whether Defendant and its goods and services are authorized by, affiliated with, sponsored by, or endorsed by Plaintiff;

C. Ordering Defendant, its affiliates, and all other persons participating or acting in concert with it to implement the 1-800 Contacts marks and all confusingly similar variations and misspelling thereof as negative keywords in all of their search engine advertising campaigns;

D. Ordering Defendant to provide an accounting of all revenues and profits gained by Defendant while engaging in the acts complained of in this complaint;

E. Ordering Defendant to promulgate corrective advertising pursuant to Utah Code Ann. § 13-11a-4(3);

F. Awarding Plaintiff its actual damages, and awarding Plaintiff any additional damages that the Court deems just and equitable under the circumstances of the case; but in no case less than the statutory damages mandated under Utah Code Ann. § 13-11a-4(2)(b);

G. Awarding Plaintiff, at its election, either treble or statutory damages in accordance with § 35 of the Lanham Act (15 U.S.C. § 1117) on all claims asserted under § 43 of the Lanham Act (15 U.S.C. § 1125);

H. Awarding Plaintiff damages to which it is entitled based upon Defendant's unjust enrichment;

I. Awarding Plaintiff prejudgment interest at the rate established under 26 U.S.C. § 6621(a)(2) from the date of service of the Complaint through the date of judgment;

J. Awarding Plaintiff its allowable costs and attorneys fees; and

K. Awarding Plaintiff such other and/or further relief as is just and equitable.

DATED this 20th day of January, 2010.

Respectfully submitted,

/s/ Mark A. Miller

Mark A. Miller (9563)

Bryan G. Pratt (9924)

Brett L. Foster (6089)

Plaintiff's Address:
66 East Wadsworth Park Drive
Draper, Utah 84020

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
1-800 CONTACTS, INC.
(b) County of Residence of First Listed Plaintiff Salt Lake
(c) Attorney's (Firm Name, Address, and Telephone Number)
Mark A. Miller, Holland & Hart, 60 E. South Temple, #2000, SLC, UT 84111
801-799-5800

DEFENDANTS
LENSES FOR LESS
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Property Rights, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. sections 1051-1127
Brief description of cause:
trademark infringement and unfair competition

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 01/20/2010
SIGNATURE OF ATTORNEY OF RECORD /s/ Mark A. Miller

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT J

Bryan G. Pratt (09924)
RADER, FISHMAN & GRAUER, PLLC
10653 South River Parkway, Suite 150
South Jordan, UT 84095
Tel.: (801) 572-0185
Fax: (801) 572-7666

Attorneys for Plaintiff

**THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

<p>1-800 CONTACTS, INC. a Delaware corporation, Plaintiff, v. Lensfast, L.L.C. d/b/a CONTACTLENS.COM, LENSFAST.COM, and E-CONTACTS.COM a Limited Liability Company of Wyoming, and Randolph Weigner, of Meredith New Hampshire Defendants.</p>	<p>Case No.:</p> <p><u>COMPLAINT</u></p>
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Plaintiff 1-800 CONTACTS, INC. (“1-800 CONTACTS” or “Plaintiff”) for its Complaint against Defendants Lensfast, L.L.C. d/b/a as CONTACTLENS.COM, LENSFAST.COM, and E-CONTACTS.COM and Randolph Weigner (“Lensfast” or “Defendants”) alleges:

NATURE OF THE ACTION

1. This is a civil action for damages and injunctive relief arising out of Lensfast’s acts of trademark infringement, unfair competition, false designation of origin, false advertising, passing off, and unjust enrichment under federal, state and/or common law as a result of Lensfast’s wrongful acts, including willful infringement of 1-800 CONTACTS’ rights in the trademark 1800CONTACTS, 1-800 CONTACTS, and 1 800 CONTACTS (the “1-800 CONTACTS Marks”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a) and (b). On information and belief, the parties are citizens of different states and the amount in controversy far exceeds the sum or value of seventy-five thousand dollars (\$75,000), exclusive of interest and costs, creating jurisdiction under 28 U.S.C § 1332. Jurisdiction over the state law claims is also appropriate under 28 U.S.C. § 1367(a) and principles of pendent jurisdiction.

3. This Court has personal jurisdiction over Lensfast. Upon information and belief, Lensfast conducts business in this District, having shipped contacts and other items to this District. In addition, Lensfast has purposefully availed itself of the privilege of acting in this District by, among other things, advertising via the Internet in this District and offering interactive websites at www.lensfast.com, www.contactlens.com, and www.e-contacts.com (“the

Lensfast Websites”) and various affiliate websites, which are accessible by Internet users throughout the country, including in this District, which permit users to register online, including in this District, and from which product can be ordered and shipped throughout the country, including in this District. *See* excerpts from the Lensfast Websites at Exhibit A. Lensfast has used the 1-800 CONTACTS Marks without authorization or consent from 1-800 CONTACTS, including in this District. The tortious conduct about which 1-800 CONTACTS complains has been committed by Lensfast in this District. Lensfast’s actions are aimed, at least in part, at this District.

4. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391(b). A substantial portion of the activity about which 1-800 CONTACTS complains has taken place in this District, and the damages suffered by 1-800 CONTACTS were suffered, at least in part, in this District.

5. Upon information and belief, Lensfast transacts business throughout the entire United States, including in the District of Utah. The unlawful acts committed by Lensfast, as hereinafter alleged, have been and are, in whole or in part, conceived, carried out and made effective within this District. The interstate trade or commerce described herein by Lensfast is carried out in part within this District.

THE PARTIES

6. Plaintiff 1-800 Contacts, Inc. is a Delaware corporation, with its principal place of business at 66 East Wadsworth Park Drive, Draper, Utah 84020.

7. Upon information and belief, Defendant Lensfast, L.L.C. is a Limited Liability Company with a mailing address and a principle place of business of 1903 S Greeley Hwy #127, Cheyenne, WY 82001. *See* Wyoming Secretary of State Record at Exhibit B. Defendant Lensfast operates throughout the United States including in the State of Utah.

8. Upon information and belief, Lensfast, L.L.C. also operates under the names lensfast.com, contactlens.com, and e-contacts.com and often offers the address of P.O. Box 1001, Meredith, NH 03253 as its mailing address.

9. Upon information and belief, Defendant Randolph Weigner, located at the address of 29 Douglas Dr., Meredith, NH 03253, is the owner of Lensfast L.L.C. and sole administrative contact of the Lensfast Websites.

10. The public records for the domain name "lensfast.com" show that Lensfast, L.L.C. is the owner of the domain name and that Randolph Weigner is listed as the administrative contact, located at the address of P.O. Box 1001, Meredith, NH 03253. See Whois record at Exhibit C.

11. The public records for the domain name "e-contacts.com" show that there is no owner of the domain name listed, but Randolph Weigner is listed as the administrative contact, located at the address of P.O. Box 1001, Meredith, NH 03253. See Whois record at Exhibit D.

12. The public records for the domain name "contactlens.com" show that again there is no owner of the domain name listed, but Randolph Weigner is listed as the administrative contact, located at the address of P.O. Box 1001, Meredith, NH 03253. See Whois record at Exhibit E.

GENERAL ALLEGATIONS

1-800 CONTACTS' ACTIVITIES AND PROPRIETARY RIGHTS

13. For over a decade, 1-800 CONTACTS has been and is now extensively engaged in the business of selling and distributing contact lenses and eye care products via telephone and fax, through the Internet and by mail (the "1-800 CONTACTS Goods and Services"). Indeed, 1-800 CONTACTS is the market leader in the field of replacement contact lenses, having filled

over 16 million orders for over five million customers, with an inventory of over 20 million lenses. 1-800 CONTACTS' products can be ordered over the Internet via Plaintiff's website at www.1800contacts.com (the "1-800 CONTACTS Website").

14. Since at least as early as 1995, the 1-800 CONTACTS Goods and Services have been widely advertised and offered in interstate commerce throughout the United States. The 1-800 CONTACTS Marks are used extensively in various advertising and promotional media, including the Internet, radio, television, trade shows, and through various printed media including direct mail.

15. 1-800 CONTACTS possesses common law and federal registration rights in the mark 1-800 CONTACTS, including U.S. Registration Nos. 2,675,866 and 2,731,114. Copies of these registrations and printouts from the U.S. Patent and Trademark Office database for such registrations are attached at Exhibit F.

16. U.S. Registration Nos. 2,675,866 and U.S. Registration No. 2,731,114 are incontestable and constitute conclusive evidence of 1-800 CONTACTS' ownership of the 1-800 CONTACTS Marks, its exclusive right to use the marks throughout the United States, and the validity of the registrations and the marks.

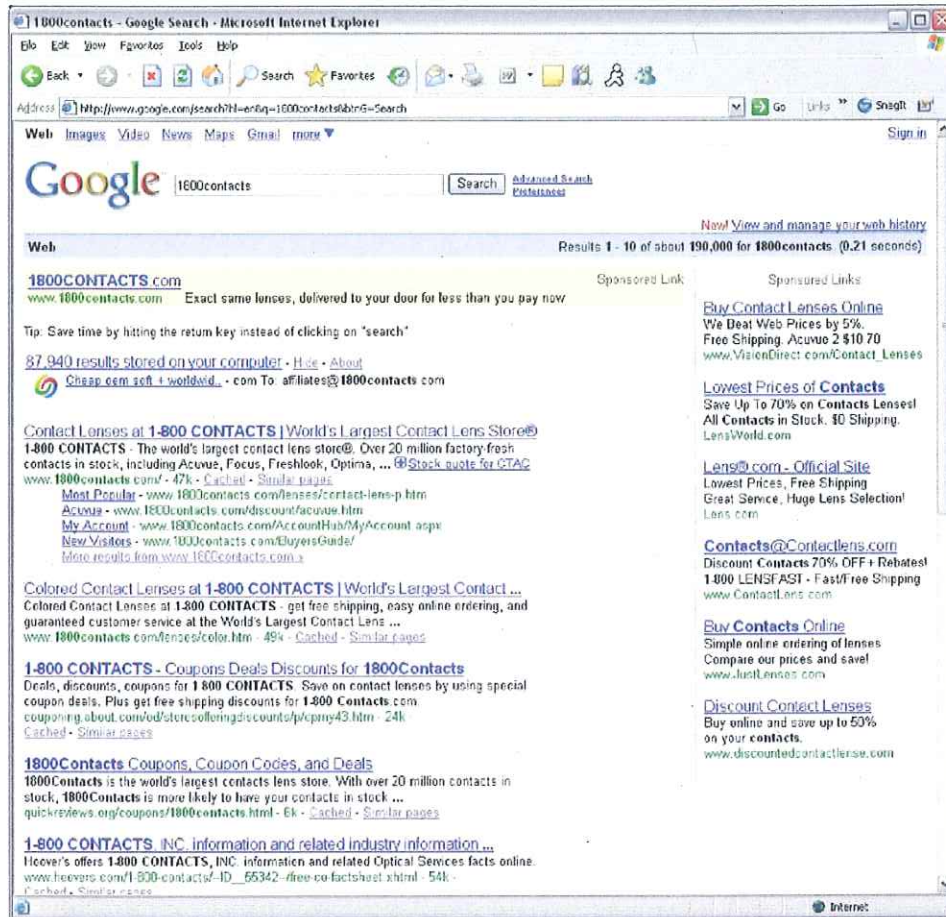
17. As a result of the quality of the 1-800 CONTACTS Goods and Services and the widespread promotion thereof under the 1-800 CONTACTS Marks, the 1-800 CONTACTS Goods and Services have met with substantial commercial success and widespread consumer recognition. As a further result, the 1-800 CONTACTS Marks are extensively known and have become symbols of Plaintiff, its quality products and services, and its goodwill.

**LENSFAST'S
WRONGFUL ACTS**

18. Like 1-800 CONTACTS, Lensfast offers the sale of replacement contact lenses over the Internet.

19. 1-800 CONTACTS discovered that Lensfast had purchased sponsored advertisements from Google, and other search engines, for Plaintiff's Marks to trigger advertising and/or a link to the Lensfast Websites. Such infringing activity was immediately brought to the attention of Lensfast.

20. Lensfast blatantly ignored the notification letter and did not cease using the 1-800 CONTACTS Marks to trigger advertising. For example, as shown in the below screen shot, which was prepared October 1, 2007, when 1800CONTACTS was entered into the search box, links to www.contactlens.com appear on the right side of the screen under the "Sponsored Links" section.



21. The www.lensfast.com website advertisements are triggered upon a search for 1800CONTACTS and thus, use the 1800 CONTACTS trademark as a triggering keyword to display and promote Lensfast's directly competitive goods and services. In essence, Lensfast is using the 1-800 CONTACTS Marks to trick consumers into visiting the Lensfast Websites
22. Lensfast's actions are specifically aimed at diverting web users who are expressly looking for 1-800 CONTACTS and the 1-800 CONTACTS Goods and Services. Indeed, Lensfast goes even so far as to intimate that there is an affiliation between 1-800 CONTACTS

and Lensfast by using a number of variations and mis-spellings of the 1-800 CONTACTS Marks to trigger the Lensfast ads.

**THE PARTIES' PAST HISTORY AND
LENSFAST'S INCESSANT INFRINGEMENT**

23. On or about September 12, 2007, 1-800 CONTACTS' outside counsel, Bryan G. Pratt, contacted Lensfast in writing to notify Lensfast of the infringement. A copy of the letter is attached hereto as **Exhibit G.**

24. No response to the notification letter was received from Lensfast.

25. On or about March 14, 2008, 1-800 CONTACTS noted another increase in Lensfast's level of infringement. Consequently, Plaintiff's outside counsel, Bryan G. Pratt, sent another letter to Lensfast concerning Defendants' increasingly infringing acts. A copy of the letter is attached hereto as **Exhibit H.**

26. On or about April 5, 2008, Plaintiff's second cease and desist letter was refused and returned.

27. In spite of its previous receipt of notice to stop the infringement, Lensfast took no action to remedy the infringement after refusing the notification. In fact, upon refusing this communication, infringement by Lensfast was maintained and in some instances actually increased.

28. Lensfast's infringing activities continue today, as evidenced by a screen shot prepared on December 22, 2008 that shows sponsored advertisements purchased by Lensfast that are triggered upon searching for the 1-800 CONTACTS Marks. As may be seen, the website www.contactlens.com is featured on the top right portion of the page, under a "Sponsored Links" heading.

Web Images Maps News Shopping Gmail more v Sign in

Google 1800contacts Advanced Search Preferences

Web Results 1 - 10 of about 428,000 for 1800contacts (0.21 seconds)

1800CONTACTS.com Sponsored Link Sponsored Links
www.1800contacts.com Need contact lenses? Buy in just 5 minutes. We deliver. You save.

Contact Lenses at 1-800 CONTACTS | World's Largest Contact Lens Store®
1-800 CONTACTS - The world's largest contact lens store®. Over 20 million name-brand contacts in stock, including Acuvue, Focus, Soflens, Proclear ...
www.1800contacts.com/ - 61k - Cached - Similar pages

[How to Order](#) [Color Lenses](#)
[Acuvue](#) [Toric Lenses](#)
[Full Product List](#) [OZ Opto](#)
[Bausch & Lomb](#) [How to Read Your RX](#)
[More results from 1800contacts.com »](#)

1800Contacts Discount Coupon
1800Contacts is one of the largest online contact lens stores. 1800Contacts is dedicated to providing you with a simple, hassle-free way to replace your ...
www.samlan.com/lenses/ - 5k - Cached - Similar pages

Home at 1-800 CONTACTS | World's Largest Contact Lens Store®
Click Step 1 to the left to start the application process with 1-800 CONTACTS. Culture? Benefits? Click: Company Info. ***ATTN: Applicants - Initial contact ...
<https://jobs.1800contacts.com/careers/> - 14k - Cached - Similar pages

from **The Honorable Elsworth Van Graafeiland, of the United 1 States ...**
File Format: PDF/Adobe Acrobat - [View as HTML](#)

1-800 Contacts, 509 F. Supp. 2d at 478. Each type of ad categorical associations (e.g. www.1800contacts.com might ...
caselaw.findlaw.com/casestats/casestats?docId=209646ed - Similar cases

INJURY TO 1-800 CONTACTS AND THE PUBLIC

29. Lensfast's unauthorized use of the 1-800 CONTACTS Marks has and will continue to irreparably injure 1-800 CONTACTS by confusing customers, diverting sales, and diluting the distinctiveness of the 1-800 CONTACTS Marks. If permitted to continue, Lensfast's use of the 1-800 CONTACTS Marks will continue to irreparably injure 1-800 CONTACTS, the 1800 CONTACTS Marks, the reputation and goodwill associated therewith, 1-800 CONTACTS' reputation for exceedingly high-quality services and products, and the public interest in being free from confusion, mistake or deception.

30. Lensfast's use of the 1-800 CONTACTS Marks has caused and will continue to cause confusion, mistake or deception as to the source or origin of Lensfast's goods and services and is likely to falsely suggest a sponsorship, connection, license, endorsement or association of Lensfast's goods and services with 1-800 CONTACTS, thereby injuring 1-800 CONTACTS and the public.

31. Lensfast's use of colorable and confusingly similar imitations of the 1-800 CONTACTS Marks, including misspellings, hyphenation variations, and spacing variations, is part of a deliberate plan to trade on 1-800 CONTACTS' goodwill and otherwise unfairly compete with 1-800 CONTACTS and benefit therefrom. Lensfast knew of 1-800 CONTACTS' tremendous success and the 1-800 CONTACTS Marks and intentionally engaged in trademark infringement with full knowledge of 1-800 CONTACTS' rights and in the face of notice not to engage in such activities.

COUNT I

Federal Trademark Infringement Violation of 15 U.S.C. § 1114

32. 1-800 CONTACTS incorporates by reference the allegations of Paragraphs 1-31 of this Complaint.

33. The unauthorized appropriation and use by Lensfast in commerce of the 1-800 CONTACTS Marks, in connection with goods and services that are identical or substantially similar to those offered by 1-800 CONTACTS, is likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of Lensfast's services and commercial activities, and thus directly, jointly, and/or contributorily infringes 1-800 CONTACTS' rights in its federally registered marks under 15 U.S.C. § 1114. Lensfast's actions have been carried out in willful disregard of 1-800 CONTACTS' rights in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

COUNT II**Federal Unfair Competition, False Designation of Origin,
Passing Off, and False Advertising****15 U.S.C. §1125(a)**

34. Plaintiff incorporates by reference the allegations of Paragraphs 1 – 33.

35. The unauthorized use by Lensfast of the 1-800 CONTACTS Marks in connection with Lensfast's business is likely to cause the public to mistakenly believe that Lensfast's contact lens replacement services originate from, are endorsed by, or are in some way affiliated with 1-800 CONTACTS and thus constitutes trademark infringement, false designation of origin, passing off, and unfair competition and is likely to cause the 1-800 CONTACTS Marks to lose their significance as indicators of origin. Lensfast's actions are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

36. Upon information and belief, the appropriation of the 1-800 CONTACTS Marks by Lensfast as set forth above is a part of a deliberate plan to trade on the valuable goodwill established therein. With knowledge of 1-800 CONTACTS and 1-800 CONTACTS' rights and with the deliberate intention to unfairly benefit from 1-800 CONTACTS' goodwill, the actions of Lensfast has been carried out in willful disregard of 1-800 CONTACTS' rights in violation of 15 U.S.C. Section 1125(a).

COUNT III**Common Law Unfair Competition, Misappropriation,
and Trademark Infringement****Unfair Practices Act – Utah Code Ann. §13-5-1 *et seq.***

37. 1-800 CONTACTS incorporates by reference the allegations of Paragraphs 1 – 36.

38. By its aforesaid conduct calculated to increase business and profits by deceiving and confusing members of the public, Lensfast continues to misappropriate the valuable goodwill of the 1-800 CONTACTS Marks, to infringe 1-800 CONTACTS' rights therein, and to unfairly compete with 1-800 CONTACTS under the common law and the laws of Utah. Lensfast's use of the 1-800 CONTACTS Marks to promote, market or sell products and services constitutes an unfair practice under Utah Code Ann. §13-5-1 *et seq.* Lensfast's use of the 1-800 CONTACTS Marks is an unfair or deceptive method of competition occurring in trade or commerce that impacts the public interest and has caused and is causing injury to 1-800 CONTACTS and consumers.

COUNT IV

Unjust Enrichment

39. 1-800 CONTACTS incorporates by reference the allegations of Paragraphs 1 - 38.

40. Lensfast is being unjustly enriched to the damage and irreparable harm of 1-800 CONTACTS.

DEMAND FOR RELIEF

WHEREFORE, 1-800 CONTACTS requests that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to, the following:

A. That 1-800 CONTACTS is the owner of the entire right, title and interest in and to the 1-800 CONTACTS Marks, that the 1-800 CONTACTS Marks are valid, enforceable and violated by Lensfast and that Lensfast has violated and is violating other relevant federal and state laws and regulations.

B. That Lensfast, their Affiliates, agents, servants, employees, attorneys, and all persons in active concert or participation with them, be preliminarily and permanently enjoined and restrained from:

1. Further infringement of the 1-800 CONTACTS Marks and from unfairly competing with 1-800 CONTACTS; from using any variation of the 1-800 CONTACTS Marks and any other marks or names that are confusingly similar to or that dilute the distinctiveness of those proprietary materials, including but not limited to use as domain names, trademarks, services marks, business names, meta tags, sponsored advertisement triggers, other identifiers, keywords or other terms used to attract or divert traffic on the Internet or to secure higher placement within search engine search results; and

2. From representing by any means whatsoever, directly or indirectly, that Lensfast, any products or services offered by Lensfast, or any activities undertaken by Lensfast, are associated with, endorsed by, sponsored by or connected in any way with 1-800 CONTACTS.

C. That Lensfast willfully violated 1-800 CONTACTS' rights.

E. That Lensfast be required to pay to 1-800 CONTACTS' damages according to proof, together with prejudgment interest thereon, as 1-800 CONTACTS has sustained as a consequence of Lensfast's wrongful acts, and to account for and return to 1-800 CONTACTS any monies, profits and advantages wrongfully gained by Lensfast.

G. That all damages sustained by Lensfast be trebled.

H. That Lensfast be required to pay to 1-800 CONTACTS punitive and exemplary damages.

I. That Lensfast be required to pay to 1-800 CONTACTS all attorney fees, expenses and costs incurred in this action.

J. That 1-800 CONTACTS deliver up for impoundment during the pendency of this action, and for destruction upon entry of judgment, all products, fixtures, writings, signage, artwork and other materials that infringe 1-800 CONTACTS' rights, falsely designate source or origin, or otherwise facilitate Lensfast's unfair competition with 1-800 CONTACTS.

K. That an Order be issued directing Lensfast to file with this Court and serve on 1-800 CONTACTS' attorneys, within thirty (30) days after the date of entry of any injunction, a report in writing and under oath setting forth in detail the manner and form in which Lensfast has complied with the injunction.

L. That 1-800 CONTACTS be granted such further relief as this Court may deem appropriate.

DEMAND FOR JURY TRIAL

1-800 CONTACTS hereby demands a trial by jury on all issues and claims so triable.

Respectfully submitted,

Date: December 23, 2008

By: /s/ Bryan G. Pratt
Bryan G. Pratt
RADER, FISHMAN & GRAUER, PLLC
10653 South River Parkway, Suite 150
South Jordan, UT 84095
Tel.: (801) 572-0185; Fax: (801) 572-7666

Attorneys for Plaintiff

INDEX OF EXHIBITS

Exhibit A – Excerpts from Lensfast websites

Exhibit B - Wyoming Secretary of State Record

Exhibit C - Whois record for lensfast.com

Exhibit D - Whois record for e-contacts.com

Exhibit E - Whois record for contactlens.com

Exhibit F – Certificates of U.S. Registration Nos. 2,675,866 and 2,731,114

Exhibit G – Letter dated September 12, 2007

Exhibit H – Letter dated March 14, 2008

The screenshot shows a web browser window titled "Contact Lens - Windows Internet Explorer". The address bar contains the URL "http://www.contactlens.com/index.php?ip=signup". The browser's menu bar includes "File", "Edit", "View", "Favorites", "Tools", and "Help". The browser toolbar shows "Contact Lens", "Pandora Radio - Listen to Fre...", and "1800contacts - Google Search".

The main content area is titled "Via Contact Lens" and contains a "Shipping Address" section. It features a checkbox labeled "Shipping address is the same as billing" which is currently unchecked. Below this is a note: "Please check this box if your shipping information is the same as billing." The form includes the following fields:

- Name : [Text Input]
- Company or In Care Of Name : [Text Input]
- Address Line 1 : [Text Input]
- Street, Apt, Floor Number : [Text Input]
- City : [Text Input]
- State : [Dropdown Menu] (Current selection: Utah (USA))
- Or Custom State / Province : [Text Input] (ONLY if outside USA and Canada)
- ZIP Code : [Text Input]
- Country : [Dropdown Menu] (Current selection: United States)

Below the shipping address section is an "Account Information" section with the following fields:

- Username : [Text Input] (Minimum 4 characters or you may use your email address)
- Password : [Text Input]

The browser's status bar at the bottom shows "Internet" and "100%" zoom level.

EXHIBIT A - Page 1

STATE OF WYOMING * SECRETARY OF STATE
MAX MAXFIELD
BUSINESS DIVISION

200 West 24th Street, Cheyenne, WY 82002-0200

Phone 307-777-7311 · Fax 307-777-5339

Website: <http://soswy.state.wy.us> · Email: business@state.wy.us

Filing Information

Name Lensfast LLC
Filing Type Limited Liability Company
Status Active

General Information

Fictitious Name		ID	2001-000420641
Old Name		Standing	Good
Sub Type		SubStatus	Current
Formation Locale	Wyoming	Name Consent	N
Filing Date	05/15/2001 12:00 AM	Term of Duration	None
Delayed Effective Date		Expiration Date	
Inactive Date			

Registered Agent Address

Registered Agency Services, Inc.
2120 Carey Ave
Cheyenne, WY 82001 USA

Mailing Address

1903 S Greeley Hwy # 127
Cheyenne, WY 82007 USA

Parties

Type	Name / Organization / Address
------	-------------------------------

Public Notes

Duration: 30 years

Filing Information

Name Lensfast LLC
 Filing Type Limited Liability Company
 Status Active

Most Recent Annual Report Information

Type	Original	AR Year	2008
License Tax	\$50.00	AR Exempt	N
AR Date	12/11/2008 11:41 AM	Electronic AR	Y
Web Filed	N	AR Email	dtv@usa.com
		AR ID	00954162

Officers / Directors

Type	Name / Organization / Address
------	-------------------------------

Principal Address

1903 S Greeley Hwy # 127
 Cheyenne, WY 82007 USA
 Phone: () -
 Fax: () -

Mailing Address

1903 S Greeley Hwy # 127
 Cheyenne, WY 82007 USA

Filing Information

Name Lensfast LLC
Filing Type Limited Liability Company
Status Active

Amendment History

<u>Num</u>	<u>Type</u>	<u>Date</u>	<u>Delayed Date</u>	<u>Status</u>	<u>Username</u>
2008-000669766	System Amendment	05/02/2008		Active	SYSTEM.USER
2007-000608005	System Amendment	05/01/2007		Active	SYSTEM.USER

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Site Search GO

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lensfast.com

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DomainPeople, Inc. reserves the right to modify these terms at any time.

By submitting this query, you agree to abide by the terms of this policy.

Registrant:

LENSFAST LLC
PO BOX 1001
MEREDITH, NH 03253
United States of America

Registrar: DomainPeople, Inc.

Domain Name: lensfast.com
Created on Tue May 04 23:59:59 2004
Expires on Fri Apr 27 23:59:59 2012
Record last updated on Wed Feb 14 23:21:50 2007
Status LOCK

Administrative Contact:

RANDOLPH WEIGNER
PO BOX 1001

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EXHIBIT C - Page1

MEREDITH, NH
03253, US
() (603) 520-1127
()
dltvt@yahoo.com

Technical Contact:

SiteProduct Web Services
Administrator DNS
1 N State Street
12th Floor
Chicago, IL
60602, US
() +1.3122362132
()
administrator@siteprotect.com

Domain servers in listed order:

dns1.stabletransit.com 64.49.219.215
dns2.stabletransit.com

(lensfast.com)

Register your domain name at <http://www.domainpeople.com>

The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

[Show underlying registry data for this record](#)

Current Registrar:	DOMAINPEOPLE, INC.
IP Address:	66.216.115.24 (ARIN & RIPE IP search)
IP Location:	US(UNITED STATES)-ILLINOIS-BELLEVILLE
Record Type:	Domain Name
Server Type:	Apache 1
Lock Status:	clientTransferProhibited
Web Site Status:	Active
DMOZ	no listings
Y! Directory:	see listings
Web Site Title:	Contact Lens
Meta Description:	Contact Lens.com - World's Best Contact Lens Store? Buy discount contact lenses online or 1-800 LENSFAST. Acuvue contact lens, Coopervision, Ciba Vision, Bausch & Lomb and Focus. Free shipping.
Meta Keywords:	contact lenses, contact lens, contacts, cheap, cheapest, discounted, disposable, color, bifocal, toric, acuvue, focus, biomedics, ciba vision, coopervision, bausch & lomb, online, free shipping, freshlook, proclear
Secure:	No
E-commerce:	Yes
Traffic Ranking:	Not available
Data as of:	22-Apr-2008



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Registrant:

PO BOX 1001
MEREDITH, NH 03253
United States of America

Registrar: DomainPeople, Inc.

Domain Name: e-contacts.com

Created on Tue Nov 17 23:59:59 1998
Expires on Sat Nov 16 23:59:59 2013
Record last updated on: Thu Feb 15 11:06:26 2007
Status LOCK

Administrative Contact:

RANDOLPH WEIGNER
PO BOX 1001

When you register a domain name, current policies require that the contact information for your domain name registration be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information visit www.internetprivacyadvocate.org.

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IP Address

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() (603) 520-1127
()
dltv@yahoo.com

Technical Contact:
SiteProtect Web Services
Administrator DNS
1 N State Street
12th Floor
Chicago, IL
60602, US
() (312-238-2132
()
administrator@siteprotect.com

Domain servers in listed order:
dns1.stabletransit.com 64.49.219.215
dns2.stabletransit.com

(e-contacts.com)

Register your domain name at <http://www.domainpeople.com>

The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

[Show underlying registry data for this record](#)

Current Registrar:	DOMAINPEOPLE, INC.
IP Address:	96.216.115.24 (ARIN & RIPE IP search)
IP Location:	US(UNITED STATES)-ILLINOIS-BELLEVILLE
Record Type:	Domain Name
Server Type:	Apache 1
Lock Status:	clientTransferProhibited
Web Site Status:	Active
DMOZ	no listings
Y! Directory:	see listings
Web Site Title:	Contact Lens Contact Lens.com --World's Best Contact Lens Store? Buy discount contact lenses online or 1-800 LENSFAST. Acuvue contact lens, Coopervision, Ciba Vision, Bausch & Lomb and Focus. Free shipping.
Meta Description:	contact lenses, contact lens, contacts, cheap, cheapest, discounted, disposable, color, bifocal, toric, acuvue, focus, biomedics, ciba vision, coopervision, bausch & lomb, online, free shipping, freshlook, proclear
Meta Keywords:	
Secure:	No
E-commerce:	Yes
Traffic Ranking:	Not available
Data as of:	22-Apr-2008



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DomainPeople, Inc. reserves the right to modify these terms at any time.

By submitting this query, you agree to abide by the terms of this policy.

Registrant:

PO BOX 1001

MEREDITH, NH 03253
United States of America

Registrar: DomainPeople, Inc.

Domain Name: contactlens.com

Created on Tue May 04 23:59:59 2004

Expires on Sat Dec 17 23:59:59 2011

Record last updated on Sun Apr 13 04:46:39 2008.

Administrative Contact:

RANDOLPH WEIGNER
PO BOX 1001

MEREDITH, NH

When you register a domain name, current policies require that the contact information for your domain name registration be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information visit www.internetprivacyadvocate.org

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Search by:

 Domain Name IP Address[Search](#)

EXHIBIT E - Page 1

03253, US
 ()(603) 520-1127
 ()
 divtv@yahoo.com

Technical Contact:
 SiteProduct Web Services
 Administrator DNS
 1 N State Street
 12th Floor
 Chicago, IL
 60602, US
 ()+1 3122362132
 ()
 administrator@siteprotect.com

Domain servers in listed order:
 dns1.stabletransit.com 64.49.219.215
 dns2.stabletransit.com

(contactlens.com)

Register your domain name at <http://www.domainpeople.com>

The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

[Show underlying registry data for this record](#)

Current Registrar:	DOMAINPEOPLE, INC.
IP Address:	66.216.115.24 (ARIN & RIPE IP search)
IP Location:	US(UNITED STATES)-ILLINOIS-BELLEVILLE
Record Type:	Domain Name
Server Type:	Apache 1
Lock Status:	ok
Web Site Status:	Active
DMOZ	no listings
Y! Directory:	see listings
Web Site Title:	Contact Lens
Meta Description:	Contact Lens.com - World's Best Contact Lens Store? Buy discount contact lenses online or 1-800 LENSFAST. Acuvue contact lens, Coopervision, Ciba Vision, Bausch & Lomb and Focus. Free shipping.
Meta Keywords:	contact lenses, contact lens, contacts, cheap, cheapest, discounted, disposable, color, bifocal, toric, acuvue, focus, biomedics, ciba vision, coopervision, bausch & lomb, online, free shipping, freshlook, proclear
Secure:	Yes
E-commerce:	Yes
Traffic Ranking:	4
Data as of:	22-Apr-2008



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 \$11.95/month, plus a \$499.00 design fee



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Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,675,866

Registered Jan. 21, 2003

United States Patent and Trademark Office

**SERVICE MARK
PRINCIPAL REGISTER**

1800CONTACTS

1-800 CONTACTS, INC (DELAWARE CORPORATION)
66 EAST WADSWORTH PARK DRIVE, 3RD FLOOR
DRAPER, UT 84020

FIRST USE 7-0-1995; IN COMMERCE 7-0-1995.

SEC. 2(F).

FOR: MAIL ORDER AND TELEPHONE ORDER
SERVICES IN THE FIELD OF CONTACT LENSES
AND RELATED PRODUCTS, AND ELECTRONIC
RETAILING SERVICES VIA COMPUTER FEATUR-
ING CONTACT LENSES AND RELATED PRO-
DUCTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

SER. NO. 75-746,706, FILED 7-8-1999.

RONALD MCMORROW, EXAMINING ATTORNEY

EXHIBIT F - Page 1

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,731,114
Registered July 1, 2003

SERVICE MARK
PRINCIPAL REGISTER

1 800 CONTACTS

1-800 CONTACTS, INC. (DELAWARE CORPORATION)
66 EAST WADSWORTH PARK DRIVE
3RD FLOOR
DRAPER, UT 84020

FOR: MAIL ORDER AND TELEPHONE ORDER SERVICES IN THE FIELD OF CONTACT LENSES AND RELATED PRODUCTS, AND ELECTRONIC RETAILING SERVICES VIA COMPUTER FEATURING CONTACT LENSES AND RELATED PRODUCTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 7-13-1998; IN COMMERCE 7-13-1998.

APPLICANT CLAIMS THE COLORS YELLOW, BLUE AND WHITE AS PART OF THE MARK. THE BOX BEHIND THE WORD "CONTACTS" IS YELLOW. THE BORDER AROUND THE YELLOW BOX BEHIND THE WORD "CONTACTS" IS BLUE. THE BOX BEHIND THE TERM "800" IS BLUE. THE NUMBER ONE AND THE WORD "CONTACTS" ARE WRITTEN IN BLUE. THE TERM "800" IS WRITTEN IN WHITE.

SEC. 2(F) AS TO 1800 CONTACTS .

SER. NO. 76-138,625, FILED 10-2-2000.

RONALD MCMORROW, EXAMINING ATTORNEY

EXHIBIT F - Page 2

received

RADER,

FISHMAN

& GRAUER

PLLC

VIA EXPRESS MAIL

10653 S. River Front Pkwy., Suite 150
South Jordan, UT 84095
Tel: (801) 572-0185
Fax: (801) 572-7666

Bryan G. Pratt
(801) 572-0185
bgp@raderfishman.com

September 12, 2007

RANDOLPH WEIGNER
PO BOX 1001
MEREDITH, NH 03253
USA

Re: Unauthorized Use of the 1800CONTACTS and 1800 CONTACTS
Trademarks; Use of 1800 CONTACTS, INC.'s Trademarks in Sponsored
Advertisements at Google and Related Search Engines
Our Ref: 40302-00012

Dear Mr. Weigner:

We act as outside intellectual property counsel for 1800 CONTACTS, INC. We have been asked by our client to advise you of 1800 CONTACTS, INC.'s rights to the trademarks 1800CONTACTS and 1800 CONTACTS. It has come to our attention that you are engaged in a targeted scheme to infringe upon the 1800 CONTACTS and 1800CONTACTS trademarks. More specifically, you have purchased sponsored advertisements at Google, and possibly other search engines, for at least one of the 1800 CONTACTS or 1800CONTACTS trademarks, or a confusingly similar variation thereof, to trigger a link to your directly competitive www.ContactLens.com website.

As you are undoubtedly aware, our client is extensively engaged in the business of marketing and distributing contact lenses and contact lens care products. 1800 CONTACTS, INC. has been engaged in these activities for over a decade, and our client has distributed contact lenses throughout the United States under its federally registered 1800 CONTACTS and 1800CONTACTS marks. Additionally, our client has applied for and been granted numerous trademark registrations for its 1800 CONTACTS mark and variations thereof. Our client has received the following U.S. registrations related to its 1800 CONTACTS mark:

*Worldwide Intellectual Property Matters • Patents • Trademarks • Litigation • Copyrights • U.S. and Foreign Portfolio Management
Computer and Internet Law • Trade Secrets • Unfair Competition*

Bloomfield Hills Washington, D.C. Salt Lake City Tokyo

EXHIBIT G - Page 1

Randolph Weigner
September 12, 2007
Page 2

RADER,

FISHMAN

& GRAUER

PLLC

MARK	NUMBER	DATE
1800 CONTACTS	2,731,114	10/02/2000
1800CONTACTS	2,675,866	07/08/1999

Our client's contact lens distribution services, as well as the products provided by our client in connection therewith, are well-known and highly regarded by consumers and competitors alike. In addition, our client has expended considerable resources in promoting its contact lens distribution services and eye care products under these marks through various media, including newspapers, magazines, other print advertisements, radio and television advertisements, and the World Wide Web. As a result, the public has come to recognize these marks as a symbol of our client, its quality services, and its goodwill.

In the face of our client's valuable prior rights, we are concerned that you have continually purchased sponsored advertisements at Google, and possibly other search engines, that are triggered upon a search for "1800 CONTACTS," or a confusingly similar variation thereof. Your use of the 1800 CONTACTS trademark as a triggering keyword to advertise for your directly competitive goods and services is an obvious attempt to trade off the goodwill established by 1800 CONTACTS, INC. in its famous 1800 CONTACTS trademark. The use of the mark 1800 CONTACTS and/or any confusingly similar variation of the mark as a keyword in the United States may constitute trademark infringement under state and federal law in that it is likely to cause initial interest confusion, or likely to cause the public to mistakenly assume that your business activities originate from, are sponsored by, or are in some way associated with 1800 CONTACTS, INC. For the same reasons, such use may constitute unfair competition and false advertising under state law and similarly may violate Section 43(a) of the Trademark Act, 15 U.S.C. §1125(a), as a "false designation of origin." Your activities may also violate the Federal Dilution Act of 1995, 15 U.S.C. §1125(c).

Under the circumstances, we request that you cease and desist from further use of the mark 1800 CONTACTS, and confusingly similar variations thereof in the United States. Further, we request that you immediately remove ALL sponsored advertisements that you have purchased through Google, Yahoo Search, and any other search engines which are triggered by the 1800 CONTACTS trademark or a confusingly similar variation thereof. Additionally, we demand that you incorporate the attached list of negative keywords in any continued sponsored advertisement campaigns. Moreover, we request that you confirm in writing that you will comply with our requests. Failing to hear from you within the next three (3) days, we will assume that you intend to ignore our requests, and we will take appropriate action as authorized by our client.

EXHIBIT G - Page 2

Randolph Weigner
September 12, 2007
Page 3

RADER,
FISHMAN
& GRAUER
PLLC

Very truly yours,
RADER, FISHMAN & GRAUER PLLC


Bryan G. Pratt

BGP/cj

cc: David Zeidner
Brandon Dansie

EXHIBIT G - Page 3

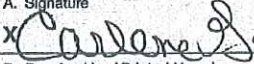
SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature  <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee
1. Article Addressed to: Randolph Weigner P.O. Box 1001 Meredith, NH 03253	B. Received by (Printed Name) C. Date of Delivery SEP 27 2007
2. Article Number (Transfer from service label)	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
PS Form 3811, August 2001	3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
Domestic Return Receipt	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
102595-02-11-1540	7003 3110 0000 9941 9281

EXHIBIT G - Page 4

RADER,**FISHMAN****& GRAUER**

PLLC

VIA USPS MAIL

10653 S. River Front Pkwy., Suite 150
 South Jordan, UT 84095
 Tel: (801) 572-0185
 Fax: (801) 572-7666

Bryan G. Pratt
 (801) 572-0185
bgp@raderfishman.com

March 14, 2008

Randolph Weigner
 P.O. Box 1001
 Meredith, NH 03253
 USA

Re: Unauthorized Use of the 1800CONTACTS and 1800 CONTACTS
 Trademarks; Use of 1800 CONTACTS, INC.'s Trademarks in Sponsored
 Advertisements at Google and Related Search Engines
 Our Ref: 40302-00012

Dear Mr. Weigner:

As you are well aware, we act as outside intellectual property counsel for 1800 CONTACTS, INC. We have been asked by our client to again advise you of 1800 CONTACTS, INC.'s rights to the trademarks 1800CONTACTS and 1800 CONTACTS. It has come to our attention that you are once more engaged in a targeted scheme to infringe upon the 1800 CONTACTS and 1800CONTACTS trademarks. More specifically, you have purchased sponsored advertisements at Google, and possibly other search engines, for at least one of the 1800 CONTACTS or 1800CONTACTS trademarks, or a confusingly similar variation thereof, to trigger a link to your directly competitive www.ContactLens.com website.

As you are undoubtedly aware, our client is extensively engaged in the business of marketing and distributing contact lenses and contact lens care products. 1800 CONTACTS, INC. has been engaged in these activities for over a decade, and our client has distributed contact lenses throughout the United States under its federally registered 1800 CONTACTS and 1800CONTACTS marks. Additionally, our client has applied for and has been granted numerous trademark registrations for its 1800 CONTACTS mark and variations thereof. Our client has received the following U.S. registrations related to its 1800 CONTACTS mark:

*Worldwide Intellectual Property Matters • Patents • Trademarks • Litigation • Copyrights • U.S. and Foreign Portfolio Management
 Computer and Internet Law • Trade Secrets • Unfair Competition*

Bloomfield Hills Washington, D.C. Salt Lake City Tokyo

EXHIBIT H - Page 1

Randolph Weigner
 March 14, 2008
 Page 2

RADER,

FISHMAN

& GRAUER

PLLC

MARK	NUMBER	DATE
1800 CONTACTS	2,731,114	10/02/2000
1800CONTACTS	2,675,866	07/08/1999

Our client's contact lens distribution services, as well as the products provided by our client in connection therewith, are well-known and highly regarded by consumers and competitors alike. In addition, our client has expended considerable resources in promoting its contact lens distribution services and eye care products under these marks through various media, including newspapers, magazines, other print advertisements, radio and television advertisements, and the World Wide Web. As a result, the public has come to recognize these marks as a symbol of our client, its quality services, and its goodwill.

In the face of our client's valuable prior rights, and in light of our previous contact, which contact is evidenced by the attached proof of receipt, we are concerned that you have continually purchased sponsored advertisements at Google, and possibly other search engines, that are triggered upon a search for "1800 CONTACTS," or a confusingly similar variation thereof. Your use of the 1800 CONTACTS trademark as a triggering keyword to advertise for your directly competitive goods and services is an obvious attempt to trade off the goodwill established by 1800 CONTACTS, INC. in its famous 1800 CONTACTS trademark. The use of the mark 1800 CONTACTS and/or any confusingly similar variation of the mark as a keyword in the United States may constitute trademark infringement under state and federal law in that it is likely to cause initial interest confusion, or likely to cause the public to mistakenly assume that your business activities originate from, are sponsored by, or are in some way associated with 1800 CONTACTS, INC. For the same reasons, such use may constitute unfair competition and false advertising under state law and similarly may violate Section 43(a) of the Trademark Act, 15 U.S.C. §1125(a), as a "false designation of origin." Your activities may also violate the Federal Dilution Act of 1995, 15 U.S.C. §1125(c).

Under the circumstances, we request that you **cease and desist** from further use of the mark 1800 CONTACTS, and confusingly similar variations thereof in the United States. Further, we request that you immediately remove **ALL** sponsored advertisements that you have purchased through Google, Yahoo Search, and any other search engines which are triggered by the 1800 CONTACTS trademark or a confusingly similar variation thereof. Additionally, we demand that you incorporate the attached list of negative keywords in any continued sponsored advertisement campaigns.

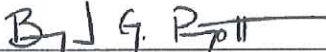
EXHIBIT H - Page 2

RADER,
FISHMAN
& GRAUER
PLLC

Randolph Weigner
March 14, 2008
Page 3

Furthermore, we demand that you confirm in writing the steps you will take to prevent this from occurring in the future. Failing to hear from you within the next three (3) days, we will assume that you intend to ignore our requests, and we will take appropriate action as authorized by our client.

Very truly yours,
RADER, FISHMAN & GRAUER PLLC


Bryan G. Pratt

BGP/clj

cc: David Zeidner
Randolph Weigner via FedEx

EXHIBIT H - Page 3

Web Images Maps News Shopping Gmail more ▾ Sign in

Google [Advanced Search](#) [Preferences](#)

Web Results Results 1 - 10 of about 414,000 for 1800contacts. (0.13 seconds)

1800CONTACTS.com
www.1800contacts.com Need contact lenses? Buy in just 5 minutes. We deliver. You save.
[Buy Contact Lenses Online](#)
www.VisionDirect.com/Contact_Lenses Free Shipping -- No Minimum. Lowest Prices and Satisfaction Guaranteed

Tip: Save time by hitting the return key instead of clicking on "search"

Contact Lenses at 1-800 CONTACTS | World's Largest Contact Lens Store®
"It's easy to order from you guys. You ship promptly and price is unbeatable...Keep up the good work!"—Eugene, California.
www.1800contacts.com/ - 46k - [Cached](#) - [Similar pages](#)

[Acuvue Rebates](#) [Most Popular](#)
[How to Order](#) [Bausch and Lomb](#)
[Acuvue](#) [FreshLook Rebates](#)
[Full Product List](#) [Color Lenses](#)

[More results from 1800contacts.com >](#)

Colored Contact Lenses at 1-800 CONTACTS | World's Largest Contact ...
Colored Contact Lenses at 1-800 CONTACTS - get free shipping, easy online ordering, and guaranteed customer service at the World's Largest Contact Lens ...
www.1800contacts.com/lenses/color.htm - 44k - [Cached](#) - [Similar pages](#)

1800Contacts Discount Coupon
1800Contacts is one of the largest online contact lens store. 1800Contacts is dedicated to providing you with a simple, hassle-free way to replace your ...
www.eamilan.com/lenses/ - 5k - [Cached](#) - [Similar pages](#)

Wal-Mart Facts - Wal-Mart Teams with 1-800 CONTACTS to Expand ...
Jan 17, 2008 ... Wal-Mart, Sam's Club and 1-800 CONTACTS will create efficiencies across their call centers, websites, purchasing, and distribution efforts ...
www.walmartfacts.com/articles/5593.aspx - 80k - [Cached](#) - [Similar pages](#)

from **UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK ...**
File Format: PDF/Adobe Acrobat - [View as HTML](#)
locations within the 1-800 Contacts domain. The URL of a webpage ..., the main browser window (containing the 1-800 Contacts website) ...
www.nysd.uscourts.gov/courtweb/pdf/03NYSC03-10121.PDF - [Similar pages](#)

from **The Honorable Ellsworth Ven Graafeiland, of the United 1 States ...**
File Format: PDF/Adobe Acrobat - [View as HTML](#)
1-800 Contacts, 309 F. Supp. 2d at 470. Each type of ad. 17, appears in a window that is separate ... main browser window (containing the 1-800 Contacts ...
www.ell.org/files/filenode/1800contacts_v_whelm/decision.pdf - [Similar pages](#)

1800contacts
www.phillipsnizer.com/library/cases/lib_case035.cfm - [Similar pages](#)

Home at 1-800 CONTACTS | World's Largest Contact Lens Store®
Click Step 1 to the left to start the application process with 1-800 CONTACTS. Culture? Benefits? Click Company Info. ""ATTN: Applicants - Initial contact ...
https://jobs.1800contacts.com/careers/ - 14k - [Cached](#) - [Similar pages](#)

Techdirt: 1-800 Contacts Sues Competitor For Keyword Ads Despite ...
1-800 Contacts is suing competitor LensWorld for buying ads on the "1800Contacts" keyword. Again, assuming that LensWorld's ads are clearly for LensWorld, ...
techdirt.com/articles/20080110/021037.shtml - 26k - [Cached](#) - [Similar pages](#)

1-800 CONTACTS - Company Overview - Hoover's
If you can still find your phone or computer, you can get replacement lenses from 1-800 CONTACTS. The firm sells lenses by phone and ...
www.hoovers.com/1-800-contacts/-ID_55342--free-co-factsheet.shtml - 31k - [Cached](#) - [Similar pages](#)

Sponsored Links

Discount Contact Lenses
Save Up To 70% On Contact Lenses. Get Fast Service And Free Shipping!
www.ShipMyContacts.com

70% Off Contacts
Quality Contacts Deeply Discounted! Cheap Contacts, Free Shipping
Contacts.TopRate.net
Utah

1-877-LENS-347 Contacts
Save 70% or more on your Contacts! We'll beat all 1800 and web prices.
www.LensDiscounters.com

Discount Eye Contacts
Great Prices and Customer Care. Leading Name Brands and Products.
www.ReplaceMyContacts.com

Contacts@1-800 LENSFAST
Up To 75% Discount and \$100 Rebates! 1-800 536-7327 - Fast/Free Shipping
www.ContactLens.com/contacts

JustLenses.com Savings
Up to 70% off Retail Price. Name Brand Contacts & Low Prices.
www.JustLenses.com

Goooooooooog|c ▸

1 2 3 4 5 6 7 8 9 10 [Next](#)

[Search within results](#) | [Language Tools](#) | [Search Tips](#) | [Dissatisfied?](#) | [Help us improve](#) | [Try Google Experiments](#)

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Negative Keywords

Key words:

1 800 contact
1 800 contacts
1800 contacts
1-800 contacts
1800.contacts
1800contact
1800contacts
1-800-contacts
1800contacts.com
800 contacts
800.contacts
800contacts
lens express
Lensexpress
Aquasoft
Aquasoft complete vision system
www.1800contacts.com.
www.1800contacts.net.
www.1800contacts.org.
www.1800contacs.com.
www.1800contacs.net.
www.1-800contacts.com.
www.1-800contacts.net.
www.800contacts.com.
www.800contacts.net.
www.contacts.com.
www.lens1st.com.
www.lensfirst.com.
www.lensexpress.com.
www.lensexpress.net.

RADER,
FISHMAN
& GRAUER
PLLC

River Park Corporate Center One
10653 S. River Front Parkway
Suite 150
South Jordan, UT 84095

CERTIFIED MAIL™



78095 3310 0000 9941 9335

02 1P \$07.35
0002419020 MAR 17 2008
MAILED FROM ZIP CODE 84095

1st NOTICE MAR 20 2008
2nd NOTICE MAR 26 2008
RETURNED APR 15 08

NAME _____
1st Notice _____
2nd Notice _____
Return _____

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Randolph Weir
P.O. Box 1001
Manchester, NH 03253

2. Article Number
(Transfer from)
PS Form 3811

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent Addressee
X
- B. Received by (Printed Name) _____ C. Date of Delivery _____
- D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No
3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

EXHIBIT K

Bryan G. Pratt (9924)
RADER, FISHMAN & GRAUER, PLLC
10653 South River Parkway, Suite 150
South Jordan, UT 84095
Tel.: (801) 572-0185
Fax: (801) 572-7666
Email: bgp@raderfishman.com

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

<p>1-800 CONTACTS, INC. a Delaware corporation, Plaintiff, v. MEMORIAL EYE, PA d/b/a SHIPMYCONTACTS.COM, SHIP-MY- CONTACTS.COM, and IWANTCONTACTS.COM a Texas Professional Association, Defendant.</p>	<p>Case No.:</p> <p><u>COMPLAINT</u></p>
--	--

Plaintiff 1-800 CONTACTS, INC. ("1-800 CONTACTS" or "Plaintiff") for its Complaint against Defendant Memorial Eye, PA d/b/a SHIPMYCONTACTS.COM, IWANTCONTACTS.COM, and SHIP-MY-CONTACTS.COM ("Memorial Eye" or "Defendant") alleges:

NATURE OF THE ACTION

1. This is a civil action for damages and injunctive relief arising out of Memorial Eye's acts of trademark infringement, unfair competition, false designation of origin, false advertising, passing off, and unjust enrichment under federal, state and/or common law as a result of Memorial Eye's wrongful acts, including willful infringement of 1-800 CONTACTS' rights in the trademark 1800CONTACTS, 1-800 CONTACTS, and 1 800 CONTACTS (the "1-800 CONTACTS Marks").

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a) and (b). Upon information and belief, the parties are citizens of different states and the amount in controversy far exceeds the sum or value of seventy-five thousand dollars (\$75,000), exclusive of interest and costs, creating jurisdiction under 28 U.S.C § 1332. Jurisdiction over the state law claims is also appropriate under 28 U.S.C. § 1367(a) and principles of pendent jurisdiction.

3. This Court has personal jurisdiction over Memorial Eye. Upon information and belief, Memorial Eye conducts business in this District, having shipped contacts and other items to this District. In addition, Memorial Eye has purposefully availed itself of the privilege of acting in this District by, among other things, advertising via the Internet in this District and offering interactive websites at www.Shipmycontacts.com, www.iwantcontacts.com, and

www.ship-my-contacts.com (“the Memorial Eye Websites”) and various affiliate websites, which are accessible by Internet users throughout the country, including in this District, which permit users to register online, including in this District, and from which product can be ordered and shipped throughout the country, including in this District. See excerpts from the Memorial Eye Websites at **Exhibits A** and **B**. Memorial Eye has used the 1-800 CONTACTS Marks without authorization or consent from 1-800 CONTACTS, including in this District. The tortious conduct about which 1-800 CONTACTS complains has been committed by Memorial Eye in this District. Memorial Eye’s actions are aimed, at least in part, at this District.

4. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391(b). A substantial portion of the activity about which 1-800 CONTACTS complains has taken place in this District, and the damages suffered by 1-800 CONTACTS were suffered, at least in part, in this District.

5. Upon information and belief, Memorial Eye transacts business throughout the entire United States, including in the District of Utah. The unlawful acts committed by Memorial Eye, as hereinafter alleged, have been and are, in whole or in part, conceived, carried out and made effective within this District. The interstate trade or commerce described herein by Memorial Eye is carried out in part within this District.

THE PARTIES

6. Plaintiff 1-800 Contacts, Inc. is a Delaware corporation, with its principal place of business at 66 East Wadsworth Park Drive, Draper, Utah 84020.

7. Upon information and belief, Defendant Memorial Eye, PA. is a Professional Association with a mailing address and a principle place of business of 2470 Gray Falls Drive, Suite 150, Houston, TX 77077. See Whois record at **Exhibit C**. Defendant Memorial Eye operates throughout the United States including in the State of Utah.

8. Upon information and believe, Memorial Eye, Inc. also operates under the names iwantcontacts.com and ship-my-contacts.com.

9. The public records for the domain name “ship-my-contacts.com” show Memorial Eye P.A. as the owner of the domain name, at the address of 2470 Gray Falls Dr. Ste 150, Houston, TX 77077. See Whois record at [Exhibit D](#).

10. The public records for the domain name “iwantcontacts.com” show Memorial Eye P.A. as the owner of the domain name, at the address of 2470 Gray Falls Dr. Ste 150, Houston, TX 77077. See Whois record at [Exhibit E](#).

GENERAL ALLEGATIONS

1-800 CONTACTS’ ACTIVITIES AND PROPRIETARY RIGHTS

12. For over a decade, 1-800 CONTACTS has been and is now extensively engaged in the business of selling and distributing contact lenses and eye care products via telephone and fax, through the Internet and by mail (the “1-800 CONTACTS Goods and Services”). Indeed, 1-800 CONTACTS is the market leader in the field of replacement contact lenses, having filled over 16 million orders for over five million customers, with an inventory of over 20 million lenses. 1-800 CONTACTS’ products can be ordered over the Internet via Plaintiff’s website at www.1800contacts.com (the “1-800 CONTACTS Website”).

13. Since at least as early as 1995, the 1-800 CONTACTS Goods and Services have been widely advertised and offered in interstate commerce throughout the United States. The 1-800 CONTACTS Marks are used extensively in various advertising and promotional media, including the Internet, radio, television, trade shows, and through various printed media including direct mail.

14. 1-800 CONTACTS possesses common law and federal registration rights in the mark 1-800 CONTACTS, including U.S. Registration Nos. 2,675,866 and 2,731,114. Copies of these registrations and printouts from the U.S. Patent and Trademark Office database for such registrations are attached at Exhibit F.

15. U.S. Registration Nos. 2,675,866 and U.S. Registration No. 2,731,114 are incontestable and constitute conclusive evidence of 1-800 CONTACTS' ownership of the 1-800 CONTACTS Marks, its exclusive right to use the marks throughout the United States, and the validity of the registrations and the marks.

16. As a result of the quality of the 1-800 CONTACTS Goods and Services and the widespread promotion thereof under the 1-800 CONTACTS Marks, the 1-800 CONTACTS Goods and Services have met with substantial commercial success and widespread consumer recognition. As a further result, the 1-800 CONTACTS Marks are extensively known and have become symbols of Plaintiff, its quality products and services, and its goodwill.

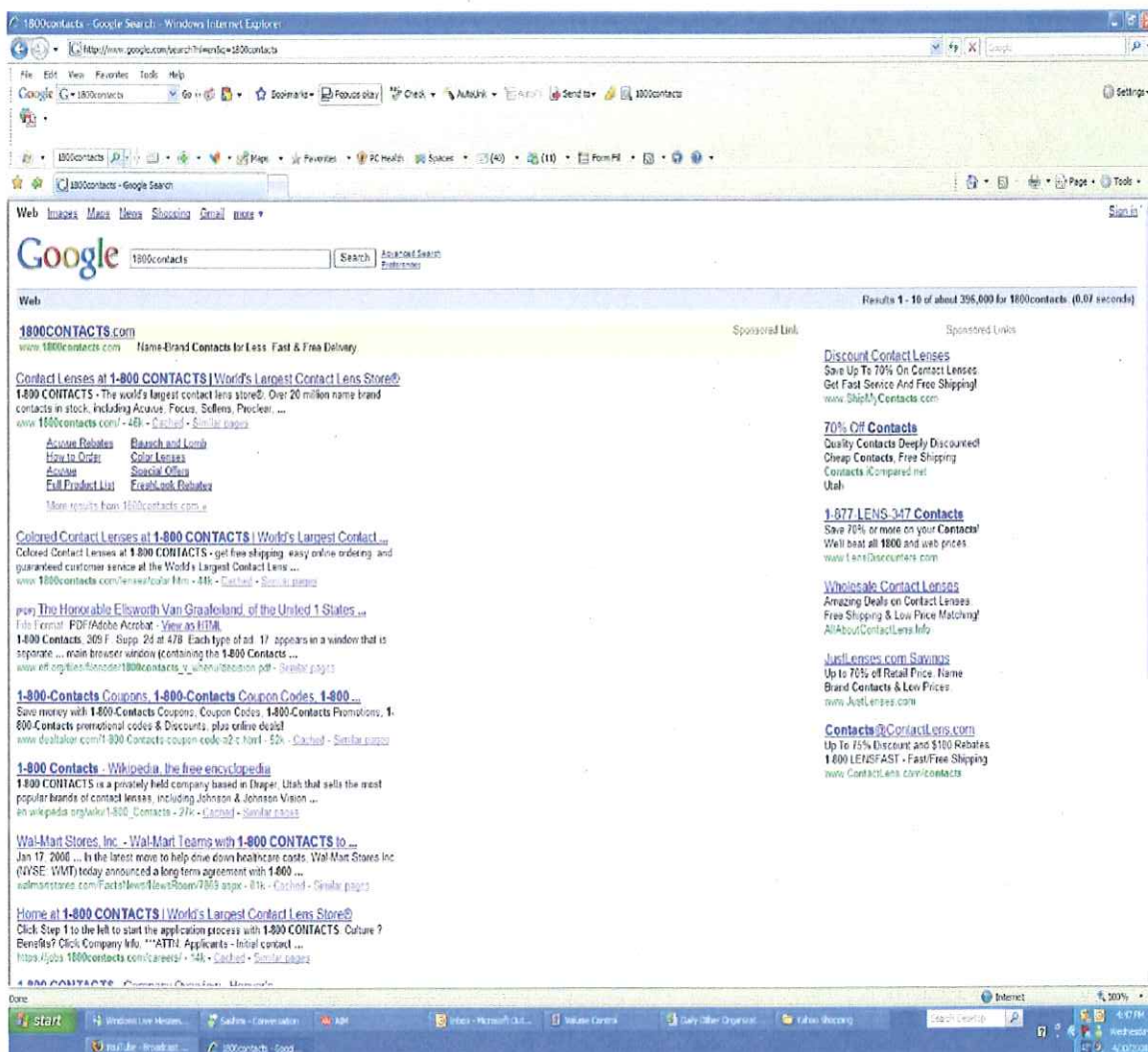
MEMORIAL EYE'S WRONGFUL ACTS

17. Like 1-800 CONTACTS, Memorial Eye offers the sale of replacement contact lenses over the Internet.

18. 1-800 CONTACTS discovered that Memorial Eye had purchased sponsored advertisements from Google, and other search engines, for Plaintiff's Marks to trigger advertising and/or a link to the Memorial Eye Websites. Such infringing activity was immediately brought to the attention of Memorial Eye.

19. Notwithstanding the receipt of the cease and desist letter, Memorial Eye refused to cease using the 1-800 CONTACTS Marks to trigger advertising. For example, a shown in the below screen shot, which was prepared April 30, 2008, when 1800CONTACTS entered into the

search box, links to www.shipmycontacts.com appear on the right side of the screen under the “Sponsored Links” section.



20. The www.shipmycontacts.com website advertisements are triggered upon a search for 1800CONTACTS and thus, use the 1800 CONTACTS trademark as a triggering keyword to display and promote Memorial Eye’s directly competitive goods and services. In

essence, Memorial Eye is using the 1-800 CONTACTS Marks to trick consumers into visiting the Memorial Eye Websites

21. Memorial Eye's actions are specifically aimed at diverting web users who are expressly looking for 1-800 CONTACTS and the 1-800 CONTACTS Goods and Services. Indeed, Memorial Eye goes even so far as to represent to consumers that it is 1-800 CONTACTS and/or that there is an affiliation between 1-800 CONTACTS and Memorial Eye by using a number of variations and mis-spellings of the 1-800 CONTACTS Marks to trigger the Memorial Eye ads.

**THE PARTIES' PAST HISTORY AND
MEMORIAL EYE'S INCESSANT INFRINGEMENT**

22. On or about September 13, 2005, 1-800 CONTACTS' in-house counsel, David Zeidner, contacted Memorial Eye in writing to notify Memorial Eye of the infringement. A copy of the letter is attached hereto as **Exhibit G.**

23. In response to the letter sent by David Zeidner, on or about October 13, 2005, Randall D. Luckey, outside counsel for Memorial Eye communicated to David Zeidner in writing that Memorial Eye would not cease their practices. A copy of the letter is attached hereto as **Exhibit H.**

24. On or about November 3, 2005, David Zeidner responded to Mr. Luckey informing and educating him on how his client could easily take actions to prevent the complained of actions from occurring. A copy of the letter is attached hereto as **Exhibit I.**

25. Shortly after the communication exchange between in-house counsel for Memorial Eye and 1-800 CONTACTS, Memorial Eye's infringement was reduced.

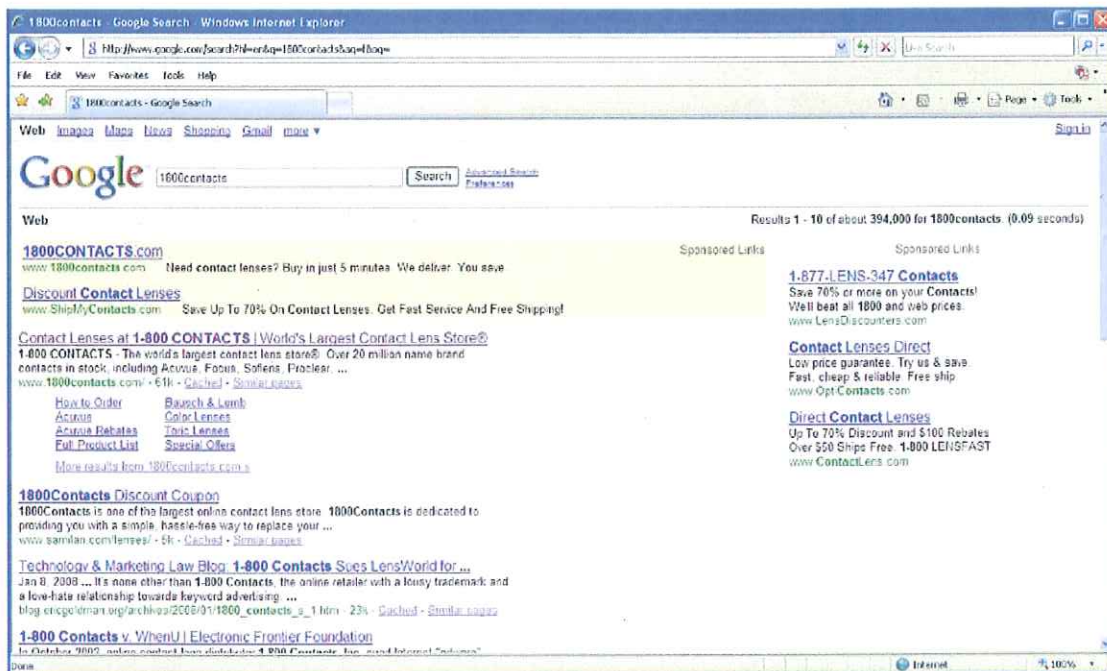
26. On or about September 12, 2007, 1-800 CONTACTS noted an increase in Memorial Eye's level of infringement. Consequently, Plaintiff's outside counsel, Bryan G. Pratt, sent a letter to Memorial Eye concerning Defendant's increasingly infringing acts. A copy of the letter is attached hereto as Exhibit J. No response was received from Memorial Eye and a near identical letter was subsequently sent on February 27, 2008, after another noticeable increase in Defendant's infringing acts.

27. On or about March 17, 2008, Memorial Eye's outside counsel, Randall D. Luckey, again responded to 1-800 CONTACTS' cease and desist letters by communicating that Memorial Eye would not cease their practices that cause advertisements for their company from appearing in response to searches for trademarks of 1-800 CONTACTS. A copy of the letter is attached hereto as Exhibit K

28. In spite of its previous recognition of the infringement, its knowledge of how to correct and stop the infringement as evidenced by its previous corrective measures, Memorial Eye took no action to remedy the infringement. In fact, upon receiving this communication, infringement by Memorial Eye actually increased.

29. 1-800 CONTACTS closely monitored the display of advertisements by Memorial Eye and not only observed advertisements for the Memorial Eye websites appearing in response to searches for trademarks of 1-800 CONTACTS, but also for confusingly similar variations of the trademark, such as 1800 contacts, 1 800 contacts, 1-800-contacts, and 1-800 contacts. Incredibly, advertisements for the Memorial Eye websites also appear for searches for 1800CONTACTS' website and for misspellings of the 1-800 CONTACTS marks such as 1800 contacts.com, 800 contacts, 1-800 contacts, 1800contacts.com, www.1800contacts.com, www.1800contacts, 1800contact, 1800ccontacts, and 800contacts.

30. Memorial Eye's infringing activities continue today, as evidenced by a screen shot prepared on December 17, 2008 that shows sponsored advertisements purchased by Memorial Eye that are triggered upon searching for the 1-800 CONTACTS Marks. As may be seen, the website www.Shipmycontacts.com is featured on the top left portion of the page, right under 1-800 CONTACTS website advertisement, under a "sponsored advertisement" heading.



INJURY TO 1-800 CONTACTS AND THE PUBLIC

31. Memorial Eye's unauthorized use of the 1-800 CONTACTS Marks has and will continue to irreparably injure 1-800 CONTACTS by confusing customers, diverting sales, and diluting the distinctiveness of the 1-800 CONTACTS Marks. If permitted to continue, Memorial Eye's use of the 1-800 CONTACTS Marks will continue to irreparably injure 1-800 CONTACTS, the 1800 CONTACTS Marks, the reputation and goodwill associated therewith, 1-

800 CONTACTS' reputation for exceedingly high-quality services and products, and the public interest in being free from confusion, mistake or deception.

32. Memorial Eye's use of the 1-800 CONTACTS Marks has caused and will continue to cause confusion, mistake or deception as to the source or origin of Memorial Eye's goods and services and is likely to falsely suggest a sponsorship, connection, license, endorsement or association of Memorial Eye's goods and services with 1-800 CONTACTS, thereby injuring 1-800 CONTACTS and the public.

33. Memorial Eye's use of colorable and confusingly similar imitations of the 1-800 CONTACTS Marks, including misspellings, hyphenation variations, and spacing variations, is part of a deliberate plan to trade on 1-800 CONTACTS' goodwill and otherwise unfairly compete with 1-800 CONTACTS and benefit therefrom. Memorial Eye knew of 1-800 CONTACTS' tremendous success and the 1-800 CONTACTS Marks and intentionally engaged in trademark infringement with full knowledge of 1-800 CONTACTS' rights and in the face of notice not to engage in such activities.

COUNT I

Federal Trademark Infringement

Violation of 15 U.S.C. § 1114

34. 1-800 CONTACTS incorporates by reference the allegations of Paragraphs 1-33 of this Complaint.

35. The unauthorized appropriation and use by Memorial Eye in commerce of the 1-800 CONTACTS Marks, in connection with goods and services that are identical or substantially similar to those offered by 1-800 CONTACTS, is likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of Memorial Eye's services and commercial

activities, and thus directly, jointly, and/or contributorily infringes 1-800 CONTACTS' rights in its federally registered marks under 15 U.S.C. § 1114. Memorial Eye's actions have been carried out in willful disregard of 1-800 CONTACTS' rights in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

COUNT II

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

Violation of 15 U.S.C. §1125(a)

36. 1-800 CONTACTS incorporates by reference the allegations of Paragraphs 1 – 35 of this Complaint.

37. The unauthorized use by Memorial Eye of the 1-800 CONTACTS Marks in connection with Memorial Eye's business is likely to cause the public to mistakenly believe that Memorial Eye's contact lens replacement services originate from, are endorsed by, or are in some way affiliated with 1-800 CONTACTS and thus constitutes trademark infringement, false designation of origin, passing off, and unfair competition and is likely to cause the 1-800 CONTACTS Marks to lose their significance as indicators of origin. Likewise, Memorial Eye has used the 1-800 CONTACTS Marks in connection with false and misleading descriptions or representations of fact in commercial advertising or promotion, thereby misrepresenting the nature, characteristics, and qualities of their or another entity's goods, services, or commercial activities. Memorial Eye's actions are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

38. Upon information and belief, the appropriation of the 1-800 CONTACTS Marks by Memorial Eye as set forth above is part of a deliberate plan to trade on the valuable goodwill established therein. With knowledge of 1-800 CONTACTS and 1-800 CONTACTS' rights and

with the deliberate intention to unfairly benefit from 1-800 CONTACTS' goodwill, the actions of Memorial Eye have been carried out with willful disregard of 1-800 CONTACTS' rights and in violation of 15 U.S.C. Section 1125(a).

COUNT III

Common Law Unfair Competition, Misappropriation, and Trademark Infringement

Unfair Practices Act – Utah Code Ann. §13-5-1 *et seq.*

39. 1-800 CONTACTS incorporates by reference the allegations of Paragraphs 1 – 38 of this Complaint.

40. By its aforesaid calculated conduct to increase business and profits by deceiving and confusing members of the public, Memorial Eye continues to misappropriate the valuable goodwill of the 1-800 CONTACTS Marks, to infringe 1-800 CONTACTS' rights therein, and to unfairly compete with 1-800 CONTACTS under the common law and the laws of Utah. Memorial Eye's use of the 1-800 CONTACTS Marks to promote, market or sell products and services constitutes an unfair practice under Utah Code Ann. §13-5-1 *et seq.* Memorial Eye's use of the 1-800 CONTACTS Marks is an unfair or deceptive method of competition occurring in trade or commerce that impacts the public interest and has caused and is causing injury to 1-800 CONTACTS and consumers.

COUNT IV

Unjust Enrichment

41. 1-800 CONTACTS incorporates by reference the allegations of Paragraphs 1 - 40 of this Complaint.

42. Memorial Eye is being unjustly enriched to the damage and irreparable harm of 1-800 CONTACTS.

DEMAND FOR RELIEF

WHEREFORE, 1-800 CONTACTS requests that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to, the following:

A. That 1-800 CONTACTS is the owner of the entire right, title and interest in and to the 1-800 CONTACTS Marks, that the 1-800 CONTACTS Marks are valid, enforceable and violated by Memorial Eye and that Memorial Eye has violated and is violating other relevant federal and state laws and regulations.

B. That Memorial Eye, their Affiliates, agents, servants, employees, attorneys, and all persons in active concert or participation with them, be preliminarily and permanently enjoined and restrained from:

1. Further infringement of the 1-800 CONTACTS Marks and from unfairly competing with 1-800 CONTACTS; from using any variation of the 1-800 CONTACTS Marks and any other marks or names that are confusingly similar to or that dilute the distinctiveness of those proprietary materials, including but not limited to use as domain names, trademarks, services marks, business names, meta tags, sponsored advertisement triggers, other identifiers, keywords or other terms used to attract or divert traffic on the Internet or to secure higher placement within search engine search results; and

2. From representing by any means whatsoever, directly or indirectly, that Memorial Eye, any products or services offered by Memorial Eye, or any activities undertaken by Memorial Eye, are associated with, endorsed by, sponsored by or connected in any way with 1-800 CONTACTS.

C. That Memorial Eye willfully violated 1-800 CONTACTS' rights.

E. That Memorial Eye be required to pay to 1-800 CONTACTS' damages according to proof, together with prejudgment interest thereon, as 1-800 CONTACTS has sustained as a consequence of Memorial Eye's wrongful acts, and to account for and return to 1-800 CONTACTS any monies, profits and advantages wrongfully gained by Memorial Eye.

G. That all damages sustained by Memorial Eye be trebled.

H. That Memorial Eye be required to pay to 1-800 CONTACTS punitive and exemplary damages.

I. That Memorial Eye be required to pay to 1-800 CONTACTS all attorney fees, expenses and costs incurred in this action.

J. That 1-800 CONTACTS deliver up for impoundment during the pendency of this action, and for destruction upon entry of judgment, all products, fixtures, writings, signage, artwork and other materials that infringe 1-800 CONTACTS' rights, falsely designate source or origin, or otherwise facilitate Memorial Eye's unfair competition with 1-800 CONTACTS.

K. That an Order be issued directing Memorial Eye to file with this Court and serve on 1-800 CONTACTS' attorneys, within thirty (30) days after the date of entry of any injunction, a report in writing and under oath setting forth in detail the manner and form in which Memorial Eye has complied with the injunction.

L. That 1-800 CONTACTS be granted such further relief as this Court may deem appropriate.

DEMAND FOR JURY TRIAL

1-800 CONTACTS hereby demands a trial by jury on all issues and claims so triable.

Respectfully submitted,

Date: December 23, 2008

By: s/Bryan G. Pratt
Bryan G. Pratt (9924)
RADER, FISHMAN & GRAUER, PLLC
10653 South River Parkway, Suite 150
South Jordan, UT 84095
Tel.: (801) 572-0185
Fax: (801) 572-7666
Email: bgp@raderfishman.com

Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

I-800 CONTACTS, INC.

(b) County of Residence of First Listed Plaintiff Salt Lake (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Bryan G. Pratt, Esq., Rader Fishman & Grauer, PLLC 10653 South River Parkway, Suite 150, South Jordan, UT 84095

DEFENDANTS

MEMORIAL EYE, P.A. d/b/a Shipmycontacts.com, Ship-My-Contacts.com, and Iwantcontacts.com

County of Residence of First Listed Defendant Harris (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 USC 1121; 28 USC 1331; 1338; 1367(a); 15 USC 1114, Lanham Act; 15 USC 1125(a)
Brief description of cause: Trademark Infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 12/23/2008 SIGNATURE OF ATTORNEY OF RECORD /s/Bryan G. Pratt

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Buttons: Print, Save As..., Export as FDF, Retrieve FDF File, Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ShipMyContacts.com - FAQ - Windows Internet Explorer

http://www.shipmycontacts.com/faq.asp#shipping

File Edit View Favorites Tools Help

ShipMyContacts.com - FAQ

FREE SHIPPING ON ALL ORDERS OVER \$79. IN THE U.S.!!

FAQ

1. When will I receive my contacts?

Your prescription will be verified within 2 business days of your order. If your contact lenses are in stock, your order will ship out upon verification; otherwise, your order will ship out 2-3 business days after verification of your prescription.

Shipping options available to the 48 contiguous United States and the District of Columbia.

Shipping Method	Shipping Schedule	Sub-Total	Shipping Charge
USPS First Class Mail	5-7 Business Days upon shipping	\$79--	FREE
USPS First Class Mail	5-7 Business Days upon shipping	under \$79	\$5.95
USPS Priority Mail	2-4 Business Days upon shipping	\$75--	\$5.95
USPS Priority Mail	2-4 Business Days upon shipping	under \$75	\$9.95
Expedited Shipping	1-2 Business Days upon shipping	Any	\$25.95

Shipping options available to Alaska, Hawaii, Puerto Rico and other U.S. Territories.

Shipping Method	Shipping Schedule	Sub-Total	Shipping Charge
USPS First Class Mail	5-7 Business Days upon shipping	\$79--	FREE
USPS First Class Mail	5-7 Business Days upon shipping	under \$79	\$5.95
USPS Priority Mail	3-4 Business Days upon shipping	Any	\$8.95

2. Do you ship to international addresses?

We currently ship to Canada, Puerto Rico, APOs and FPOs. Orders shipping outside of the United States do not require prescription verification. Please be sure to enter your prescription correctly.

Please note that all prices on the site are reflected in United States dollars. Currency exchanges will be performed by your credit card company. Please direct any questions relating to currency exchange to your credit card company.

Trusted Store

Get Started

Reorder

Bookmark Us!

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Acuvue

Blomedics

Encore Premium

Focus

Internet 100%

EXHIBIT A

1-800F_00082040

Get Started

Account Bookmark Us

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Top Brands

Acuvue
Bionics
Encore Premium
Focus
Frequency
Freshlook
O2 Optix
Proclear
PureVision
Soflens
Vertex

Categories

Popular Lenses
Bifocal Lenses
Color Lenses
Daily Disposable
Disposables
Toric Lenses
Other Vist Lenses

Manufacturers

Bausch & Lomb
Ciba Vision
CooperVision
Johnson and Johnson
Ocular Sciences

FAQ

1. When will I receive my contacts?

Your prescription will be verified within 2 business days of your order. If your contact lenses are in stock, your order will ship upon verification; otherwise, your order will ship out 2-3 business days after verification of your prescription.

Shipping options available to the 48 contiguous United States and the District of Columbia.

Shipping Method	Shipping Schedule	Sub-Total	Shipping Charge
USPS First Class Mail	3-7 Business Days upon shipping	\$79	\$10
USPS First Class Mail	5-7 Business Days upon shipping	under \$75	\$4.95
USPS Priority Mail	3-4 Business Days upon shipping	\$79	\$4.95
USPS Priority Mail	3-4 Business Days upon shipping	under \$75	\$4.95
Expedited Shipping	1-2 Business Days upon shipping	Any	\$25.00

Shipping options available to Alaska, Hawaii, Puerto Rico and other U.S. Territories.

Shipping Method	Shipping Schedule	Sub-Total	Shipping Charge
USPS First Class Mail	3-7 Business Days upon shipping	\$79	\$10
USPS First Class Mail	5-7 Business Days upon shipping	under \$75	\$4.95
USPS Priority Mail	3-4 Business Days upon shipping	Any	\$9.95

2. Do you ship to international addresses?

We currently ship to Canada, Puerto Rico, APOs and FPOs. Orders shipping outside of the United States do not require prescription verification. Please be sure to enter your prescription correctly.

Please note that all prices on the site are reflected in United States dollars. Currency exchanges will be performed by your credit card company. Please direct any questions relating to currency exchange to your credit card company.

WantContacts is not responsible for any customs delays or customs charges imposed by the destination country. Please note that customs duties and/or taxes are NOT included in the purchase price of your order. It is your responsibility to pay any customs duties and/or sales taxes to your customs department at the point of delivery.

Shipments going to international addresses may deliver between 6 to 10 days from shipment but may be delayed by your customs office.

Shipping options available to Canada

Shipping Method	Shipping Schedule	Sub-Total	Shipping Charge
USPS Priority Mail International	4-12 Business Days upon shipping	Any	\$10.00

3. Where do I get my mail-in rebate certificate?

If you purchase qualified for the mail-in rebate, the rebate certificate will be mailed with your contact lens order. Some brands will have a rebate certificate mailed separately, and you should receive it within one week. Please note that rebates are only valid for United States orders.

4. What is a Flexible Spending Account?

A Flexible Spending Account is a savings account that you set up through your employer at a tax-free savings to use towards qualified medical expenses. The money saved within this account is pre-tax money from your paycheck that must be used within the calendar year. Any money left in the account at the end of the year is lost. Once you have made a contact lens purchase, you must submit your receipt to your account administrator for reimbursement.

5. Can I use my Flexible Spending Account towards the purchase of contact lenses?

Yes, contact lens purchases are qualified as a medical expense. You can use your Flexible Spending Account towards the purchase of prescribed, non-colored contact lenses. However, you may not use the Flexible Spending Account towards the purchase of any colored lenses.

6. How can I order my contacts if I didn't see them listed?

Please email us with your contact lens information, and we will contact you with price and availability.

7. If I have vision insurance discounts, can I use them towards my online purchase?

Because of our competitive online prices, we do not offer any additional discounts; however, you may use the amount provided to file the claim with your insurance.

8. What should I do if I receive a defective lens?

Manufacturer defects are rare, and we want to assure you that we provide the same quality lenses that your optometrist provides. All of our lenses are factory sealed. If you believe a lens is defective, please contact us immediately. If the manufacturer determines that the lenses are defective, we will replace any defective lenses.

9. What should I do if I do not receive what I ordered?

In case we have sent you an order in error, please contact us immediately to resolve the problem.

10. Return Policy

Do you accept returns?

We will accept any unopened and undamaged packages within 30 days of the delivery date for a full refund of the items, excluding the shipping charges. Any coupons that were applied to the order will be deducted from the refunded amount. Orders are subject to a \$6.95 handling fee. Unfortunately, we may not accept return items that are opened, damaged, or not in their original condition. We are also unable to accept items returned more than 30 days after their delivery date.

How do I return my lenses?

1. Before returning any items, you must first contact us to obtain a return authorization.
2. Once you receive your return authorization, please enclose a copy of your invoice with your order number and a reason for your return. Please explain what you would like us to do with your return.
3. Please ship the lenses via a trackable method. Please ship the contact lenses in a shipping box to prevent damage to them. Do not ship your contact lenses in a padded envelope. Unfortunately, we cannot accept responsibility for lost or damaged packages.
4. Please send your contact lens return to:

WantContacts.com
2470 Gray Falls Dr #150
Houston, TX 77077

NetworkSolutions.

- Domain Names
- Web Sites & Hosting
- Online Marketing
- All Services
- Designer & Developer Community
- Education Center
- Manage Account

WHOIS Search Results

Your WHOIS Search Results



shipmycontacts.com

Make an instant, anonymous offer to the current domain registrant. [Learn More](#)

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The data contained in GoDaddy.com, Inc.'s Whois database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the prior written permission of GoDaddy.com, Inc. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" field. In most cases, GoDaddy.com, Inc. is not the registrant of domain names listed in this database.

Registrant:
 Memorial Eye, P.A
 2470 Gray Falls Dr. Ste 150
 Houston, Texas 77077
 United States

Registered through: GoDaddy.com, Inc. (<http://www.godaddy.com>)
 Domain Name: SHIPMYCONTACTS.COM
 Created on: 29-Sep-04
 Expires on: 29-Sep-11
 Last Updated on: 20-Feb-07

Administrative Contact:
 Sanchez, Elio esanchez@memorialeyecenter.com
 Memorial Eye, P.A.
 2470 Gray Falls Dr. Ste 150
 Houston, Texas 77077
 United States
 2815665353 Fax --

Technical Contact:
 Sanchez, Elio esanchez@memorialeyecenter.com
 Memorial Eye, P.A.
 2470 Gray Falls Dr. Ste 150
 Houston, Texas 77077
 United States
 2815665353 Fax --

Domain servers in listed order:
 NS1.SHIPMYCONTACTS.COM
 NS2.SHIPMYCONTACTS.COM

When you register a domain name, current policies require that the contact information for your domain name registration be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information visit www.internetprivacypolicyadvocate.org.

NOTICE AND TERMS OF USE: You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes or for the purpose or purposes of using the data in any manner that violates these terms of use. The Data in Network Solutions' WHOIS database is provided by Network Solutions for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. Network Solutions does not guarantee its accuracy. By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via direct mail, e-mail, telephone, or

OUR WEB SITE PACKAGES NOW OFFER UP TO:

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SEARCH AGAIN

Enter a search term:

e.g. networksolutions.com

Search by:

Domain Name

IP Address

[Search >>](#)

EXHIBIT C-001

The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

[Show underlying registry data for this record](#)

Current Registrar: GODADDY.COM, INC.
IP Address: [72.167.162.131](#) (ARIN & RIPE IP search)
IP Location: US(UNITED STATES)
Record Type: Domain Name
Server Type: Apache 2
Lock Status: clientDeleteProhibited
Web Site Status: Active
DMOZ: no listings
Y! Directory: [see listings](#)
Web Site Title: ShipMyContacts.com - Easy - Affordable - Convenient - Contact Lenses
ShipMyContacts offers online contact lenses purchases at a competitive price. The most popular contact lens brands at the lowest prices. Includes Acuvue, Focus lenses, Freshlook, SofLens and more.
Meta Description: ship my contacts, shipmycontacts, rebates, contact lenses, online contacts, order contacts, Freshlook, Focus Night & Day, color contacts, contacts, free shipping, popular lenses, bifocal lenses, toric lenses, disposable lenses, daily disposables
Meta Keywords: ship my contacts, shipmycontacts, rebates, contact lenses, online contacts, order contacts, Freshlook, Focus Night & Day, color contacts, contacts, free shipping, popular lenses, bifocal lenses, toric lenses, disposable lenses, daily disposables
Secure: Yes
E-commerce: Yes
Traffic Ranking: 4
Data as of: 22-Apr-2008



Need to get your business online?
Our professional designers can build a [custom Web site](#) for your business.
\$11.95/month, plus a \$499.00 design fee

Go



Pay Per Click from Network Solutions
Create and manage your [pay per click advertising](#) from as low as \$125/month plus \$99 one time set-up fee

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EXHIBIT C-002

SOLUTIONS TO GET ONLINE SOLUTIONS TO SELL ONLINE	SOLUTIONS TO GET CUSTOMERS PROFESSIONAL BUSINESS SOLUTIONS	SOLUTIONS FOR ONLINE SECURITY LEGAL & POLICY INFO	CORPORATE INFORMATION PROMOTIONS & OFFERS
---	---	--	--

RESOURCES
CUSTOMER SUPPORT

SEARCH FOR A DOMAIN:

.com

Search

GET A FREE DOMAIN WITH HOSTING



"An outstanding customer service experience"
J.D. Power and Associates



100% Secure Transaction

For your protection, this Web site is secured with the highest level of SSL Certificate encryption.

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EXHIBIT C-003

WHOIS Search Results

Your WHOIS Search Results



ship-my-contacts.com

Make an instant, anonymous offer to the current domain registrant. Learn More

Make an offer to buy this domain



The data contained in GoDaddy.com, Inc.'s Whois database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the prior written permission of GoDaddy.com, Inc. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" field. In most cases, GoDaddy.com, Inc. is not the registrant of domain names listed in this database.

Registrant: Memorial Eye, P.A. 2470 Gray Falls Dr. Ste 150 Houston, Texas 77077 United States

Registered through: GoDaddy.com, Inc. (http://www.godaddy.com) Domain Name: SHIP-MY-CONTACTS.COM Created on: 15-Mar-05 Expires on: 15-Mar-10 Last Updated on: 15-Oct-07

Administrative Contact: Sanchez, Elio esanchez@memorialeyecenter.com Memorial Eye, P.A. 2470 Gray Falls Dr. Ste 150 Houston, Texas 77077 United States 2815665353 Fax --

Technical Contact: Sanchez, Elio esanchez@memorialeyecenter.com Memorial Eye, P.A. 2470 Gray Falls Dr. Ste 150 Houston, Texas 77077 United States 2815665353 Fax --

Domain servers in listed order: NS07.DOMAINCONTROL.COM NS08.DOMAINCONTROL.COM

When you register a domain name, current policies require that the contact information for your domain name registration be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information visit www.internetprivacyadvocate.org

NOTICE AND TERMS OF USE: You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes or for the purpose or purposes of using the data in any manner that violates these terms of use. The Data in Network Solutions' WHOIS database is provided by Network Solutions for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. Network Solutions does not guarantee its accuracy. By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial electronic solicitations via direct mail, e-mail, telephone, or

tel .TEL is HERE Tell the World How to Find You Now Open Learn More

SEARCH AGAIN Enter a search term: e.g. networksolutions.com Search by: Domain Name IP Address Search

EXHIBIT D-001

The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

[Show underlying registry data for this record](#)

Current Registrar:	GODADDY.COM, INC.
IP Address:	64.202.189.170 (ARIN & RIPE IP search)
IP Location:	US(UNITED STATES)-ARIZONA-SCOTTSDALE
Record Type:	Domain Name
Server Type:	Other
Lock Status:	clientDeleteProhibited
Web Site Status:	Active
DMOZ	no listings
Y! Directory:	see listings
Web Site Title:	ShipMyContacts.com - Easy - Affordable - Convenient - Contact Lenses ShipMyContacts offers online contact lenses purchases at a competitive price. The most popular contact lens brands at the lowest prices. Includes Acuvue, Focus lenses, Freshlook, SofLens and more.
Meta Description:	ship my contacts, shipmycontacts, rebates, contact lenses, online contacts, order contacts, Freshlook, Focus Night & Day, color contacts, contacts, free shipping, popular lenses, bifocal lenses, toric lenses, disposable lenses, daily disposables
Meta Keywords:	ship my contacts, shipmycontacts, rebates, contact lenses, online contacts, order contacts, Freshlook, Focus Night & Day, color contacts, contacts, free shipping, popular lenses, bifocal lenses, toric lenses, disposable lenses, daily disposables
Secure:	No
E-commerce:	No
Traffic Ranking:	Not available
Data as of:	22-Apr-2008



Need to get your business online?

Our professional designers can build a [custom Web site](#) for your business. \$11.95/month, plus a \$499.00 design fee

Go



Pay Per Click from Network Solutions

Create and manage your [pay per click advertising](#) from as low as \$125/month plus \$99 one time set-up fee

Go

EXHIBIT D-002

SOLUTIONS TO GET ONLINE SOLUTIONS TO SELL ONLINE	SOLUTIONS TO GET CUSTOMERS PROFESSIONAL BUSINESS SOLUTIONS	SOLUTIONS FOR ONLINE SECURITY LEGAL & POLICY INFO	CORPORATE INFORMATION PROMOTIONS & OFFERS
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RESOURCES
CUSTOMER SUPPORT

SEARCH FOR A DOMAIN: .com Search

GET A FREE DOMAIN WITH HOSTING



"An outstanding customer service experience"
J.D. Power and Associates



100% Secure Transaction

For your protection, this Web site is secured with the highest level of SSL Certificate encryption.

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EXHIBIT D-003

WHOIS Search Results

Your WHOIS Search Results



iwantcontacts.com

Make an instant, anonymous offer to the current domain registrant. [Learn More](#)

[Make an offer to buy this domain](#)



The data contained in GoDaddy.com, Inc.'s Whois database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the prior written permission of GoDaddy.com, Inc. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" field. In most cases, GoDaddy.com, Inc. is not the registrant of domain names listed in this database.

Registrant:
Memorial Eye, P.A.
2470 Gray Falls #150
Houston, Texas 77077
United States

Registered through: GoDaddy.com, Inc. (<http://www.godaddy.com>)
Domain Name: IWANTCONTACTS.COM
Created on: 22-Jun-07
Expires on: 22-Jun-10
Last Updated on: 29-Mar-08

Administrative Contact:
Sanchez, Elio esanchez@memorialeyecenter.com
Memorial Eye, P.A.
2470 Gray Falls #150
Houston, Texas 77077
United States
(281) 556-5353 Fax --

Technical Contact:
Sanchez, Elio esanchez@memorialeyecenter.com
Memorial Eye, P.A.
2470 Gray Falls #150
Houston, Texas 77077
United States
(281) 556-5353 Fax --

Domain servers in listed order:
NS1.IWANTCONTACTS.COM
NS2.IWANTCONTACTS.COM

When you register a domain name, current policies require that the contact information for your domain name registration be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information visit www.internetprivacyadvocate.org

NOTICE AND TERMS OF USE: You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes or for the purpose or purposes of using the data in any manner that violates these terms of use. The Data in Network Solutions' WHOIS database is provided by Network Solutions for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. Network Solutions does not guarantee its accuracy. By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via direct mail, e-mail, telephone, or

OUR WEB SITE PACKAGES NOW OFFER UP TO:

10x GREATER DISK STORAGE AND MORE
10x BETTER DATA TRANSFER AND MORE

GET THE ULTIMATE UPGRADE IN WEB HOSTING SOLUTIONS.
ULTIMATE PEACE OF MIND. ULTIMATE STORAGE. ULTIMATE VERSATILITY.

[Learn More](#)

SEARCH AGAIN

Enter a search term:

e.g. networksolutions.com

Search by:

- Domain Name
- IP Address

[Search](#)

EXHIBIT E-001

The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

[Show underlying registry data for this record](#)

Current Registrar: GODADDY.COM, INC.
IP Address: 72.167.162.130 (ARIN & RIPE IP search)
IP Location: US(UNITED STATES)
Record Type: Domain Name
Server Type: Apache 2
Lock Status: clientDeleteProhibited
Web Site Status: Active
DMOZ: no listings
Y! Directory: [see listings](#)
Web Site Title: IWantContacts.com - The Doctors' Choice - Contact Lenses
Meta Description: Iwantcontacts offers online contact lenses purchases at a competitive price. We always have the best prices. Includes Acuvue contacts, Focus lenses, Freshlook, SofLens and more.
Meta Keywords: ivantcontacts, contact lenses, online contacts, order contacts, Acuvue, Freshlook, Focus Night & Day, color contacts, contacts, bifocal lenses, toric lenses, disposable lenses, daily disposables
Secure: Yes
E-commerce: Yes
Traffic Ranking: 3
Data as of: 22-Apr-2008



Need to get your business online?

Our professional designers can build a [custom Web site](#) for your business.
\$11.95/month, plus a \$499.00 design fee

Go ➔



Pay Per Click from Network Solutions

Create and manage your [pay per click advertising](#) from as low as \$125/month plus \$99 one time set-up fee

Go ➔


EXHIBIT E-002

SOLUTIONS TO GET ONLINE SOLUTIONS TO SELL ONLINE	SOLUTIONS TO GET CUSTOMERS PROFESSIONAL BUSINESS SOLUTIONS	SOLUTIONS FOR ONLINE SECURITY LEGAL & POLICY INFO	CORPORATE INFORMATION PROMOTIONS & OFFERS
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RESOURCES
CUSTOMER SUPPORT

SEARCH FOR A DOMAIN: .com


GET A FREE DOMAIN WITH HOSTING



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#1 Shared Hosting
AWARD WINNER





100% Secure Transaction
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EXHIBIT E-003

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,731,114

United States Patent and Trademark Office

Registered July 1, 2003

SERVICE MARK
PRINCIPAL REGISTER

1 800 CONTACTS

1-800 CONTACTS, INC. (DELAWARE CORPORATION)
66 EAST WADSWORTH PARK DRIVE
3RD FLOOR
DRAPER, UT 84020

FOR: MAIL ORDER AND TELEPHONE ORDER SERVICES IN THE FIELD OF CONTACT LENSES AND RELATED PRODUCTS, AND ELECTRONIC RETAILING SERVICES VIA COMPUTER FEATURING CONTACT LENSES AND RELATED PRODUCTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 7-13-1998; IN COMMERCE 7-13-1998.

APPLICANT CLAIMS THE COLORS YELLOW, BLUE AND WHITE AS PART OF THE MARK. THE BOX BEHIND THE WORD "CONTACTS" IS YELLOW. THE BORDER AROUND THE YELLOW BOX BEHIND THE WORD "CONTACTS" IS BLUE. THE BOX BEHIND THE TERM "800" IS BLUE. THE NUMBER ONE AND THE WORD "CONTACTS" ARE WRITTEN IN BLUE. THE TERM "800" IS WRITTEN IN WHITE.

SEC. 2(F) AS TO 1800 CONTACTS.

SER. NO. 76-138,625. FILED 10-2-2000.

RONALD MCMORROW, EXAMINING ATTORNEY

EXHIBIT F-001

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,675,866

United States Patent and Trademark Office

Registered Jan. 21, 2003

**SERVICE MARK
PRINCIPAL REGISTER**

1800CONTACTS

1-800 CONTACTS, INC. (DELAWARE CORPORATION)
66 EAST WADSWORTH PARK DRIVE, 3RD FLOOR
DRAPER, UT 84020

FOR: MAIL ORDER AND TELEPHONE ORDER
SERVICES IN THE FIELD OF CONTACT LENSES
AND RELATED PRODUCTS, AND ELECTRONIC
RETAILING SERVICES VIA COMPUTER FEATUR-
ING CONTACT LENSES AND RELATED PRO-
DUCTS. IN CLASS 35 (U.S. CLS. 100, 101 AND 102)

FIRST USE 7-0-1995; IN COMMERCE 7-0-1995.

SEC. 2(F)

SER. NO. 75-746,706, FILED 7-8-1999.

RONALD MCMORROW, EXAMINING ATTORNEY

EXHIBIT F-002

September 13, 2005

Memorial Eye, P.A.
2470 Gray Falls #120
Houston, Texas 77077

Re: Trademark Infringement of 1800 CONTACTS Trademark in Sponsored Advertisements at Google and Related Search Engines.

To Whom It May Concern:

My name is David Zeidner, and I am Legal Counsel for 1800 CONTACTS, INC.

As you know, 1800 CONTACTS is one of the nation's leading distributors of contact lenses. To protect its reputation and good will among consumers, 1800 CONTACTS aggressively polices the use of its copyrights and trademarks.

Recently it has come to my attention that you are engaged in a targeted scheme to infringe upon the 1800 CONTACTS trademark in that you have purchased sponsored advertisements at Google, and possibly at other search engines, for the 1800 CONTACTS trademark to trigger a link to your directly competitive www.shipmycontacts.com website, via a search through AOL. At least one of these advertisements has been purchased through Google's AdWords Program. I have attached a screen shot of the infringing action by your company, for your reference.

Your advertisement is triggered upon a search for "1800 CONTACTS" and thus, uses the 1800 CONTACTS trademark as a triggering keyword to advertise for your directly competitive goods and services. This is willful and blatant trademark infringement that is damaging to 1800 CONTACTS and its established rights in its 1800 CONTACTS trademark. You have no legitimate right to use the 1800 CONTACTS trademark in this manner, and it is readily apparent that such usage is a deliberate and willful attempt to trade off the goodwill established by 1800 CONTACTS in its famous 1800 CONTACTS trademark by diverting web users legitimately looking for 1800 CONTACTS products/services to your www.shipmycontacts.com web page.

1800 CONTACTS is very concerned about this unauthorized and illegal use of its valuable 1800 CONTACTS trademark and is prepared to take whatever legal steps necessary to protect the value and integrity of this trademark. 1800 CONTACTS is intent upon stopping this trademark infringement and hereby demands:

1. that you immediately cease and desist from any and all infringing activities with respect to the 1800 CONTACTS trademark, and
2. that you immediately removal ALL sponsored advertisements you have purchased through Google, Yahoo Search, and any and other search engines which are triggered by the 1800 CONTACTS trademark.

Further, I request that you confirm in writing within three (3) business days of your receipt of this letter that you and all persons or entities associated with you will comply with our demands. If I do not hear from you or your attorney within three (3) business days of your receipt of this letter, I will assume that you intend to ignore our demands, and 1800 CONTACTS will take all further legal action necessary to resolve this matter.

Be aware that under the Lanham Trademark Act a trademark owner proving trademark infringement may be entitled to 1) injunctive relief; 2) the infringer's profits; 3) any damages sustained by the trademark owner; and/or 4) litigation costs. Further, infringement of a registered trademark under the Lanham Act could subject you, as a willful infringer, to treble damages.

I look forward to hearing from you within the three (3) business days as requested. I can be reached by telephone at 801-924-9800 or at the mailing address provided on the bottom of the first page of this letter, or by email at dzeidner@contacts.com.

Sincerely,



David Zeidner
Legal Counsel
1800 CONTACTS, INC.

EXHIBIT G-002

Search Term: 1800contacts.com

Search Results Page:

<http://search.aol.com/aolcom/search?invocationType=topsearchbox.search&query=1800contacts.com>

- 1) www.shipmycontacts.com

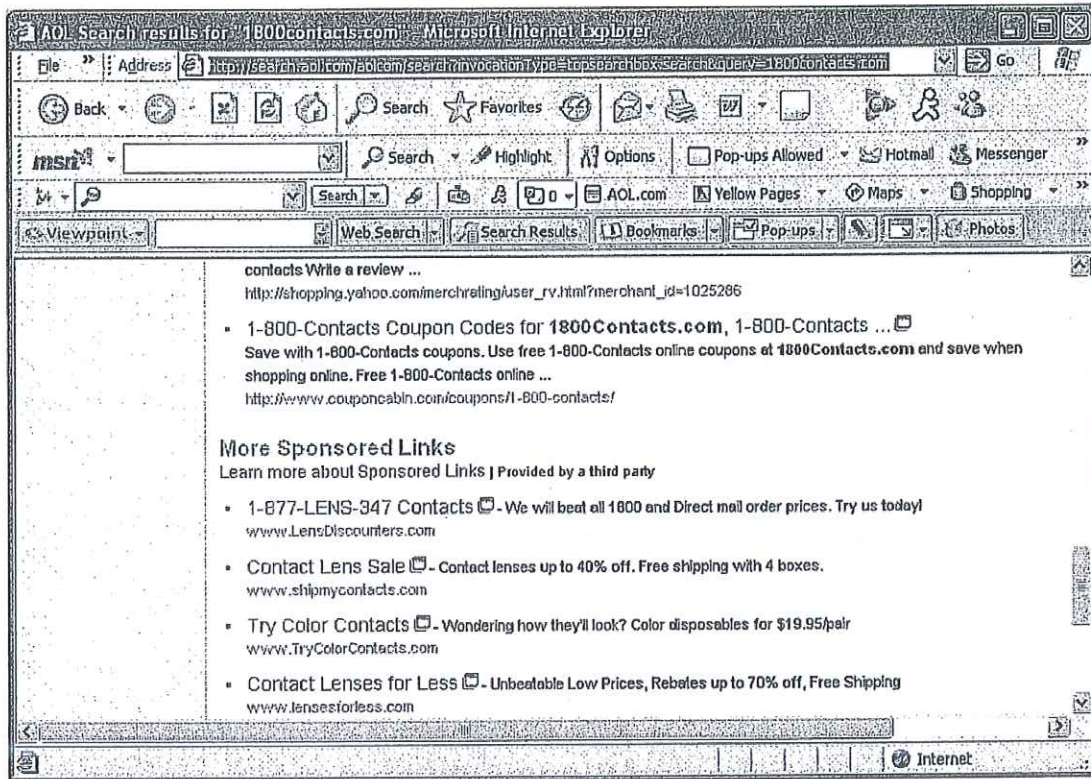


EXHIBIT G-003

From: Origin ID: (801)924-9834
SAMANTHA BLAIR
1-800 CONTACTS, INC
66 EAST WADSWORTH PARK DRIVE
DRAPER, UT 84020



Ship Date: 16SEP05
Actual Wgt: 1 LB
System#: 6041440/NET2200
Account#: S *****

REF:



Delivery Address Bar Code

SHIP TO: (281)556-5353 BILL SENDER
Beverly Cline
Memorial Eye, P.A.
2470 Gray Falls, #120
Houston, TX 77077



PRIORITY OVERNIGHT

MON

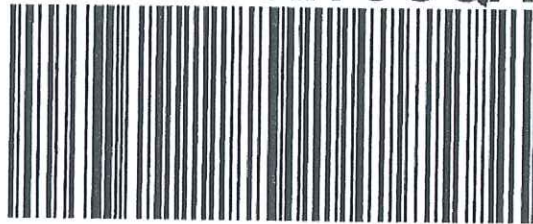
Deliver By:
19SEP05

TRK# 7925 2919 0839 FORM 0201

IAH A2

77077 -TX-US

XH JGQA



Shipping Label: Your shipment is complete

1. Use the 'Print' feature from your browser to send this page to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

EXHIBIT G-004

https://www.fedex.com/cgi-bin/ship_it/unity/7BhRz2CcWr8AfZs0Afr7AaQz7DaSs4DcRq4CfRz0GgWw... 9/16/2005

10/12/2005 07:42 7136226940

R LUCKEY

PAGE 01

RANDALL D. LUCKEY

Attorney at Law
3 Riverway, Suite 1800
Houston, Texas 77056

(713) 622-4079
(713) 622-6940 (Fax)

October 13, 2005

Mr. David Zeidner
Legal Counsel
1800 Contacts
66 East Wadsworth Park
3rd Floor
Draper, Utah 84020

Certified Mail, R.R.R.
and Facsimile (801) 924-9905

Re: Alleged Trademark Infringement of "1800 Contacts" Trademark in Sponsored Advertisements at Google and Related Search Engines

Dear Mr. Zeidner:

I represent Memorial Eye, P.A. ("Memorial Eye" - "www.shipmycontacts") in connection with the allegations made in your letter dated September 13, 2005.

In that letter you have alleged, among other things, that Memorial Eye has "engaged in a targeted scheme to infringe upon 1800 Contacts Trademark". You have, mistakenly and groundlessly, assumed and charged that Memorial Eye has used your Company's trademark as a triggering keyword for its sponsored advertisements with Google and other search engines.

Memorial Eye has never used, or even considered using, your Company's trademark in its sponsored advertisements, or even as a search phrase trigger. The fact that your Company's "mark" includes the generic word "contacts" will obviously result in a search triggering a multitude of other contact lens sites, including legitimate sponsored advertisements.

Memorial Eye's "sponsored link" in the "search shot" sent with your September 13th letter makes absolutely no reference to your Company's mark. The heading for the sponsored advertisements clearly indicates the ads are third party sponsored advertisements.

EXHIBIT H-001

10/12/2005 07:42 7135225940

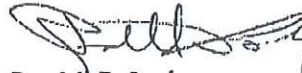
R LUCKEY

PAGE 02

Page 2

If you have any further comments or questions regarding this response to your letter please contact the undersigned.

Yours very truly



Randall D. Luckey

cc: Mr. Eric Holbrook
Memorial Eye, P.A.

EXHIBIT H-002

November 3, 2005

Randall D. Luckey
3 Riverway, Suite 1800
Houston, Texas 77056

Re: www.shipmycontacts.com

Dear Mr. Luckey:

I am in receipt of your letter dated October 13, concerning the infringement of the 1800 CONTACTS trademark by your client Memorial Eye.

In your letter you indicated that the screen shot sent with my original letter makes absolutely no reference to the 1800 CONTACTS trademark. This is in fact not correct. You will note that the search term used to trigger a link to your client's website is in fact 1800CONTACTS.COM. I have attached another screen shot for your reference showing your client's infringement of the 1800 CONTACTS trademark. Please note at the bottom of the page the term 1800contacts.com is the term used in the search box.

Therefore, your client is in fact using the 1800 CONTACTS trademark as a triggering keyword to advertise for their directly competitive goods and services. 1800 CONTACTS does not allow third parties to use any of their trademarks in "third party sponsored advertisements," as you have indicated in your letter.

This is willful and blatant trademark infringement that is damaging to 1800 CONTACTS and its established rights in its 1800 CONTACTS trademark. Your client has no legitimate right to use the 1800 CONTACTS trademark in this manner, and it is readily apparent that such usage is a deliberate and willful attempt to trade off the goodwill established by 1800 CONTACTS in its famous 1800 CONTACTS trademark by diverting web users legitimately looking for 1800 CONTACTS products/services to your client's web page found at www.shipmycontacts.com. 1800 CONTACTS is very concerned about this unauthorized and illegal use of its valuable 1800 CONTACTS trademark and is prepared to take whatever legal steps necessary to protect the value and integrity of this trademark. 1800 CONTACTS is intent upon stopping this trademark infringement and hereby demands:

1. That you immediately cease and desist from any and all infringing activities with respect to the 1800 CONTACTS trademark, and
2. That you immediately removal ALL sponsored advertisements you have purchased through Google, Yahoo Search, and any and other search engines which are triggered by the 1800 CONTACTS trademark.

Below are the steps that you need to follow to ensure that your ads are not displayed for 1800 CONTACTS trademarked keywords.

1. Ensure that none of our trademarked keywords are in your paid-search campaigns.
2. Add the following negative keywords to any campaigns containing search terms related to contact lenses.

1800contact
1800contacts
1800 contact
1800 contacts
1-800-contact
1-800-contacts
1-800 contact
1-800 contacts
1800contacts.com
1 800 contact
1 800 contacts
800 contact
800 contacts
800contact
800contacts
www.1800contact
www.1800contacts
contacts.com
lens express
lenses express

These terms can be added directly in the Google and Yahoo interfaces or the Client Services teams from each network should be able to help you the advertiser get these key words added. In Google the above terms need to be added as "negative keywords" and in Yahoo they will be called "excluded terms".

Further, I request that you confirm in writing within three (3) business days of your receipt of this letter that you and all persons or entities associated with you will comply with our demands. If I do not hear from you or your attorney within three (3) business

EXHIBIT I-002

days of your receipt of this letter, I will assume that you intend to ignore our demands, and 1800 CONTACTS will take all further legal action necessary to resolve this matter.

Be aware that under the Lanham Trademark Act a trademark owner proving trademark infringement may be entitled to 1) injunctive relief; 2) the infringer's profits; 3) any damages sustained by the trademark owner; and/or 4) litigation costs. Further, infringement of a registered trademark under the Lanham Act could subject you, as a willful infringer, to treble damages.

I look forward to hearing from you within the three (3) business days as requested. I can be reached by telephone at 801-924-9800 or at the mailing address provided on the bottom of the first page of this letter. You may also email me at dzeidner@contacts.com.

Sincerely,



David Zeidner
Legal Counsel
1800 CONTACTS, INC.

EXHIBIT I-003

1800contacts.com - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Address: http://search.1800contacts.com/...
 http://www.1800contacts.com/...
 http://www.1800contacts.com/...

Looking for contact lens? You can find contact lens here!
 1800CONTACTS.com - Back to School Free Shipping, 1800CONTACTS.com - We make it ...
 1800CONTACTS.com - Contact Lenses: Your exact prescription and brand of ...
 http://www.1800contacts.com/...

CPY Document
 1800contacts.com/...
 Contact Lens Consumers Act of 2003 ...
 http://www.ftc.gov/oc/communications/contactlensact03-04-2235-4-01.pdf

lens - Find, Compare, and Buy lens at Shopping.com
 1800CONTACTS.com World's largest contact lens store. We make it simple. www.1800contacts.com - Nikon
 Camera Zoom Lenses Accessories you need for Digital or ...
 http://www.shopping.com/KGS-lens

1 2 3 4 5 6 7 8 9 10 next >

Sponsored links 1

Ty Color Contacts
 Wandering how they'll look? Color disposables for \$19.95! www.tycolorcontacts.com

Cheap Contacts
 Find Contact Deals And Information Fast And Easy!
 Contact Lense

Contact Lens Sale
 Contact lenses up to 40% off! Free shipping with 4 boxes.
www.1800contacts.com

Contact Lenses for LESS
 Unbeatable Low Prices. Rebates up to 70% off! Free Shipping
www.lensesforless.com

keep searching web for:
1800contacts.com

1800contacts.com

1800contacts.com - Government Guide - Magnificent Assistance - Prescription Shopping - Mobile Search -
 Online 24/7 - 1800contacts.com - Prescription Travel - Link to us - Legal - Visa delivery
 AOL International AOL Live Download AOL - Accessibility Policy - Get Lenses - Terms of Use
 Revised Member Privacy Policy - Trademarks AOL - Outstanding 5 Star Email Policy
 Answers With Us - Feedback - Help
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EXHIBIT I-004

RADER,**FISHMAN****& GRAUER**

PLLC

VIA FEDERAL EXPRESS

Received

10653 S. River Front Pkwy., Suite 150
 South Jordan, UT 84095
 Tel: (801) 572-0185
 Fax: (801) 572-7666

Bryan G. Pratt
 (801) 572-0185
 bqp@raderfishman.com

September 12, 2007

Elio Sanchez
 Memorial Eye, P.A.
 2470 Gray Falls Dr. Ste 150
 Houston, Texas 77077
 United States

Re: Unauthorized Use of the 1800CONTACTS and 1800 CONTACTS
 Trademarks; Use of 1800 CONTACTS, INC.'s Trademarks in Sponsored
 Advertisements at Google and Related Search Engines
 Our Ref: 40302-00012

Dear Mr. Sanchez:

We act as outside intellectual property counsel for 1800 CONTACTS, INC. We have been asked by our client to advise you of 1800 CONTACTS, INC.'s rights to the trademarks 1800CONTACTS and 1800 CONTACTS. It has come to our attention that you are engaged in a targeted scheme to infringe upon the 1800 CONTACTS and 1800CONTACTS trademarks. More specifically, you have purchased sponsored advertisements at Google, and possibly other search engines, for at least one of the 1800 CONTACTS or 1800CONTACTS trademarks, or a confusingly similar variation thereof, to trigger a link to your directly competitive www.shipmycontacts.com website.

As you are undoubtedly aware, our client is extensively engaged in the business of marketing and distributing contact lenses and contact lens care products. 1800 CONTACTS, INC. has been engaged in these activities for over a decade, and our client has distributed contact lenses throughout the United States under its federally registered 1800 CONTACTS and 1800CONTACTS marks. Additionally, our client has applied for and been granted numerous trademark registrations for its 1800 CONTACTS mark and variations thereof. Our client has received the following U.S. registrations related to its 1800 CONTACTS mark:

EXHIBIT J-001

Worldwide Intellectual Property Matters • Patents • Trademarks • Litigation • Copyrights • U.S. and Foreign Portfolio Management
 Computer and Internet Law • Trade Secrets • Unfair Competition

Bloomfield Hills

Washington, D.C.

Salt Lake City

Tokyo

Elio Sanchez
 Memorial Eye, P.A.
 September 12, 2007
 Page 2

RADER,

FISHMAN

& GRAUER

PLLC

MARK	NUMBER	DATE
1800 CONTACTS	2,731,114	10/02/2000
1800CONTACTS	2,675,866	07/08/1999

Our client's contact lens distribution services, as well as the products provided by our client in connection therewith, are well-known and highly regarded by consumers and competitors alike. In addition, our client has expended considerable resources in promoting its contact lens distribution services and eye care products under these marks through various media, including newspapers, magazines, other print advertisements, radio and television advertisements, and the World Wide Web. As a result, the public has come to recognize these marks as a symbol of our client, its quality services, and its goodwill.

In the face of our client's valuable prior rights, we are concerned that you have continually purchased sponsored advertisements at Google, and possibly other search engines, that are triggered upon a search for "1800 CONTACTS," or a confusingly similar variation thereof. Your use of the 1800 CONTACTS trademark as a triggering keyword to advertise for your directly competitive goods and services is an obvious attempt to trade off the goodwill established by 1800 CONTACTS, INC. in its famous 1800 CONTACTS trademark. The use of the mark 1800 CONTACTS and/or any confusingly similar variation of the mark as a keyword in the United States may constitute trademark infringement under state and federal law in that it is likely to cause initial interest confusion, or likely to cause the public to mistakenly assume that your business activities originate from, are sponsored by, or are in some way associated with 1800 CONTACTS, INC. For the same reasons, such use may constitute unfair competition and false advertising under state law and similarly may violate Section 43(a) of the Trademark Act, 15 U.S.C. §1125(a), as a "false designation of origin." Your activities may also violate the Federal Dilution Act of 1995, 15 U.S.C. §1125(c).

Under the circumstances, we request that you cease and desist from further use of the mark 1800 CONTACTS, and confusingly similar variations thereof in the United States. Further, we request that you immediately remove ALL sponsored advertisements that you have purchased through Google, Yahoo Search, and any other search engines which are triggered by the 1800 CONTACTS trademark or a confusingly similar variation thereof. Additionally, we demand that you incorporate the attached list of negative keywords in any continued sponsored advertisement campaigns. Moreover, we request that you confirm in writing that you will comply with our requests. Failing to hear from you within the next three (3) days, we will assume that you intend to ignore our requests, and we will take appropriate action as authorized by our client.

EXHIBIT J-002

Elio Sanchez
Memorial Eye, P.A.
September 12, 2007
Page 3

RADER,

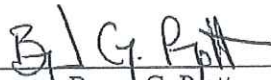
FISHMAN

& GRAUER

PLLC

Very truly yours,

RADER, FISHMAN & GRAUER PLLC



Bryan G. Pratt

BGP/clj

cc: David Zeidner
Brandon Dansie

EXHIBIT J-003

RANDALL D. LUCKEY

Attorney at Law
3 Riverway, Suite 1800
Houston, Texas 77056

(713) 622-4079
(713) 622-6940 (Fax)

March 17, 2008

Mr. Bryan G. Pratt
Rader, Fishman & Grauer PLLC
10653 S. River Front Pkwy.
Suite 150
South Jordan, Utah 84095

Certified Mail, R.R.R.

Re: Alleged Unauthorized Use of "1800Contacts" and "1800 Contacts" Trademarks in Sponsored Advertisements at Google and Related Search Engines

Dear Mr. Pratt:

I represent Memorial Eye, P.A. ("Memorial Eye"-www.shipmycontacts.com) in connection with the allegations made in your letter dated February 27, 2008.

In that letter you have alleged, among other things, that Memorial Eye has "engaged in a targeted scheme to infringe upon the 1800 Contacts or 1800Contacts Trademarks".

As indicated in my previous letter dated October 13, 2005 to Mr. David Zeidner of 1800 Contacts, Inc. [which was in response to an almost identical letter from Mr. Zeidner dated September 13, 2005], you have again, mistakenly and groundlessly, assumed and charged that Memorial Eye has used 1800 Contacts, Inc.'s trademarks as triggering keywords for its sponsored advertisements with Google and other search engines.

Memorial Eye has never used, or even considered using, 1800 Contacts, Inc.'s trademarks in its sponsored advertisements, or even as a search phrase trigger. The fact that 1800 Contacts, Inc.'s "marks" include the generic word "contacts" will obviously result in a search triggering a multitude of other contact lens sites, including legitimate sponsored advertisements.

Memorial Eye's "sponsored link" in the "search shot" sent with your February 27th letter makes absolutely no reference to 1800 Contacts, Inc.'s mark. The heading for the sponsored advertisements clearly indicates the ads are third party sponsored advertisements.

EXHIBIT K-001

Page 2

If you have any further comments or questions regarding this response to your letter please contact the undersigned.

Yours very truly

A handwritten signature in black ink, appearing to read "Randall D. Luckey", written in a cursive style.

Randall D. Luckey

cc: Mr. Eric Holbrook
Memorial Eye, P.A.

EXHIBIT K-002

EXHIBIT L

Bryan G. Pratt (9924)
RADER, FISHMAN & GRAUER, PLLC
10653 South River Parkway, Suite 150
South Jordan, Utah 84095
Tel.: (801) 572-0185
Fax: (801) 572-7666

Attorneys for Plaintiff

**THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

<p>1-800 CONTACTS, INC. a Delaware corporation, Plaintiff, v. PREMIER HOLDINGS, INC., d/b/a FILMART, a New York corporation, EUGENE LEFKOWITZ, an individual, SHOLOMO LEFKOWITZ, an individual, and JUDITH LEFKOWITZ, an individual d/b/a EZ CONTACTS USA, Defendants.</p>	<p>Case No.:</p> <p>Hon.</p> <p><u>COMPLAINT</u></p>
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Plaintiff 1-800 CONTACTS, INC. ("Plaintiff") for its Complaint against Defendants Premier Holdings, Inc. d/b/a Filmart, Eugene Lefkowitz, Sholomo Lefkowitz and Judith Lefkowitz d/b/a EZ Contacts USA (collectively, "Defendants") alleges:

NATURE OF THE ACTION

1. This is a civil action for damages and injunctive relief arising out of Defendants' acts of trademark infringement, unfair competition, false designation of origin, false advertising,

passing off, copyright infringement, and unjust enrichment under federal, state and/or common law as a result of Defendants' wrongful acts, including willful infringement of Plaintiff's copyright in its website materials ("Plaintiff's Copyrighted Materials") and Plaintiff's rights in the trademarks 1-800 CONTACTS, WE MAKE IT SIMPLE and THE WORLD'S LARGEST CONTACT LENS STORE ("Plaintiff's Marks").

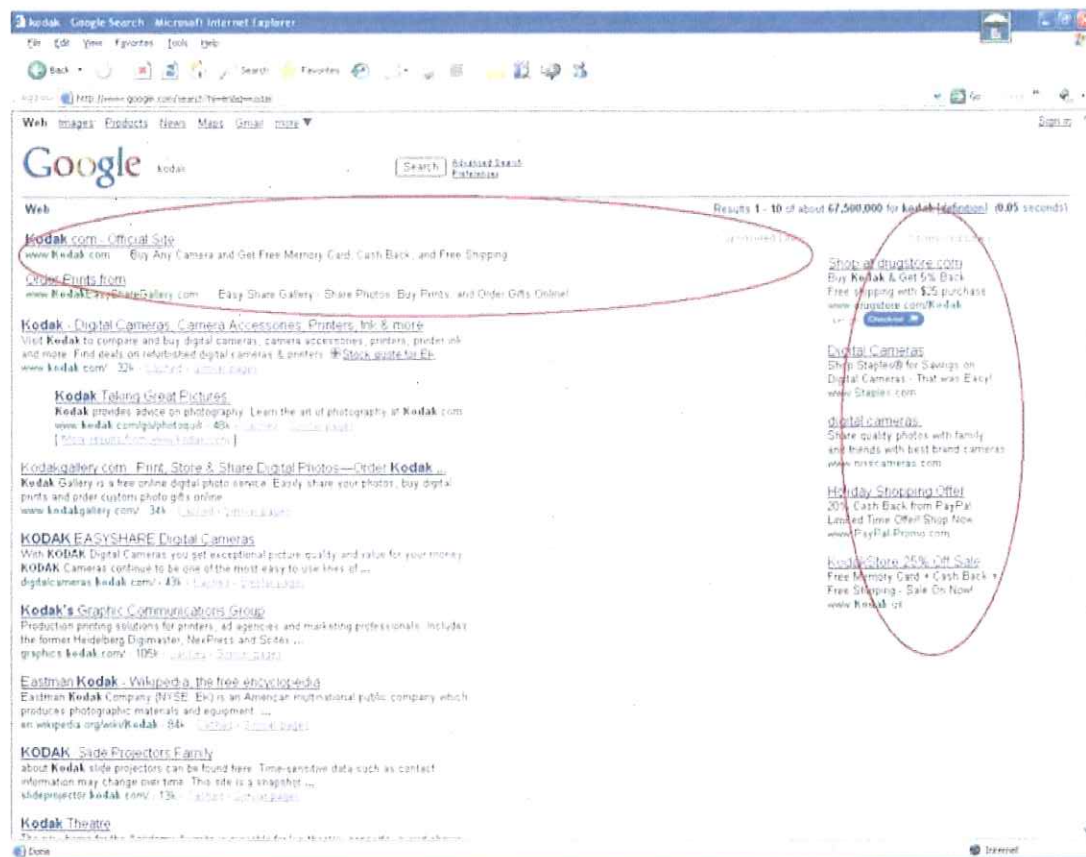
2. This suit concerns in particular the use of trademarks on the Internet, particularly with regard to competing replacement contact lens retailers and the nefarious actions of a relative newcomer.

3. In addition to incorporating Plaintiff's Copyrighted Materials and Plaintiff's Marks directly into Defendants' website at www.ezcontactsusa.com (the "EZ Contacts Website"), and falsely making claims thereon with regard to the size, stature and operations of the EZ Contacts business, upon information and belief, EZ Contacts has begun to purchase keywords consisting of at least one of Plaintiff's Marks, such that ads for EZ Contacts will be generated when consumers specifically search for Plaintiff 1-800 Contacts.

4. When searching on an Internet search engine, like Google for example, consumers typically type terms into the search engine. That search generates a list of links to web pages that the search engine identifies as relevant to the requested search. Such results are typically referred to as the "natural" or "organic" search results and are not influenced by payments to the search engine.

5. In addition to generating such "organic" search results, search engines typically offer paid placement, often near the top or the right side of the search screen. In effect, third parties can purchase "keywords" from search engines like Google, that may consist of another

party's trademarks, which will cause paid advertisements to appear above or next to the "organic" results when consumers conduct searches using those keywords. Google refers to these paid advertisements as "Sponsored Links," as shown in the example immediately below, with the Sponsored Link circled in red above and to the right of the organic search results in a search for "Kodak":



JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a) and (b). On information and belief, the

parties are citizens of different states and the amount in controversy far exceeds the sum or value of seventy-five thousand dollars (\$75,000), exclusive of interest and costs, creating jurisdiction under 28 U.S.C § 1332. Jurisdiction over the state law claims is also appropriate under 28 U.S.C. § 1367(a) and principles of pendent jurisdiction.

7. This Court has personal jurisdiction over Defendants. Defendants conduct business in this District, having shipped contacts and other items to this District. In addition, Defendants have purposefully availed themselves of the privilege of acting in this District by, among other things, by advertising via the Internet in this District and by offering interactive websites at www.ezcontacts.com (the "EZ Contacts Website") and www.filmart.com (the "Filmart Website"), which are accessible by Internet users throughout the country, including in this District, which permit users to register online, including in this District, and from which product can be ordered and shipped throughout the country, including in this District. See excerpts from the EZ Contacts USA Website and Filmart Website at **Exhibits A** and **B** allowing online registration and showing shipping available to Utah. Defendants have used Plaintiff's Copyrighted Materials and Plaintiff's Marks without authorization or consent from Plaintiff, including in this District. The tortious conduct about which Plaintiff complains has been committed by Defendants in this District. Defendants' actions are aimed, at least in part, at this District.

8. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391(b). A substantial portion of the activity about which Plaintiff complains has taken place in this District, and the damages suffered by Plaintiff were suffered, at least in part, in this District.

9. Upon information and belief, Defendants transact business throughout the entire United States, including in the District of Utah. The unlawful acts committed by Defendants, as hereinafter alleged, have been and are, in whole or in part, conceived, carried out and made effective within this District. The interstate trade or commerce described herein by Defendants is carried out in part within this District.

THE PARTIES

10. Plaintiff 1-800 Contacts, Inc. is a Delaware corporation, with its principal place of business at 66 East Wadsworth Park Drive, Draper, Utah 84020.

11. Upon information and belief, Defendant Premier Holdings, Inc. d/b/a Filmart is a New York corporation with an address of 4111 Glenwood, Brooklyn, New York, 11210, which operates throughout the United States including in the State of Utah.

12. Upon information and belief, Defendants Eugene Lefkowitz, Judith Lefkowitz and Sholomo Lefkowitz are officers of Premier Holdings, Inc.

13. The public domain name records for the domain name "ezcontactsusa.com" reflects EZ Contacts USA as the owner of the domain name, at the same address as Defendant Premier Holdings, Inc. d/b/a Filmart, 4111 Glenwood, Brooklyn, NY 11210. Likewise, the public domain records for "filmart.com" show the address of 4111 Glenwood, Brooklyn, NY 11210. See Whois records at **Exhibits C and D**.

14. Upon information and belief, Defendants Eugene Lefkowitz, Judith Lefkowitz, Sholomo Lefkowitz and/or Premier Holdings, Inc. operate and/or are affiliated with the unincorporated entity EZ Contacts USA, which operates throughout the United States including in the State of Utah.

15. Upon information and belief, the EZ Contacts USA Website previously showed 1153 55th Street, Brooklyn, New York, 11219 as the address for the unincorporated business EZ Contacts USA. See the screenshot of the archived website at Exhibit E. The EZ Contacts USA Website now shows its address as 4111 Glenwood, Brooklyn, NY 11210, the same address as Defendant Premier Holdings, Inc. d/b/a Filmart. See the screenshot of the website at Exhibit F.

16. Upon information and belief, one or more of the Defendants Eugene Lefkowitz, Judith Lefkowitz and Sholomo Lefkowitz reside or have resided at 1153 55th Street, Brooklyn, New York, the address previously associated with the unincorporated entity EZ Contacts USA.

GENERAL ALLEGATIONS

PLAINTIFF'S ACTIVITIES AND PROPRIETARY RIGHTS

17. For over a decade, Plaintiff has been and is now extensively engaged in the business of selling and distributing contact lenses and eye care products via telephone and fax, through the Internet and by mail ("Plaintiff's Goods and Services"). Plaintiff is the market leader in the field of replacement contact lenses, having filled over 16 million orders for five million customers, with an inventory of over 20 million lenses. Plaintiff's products can be ordered over the Internet via Plaintiff's website at www.1800contacts.com ("Plaintiff's Website").

18. Since at least as early as July 1995, Plaintiff has widely advertised and offered in interstate commerce services under the 1800 CONTACTS Mark. Likewise, since at least as early as June 1998 and September 2003, Plaintiff has widely advertised and offered in interstate commerce services under its THE WORLD'S LARGEST CONTACT LENS STORE mark and its WE MAKE IT SIMPLE mark, respectively. Plaintiff's Marks are used extensively in the

United States in connection with the Plaintiff's Goods and Services and in various advertising and promotional media, including the Internet, radio, television, trade shows, and through various printed media including direct mail.

19. Plaintiff is the owner of federal trademark registrations for the 1800CONTACTS, 1800 CONTACTS, THE WORLD'S LARGEST CONTACT LENS STORE, and the WE MAKE IT SIMPLE marks, U.S. Registration Nos. 2,675,866, 2,731,114, 2,886,220 and 2,927,522, respectively. Copies of these registrations and printouts from the U.S. Patent and Trademark Office database for such registrations are attached at Exhibit G.

20. Plaintiff's registrations constitute prima facie evidence of Plaintiff's ownership of Plaintiff's Marks, its exclusive right to use the marks throughout the United States, and the validity of the registrations and the marks.

21. As a result of the quality of Plaintiff's Goods and Services and the widespread promotion thereof under Plaintiff's Marks, Plaintiff's Goods and Services have met with substantial commercial success and widespread consumer recognition. As a further result, Plaintiff's Marks are extensively known and have become symbols of Plaintiff, its quality products and services, and its goodwill.

22. Plaintiff has also secured a federal copyright registration for the certain versions of the content and presentation of its website at www.1800contacts.com. The registration certificate for Registration No. VA-1-211-396 for one of the versions of Plaintiff's Website and an excerpt of the deposit copy are attached at Exhibit H. Plaintiff's Website also bears a copyright notice throughout the website.

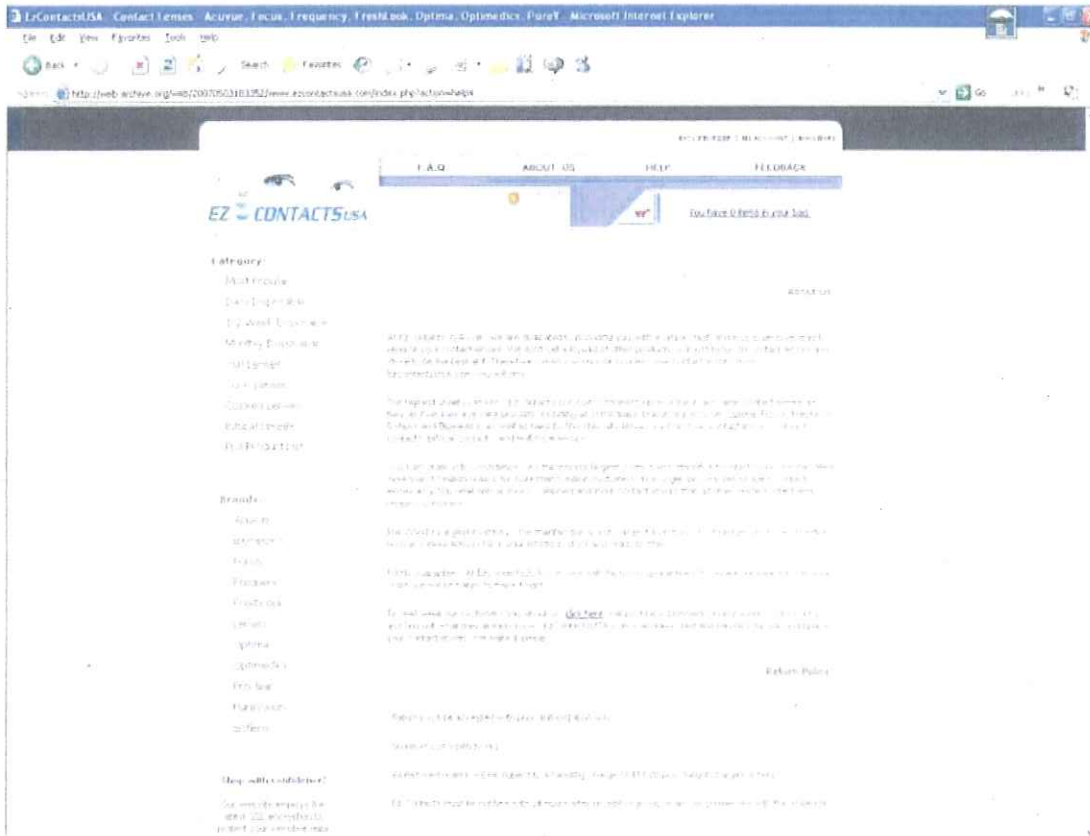
**EZ CONTACTS USA
AND DEFENDANTS' WRONGFUL ACTS**

23. Like Plaintiff, Defendants offer the sale of replacement contact lenses over the Internet.

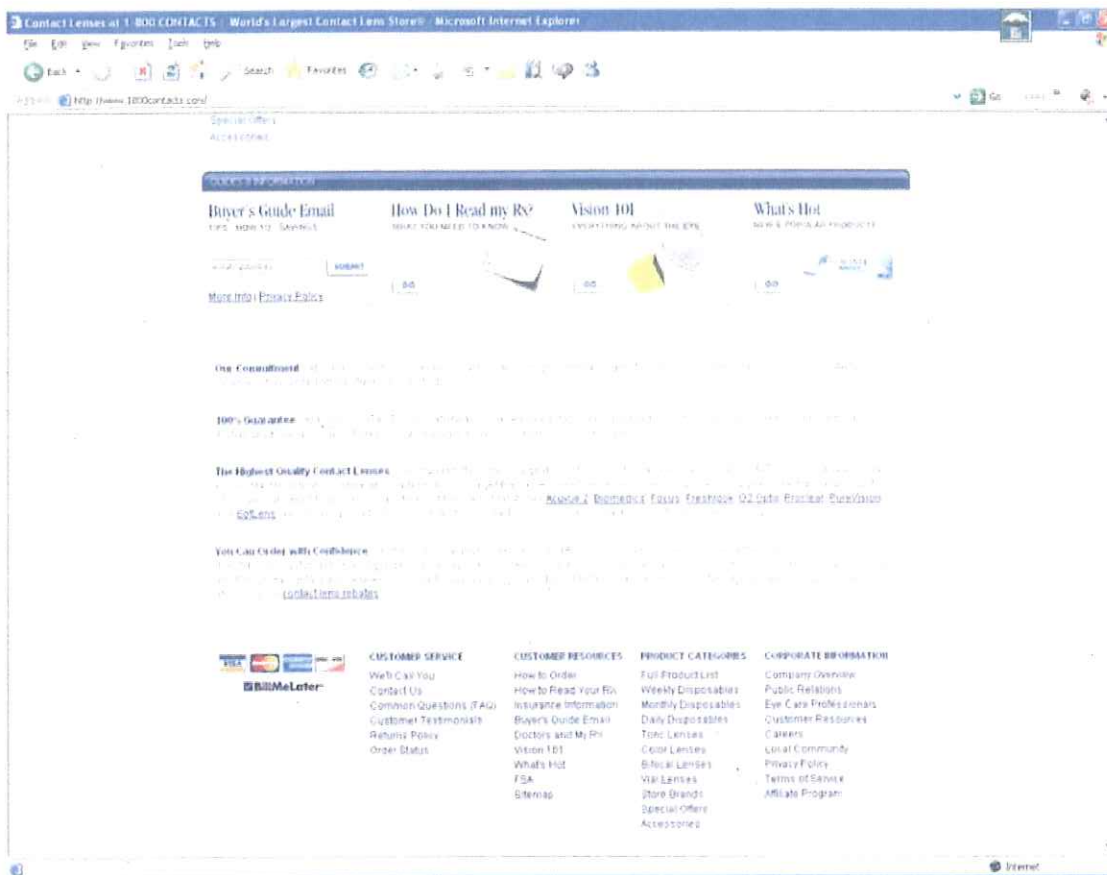
24. Upon information and belief, Defendants are relative newcomers to the replacement contact lens business and have sought to build consumer confidence by creating an association with Plaintiff 1-800 CONTACTS by utilizing Plaintiff's Marks and other proprietary materials and by adopting Plaintiff's sales figures and business claims as their own.

25. Upon information and belief, in an effort to pass themselves off as Plaintiff and/or create an association between themselves and Plaintiff, Defendants copied portions of Plaintiff's Website, including portions of its copyrighted material and had reproduced Plaintiff's Marks on such website.

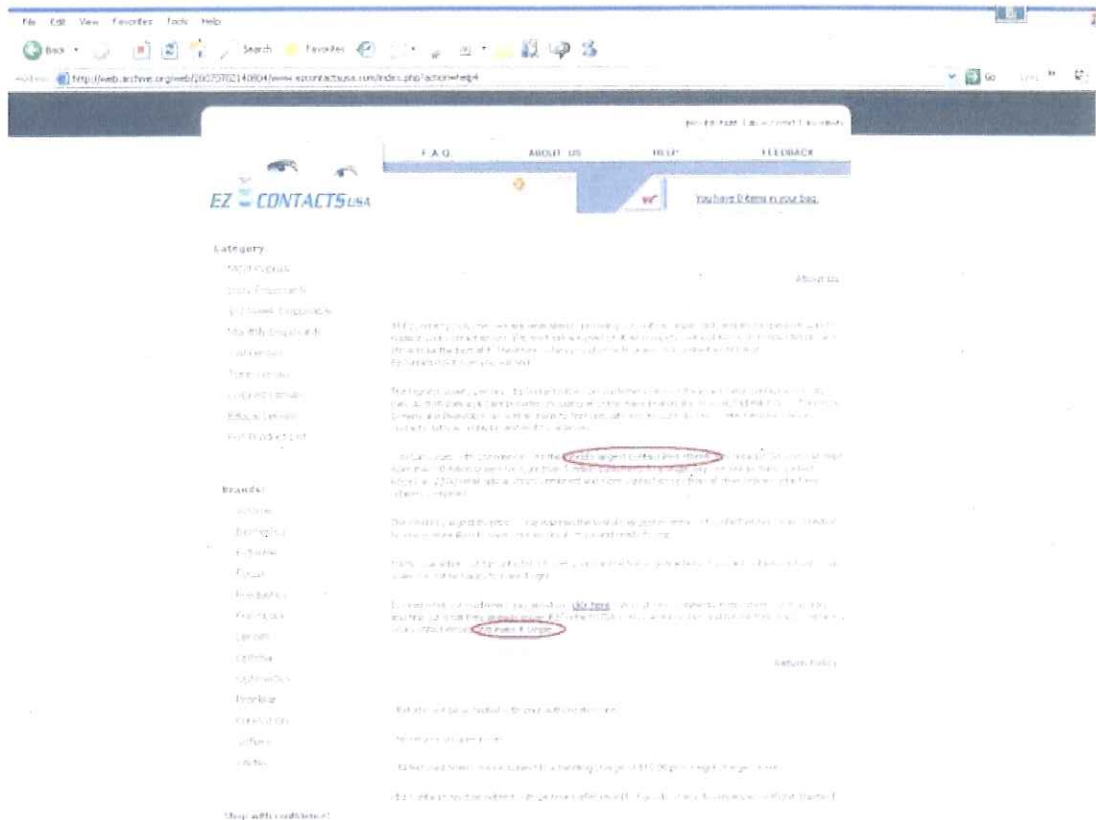
26. For example, upon information and belief, the EZ Contacts USA Website made a number of claims that were lifted directly from the 1-800 CONTACTS Website, including by way of representative example, statements that the EZ Contacts USA entity is "the world's largest contact store," that it has "filled more than 10 million orders for more than 5 million customers," that it sells in a single day "as many contact lenses as 2,500 retail optical shops combined," that it "maintain[s] the world's largest inventory of contact lenses (over 20 million)," and that "no one is more likely to have your lenses in stock and ready to ship." A screenshot from the archived EZ Contacts USA Website showing such uses is shown below.



27. Most of the copied language appears nearly verbatim on the current 1-800 CONTACTS Website, as shown below, and also in portions of copyrighted version of the website, as shown at Exhibit H.

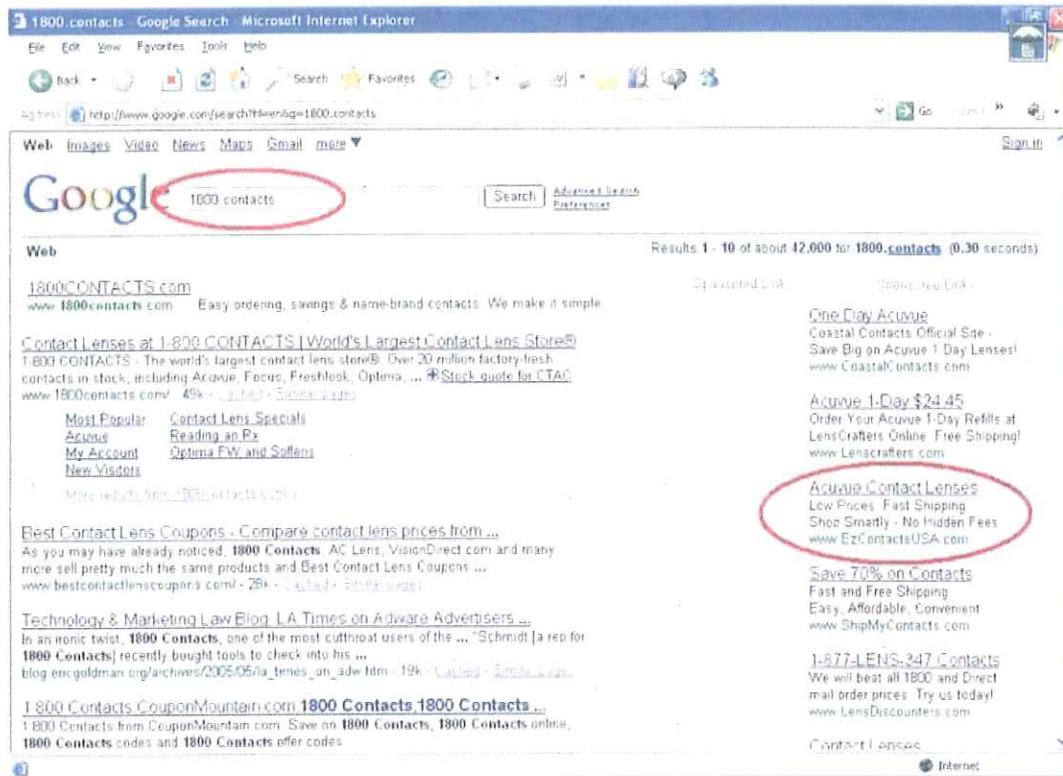


28. Upon information and belief, Defendants further emphasize the association between the EZ Contacts USA entity and Plaintiff through their adoption and use of Plaintiff's 1800 CONTACTS mark as a keyword to generate ads for EZ Contacts USA and also through their adoption and use of THE WORLD'S LARGEST CONTACT LENS STORE mark and the WE MAKE IT SIMPLE mark on Defendants' EZ Contacts USA Website as shown below:



29. Defendants' blatant copying even replicated the registration symbol ® after use of Plaintiff's THE WORLD'S LARGEST CONTACT LENS STORE mark, as shown in the screenshot immediately above.

30. Upon information and belief, Defendants reinforce the association between the EZ Contacts USA entity and Plaintiff through their adoption and use of Plaintiff's 1800 CONTACTS trademark through their purchase of keywords consisting of such mark, which are then used to generate advertising for Defendants' EZ Contacts USA entity on the Internet, as shown in the following screenshot.



31. Upon information and belief, consumers have purchased contact lenses from EZ Contacts USA based on its misrepresentations and false statements.

32. Defendants' wholesale copying of portions of Plaintiff's website, including Plaintiff's Marks, reflected Defendants' intent to trade on the goodwill inherent in such marks and on Plaintiff's reputation, to associate the EZ Contacts USA entity with Plaintiff, and to pass off its goods as emanating from Plaintiff.

33. Likewise, Defendants' wholesale copying of statements regarding Plaintiff's own market position, inventory, number of orders filled and daily amount of sales serves as Defendants' bad faith, their false advertising, and their desire to mislead the public.

34. Although Plaintiff believes Defendants recently undertook some modifications to the EZ Contacts USA website to address some of the more blatant violations, upon information and belief, Defendants continue to purchase keywords consisting of one or more of Plaintiff's Marks and to divert consumers to the EZ Contacts USA Website.

INJURY TO PLAINTIFF AND THE PUBLIC

35. Defendants' unauthorized use of Plaintiff's Marks has and will continue to irreparably injure Plaintiff by confusing customers, diverting sales, and diluting the distinctiveness of Plaintiff's Marks. If permitted to continue, Defendants' use of Plaintiff's Marks will continue to irreparably injure Plaintiff, Plaintiff's Marks, the reputation and goodwill associated therewith, Plaintiff's reputation for exceedingly high-quality services and products, and the public interest in being free from confusion, mistake or deception.

36. Defendants' use of Plaintiff's Marks has caused and will continue to cause confusion, mistake or deception as to the source or origin of Defendants' goods and services and is likely to suggest falsely a sponsorship, connection, license, endorsement or association of Defendants' goods and services with Plaintiff, thereby injuring Plaintiff and the public.

37. Defendants' use of colorable imitations of Plaintiff's Marks and Plaintiff's Copyrighted Material, are part of a deliberate plan to trade on Plaintiff's goodwill and otherwise unfairly compete with Plaintiff and benefit therefrom. Defendants were desirous of entering into Plaintiff's field of business, knew of Plaintiff's tremendous success and Plaintiff's Marks and Plaintiff's Copyrighted Material, and intentionally engaged in a wholesale copying thereof with full knowledge of Plaintiff's rights.

COUNT I

Federal Trademark Infringement

Violation of 15 U.S.C. § 1114

38. Plaintiff incorporates by reference the allegations of Paragraphs 1-37 of this Complaint.

39. The unauthorized appropriation and use by Defendants in commerce of Plaintiff's Marks, including as keywords, in connection with goods and services that are identical or substantially similar to those offered by Plaintiff, is likely to cause confusion, mistake or deception as to the origin, sponsorship, or approval of Defendants' services and commercial activities, and thus infringes Plaintiff's rights in its federally registered marks under 15 U.S.C. § 1114. Defendants' actions have been carried out in willful disregard of Plaintiff's rights in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

COUNT II

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

15 U.S.C. §1125(a)

40. Plaintiff incorporates by reference the allegations of Paragraphs 1 - 39.

41. The unauthorized use by Defendants of Plaintiff's Marks, including as keywords, and proprietary materials in connection with the EZ Contacts USA business is likely to cause the public to mistakenly believe that Defendants' contact lens replacement services originate from, are endorsed by or are in some way affiliated with Plaintiff and thus constitutes trademark infringement, false designation of origin, passing off, and unfair competition and is likely to

cause Plaintiff's Marks to lose their significance as indicators of origin. Likewise, Defendants have used Plaintiff's Marks in connection with false and misleading descriptions or representations of fact in commercial advertising or promotion, thereby misrepresenting the nature, characteristics, and qualities of their or another entity's goods, services, or commercial activities. Defendants' actions are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

42. Upon information and belief, the appropriation of Plaintiff's Marks and proprietary materials by Defendants as set forth above is a part of a deliberate plan to trade on the valuable goodwill established therein. With knowledge of Plaintiff and Plaintiff's rights and with the deliberate intention to unfairly benefit from Plaintiff's goodwill, the actions of Defendants have been carried out in willful disregard of Plaintiff's rights in violation of 15 U.S.C. Section 1125(a).

COUNT III

**Common Law Unfair Competition, Misappropriation
And Trademark Infringement**

Unfair Practices Act – Utah Code Ann. §13-5-1 *et seq.*

43. Plaintiff incorporates by reference the allegations of Paragraphs 1 - 42.

44. By its aforesaid conduct calculated to increase business and profits by deceiving and confusing members of the public, Defendants have misappropriated Plaintiff's Copyrighted Materials and the valuable goodwill of Plaintiff's Marks. Defendants have infringed Plaintiff's rights therein, and have unfairly competed with Plaintiff under the common law and the laws of Utah. Defendants' use of Plaintiff's Marks to promote, market or sell products and services

constitutes an unfair practice under Utah Code Ann. §13-5-1 *et seq.* Defendants' use of Plaintiff's Marks is an unfair or deceptive method of competition occurring in trade or commerce that impacts the public interest and has caused and is causing injury to Plaintiff and consumers.

COUNT IV

Copyright Infringement

17 U.S.C. § 101 *et seq.*

45. Plaintiff incorporates by reference the allegations of Paragraphs 1 - 44.

46. Plaintiff owns a valid copyright in versions of the content appearing on Plaintiff's Website and for which it has secured one or more copyright registrations.

47. Defendants have infringed Plaintiff's Copyrighted Material by reproducing and distributing portions thereof, without license, consent or authorization of Plaintiff, and have otherwise violated Plaintiff's exclusive rights as set forth under 17 U.S.C. §101 *et seq.*

48. Upon information and belief, Defendants had access to Plaintiff's Copyrighted Materials, as such materials are publicly available on Plaintiff's Website.

49. Upon information and belief, many of the claims and phrases that appeared on the "About Us" page of Defendants' EZ Contacts USA Website were copied from and are identical to claims and phrases appearing on Plaintiff's Website and/or otherwise violate Plaintiff's exclusive rights in Plaintiff's Copyrighted Materials, as set forth in Paragraphs 26 and 27 above. See also **Exhibit H**.

50. Defendants' conduct constitutes copyright infringement under the Federal Copyright Act, 17 U.S.C. § 101, *et seq.*

COUNT VI

Unjust Enrichment

51. Plaintiff incorporates by reference the allegations of Paragraphs 1 - 50.

52. Defendants are being unjustly enriched to the damage and irreparable harm of Plaintiff.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff requests that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to, the following:

A. That Plaintiff is the owner of the entire right, title and interest in and to Plaintiff's Marks and Plaintiff's Copyrighted Materials, that Plaintiff's Marks and Plaintiff's Copyrighted Materials are valid, enforceable and violated by Defendants and that Defendants have violated and are violating other relevant federal and state laws and regulations.

B. That Defendants, their agents, servants, employees, attorneys, and all persons in active concert or participation with them, be preliminarily and permanently enjoined and restrained from:

1. Further infringement of Plaintiff's Marks and Plaintiff's Copyrighted Materials and from unfairly competing with Plaintiff; from using any variation of Plaintiff's Marks or Plaintiff's Copyrighted Materials and any other marks or names that are confusingly similar to or that dilute the distinctiveness of those proprietary materials, including but not limited to use as domain names, trademarks, services marks, business names, meta tags, other

identifiers, keywords or other terms used to attract or divert traffic on the Internet or to secure higher placement within search engine search results; and

2. From representing by any means whatsoever, directly or indirectly, that Defendants, any products or services offered by Defendants, or any activities undertaken by Defendants, are associated with, endorsed by, sponsored by or connected in any way with Plaintiff.

C. That Defendants willfully violated Plaintiff's rights.

D. That Defendants be required to pay to Plaintiff's damages according to proof and Plaintiff's statutory damages, together with prejudgment interest thereon, as Plaintiff has sustained as a consequence of Defendants' wrongful acts, and to account for and return to Plaintiff any monies, profits and advantages wrongfully gained by Defendants.

E. That all damages sustained by Plaintiff be trebled.

F. That Defendants be required to pay to Plaintiff punitive and exemplary damages.

G. That Defendants be required to pay to Plaintiff all attorney fees, expenses and costs incurred in this action.

H. That Defendants be required to pay Plaintiff statutory damages in an amount of \$150,000 per work infringed for the foregoing acts of copyright infringement, in accordance with 17 U.S.C. § 501 *et seq.*

I. That Defendants be required to pay Plaintiff's costs and attorney's fees in this action pursuant to 15 U.S.C. § 1117, 17 U.S.C. § 501 *et seq.* and other applicable laws;

J. That Defendants deliver up for impoundment during the pendency of this action, and for destruction upon entry of judgment, all products, fixtures, writings, signage, artwork and other materials that infringe Plaintiff's rights, falsely designate source or origin, or otherwise facilitate Defendants' unfair competition with Plaintiff.

K. That an Order be issued directing Defendants to file with this Court and serve on Plaintiff's attorneys, within thirty (30) days after the date of entry of any injunction, a report in writing and under oath setting forth in detail the manner and form in which Defendants have complied with the injunction.

L. That Plaintiff be granted such further relief as this Court may deem appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues and claims so triable.

Respectfully submitted,

Date: December 6, 2007

By: s/Bryan G. Pratt
Bryan G. Pratt (9924)
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Tel.: (801) 572-0185
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Glenn E. Forbis
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35933 Woodward Avenue, Suite 140
Bloomfield Hills, Michigan 48304
Telephone: (248) 594-0600
Facsimile: (248) 594-0610

Attorneys for Plaintiff

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

1-800 Contacts, Inc.

(b) County of Residence of First Listed Plaintiff Salt Lake (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Bryan G. Pratt, Esq., Rader Fishman & Grauer, PLLC 10653 South River Parkway, Suite 150, South Jordan, UT 84095

DEFENDANTS

Premier Holdings, Inc. d/b/a Filmart, Eugene Lefkowitz, Sholomo Lefkowitz, and Judith Lefkowitz d/b/a EZ Contacts USA

County of Residence of First Listed Defendant Kings (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor Standards, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 USC 1114, Lanham Act; 15 USC 1125(a); 17 USC 101; Utah Code Ann. 13-5-1

Brief description of cause: Trademark and Copyright Infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 12/06/2007 SIGNATURE OF ATTORNEY OF RECORD s/Bryan G. Pratt

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE


THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

<p>1-800 CONTACTS, INC. a Delaware corporation,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>PREMIER HOLDINGS, INC. d/b/a FILMART, a New York corporation, EUGENE LEFKOWITZ, an individual, SHOLOMO LEFKOWITZ, an individual, and JUDITH LEFKOWITZ, an individual, d/b/a EZ CONTACTS USA;</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.:</p> <p>Hon.</p> <p>INDEX OF EXHIBITS TO COMPLAINT</p>
--	---

<u>Ex. No.</u>	<u>Description</u>
A	Screenshot EZ Contacts USA Website – shipping
B	Screenshot Filmart Website – shipping
C	Whois record – ezcontactsusa.com
D	Whois record – filmart.com
E	Archived website screenshot – EZ Contacts USA
F	Current website screenshot – EZ Contacts USA
G	1-800 Contacts, Inc. – Trademark Registration Certificates
H	1-800 Contacts, Inc. – Copyright Registration Certificate and deposit copy excerpt

Exhibit A



EASY REORDER | MY ACCOUNT | BOOKMARK

F.A.Q. ABOUT US HELP FEEDBACK

search

You have 4 items in your bag.

Category:

- .. Most Popular
- .. Daily Disposable
- .. 1-2 Week Disposable
- .. Monthly Disposable
- .. Vial Lenses
- .. Toric Lenses
- .. Colored Lenses
- .. Bifocal Lenses
- .. Full Product List

ADDRESS

[1.Your Bag](#) [2.Address](#)

If you have an account, please sign in to begin checkout.

Returning Customer

Username:	<input type="text"/>
Password:	<input type="password"/> Forgot Password?

Shopping at EzContactsUSA.com is safe and easy. We want you to know that every online transaction you make at EzContactsUSA.com will be 100% safe. GeoTrust Secure Server IDs work in conjunction with Secure Sockets Layer (SSL) technology, which is the standard protocol for secure, Web-based e-commerce transactions. SSL encrypts all traffic between you, the customer, and our dedicated server, using a unique session key.



Brands:

- .. Acuvue
- .. Biomedics
- .. CooperVision
- .. Extreme
- .. Focus
- .. Frequency
- .. FreshLook
- .. Lenses
- .. Optima
- .. Optimedics
- .. Proclear
- .. PureVision
- .. Soflens
- .. Vertex

ADDRESS

[1.Your Bag](#) [2.Address](#)

Are You A New Customer? Let's create an account for you.

Personal Information

First Name:	<input type="text"/>	*
Last Name:	<input type="text"/>	*
Company Name:	<input type="text"/>	
Day Phone:	<input type="text"/>	*
Home Phone:	<input type="text"/>	*
Email:	<input type="text"/>	*
Newsletter:	<input type="checkbox"/> Stay up to date with the latest sales and products news.	

Contact Lenses - Color Contacts - Name Brand Contact Lenses

Sunglasses: new!

- .. Ray-Ban
- .. Chanel
- .. Gucci
- .. Vogue

Shop with confidence!

Our website employs the latest SSL encryption to protect your sensitive data and transactions.



USPS Priority Mail



FREE SHIPPING
ON ALL ORDERS ABOVE
\$99.00

Billing Address

Address 1:	<input type="text"/>	*
Address 2:	<input type="text"/>	
City:	<input type="text"/>	*
State/Province:	Utah (UT)	*
Zip/Postal Code:	<input type="text"/>	*
Country:	United States	*

Shipping Address (If different then above)

Shipping Name:	<input type="text"/>
Address 1:	<input type="text"/>
Address 2:	<input type="text"/>
City:	<input type="text"/> *
State/Province:	Utah (UT)
Zip/Postal Code:	<input type="text"/>
Country:	United States

Account Information

Account:	Create Account	*
Username:	<input type="text"/>	*
Password:	<input type="text"/>	*
Retype Password:	<input type="text"/>	*

Exhibit B

Filmart - Checkout

Filmart.com SHIPPING ADDRESS

Please enter your Shipping Information

First Name	<input type="text"/>	Last Name	<input type="text"/>
Company	<input type="text"/>		
* Address	<input type="text"/>		
	<input type="text"/>		
City	<input type="text"/>	State/ Province	<input type="text" value="Utah"/>
Zip/Postal Code	<input type="text" value="84101"/>	Country	<input type="text" value="United States"/>
Email Address	<input type="text"/>		
Daytime Phone	<input type="text"/>	Evening Phone	<input type="text"/>

* Please note all orders requires adult signature at time of delivery
We cannot ship to a P.O. Box.

Next >>

Exhibit C

WhoIs Search Results

Start a domain search: .com **GO!** [Today's Offers](#) **SALE** [24/7 Sales & Support: \(408\) 999-0011](#)

Go Daddy.com
Make a .com name with us!

Go Daddy LIVE **ON-AIR**
Listen to today's show NOW!

GO DADDY CONNECTIONS
Where smart business owners exchange ideas

BobParsons.com
The 2008 Super Bowl is a go!
2 hilarious ads get rejected.
You'll never guess why.

Domains ▾ Hosting & Servers ▾ Site Builders ▾ SSL Certificates ▾ Business ▾ Email ▾ Domain Auctions ▾ Reseller Plans ▾

WHOIS
Search Results for:

Search Again
Enter a Domain Name to Check
 .com **GO!**

EZCONTACTSUSA.COM

The data contained in GoDaddy.com, Inc.'s WHOIS database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the prior written permission of GoDaddy.com, Inc. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" field. In most cases, GoDaddy.com, Inc. is not the registrant of domain names listed in this database.

Registrant:
EZ Contacts USA

4111 Glenwood Rd.
Brooklyn, New York 11210
United States

Registered through: GoDaddy.com, Inc. (<http://www.godaddy.com>)
Domain Name: EZCONTACTSUSA.COM
Created on: 26-Aug-05
Expires on: 26-Aug-09
Last Updated on: 16-Jun-07

Administrative Contact:
Schiller, Aaron bellorusha@gmail.com
500 Chestnut Ridge Road
Second Floor
Chestnut Ridge, New York 10977
United States
845-371-8300 x 113

Technical Contact:
Gardella, Lou sales@domaintechs.com
4690 Longley Lane
Suite 34
Reno, Nevada 89502-7935
United States
+1.7753313319 Fax -- +1.7753313266

Domain servers in listed order:
DNS2.WOWRU.COM
DNS.WOWRU.COM

Registry Status: clientRenewProhibited

Available TLDs

<input type="checkbox"/> EZCONTACTSUSA.NET	\$9.99/yr \$6.99/yr SAVE!
<input type="checkbox"/> EZCONTACTSUSA.INFO	\$2.99/yr SAVE!
<input type="checkbox"/> EZCONTACTSUSA.BIZ	\$9.99/yr
<input type="checkbox"/> EZCONTACTSUSA.US	\$7.99/yr
<input type="checkbox"/> EZCONTACTSUSA.NAME	\$9.99/yr

You might also

REGISTER NOW!

WhoIs Search Results

Registry Status: clientTransferProhibited
Registry Status: clientUpdateProhibited
Registry Status: clientDeleteProhibited

[See Underlying Registry Data](#)
[Report Invalid Whois](#)

24/7 Sales and Support: (480) 505-8877 Billing Questions? Call (480)505-8866 Free Email Updates! Enter address GO

[Home](#) | [Contact Us](#) | [Product Advisor](#) | [Catalog](#) | [How to Pay](#) | [Legal](#) | [Site Index](#) | [Whois](#) | [Affiliates](#) | [Resellers](#) | [Link to Us](#)
[GoDaddyLive.com](#) | [BobParsons.com](#) | [GoDaddyGirls.info](#) | [WildWestDomains.com](#)
[DomainNameAftermarket.com](#) | [GoDaddyConnections.com](#)



GoDaddy.com is the world's No. 1 ICANN-accredited domain name registrar for .COM, .NET, .ORG, .INFO, .BIZ and .US domain extensions. Source: Name Intelligence, Inc. 2006

Copyright © 1999 - 2007 GoDaddy.com, Inc. All rights reserved. [View offer Disclaimers](#)



Exhibit D

Search the WHOIS database.

WHOIS Underlying Registry Data:

Registrant:
FILMART COMPANY
4111 GLENWOOD ROAD
BROOKLYN, NY 11210
US

aaronkohn@yahoo.com
+1.7184213500
+1.7184216517

Domain Name: FILMART.COM

Administrative & Technical Contact:
SAM LEFKOWITZ
FILMART COMPANY
4111 GLENWOOD ROAD
BROOKLYN, NY 11210
US

aaronkohn@yahoo.com
+1.7184213500
+1.7184216517

Domain Name Servers:
NS1.QUICKSERVE.COM
NS000.NS0.COM

Transfer-Lock Status: ENABLED

Created: March 21, 1996
Modified: October 10, 2006
Expires: March 21, 2009

NOTICE AND TERMS OF USE: By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (a) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass, unsolicited, commercial advertising or solicitations; or (b) enable high volume, automated, electronic processes that send queries or data to the systems of any Registry Operator or ICANN-Accredited registrar, except as reasonably necessary to register domain names or modify existing registrations. pairNIC reserves all rights and remedies it now has or may have in the future, including, but not limited to, the right to terminate your access to the WHOIS database in its sole discretion, for any violations by you of these terms of use, including without limitation, for excessive querying of the WHOIS database or for failure to otherwise abide by these terms of use. pairNIC reserves the right to modify these terms at any time.

** Register Now at <http://www.pairNIC.com/> **

Registry Status: ok

Exhibit E



BizRate.com
customer certified

Star Rating: 12/06/07
Click to Verify



Price: \$17.99

[More Info...](#)

Focus Dailies 90 Pk

Focus Dailies are daily disposable lenses, which provide the convenience of no lens care and the comfort of new, fresh lenses every day. With Focus Dailies, you replace your contact lenses each day so

Price: \$35.95

[More Info...](#)

Acuvue Oasys



ACUVUE® OASYS™ Brand Contact Lenses with HYDRACLEAR™ Plus from Johnson & Johnson are designed to help eyes stay moist and fresh. They provide unbelievable comfort even in demanding conditions, like

Price: \$23.95

[More Info...](#)

1-DAY Acuvue 30 pack



1-DAY ACUVUE® Brand Contact Lenses offer the healthiest, most convenient way to wear contact lenses. There's no lens care or messy solutions required—just wear them one day and throw them away. Enjoy

Price: \$19.95

[More Info...](#)

Proclear Compatible Tone



Proclear compatible contact lenses manufactured by Cooper Vision (formerly Biocompatibles). Proclear Compatibles are the only lenses the FDA allows to claim "May provide improved comfort for cornea"

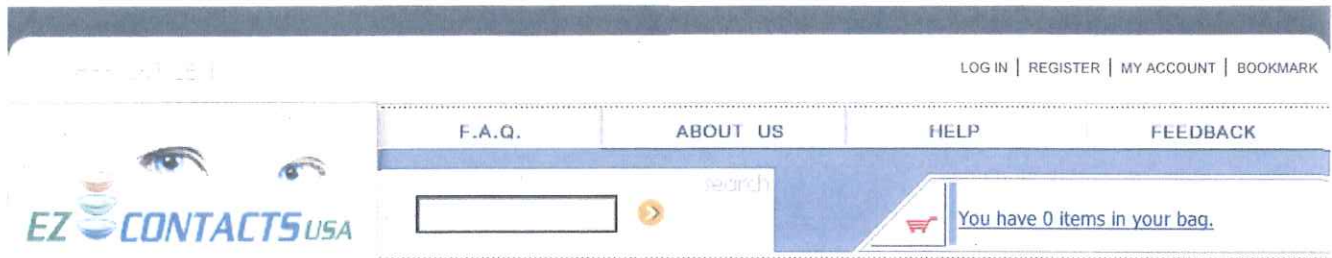
Price: \$44.99

[More Info...](#)

1153 55 Street, Brooklyn, N.Y., 11219

Copyright © EzContactUSA.com 2006

Exhibit F

**Category:**

- .. Most Popular
- .. Daily Disposable
- .. 1-2 Week Disposable
- .. Monthly Disposable
- .. Vial Lenses
- .. Toric Lenses
- .. Colored Lenses
- .. Bifocal Lenses
- .. Full Product List

Brands:

- .. Acuvue
- .. Biomedics
- .. Focus
- .. Frequency
- .. FreshLook
- .. Lenses
- .. Optima
- .. Optimedics
- .. Proclear
- .. PureVision
- .. Soflens

About Us

At EzContactsUSA.com, we are dedicated to providing you with a simple, fast, and less expensive way to replace your contact lenses. We don't sell a myriad of other products; we just focus on contact lenses and strive to be the best at it. Therefore, when you choose to order your contact lenses from EzContactsUSA.com you will find:

The Highest Quality Lenses - EzContactsUSA.com customers receive the exact same contact lenses as they do from their eye care provider, including all of the major brands like Acuvue, Optima, Focus, Freshlook, Soflens and Biomedics, as well as hard-to-find specialty lenses such as toric contact lenses, colored contacts, bifocal contacts, and multifocal lenses.

You Can Order with Confidence - As the World's largest contact lens store®, EzContactsUSA.com has filled more than 10 million orders for more than 5 million customers. In a single day, we sell as many contact lenses as 2,500 retail optical shops combined and more contact lenses than all other online contact lens retailers combined.

The World's Largest Inventory - We maintain the world's largest inventory of contact lenses (over 20 million). No one is more likely to have your lenses in stock and ready to ship.

100% Guarantee - At EzContactsUSA.com your satisfaction is guaranteed. If you are not pleased with your order we will be happy to make it right.


To read what our customers say about us, [click here](#). We post new comments every week. Give us a try and find out what they already know: EzContactsUSA.com is an easy, fast and hassle free way to replace your contact lenses. We make it simple.

Return Policy

- Returns will be accepted with prior authorization only
- No returns on open boxes
- All Refused orders will be subject to a handling charge of \$15.00 plus freight charges & fees
- Ez Contacts must be notified with 24 hours after receipt of goods of any discrepancies with the shipment


EzContactsUSA.com
1153 55 Street
Brooklyn, N.Y., 11219

[EASY REORDER](#) | [MY ACCOUNT](#) | [BOOKMARK](#)



[F.A.Q.](#) [ABOUT US](#) [HELP](#) [FEEDBACK](#)

[search](#)

 [You have 0 items in your bag.](#)

Category:

- .. Most Popular
- .. Daily Disposable
- .. 1-2 Week Disposable
- .. Monthly Disposable
- .. Vial Lenses
- .. Toric Lenses
- .. Colored Lenses
- .. Bifocal Lenses
- .. Full Product List


Brands:

- .. Acuvue
- .. Biomedics
- .. CooperVision
- .. Extreme
- .. Focus
- .. Frequency
- .. FreshLook
- .. Lenses
- .. Optima
- .. Optimedics
- .. Proclear
- .. PureVision
- .. Soflens
- .. Vertex

NO handling fee

**ALWAYS
FREE SHIPPING
ON ALL ORDERS OVER \$99.00**


[Focus Dailies 90 Pk](#)



Focus Dailies are daily disposable lenses, which provide the convenience of no lens care and the comfort of new, fresh lenses every day. With Focus Dailies, you replace your contact lenses each day so...

Price: \$39.99 [More Info](#)

[Acuvue Oasys](#)



ACUVUE® OASYS™ Brand Contact Lenses with HYDRACLEAR™ Plus from Johnson & Johnson are designed to help eyes stay moist and fresh. They provide unbelievable comfort even in demanding conditions, like...

Price: \$23.89 [More Info](#)

[1-Day Acuvue 30 pack](#)

Contact Lenses - Color Contacts - Name Brand Contact Lenses

Sunglasses: new!

- .. Ray-Ban
- .. Chanel
- .. Gucci
- .. Vogue

Shop with confidence!

Our website employs the latest SSL encryption to protect your sensitive data and transactions.



USPS Priority Mail



FREE SHIPPING
ON ALL ORDERS ABOVE
\$99.00



Price: \$17.95

[More Info](#)

1-DAY ACUVUE® Brand Contact Lenses offer the healthiest, most convenient way to wear contact lenses. There's no lens care or messy solutions required—just wear them one day and throw them away! Enjoy ...

Proclear Compatibles Toric



Price: \$41.95

[More Info](#)

Proclear compatible contact lenses manufactured by Cooper Vision (formerly Biocompatibles). Proclear Compatibles are the only lenses the FDA allows to claim: "May provide improved comfort for conta...

NIKE MAXSIGHT



Price: \$41.95

[More Info](#)

A prescription for this lens or consent from your doctor is required, even for 0.00 power lenses. Nike MAXSIGHT is a revolutionary tinted soft contact lens that provides excellent visual performan...

Biomedics XC



Price: \$14.50

[More Info](#)

Biomedics XC lenses utilize patented PC Technology™ to create a unique material that contains molecules of phosphorylcholine (PC), a substance found naturally in human cell membranes. These PC molecu...

1-DAY ACUVUE® MOIST™



Price: \$21.95

[More Info](#)

Designed to enable existing wearers to upgrade without being refitted, 1-DAY ACUVUE® MOIST contact lenses are the best we've seen for dry eyes. 1-DAY ACUVUE® MOIST contacts are made from Etafilcon A m...

4111 Glenwood Rd., Brooklyn, N.Y., 11210

Copyright EzContactsUSA.com 2006

Exhibit G

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,675,866

Registered Jan. 21, 2003

**SERVICE MARK
PRINCIPAL REGISTER**

1800CONTACTS

1-800 CONTACTS, INC (DELAWARE CORPORATION)
66 EAST WADSWORTH PARK DRIVE, 3RD FLOOR
DRAPER, UT 84020

FIRST USE 7-0-1995; IN COMMERCE 7-0-1995.

SEC. 2(F).

FOR: MAIL ORDER AND TELEPHONE ORDER
SERVICES IN THE FIELD OF CONTACT LENSES
AND RELATED PRODUCTS, AND ELECTRONIC
RETAILING SERVICES VIA COMPUTER FEATUR-
ING CONTACT LENSES AND RELATED PRO-
DUCTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

SER. NO. 75-746,706, FILED 7-8-1999.

RONALD MCMORROW, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,731,114

Registered July 1, 2003

SERVICE MARK
PRINCIPAL REGISTER

1 800 CONTACTS

1-800 CONTACTS, INC. (DELAWARE CORPORATION)
66 EAST WADSWORTH PARK DRIVE
3RD FLOOR
DRAPER, UT 84020

FOR: MAIL ORDER AND TELEPHONE ORDER SERVICES IN THE FIELD OF CONTACT LENSES AND RELATED PRODUCTS, AND ELECTRONIC RETAILING SERVICES VIA COMPUTER FEATURING CONTACT LENSES AND RELATED PRODUCTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 7-13-1998; IN COMMERCE 7-13-1998.

APPLICANT CLAIMS THE COLORS YELLOW, BLUE AND WHITE AS PART OF THE MARK. THE BOX BEHIND THE WORD "CONTACTS" IS YELLOW. THE BORDER AROUND THE YELLOW BOX BEHIND THE WORD "CONTACTS" IS BLUE. THE BOX BEHIND THE TERM "800" IS BLUE. THE NUMBER ONE AND THE WORD "CONTACTS" ARE WRITTEN IN BLUE. THE TERM "800" IS WRITTEN IN WHITE.

SEC. 2(F) AS TO 1800 CONTACTS .

SER. NO. 76-138,625, FILED 10-2-2000.

RONALD MCMORROW, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,886,220

United States Patent and Trademark Office

Registered Sep. 21, 2004

**SERVICE MARK
PRINCIPAL REGISTER**

THE WORLD'S LARGEST CONTACT LENS STORE.

1-800 CONTACTS, INC. (DELAWARE CORPORATION)
66 EAST WADSWORTH PARK DRIVE, 3RD FLOOR
DRAPER, UT 84020

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "CONTACT LENS STORE", APART
FROM THE MARK AS SHOWN.

FOR: MAIL ORDER AND TELEPHONE ORDER
SERVICES IN THE FIELD OF CONTACT LENSES
AND RELATED PRODUCTS, AND ELECTRONIC
RETAILING SERVICES VIA COMPUTER FEATURING
CONTACT LENSES AND RELATED PRODUCTS,
IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

SEC. 2(F).

SER. NO. 78-125,785, FILED 5-2-2002.

FIRST USE 6-1-1998; IN COMMERCE 6-1-1998.

BRETT J. GOLDEN, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,927,522

United States Patent and Trademark Office

Registered Feb. 22, 2005

**SERVICE MARK
PRINCIPAL REGISTER**

WE MAKE IT SIMPLE

1-800 CONTACTS, INC. (DELAWARE CORPORATION)
66 EAST WADSWORTH PARK DRIVE, 3RD FLOOR
DRAPER, UT 84020

FOR: MAIL ORDER AND TELEPHONE ORDER
SERVICES IN THE FIELD OF CONTACT LENSES
AND RELATED PRODUCTS, AND ELECTRONIC
RETAILING SERVICES VIA COMPUTER FEATUR-

ING CONTACT LENSES AND RELATING PRO-
DUCTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-1-2003; IN COMMERCE 10-1-2003.

SER. NO. 76-575,250, FILED 2-12-2004.

GENE MACIOL, EXAMINING ATTORNEY

Exhibit H

Case 2:07-cv-00946-TS Document 2-11 Filed 12/06/07 Page 2 of 11
Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

FORM VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

RE VA 1-211-396

EFFECTIVE DATE OF REGISTRATION

Feb 21 2003
Month Day Year

DO NOT WRITE ABOVE THIS LINE IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET

1 Title of This Work **NATURE OF THIS WORK** See instructions

1-800 CONTACTS WEBSITE

Previous or Alternative Titles

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial give Volume Number Issue Date On Pages

2 NAME OF AUTHOR DATES OF BIRTH AND DEATH

a 1-800 Contacts, Inc. Year Born Year Died

NOTE Under the law the author of a work made for hire is generally the employer, not the employee (see instructions). For any part of this work that was made for hire, check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as Author of that part and leave the space for dates of birth and death blank.

Was this contribution to the work "work made for hire"? Yes No

Author's Nationality or Domicile: Citizen of OR Domiciled in United States

Was This Author's Contribution to the Work: Anonymously? Yes No Pseudonymously? Yes No

Nature of Authorship (check appropriate box(es) See instructions)

3 Dimensional sculpture Map Technical drawing Computer Program

2 Dimensional artwork Photograph Text

Reproduction of work of art Jewelry design Architectural work

Entire work, including system program, screen display, text and ~~additional software~~

b Name of Author Dates of Birth and Death

Year Born Year Died

Was this contribution to the work a work made for hire? Yes No

Author's Nationality or Domicile: Citizen of OR Domiciled in

Was This Author's Contribution to the Work: Anonymously? Yes No Pseudonymously? Yes No

Nature of Authorship (check appropriate box(es) See instructions)

3 Dimensional sculpture Map Technical drawing

2 Dimensional artwork Photograph Text

Reproduction of work of art Jewelry design Architectural work

3 a Year in Which Creation of This Work Was Completed 2002 This information must be given in all cases. b Date and Nation of First Publication of This Particular Work Month August Day 28 Year 2002 United States Nation

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2

1-800 Contacts, Inc.
3rd Floor, 66 East Wadsworth Park Drive
Draper, UT 84020

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright

APR 21 2003
FEB 21 2003
ONE DEPOSIT RECEIVED
TWO DEPOSITS RECEIVED
FUNDS RECEIVED

DO NOT WRITE HERE OFFICE USE ONLY

MORE ON BACK Complete all applicable spaces (numbers 5-9) on the reverse side of this page. See detailed instructions. Sign the form at line 8.

DO NOT WRITE HERE Page 1 of 2 pages

*Amended by CO on authority of telephone conversation with Amy Barrier on 9/15/03

EXAMINED BY <i>[Signature]</i>	FORM VA
CHECKED BY <i>[Signature]</i>	
<input type="checkbox"/> CORRESPONDENCE Yes	FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET

PREVIOUS REGISTRATION Has registration for this work or for an earlier version of this work already been made in the Copyright Office?

Yes No If your answer is Yes why is another registration being sought? (Check appropriate box) 5

- a This is the first published edition of a work previously registered in unpublished form
- b This is the first application submitted by this author as copyright claimant
- c This is a changed version of the work as shown by space 6 on this application

If your answer is Yes give Previous Registration Number Year of Registration

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work complete only 6b for a compilation

a Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. 6
United States Copyright registration # VA 1-032-662,
Registered on 10-02-00

a See instructions before completing this space

b Material Added to This Work Give a brief general statement of the material that has been added to this work and in which copyright is claimed b
Adaptation of 2-dimensional artwork and additional text.

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account

Name Account Number 7

CORRESPONDENCE Give name and address to which correspondence about this application should be sent Name/Address/Apt/City/State/ZIP

Amy E. Barrier, Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W., Suite 900
Washington, D.C. 20036 b

Area code and daytime telephone number (202) 887-3729 Fax number (202) 530-9655

Email abarrier@gibsondunn.com

CERTIFICATION I, the undersigned, hereby certify that I am the

- check only one author
 other copyright claimant
 owner of exclusive right(s)
 authorized agent of 1-800 Contacts, Inc.
Name of author or other copyright claimant or owner of exclusive right(s)
- 8

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date If this application gives a date of publication in space 3 do not sign and submit it before that date

Amy E. Barrier Date 2/14/03

Handwritten signature (X)

X *Amy E Barrier*

Certificate will be mailed in window envelope to this address

Name <input type="text"/>	Amy E. Barrier
Number/Street/Apt. <input type="text"/>	1050 Connecticut Avenue, N.W., Suite 900
City/State/ZIP <input type="text"/>	Washington, D.C. 20036

YOU MUST
 Complete all necessary spaces
 Sign your application in space 8
SEND ALL 3 ELEMENTS IN THE SAME PACKAGE
 1 Application form
 2 Non-refundable filing fee in check or money order payable to Registrar of Copyrights
 3 Deposit material
MAIL TO
 Library of Congress
 Copyright Office
 101 Independence Avenue S E
 Washington D C 20559 6000

9
Free fee subject to change. Fee current fees listed in Copyright Office website of www.copyright.gov write the Copyright Office or call (800) 777-3338

17 U.S.C. § 506(e) Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409 or in any written statement filed in connection with the application shall be fined not more than \$2,500



COPY OF DEPOSIT

VA 1-211-396

1 800 CONTACTS™

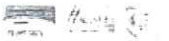
We deliver. You save.™

Pick a Product...

START ORDER:

- ▶ NEW CUSTOMER
- ✓ EXISTING CUSTOMER

The world's *largest* inventory.



+ PRODUCT LIST



CUSTOMER SERVICE

- ▶ Contact Us
- ▶ Common Questions
- ▶ Order Status
- ▶ Privacy Policy



1-800-LENS EXPRESS

More...

Free Shipping on web orders!

QUANTITY DISCOUNTS ON INTERNET

Take \$10 to \$20 off!

▶ Click here for details

RX & Doctors
WHAT YOU NEED TO KNOW



Everything about the eye...



New Customer | Existing Customer | Product List | Company Information | Public Relations | Investor Relations

VA 1-211-396



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1 800 CONTACTS™

COMPANY INFORMATION

We deliver. You *save*™

COMPANY INFORMATION

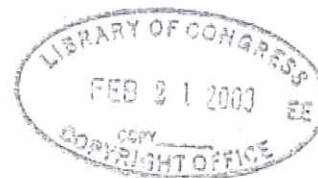
The Company

As the world's largest contact lens store, 1-800 CONTACTS is dedicated to providing you with a simple, hassle-free way to replace your contact lenses. At 1-800 CONTACTS, you will receive the exact same contact lenses your doctor prescribed, delivered to your door, at a great price. And with an inventory of over 20 million contacts, we are more likely to have your prescription in stock than anyone else, which means you'll receive your contacts fast.

In the last 7 years, 1-800 CONTACTS has filled more than 7 million orders for over 2.5 million customers. In a single day, we sell as many contact lenses as 2,500 retail optical shops combined. Our large volume and central distribution facility help keep costs down—and we pass the savings on to you.

At 1-800 CONTACTS, our goal is to make it as easy and convenient as possible to purchase your contacts. In support of that goal, we offer simple ordering by phone, internet, mail or fax, along with 200 trained customer service agents ready to provide live help 7 days a week. No more running around town to pick up contact lenses—at 1-800 CONTACTS we deliver, you save.

1-800 CONTACTS is a publicly traded company (NASDAQ symbol: CTAC).



largest

1 800 CONTACTS™

COMPANY INFORMATION

We deliver. You save.™

COMMON QUESTIONS

Common Questions



- [How to purchase contact lenses through 1-800 CONTACTS?](#)
- [Are the contacts the same quality as purchased from my eye care provider?](#)
- [What savings can one expect by using 1-800 CONTACTS?](#)
- [How can 1-800 CONTACTS offer savings compared to most eye care providers?](#)
- [Does a customer need his/her prescription to place an order?](#)
- [How does a customer know if his/her prescription is still valid?](#)
- [What is the benefit of ordering online?](#)
- [Is there a membership fee for joining 1-800 CONTACTS?](#)
- [How many orders does 1-800 CONTACTS typically fulfill in any given day?](#)
- [Can the lenses be returned?](#)
- [Do replacement lenses need to be fitted?](#)
- [Who staffs the 1-800 CONTACTS call center?](#)
- [Why order from 1-800 CONTACTS?](#)
- [How does 1-800 CONTACTS compare?](#)
- [When do you plan to start buying directly from J&J?](#)

Q: How to purchase contact lenses through 1-800 CONTACTS?

A: 1-800 CONTACTS offers contact lens wearers a simple, convenient option to obtain replacement contacts. Wearers can order via the phone, fax, mail or web. The easiest methods are to call the company's easy-to-remember toll-free telephone number "1-800-CONTACTS" or visit the company's Web site www.1800contacts.com and provide valid prescription information.

Then, one of 1-800 CONTACTS' more than 200 trained customer service agents who are available seven days a week to assist with ordering, takes the prescription information and attempts to verify its accuracy with the customer's eye care practitioner. Once the information is confirmed, 1-800 CONTACTS fills the order and the lenses are shipped by US mail or overnight delivery directly to the customer's door. In fact, because 1-800 CONTACTS maintains the largest inventory of contact lenses on the planet (over 20 million contact lenses), 90% of orders are shipped within 24 hours.

Q: Are the contacts the same quality as purchased from my eye care provider?

A: Yes, 1-800 CONTACTS customers receive the exact same contact lenses as they do from their eye care provider, including all of the major brands like Acuvue, Optima, Focus and Biomedics, as well as hard-to-find specialty lenses such as toric, colored, multifocal and disposable lenses.

Q: What kind of savings can a customer expect by using 1-800 CONTACTS?

A: On average, 1-800 CONTACTS customers save from 20% to 50% on their replacement contact lens orders depending on the brand of contact lens they wear.

Q: How can 1-800 CONTACTS offer savings compared to most eye care providers?

A: It's pretty simple - high volume, low overhead, and a single-minded focus on contact lenses.

High Volume:

The average eye care provider's retail store usually sees only a few contact lens wearers every day. The typical store usually has to save up orders for a few days or even a couple of weeks in order to get any quantity discounts from distributors or manufacturers.

1-800 CONTACTS delivers approximately two tons of contacts every day (about 150,000 lenses). We don't wait around to order your contacts. We already have them. In fact, 1-800 CONTACTS stocks more than 20 million contact lenses and by purchasing lenses in such large quantities, 1-800 CONTACTS is able to pass the savings on to the customer.

Low overhead:

It would take more than 2,000 retail optical locations to sell as many contacts as 1-800 CONTACTS. Rent isn't cheap and someone has to pay for it. Until now, that someone was the customer.

Single-minded focus:

We are a contact lens company. We don't sell eyeglasses or membership clubs. We are focused on having the highest possible percentage of contact lenses in stock at the time an order is received. Our goal is to provide you with the fastest, easiest, most convenient way to replace contact lenses - by phone, mail, fax or the Internet.

Q: Does a customer need his/her prescription to place an order?

A: Yes. 1-800 CONTACTS requires a valid prescription for every customer's order. Customers can obtain a copy from their eye care provider and forward it to 1-800 CONTACTS or they can simply give 1-800 CONTACTS their prescription information. After the customer provides 1-800 CONTACTS with the prescription information, 1-800 CONTACTS will then attempt to contact the eye care provider to verify that the prescription is accurate and has not expired.

Q: How does a customer know if his/her prescription is still valid?

A: Most prescriptions are valid for one year or two years depending on the state one lives in. 1-800 CONTACTS is an advocate of proper eye health and encourages its customers to receive regular eye examinations. If a customer's prescription is expiring or has already expired, a customer service agent will remind the customer to visit his/her eye care provider for an exam and to receive a new or updated prescription.

Q: What is the benefit of ordering online?

A: In addition to the convenience of being able to place an order 24 hours a day, seven days a week, customers who order their lenses via 1-800 CONTACTS' Web site www.1800contacts.com also receive free shipping.

1-800 CONTACTS is the Internet's largest contact lens store. In addition to the thousands of orders we fill every day in our main call center, we also fill over two thousand Internet orders daily. The Internet is a focus of our business and Internet orders receive the same priority as every other order. All orders placed through the 1-800 CONTACTS' web site automatically receive free standard shipping (a \$5.95 value).

Web orders are also verified with an e-mail confirmation that includes a custom link that enables customers to track the status of their orders online. In addition, 1-800

CONTACTS' integrated database facilitates a simple reorder process online, even for customers who place their initial order by telephone.

Q: Is there a membership fee for joining 1-800 CONTACTS?

A: 1-800 CONTACTS does not charge membership fees, and never will. Instead, 1-800 CONTACTS' formula for success combines tremendous selection, reasonable and affordable pricing and great customer service. As a result, more than 75% of those who order from 1-800 CONTACTS return to 1-800 CONTACTS when it is time to reorder their lenses.

Q: How many orders does 1-800 CONTACTS typically fulfill in any given day?

A: 1-800 CONTACTS fills on average over 5,000 orders - or approximately 150,000 lenses -- every day and ships 90% of all orders within 24 hours.

Q: Can the lenses be returned?

A: If a customer orders a supply of lenses, but his/her prescription changes, he/she may return the unused lenses, as long as they are sealed in their original packaging. Once 1-800 CONTACTS verifies the new prescription, the lenses are replaced with the new prescription and resent to the customer. Torn lenses can also be replaced.

Q: Do replacement lenses need to be fitted?

A: Once a customer has received an initial eye examination and fitting for contact lenses, the replacement lenses will follow the initial prescription. It is only necessary to be refitted if the prescription changes.

Q: Who staffs the 1-800 CONTACTS call center?

A: 1-800 CONTACTS employs more than 200 call center representatives who receive extensive training in ocular health, contact lenses and customer service. Ninety percent of calls to the 1-800 CONTACTS call center are answered within 10 seconds, and another 90% of lens orders are filled within 24 hours.

Q: Why order from 1-800 CONTACTS?

A: Direct delivery to your door, lower prices and faster service.

1-800 CONTACTS sells more contact lenses than 2,500 retail optical stores - but we only have one location. With the largest inventory of contact lenses in the world, we are able to stock most of the parameters that customers order - with very few exceptions. In fact, we have many contact lens parameters in inventory that are only stocked by two companies (1-800 CONTACTS and the manufacturer themselves). We even stock most colors, torics, bifocals and multifocals.

Most contact lenses aren't custom made anymore. Daily wear and disposable contact lenses are made by automated equipment in very large quantities on heavily automated production lines. As a medical device, they must be nearly identical every time - no matter where they are sold.

You will receive the exact same contact lenses from 1-800 CONTACTS as you have been getting from your eye care provider's store - the only difference is the delivery to your door (and the lower price).

The average customer saves about \$20.00 to \$50.00 per year by ordering from 1-800 CONTACTS. If you are already going to a large national optical chain, or a really competitive optical store, you may find that you only save five or ten dollars by ordering from 1-800 CONTACTS. Don't forget to include the time you saved by not making another trip to the store.

1-800 CONTACTS will also keep your prescription, address, and billing information

on file. If you move, or if you are traveling and need more contact lenses, 1-800 CONTACTS can have replacements to you as soon as the next day.

1-800 CONTACTS sells more contacts than the next five largest direct competitors combined. There is a reason. We keep things simple and we deliver on our promises. We don't charge membership fees and we don't use gimmicks to attract new customers.

In addition to our already low prices and free shipping on all web orders, we now offer special quantity discounts online. Quantity discounts are shown at the top of the product and checkout pages – just adjust your quantity on the checkout page and the discount will automatically be subtracted from the total below.

Q: How does 1-800 CONTACTS compare?

A: Your order is more likely to be in stock at 1-800 CONTACTS than anywhere else in the world. No other competitor can even come close to our inventory or speed of service.

1-800 CONTACTS offers consistently low prices, free shipping on all internet orders, quantity discounts, and the best possible level of service – whether you are ordering online, or need live assistance on our 800 number.

There are few questions to ask when considering a direct source for contacts:

Do they offer free shipping on Internet and mail orders?

1-800 CONTACTS offers free shipping on all Internet orders and includes an automated reorder slip on each invoice – all you have to do is check it off, drop it in the mail, and get free shipping. Or just return to our website and click on "existing customer."

Do they charge a membership fee?

1-800 CONTACTS never has and never will. Some competitors actually hide the membership fee and notify you only after the order has been placed.

Do they have a large inventory? Are your lenses in-stock? Can they fill your order quickly when you need contacts?

1-800 CONTACTS has the largest contact lens inventory in the world. Some competitors have very little inventory on hand. Some have none at all.

Can I talk to someone if I have a problem?

1-800 CONTACTS is available by phone 7 days a week:
 Mon-Thur 8AM to Midnight Eastern Standard Time
 Friday 8AM to 11PM
 Saturday 9AM to 11PM
 Sunday 10AM to 6PM

1-800 CONTACTS is not a web-only company. Some competitors operate out of a basement with little or no inventory and no live help on the phone. 1-800 CONTACTS has over 200 trained agents ready to answer any questions and help you with your order (over 90% of calls are answered within 10 seconds). We realize that, while the Internet makes ordering easy and efficient, it's nice to be able to pick up the phone and talk to someone if you need help.

Q: When do you plan to start buying directly from J&J?

A: We will begin buying directly from J&J once our new procedures for J&J orders have been tested and approved. We presently plan to phase in these new procedures for J&J orders by region as follows: Pacific time zone states (2/14), Mountain time zone states (2/28), Central time zone states (3/21), and Eastern time zone states (4/11).

1-800 CONTACTS™

PUBLIC RELATIONS INFO

We deliver. You save.®

PUBLIC RELATIONS INTRO

Public Relations

1-800 CONTACTS was founded with a clear understanding of the two key frustrations among contact lens wearers: 1) contact lenses are expensive and 2) contact lenses are inconvenient to replace. Our business directly address these two frustrations by offering contact lens wearers an alternative way to shop that is not only fast but at the same time saves them money. Today, 1-800 CONTACTS maintains the world's largest inventory of contact lenses – over 20 million. No one is more likely to have the customer's exact prescription in-stock and ready to ship right to their door. In addition, this level of purchasing power enables us to pass significant savings on to our customers. It is no wonder that today 1-800 CONTACTS is the world's largest contact lens store.

We also understand that media professionals are busy, working against deadlines and looking for stories that are important to a large portion of the population. This section of our website is designed to provide media professionals easy access to information about the company and the contact lens industry. It also provides a detailed web platform (called "Media Resources") which provides specific information about a consumer rights issue that has plagued the industry and its 36 million contact lens wearers for years. This issue has been covered both locally and nationally by ABC News, Consumers Union and Readers Digest, but still, little has changed with respect to a contact lens wearer's rights.

We hope you find the information helpful. Press Releases and more detailed financial information can be found in the [Investor Relations](#) section.

EXHIBIT M

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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

<p>1-800 CONTACTS, INC., a Delaware corporation;</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>STANDARD OPTICAL COMPANY, a Utah corporation,</p> <p style="text-align: center;">Defendant.</p>	<p>COMPLAINT</p> <p>Case No. 2:10-cv-643</p> <p>Magistrate Judge Paul M. Warner</p> <p>(JURY DEMAND)</p>
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Plaintiff 1-800 Contacts, Inc. ("1-800 Contacts" or "Plaintiff"), by and through counsel, alleges and complains against Defendant Standard Optical Company, ("Defendant") as follows:

JURISDICTION AND VENUE

1. This is an action for trademark infringement and unfair competition under §§ 32 and 43 of the Lanham Act (a.k.a. Trademark Act of 1946, 15 U.S.C. §§ 1051-1127, as amended), and state law infringement and false advertising claims.

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2. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (trademarks), and 15 U.S.C. § 1121 (trademarks). This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367(a), because those claims arise from the common nucleus of operative facts alleged in Plaintiff's federal claims.

3. This Court has personal jurisdiction over Defendant because Defendant's corporate headquarters are located in Utah and Defendant has transacted business in Utah and has caused damage to Plaintiff in Utah. Defendant has purposefully availed itself of the privilege of transacting business in this District by, *inter alia*, advertising its contact lens products via the Internet in this District, offering an interactive website www.standardoptical.net accessible to consumers throughout the country, including in this District, which permits the consumer to order contact lenses to be shipped to the consumer in this District. Defendant has used Plaintiff's trademarks in connection with its Internet advertising, including in this District, without the authorization or consent of Plaintiff. In addition, Defendant has had such continuous and systematic business contacts with this district that Defendant is subject to general personal jurisdiction in this district.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because there is personal jurisdiction over Defendant, and because a substantial part of Defendant's acts and omissions giving rise to Plaintiff's claims occurred in this judicial district.

PARTIES

5. Plaintiff 1-800 Contacts, Inc. is a Delaware corporation having its principal place of business at 66 East Wadsworth Park Drive, Draper, Utah 84020. Plaintiff is engaged in retail sales of contact lenses, including marketing and selling contact lenses via the Internet.

6. Upon information and belief, Defendant is a Utah corporation having a place of business at 1901 West Parkway Blvd., Salt Lake City, Utah 84119. Upon information and belief, Defendant is engaged in retail sales of contact lenses, including marketing and selling contact lenses via the Internet in direct competition with Plaintiff.

7. Upon information and belief, Defendant owns and operates the website www.standardoptical.net, and possibly others, relating to its business of offering and selling contact lenses and vision-related products.

GENERAL ALLEGATIONS

8. For over a decade, Plaintiff has been, and continues to be, engaged in the business of advertising, offering for sale, selling and distributing contact lenses and eye care products via telephone, fax, Internet, and mail orders (the "Goods and Services"). 1-800 Contacts is the market leader, having filled over ten million orders for millions customers. Plaintiff's contact lens and eye care products can be ordered via the Internet at Plaintiff's website: www.1800contacts.com.

9. Plaintiff owns common law and federally registered trademark rights in the marks 1-800 CONTACTS, 1800 CONTACTS (U.S. Registration No. 2,731,114) and 1800CONTACTS (U.S. Registration No. 2,675,866) (the "1-800 Contacts marks").

10. Since at least as early as 1995, Plaintiff has advertised and offered its Goods and Services using one or more of the 1-800 Contacts marks in interstate commerce throughout the United States. The 1-800 Contacts marks have been used extensively in advertising and promotional media, including the Internet, radio, television, trade shows, various printed media, and direct mail.

11. Plaintiff has expended hundreds of millions of dollars advertising and marketing its Goods and Services using the 1-800 Contacts marks over many years. As a result, the 1-800 Contacts marks and Goods and Services have achieved significant commercial success and widespread consumer fame and recognition. In addition, the consuming public has come to regard the 1-800 Contacts marks as symbols of Plaintiff, of Plaintiff's quality Goods and Services, and of Plaintiff's goodwill as the leader in the retail contact lens industry.

12. Like Plaintiff, Defendant advertises and offers contact lenses over the Internet through its www.standardoptical.net website in direct competition with Plaintiff. Defendant does so via keyword advertising campaigns through various search engines such as, for example, Google, Yahoo, Ask, AOL, and Bing.

13. On information and belief, Defendant is aware of the strong consumer recognition enjoyed by the 1-800 Contacts marks and the significant goodwill Plaintiff has created in those marks.

14. In order to trade off of Plaintiff's goodwill and capitalize on the fame and recognition of the 1-800 Contacts marks, Defendant has purchased, continues to purchase, and has caused to be purchased, the 1-800 Contacts marks and/or confusingly similar variations or misspellings thereof as keywords that trigger the display of sponsored advertisements for Defendant's competitive goods and services.

15. On information and belief, the keyword advertising programs offered by the various search engines give control to the user, such as Defendant, to (a) select the keywords it wishes to purchase to trigger its sponsored advertisements, and (b) implement "negative keywords" that will ensure such advertisements are not triggered in response to a search for such negative keywords.

16. On information and belief, Defendant is aware of the control it has over the keyword advertising programs offered by the various search engines with respect to Defendant's advertisements. In particular, Defendant is aware that it can easily implement the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as "negative keywords" in its Internet advertising campaigns to ensure that Defendant's directly competitive advertisements are not displayed in response to a consumer searching for Plaintiff and/or Plaintiff's Goods and Services.

17. Notwithstanding the foregoing, Defendant has not implemented the 1-800 Contacts marks (and confusingly similar variations or misspellings thereof) as negative keywords, but has instead consciously participated in causing its competitive advertisements to be displayed in response to consumers searching for the 1-800 Contacts marks and Plaintiff's Goods and Services.

18. On information and belief, Defendant uses affiliate networks to advertise over the Internet and can control what keywords its affiliates use to place sponsored ads and can require its affiliates to implement certain negative keywords in their advertising campaigns. Despite this control, Defendant has refused to require its affiliates to stop using the 1-800 Contacts mark and variations and misspellings thereof as triggering keywords in their on-line advertising campaigns. Defendant has also refused to require its affiliates to implement the 1-800 Contacts marks as negative keywords in their advertising campaigns. Instead, Defendant wishes to profit and benefit from sponsored links to its website and paid advertisements for its goods and services being displayed in response to a user searching specifically for Plaintiff.

19. Defendant's unauthorized use of the 1-800 Contacts marks as keywords in its Internet advertising campaigns, its participation in causing its sponsored advertisements to be

displayed in response to searches for Plaintiff and Plaintiff's Goods and Services, and its refusal to cause its affiliates to respect Plaintiff's trademark rights in the advertising campaigns they conduct on Defendant's behalf has caused, and will continue to cause, confusion and mistake, including initial interest confusion, as to the source or origin of Defendant's goods and services and is likely to falsely suggest a sponsorship, connection, license, endorsement or association by Plaintiff with Defendant's goods and services, thereby injuring Plaintiff and the consuming public.

20. Defendant's actions also unjustly enrich Defendant by wrongfully directing consumers searching for Plaintiff and Plaintiff's Goods and Services on the Internet to Defendant's competitive website where such consumers purchase contact lenses from Defendant rather than Plaintiff.

CAUSES OF ACTION

COUNT I

(TRADEMARK INFRINGEMENT UNDER SECTION 43(a) OF THE LANHAM ACT – 35 U.S.C. § 1125)

21. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

22. Defendant's acts as alleged herein with respect to its infringement of Plaintiff's marks are likely to cause public confusion, mistake, or deception as to the affiliation, connection, or association of Plaintiff with Defendant. Defendant's acts are also likely to cause public confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods and services by Plaintiff. Accordingly, Defendant's acts constitute trademark infringement in violation of 15 U.S.C. § 1125(a).

23. To the extent Defendant utilizes affiliates to conduct keyword advertising on its behalf, Defendant is secondarily liable for the infringing acts of its affiliates that likewise

purchase the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as keywords (and fail to implement corresponding negative keywords) in order to display advertisements for Defendant's competitive goods and services in response to searches for Plaintiff and Plaintiff's Goods and Services.

24. Plaintiff has been and will continue to be damaged by such wrongful acts.

25. Because Defendant's actions, on information and belief, were intentional, willful and/or deliberate, Plaintiff is entitled to an award of treble damages under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

26. This is an exceptional case, and thus Plaintiff is entitled to an award of attorneys' fees under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

27. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief and monetary damages against Defendant.

COUNT II

(TRADEMARK INFRINGEMENT UNDER SECTION 32 OF THE LANHAM ACT – 35 U.S.C. § 1114)

28. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

29. Defendant's acts as alleged herein with respect to its infringement of Plaintiff's marks are likely to cause public confusion, mistake, or deception and, therefore, constitute trademark infringement in violation of 15 U.S.C. § 1114.

30. To the extent Defendant utilizes affiliates to conduct keyword advertising on its behalf, Defendant is secondarily liable for the infringing acts of its affiliates that likewise purchase the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as keywords (and fail to implement corresponding negative keywords) in order to display

advertisements for Defendant's competitive goods and services in response to searches for Plaintiff and Plaintiff's Goods and Services.

31. Plaintiff has been and will continue to be damaged by such wrongful acts.

32. Because Defendant's actions, on information and belief, were intentional, willful and/or deliberate, Plaintiff is entitled to an award of treble damages under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

33. This is an exceptional case, and thus Plaintiff is entitled to an award of attorneys' fees under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

34. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief and monetary damages against Defendant.

COUNT III
(CONTRIBUTORY TRADEMARK INFRINGEMENT UNDER SECTIONS 43(A)
AND 32 OF THE LANHAM ACT)

35. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

36. On information and belief, the search engines through which Defendant conducts its advertising use the 1-800 Contacts marks in order to display Defendant's competitive advertisements and links to Defendant's competitive websites. Such use is a use in commerce in connection with the advertisement of Defendant's competitive goods and services which is likely to cause public confusion, mistake, or deception as to the affiliation, connection, or association of Plaintiff with Defendant. Such use is also likely to cause public confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods and services by Plaintiff. Accordingly, the search engines' acts constitute trademark infringement in violation of 15 U.S.C. §§ 1114 and 1125(a).

37. Defendant's actions as alleged above, and particularly Defendant's failure to implement appropriate negative keywords in connection with its internet advertising campaigns through the search engines to ensure that Defendant's advertisements and/or links to Defendant's competitive websites are not displayed in response to or as a result of a search for Plaintiff's trademarks and/or Goods and Services, demonstrate a willful blindness to the infringement of the 1-800 Contacts marks and the consumer confusion being caused by its participation in its internet advertising campaigns. Such actions constitute contributory infringement, whether or not Defendant affirmatively purchases any of Plaintiff's trademarks as keywords.

38. Plaintiff has been and will continue to be damaged by such wrongful acts.

39. Plaintiff is, therefore, entitled to all damages and relief set forth under Counts I and II above due to Defendant's contributory trademark infringement.

COUNT IV

(COMMON LAW UNFAIR COMPETITION, MISAPPROPRIATION, AND TRADEMARK INFRINGEMENT – UTAH UNFAIR COMPETITION ACT, UTAH CODE ANN. §13-5a-101 *et. seq.*)

40. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

41. The 1-800 Contacts marks are distinctive of Plaintiff's Goods and Services and of Plaintiff as the source for those Goods and Services.

42. Defendant's actions, as alleged above, were intentional business acts that infringe and diminish the value of Plaintiff's trademark rights under federal common law and Utah common law and, therefore, constitute acts of unfair competition under Utah Code Ann. §13-5a-102(4)(a).

43. By reason of the foregoing, Plaintiff is entitled to injunctive relief and monetary damages against Defendant.

44. The infringing activities of Defendant, on information and belief, are willful and intentional, thereby justifying an award of exemplary and/or punitive damages.

**COUNT V
(UNJUST ENRICHMENT)**

45. Plaintiff realleges and incorporates by this reference all of the foregoing paragraphs.

46. Defendant has benefited from the improper, unfair, and unauthorized use of the 1-800 Contacts marks in its Internet advertising and its unauthorized trading off of Plaintiff's goodwill attendant thereto, as alleged above.

47. Defendant has knowledge and fully appreciates the benefits it has received from Plaintiff's trademark rights, consumer recognition, and goodwill as a result of such actions.

48. Defendant would be unjustly enriched if it were permitted to retain the proceeds obtained from such actions.

49. Equity and good conscience dictate that Defendant be required to account for and turn over to Plaintiff an amount equal to the value of the benefits involuntarily conferred upon it.

JURY DEMAND

Plaintiff demands that all claims and causes of action raised in this complaint against Defendant be tried to a jury to the fullest extent possible under the United States and Utah Constitutions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

A. Preliminarily and permanently enjoining Defendant, its affiliates, and all other persons participating or acting in concert with it, from infringing any of Plaintiff's rights in the 1-800 Contacts marks.

B. Preliminarily and permanently enjoining Defendant, its affiliates, and all other persons participating or acting in concert with it, from purchasing or using the 1-800 Contacts marks or any marks confusingly similar to the 1-800 Contacts marks as keywords in Internet search engine advertising programs and from otherwise using such marks in any manner that is likely to cause confusion or mistake as to whether Defendant and its goods and services are authorized by, affiliated with, sponsored by, or endorsed by Plaintiff;

C. Ordering Defendant, its affiliates, and all other persons participating or acting in concert with it to implement the 1-800 Contacts marks and all confusingly similar variations and misspelling thereof as negative keywords in all of their search engine advertising campaigns;

D. Ordering Defendant to provide an accounting of all revenues and profits gained by Defendant while engaging in the acts complained of in this complaint;

E. Ordering Defendant to promulgate corrective advertising pursuant to Utah Code Ann. § 13-11a-4(3);

F. Awarding Plaintiff its actual damages, and awarding Plaintiff any additional damages that the Court deems just and equitable under the circumstances of the case; but in no case less than the statutory damages mandated under Utah Code Ann. § 13-11a-4(2)(b);

G. Awarding Plaintiff, at its election, either treble or statutory damages in accordance with § 35 of the Lanham Act (15 U.S.C. § 1117) on all claims asserted under § 43 of the Lanham Act (15 U.S.C. § 1125);

H. Awarding Plaintiff damages to which it is entitled based upon Defendant's unjust enrichment;

I. Awarding Plaintiff prejudgment interest at the rate established under 26 U.S.C. § 6621(a)(2) from the date of service of the Complaint through the date of judgment;

J. Awarding Plaintiff its allowable costs and attorneys fees; and

K. Awarding Plaintiff such other and/or further relief as is just and equitable.

DATED this 13th day of July, 2010.

Respectfully submitted,

/s/ Mark A. Miller

Mark A. Miller (9563)

Bryan G. Pratt (9924)

Brett L. Foster (6089)

Plaintiff's Address:
66 East Wadsworth Park Drive
Draper, Utah 84020

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

1-800 CONTACTS

(b) County of Residence of First Listed Plaintiff Salt Lake (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Mark A. Miller, Holland & Hart, 222 South Main, Ste 2200, SLC, UT 84101 801-799-5800

DEFENDANTS

STANDARD OPTICAL COMPANY, a Utah corporation

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (if Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Property, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Sections 32 and 43, Lanham Act, 15 U.S.C. sections 1051-1127. Brief description of cause: trademark infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

07/13/2010 /s/ Mark A. Miller

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

- Print, Save As..., Export as FDF, Retrieve FDF File, Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT N

Mark A. Miller, 9563
 mmiller@hollandhart.com
Bryan G. Pratt, 9924
 bgpratt@hollandhart.com
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 222 South Main, Suite 2200
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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

<p>1-800 CONTACTS, INC., a Delaware corporation;</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>TRAM DATA, LLC, d/b/a REPLACEMENTCONTACTS.COM., a Pennsylvania limited liability company,</p> <p style="text-align: center;">Defendant.</p>	<p>COMPLAINT</p> <p>Case No. 2:10-cv-420</p> <p>Judge Dee Benson</p> <p>(JURY DEMAND)</p>
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Plaintiff 1-800 Contacts, Inc. ("1-800 Contacts" or "Plaintiff"), by and through counsel, alleges and complains against Defendant Tram Data LLC, d/b/a Replacemycontacts.com, ("Defendant") as follows:

JURISDICTION AND VENUE

I. This is an action for trademark infringement and unfair competition under §§ 32 and 43 of the Lanham Act (a.k.a. Trademark Act of 1946, 15 U.S.C. §§ 1051-1127, as amended), and state law infringement and false advertising claims.

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2. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (trademarks), and 15 U.S.C. § 1121 (trademarks). This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367(a), because those claims arise from the common nucleus of operative facts alleged in Plaintiff's federal claims.

3. This Court has personal jurisdiction over Defendant because, on information and belief, Defendant has transacted business in Utah and has caused damage to Plaintiff in Utah. Defendant has purposefully availed itself of the privilege of transacting business in this District by, *inter alia*, advertising its contact lens products via the Internet in this District, offering an interactive website www.replacemycontacts.com accessible to consumers throughout the country, including in this District, which permits the consumer to create an account and order contact lenses to be shipped to the consumer in this District. Defendant has used Plaintiff's trademarks in connection with its Internet advertising, including in this District, without the authorization or consent of Plaintiff.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because there is personal jurisdiction over Defendant, and because a substantial part of Defendant's acts and omissions giving rise to Plaintiff's claims occurred in this judicial district.

PARTIES

5. Plaintiff 1-800 Contacts, Inc. is a Delaware corporation having its principal place of business at 66 East Wadsworth Park Drive, Draper, Utah 84020. Plaintiff is engaged in retail sales of contact lenses, including marketing and selling contact lenses via the Internet.

6. Upon information and belief, Defendant is a Pennsylvania limited liability company having a place of business at 4119-C Mauch Chunk Road, Coplay, Pennsylvania

18037. Upon information and belief, Defendant is engaged in retail sales of contact lenses under the trade name Replace My Contacts, including marketing and selling contact lenses via the Internet in direct competition with Plaintiff.

7. Upon information and belief, Defendant owns and operates the website www.replacemycontacts.com, and possibly others, relating to its business of offering and selling contact lenses and vision-related products.

GENERAL ALLEGATIONS

8. For over a decade, Plaintiff has been, and continues to be, engaged in the business of advertising, offering for sale, selling and distributing contact lenses and eye care products via telephone, fax, Internet, and mail orders (the "Goods and Services"). 1-800 Contacts is the market leader, having filled over ten million orders for millions customers. Plaintiff's contact lens and eye care products can be ordered via the Internet at Plaintiff's website: www.1800contacts.com.

9. Plaintiff owns common law and federally registered trademark rights in the marks 1-800 CONTACTS, 1800 CONTACTS (U.S. Registration No. 2,731,114) and 1800CONTACTS (U.S. Registration No. 2,675,866) (the "1-800 Contacts marks").

10. Since at least as early as 1995, Plaintiff has advertised and offered its Goods and Services using one or more of the 1-800 Contacts marks in interstate commerce throughout the United States. The 1-800 Contacts marks have been used extensively in advertising and promotional media, including the Internet, radio, television, trade shows, various printed media, and direct mail.

11. Plaintiff has expended hundreds of millions of dollars advertising and marketing its Goods and Services using the 1-800 Contacts marks over many years. As a result, the 1-800

Contacts marks and Goods and Services have achieved significant commercial success and widespread consumer fame and recognition. In addition, the consuming public has come to regard the 1-800 Contacts marks as symbols of Plaintiff, of Plaintiff's quality Goods and Services, and of Plaintiff's goodwill as the leader in the retail contact lens industry.

12. Like Plaintiff, Defendant advertises and offers contact lenses over the Internet through its www.replacemycontacts.com website in direct competition with Plaintiff. Defendant does so via keyword advertising campaigns through various search engines such as, for example, Google, Yahoo, Ask, AOL, and Bing.

13. On information and belief, Defendant is aware of the strong consumer recognition enjoyed by the 1-800 Contacts marks and the significant goodwill Plaintiff has created in those marks.

14. In order to trade off of Plaintiff's goodwill and capitalize on the fame and recognition of the 1-800 Contacts marks, Defendant has purchased, continues to purchase, and has caused to be purchased, the 1-800 Contacts marks and/or confusingly similar variations or misspellings thereof as keywords that trigger the display of sponsored advertisements for Defendant's competitive goods and services.

15. On information and belief, the keyword advertising programs offered by the various search engines give control to the user, such as Defendant, to (a) select the keywords it wishes to purchase to trigger its sponsored advertisements, and (b) implement "negative keywords" that will ensure such advertisements are not triggered in response to a search for such negative keywords.

16. On information and belief, Defendant is aware of the control it has over the keyword advertising programs offered by the various search engines with respect to Defendant's

advertisements. In particular, Defendant is aware that it can easily implement the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as “negative keywords” in its Internet advertising campaigns to ensure that Defendant’s directly competitive advertisements are not displayed in response to a consumer searching for Plaintiff and/or Plaintiff’s Goods and Services.

17. Notwithstanding the foregoing, Defendant has not sufficiently implemented the 1-800 Contacts marks (and confusingly similar variations or misspellings thereof) as negative keywords, but has instead voluntarily and consciously participated in causing its competitive advertisements to be displayed in response to consumers searching for the 1-800 Contacts marks and Plaintiff’s Goods and Services.

18. Defendant’s unauthorized use of the 1-800 Contacts marks as keywords in its Internet advertising campaigns and Defendant’s participation in causing its sponsored advertisements to be displayed in response to searches for Plaintiff and Plaintiff’s Goods and Services has caused, and will continue to cause, confusion and mistake, including initial interest confusion, as to the source or origin of Defendant’s goods and services and is likely to falsely suggest a sponsorship, connection, license, endorsement or association by Plaintiff with Defendant’s goods and services, thereby injuring Plaintiff and the consuming public.

19. Defendant’s actions also unjustly enrich Defendant by wrongfully directing consumers searching for Plaintiff and Plaintiff’s Goods and Services on the Internet to Defendant’s competitive website where such consumers purchase contact lenses from Defendant rather than Plaintiff.

CAUSES OF ACTION

COUNT I

(TRADEMARK INFRINGEMENT UNDER SECTION 43(a) OF THE LANHAM ACT – 35 U.S.C. § 1125)

20. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

21. Defendant's acts as alleged herein with respect to its infringement of Plaintiff's marks are likely to cause public confusion, mistake, or deception as to the affiliation, connection, or association of Plaintiff with Defendant. Defendant's acts are also likely to cause public confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods and services by Plaintiff. Accordingly, Defendant's acts constitute trademark infringement in violation of 15 U.S.C. § 1125(a).

22. To the extent Defendant utilizes affiliates to conduct keyword advertising on its behalf, Defendant is secondarily liable for the infringing acts of its affiliates that likewise purchase the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as keywords (and fail to implement corresponding negative keywords) in order to display advertisements for Defendant's competitive goods and services in response to searches for Plaintiff and Plaintiff's Goods and Services.

23. Plaintiff has been and will continue to be damaged by such wrongful acts.

24. Because Defendant's actions, on information and belief, were intentional, willful and/or deliberate, Plaintiff is entitled to an award of treble damages under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

25. This is an exceptional case, and thus Plaintiff is entitled to an award of attorneys' fees under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

26. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief and monetary damages against Defendant.

COUNT II
(TRADEMARK INFRINGEMENT UNDER SECTION 32 OF THE LANHAM ACT – 35 U.S.C. § 1114)

27. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

28. Defendant's acts as alleged herein with respect to its infringement of Plaintiff's marks are likely to cause public confusion, mistake, or deception and, therefore, constitute trademark infringement in violation of 15 U.S.C. § 1114.

29. To the extent Defendant utilizes affiliates to conduct keyword advertising on its behalf, Defendant is secondarily liable for the infringing acts of its affiliates that likewise purchase the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as keywords (and fail to implement corresponding negative keywords) in order to display advertisements for Defendant's competitive goods and services in response to searches for Plaintiff and Plaintiff's Goods and Services.

30. Plaintiff has been and will continue to be damaged by such wrongful acts.

31. Because Defendant's actions, on information and belief, were intentional, willful and/or deliberate, Plaintiff is entitled to an award of treble damages under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

32. This is an exceptional case, and thus Plaintiff is entitled to an award of attorneys' fees under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

33. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief and monetary damages against Defendant.

COUNT III
(CONTRIBUTORY TRADEMARK INFRINGEMENT UNDER SECTIONS 43(A) AND 32 OF THE
LANHAM ACT)

34. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

35. On information and belief, the search engines through which Defendant conducts its advertising use the 1-800 Contacts marks in order to display Defendant's competitive

advertisements and links to Defendant's competitive websites. Such use is a use in commerce in connection with the advertisement of Defendant's competitive goods and services which is likely to cause public confusion, mistake, or deception as to the affiliation, connection, or association of Plaintiff with Defendant. Such use is also likely to cause public confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods and services by Plaintiff. Accordingly, the search engines' acts constitute trademark infringement in violation of 15 U.S.C. §§ 1114 and 1125(a).

36. Defendant's actions as alleged above, and particularly Defendant's failure to implement appropriate negative keywords in connection with its internet advertising campaigns through the search engines to ensure that Defendant's advertisements and/or links to Defendant's competitive websites are not displayed in response to or as a result of a search for Plaintiff's trademarks and/or Goods and Services, demonstrate a willful blindness to the infringement of the 1-800 Contacts marks and the consumer confusion being caused by its participation in its internet advertising campaigns. Such actions constitute contributory infringement, whether or not Defendant affirmatively purchases any of Plaintiff's trademarks as keywords.

37. Plaintiff has been and will continue to be damaged by such wrongful acts.

38. Plaintiff is, therefore, entitled to all damages and relief set forth under Counts I and II above due to Defendant's contributory trademark infringement.

COUNT IV

(COMMON LAW UNFAIR COMPETITION, MISAPPROPRIATION, AND TRADEMARK INFRINGEMENT – UTAH UNFAIR COMPETITION ACT, UTAH CODE ANN. §13-5a-101 *et. seq.*)

39. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

40. The 1-800 Contacts marks are distinctive of Plaintiff's Goods and Services and of Plaintiff as the source for those Goods and Services.

41. Defendant's actions, as alleged above, were intentional business acts that infringe and diminish the value of Plaintiff's trademark rights under federal common law and Utah common law and, therefore, constitute acts of unfair competition under Utah Code Ann. §13-5a-102(4)(a).

42. By reason of the foregoing, Plaintiff is entitled to injunctive relief and monetary damages against Defendant.

43. The infringing activities of Defendant, on information and belief, are willful and intentional, thereby justifying an award of exemplary and/or punitive damages.

**COUNT V
(UNJUST ENRICHMENT)**

44. Plaintiff realleges and incorporates by this reference all of the foregoing paragraphs.

45. Defendant has benefited from the improper, unfair, and unauthorized use of the 1-800 Contacts marks in its Internet advertising and its unauthorized trading off of Plaintiff's goodwill attendant thereto, as alleged above.

46. Defendant has knowledge and fully appreciates the benefits it has received from Plaintiff's trademark rights, consumer recognition, and goodwill as a result of such actions.

47. Defendant would be unjustly enriched if it were permitted to retain the proceeds obtained from such actions.

48. Equity and good conscience dictate that Defendant be required to account for and turn over to Plaintiff an amount equal to the value of the benefits involuntarily conferred upon it.

JURY DEMAND

Plaintiff demands that all claims and causes of action raised in this complaint against Defendant be tried to a jury to the fullest extent possible under the United States and Utah Constitutions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

A. Preliminarily and permanently enjoining Defendant, its affiliates, and all other persons participating or acting in concert with it, from infringing any of Plaintiff's rights in the 1-800 Contacts marks.

B. Preliminarily and permanently enjoining Defendant, its affiliates, and all other persons participating or acting in concert with it, from purchasing or using the 1-800 Contacts marks or any marks confusingly similar to the 1-800 Contacts marks as keywords in Internet search engine advertising programs and from otherwise using such marks in any manner that is likely to cause confusion or mistake as to whether Defendant and its goods and services are authorized by, affiliated with, sponsored by, or endorsed by Plaintiff;

C. Ordering Defendant, its affiliates, and all other persons participating or acting in concert with it to implement the 1-800 Contacts marks and all confusingly similar variations and misspelling thereof as negative keywords in all of their search engine advertising campaigns;

D. Ordering Defendant to provide an accounting of all revenues and profits gained by Defendant while engaging in the acts complained of in this complaint;

E. Ordering Defendant to promulgate corrective advertising pursuant to Utah Code Ann. § 13-11a-4(3);

F. Awarding Plaintiff its actual damages, and awarding Plaintiff any additional damages that the Court deems just and equitable under the circumstances of the case; but in no case less than the statutory damages mandated under Utah Code Ann. § 13-11a-4(2)(b);

G. Awarding Plaintiff, at its election, either treble or statutory damages in accordance with § 35 of the Lanham Act (15 U.S.C. § 1117) on all claims asserted under § 43 of the Lanham Act (15 U.S.C. § 1125);

H. Awarding Plaintiff damages to which it is entitled based upon Defendant's unjust enrichment;

I. Awarding Plaintiff prejudgment interest at the rate established under 26 U.S.C. § 6621(a)(2) from the date of service of the Complaint through the date of judgment;

J. Awarding Plaintiff its allowable costs and attorneys fees; and

K. Awarding Plaintiff such other and/or further relief as is just and equitable.

DATED this 6th day of May, 2010.

Respectfully submitted,

/s/ Mark A. Miller
Mark A. Miller (9563)
Bryan G. Pratt (9924)
Brett L. Foster (6089)

Plaintiff's Address:
66 East Wadsworth Park Drive
Draper, Utah 84020

EXHIBIT O

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
1-800 CONTACTS, INC.,

Plaintiff,

v. **JUDGE BATTS**

WHENU.COM, INC.

and

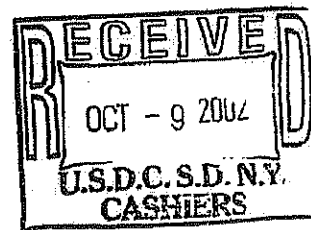
VISION DIRECT, INC.,

Defendants.
----- x

02 CV 8043

___ Civ. ___ ()

COMPLAINT



Plaintiff 1-800 Contacts, Inc. ("1-800 Contacts" or "Plaintiff"), by their undersigned attorneys, for their Complaint allege against defendants, WhenU.com, Inc. ("WhenU.com") and Vision Direct, Inc. ("Vision Direct") (collectively, the "Defendants") as follows:

NATURE OF THE ACTION

1. This action is for preliminary and permanent relief, damages, and attorney's fees and costs arising out of Defendants' acts of trademark infringement, unfair competition, false designation of origin, trademark dilution, copyright infringement, and contributory copyright infringement, and tortious interference with prospective economic advantage.

THE PARTIES

2. Plaintiff 1-800 Contacts was incorporated in Utah in 1995 and is presently incorporated in Delaware. Its principle place of business is in Draper, Utah. 1-800 Contacts is the world's largest contact lens distributor, having delivered over 7 million orders to more than 2.5 million customers since its inception in 1995. 1-800 Contacts is a publicly traded company listed on NASDAQ.

3. 1-800 Contacts revolutionized the way in which consumers purchase contact lenses by providing easy and convenient methods of purchase via its Internet website, located at <http://www.1800Contacts.com>, as well as through its toll-free telephone number, "1-800 Contacts," and by mail.

4. Upon information and belief, Defendant WhenU.com is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York.

5. Upon information and belief, Defendant Vision Direct is a Texas Corporation with its principle place of business in Austin, Texas. Defendant Vision Direct sells contact lenses through its Internet website, located at <http://www.visiondirect.com>, as well as by telephone and mail, and endeavors to compete with the Plaintiff.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action under 15 U.S.C. §1121, 28 U.S.C. §1331, and 28 U.S.C. § 1338(a) and (b). This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §1367(a) because those claims are so related to the federal claims brought herein as to form part of the same case or controversy.

7. Venue is proper in this district under 28 U.S.C. §1391(b) and 28 U.S.C. §1400(a) because Defendants reside in this district within the meaning of 28 U.S.C. §1391(c).

8. WhenU.com is subject to personal jurisdiction in this district because its principle place of business is in the State of New York within this district.

9. Vision Direct is subject to personal jurisdiction in this district because it practices the unlawful conduct complained of herein, in part, within the State of New York and this district; because the unlawful conduct complained of herein causes injury, in part, within the State of New York and this district; and because Vision Direct regularly does or solicits business, engages in other persistent courses of conduct and/or derives substantial revenue from goods used or consumed or services rendered within the State of New York and this district.

Moreover, Vision Direct regularly and systematically has directed electronic activity into the State of New York with the manifested intent of engaging in business within the State and that activity has resulted in causes of action cognizable within the State. Vision Direct's actions in this regard include causing the regular placement of pop-up advertisements upon the screens of numerous PCs within the State; the offering of contact lens products to PC users within the State, many of whom purchased such products; and entry into contracts with residents of the State. Upon information and belief, these actions by Vision Direct were the means by which actual business was conducted by Vision Direct within the State and which resulted in cognizable causes of action within the State. In particular, Vision Direct entered into a contract with WhenU.com, a corporation with its principal place of business in the State of New York and within this district, which resulted in the unauthorized placement of Vision Direct advertisements upon the Plaintiff's websites, the exact harm complained of in this lawsuit.

PLAINTIFF'S TRADEMARKS

10. On July 8, 1999, 1-800 Contacts filed to register the service mark "1-800 CONTACTS" with the United States Patent and Trademark Office ("USPTO") USPTO for use in connection with retail sales via electronic retailing services using a computer, by mail order and by telephone order, for the field of contact lenses and related products. That application remains pending. *See* USPTO Trademark Application No. 75/746,706 (appended hereto as Exhibit A).

11. On October 2, 2000, 1-800 Contacts filed to register the service mark "1-800 CONTACTS" and associated design logo with the USPTO for use in connection with retail sales via electronic retailing services using a computer, by mail order and by telephone order, for the field of contact lenses and related products. That application remains pending. *See* USPTO Trademark Application No. 76/138,625 (appended hereto as Exhibit B).

12. On August 29, 2000, 1-800 Contacts registered the service mark "WE DELIVER. YOU SAVE." with the USPTO for use in connection with retail sales via electronic retailing services using a computer, by mail order and by telephone order, for the field of contact lenses

and related products. On April 9, 2002, the USPTO issued a registered service mark. *See* Federal Trademark Reg. No. 2558233 (appended hereto as Exhibit C.)

13. 1-800 Contacts has continuously promoted and advertised the above-described trademarks in interstate commerce in the United States and throughout the world since at least as early as July 1995. Plaintiff has spent significant sums promoting these marks over the last seven years. In 2001 alone, 1-800 Contacts spent \$26.8 million on marketing.

14. In 2001, there were \$169 million worth of retail transactions under Plaintiff's trademarks.

15. Through Plaintiff's actions, and because of widespread and favorable public acceptance and recognition, the Plaintiff's trademarks have become a distinctive designation of the source of origin of Plaintiff's goods and services. The Plaintiff's trademarks have become uniquely associated with, and hence identify, the Plaintiff. These marks are an asset of incalculable value as a symbol of the Plaintiff, its quality services and its goodwill.

16. Accordingly, the Plaintiff's trademarks have developed secondary meaning and are famous marks.

PLAINTIFF'S COPYRIGHT

17. Plaintiff is the sole owner of the 1-800contacts.com website and holds a valid copyright on the 1-800Contacts.com website.

18. Plaintiff registered its copyright to the 1-800Contacts.com website with the Copyright Office of the United States Library of Congress ("Copyright Office") on October 2, 2000. *See* Certificate of Registration No. VA-1-032-662 (appended hereto as Exhibit D).

19. Plaintiff grants visitors to its website a non-exclusive, non-transferable, limited right to access, use and display the website and its content for the viewers' personal, non-commercial use. Visitors are explicitly prohibited from modifying any of the website content or the manner in which the content is displayed.

FACTUAL BACKGROUND**A. The Internet And The World Wide Web**

20. The Internet is a global network of millions of interconnected computers. The World Wide Web is a portion of the Internet especially suited to displaying images and sound, in addition to text. Much of the information on the World Wide Web is stored in the form of "webpages," which can be accessed through a computer connected to the Internet (available through commercial Internet service providers or "ISPs"), and viewed using a computer program called a "browser," such as Microsoft Internet Explorer and Netscape Navigator. "Websites" are locations on the World Wide Web containing a collection of webpages. A webpage is identified by its own unique Uniform Resource Locator ("URL") (e.g., <http://www.1800contacts.com>), which ordinarily incorporates its site's "domain name" (e.g., 1-800 Contacts).

21. Internet use in the United States has grown substantially in the last few years. More than half of the nation, roughly 53.9 million households, are now online. Internet use in the United States continues to grow at an astonishing rate of two million new Internet users per month.

22. The Internet has revolutionized commercial sales activities in the United States and throughout the world. Using the Internet, consumers now have the power to comparatively shop multiple, worldwide vendors, without leaving the comforts of their homes.

23. Among Internet users in the United States, 39 percent currently use the Internet to make online purchases.

24. As a result, Internet sales, or "e-commerce" reached an estimated \$48.28 billion by 2000.

B. The Business Of Plaintiff 1-800 Contacts

25. Plaintiff 1-800 Contacts has established and operates a website for the purpose of advertising and selling contact lenses and related products. Plaintiff prominently displays its "1-

800 Contacts" and "We Deliver. You Save." trademarks on its website. Plaintiff also sells its products through its easy to remember toll-free "1-800 Contacts" telephone number and by mail.

26. Plaintiff is recognized as the leading distributor of contact lenses, with sales growing from \$3.6 million in 1996 to \$169 million in 2001.

27. 1-800 Contacts has achieved such success in part because 1-800 Contacts offers consumers a simple, convenient and efficient method for purchasing contact lenses. In support of this goal, 1-800 Contacts has invested in excess of \$45 million in its contact lenses inventory. In addition, 1-800 Contacts has invested substantially in the information systems and Internet infrastructure necessary to support customer sales.

28. Plaintiff derives a substantial portion of its sales from e-commerce. Therefore, great care and enormous efforts are undertaken by the Plaintiff to present its webpage content with a specific "look and feel" that will encourage site visitors to remain at the site, to purchase Plaintiff's products and to return to Plaintiff's website for future purchases. Plaintiff deliberately designs its website to display and advertise its products and related information in a manner that will be visually attractive and easy to navigate for site visitors.

29. Plaintiff offers users the ability to personalize the services available on or through its website. For example, customers may "store" their purchase details, such as their contact lens prescription or billing information, by registering on Plaintiff's website.

30. As a result of these design efforts, millions of customers have developed strong relationships with 1-800 Contacts, and return to the 1-800Contacts.com website repeatedly to purchase their contact lenses.

31. 1-800 Contacts uses its website to advertise and to sell exclusively its products. Plaintiff does not permit other advertising on its website. Moreover, the Plaintiff's website does not utilize pop-up advertisements.

C. The Business of WhenU.com

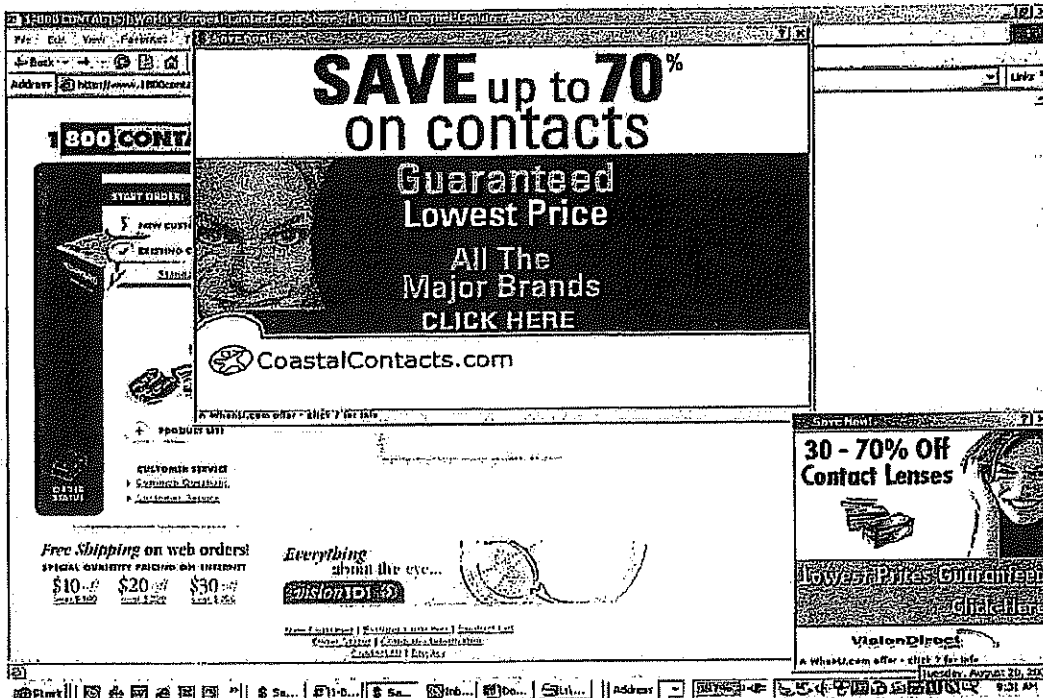
32. WhenU.com is in the business of selling online advertising. But, rather than sell advertising on its own website, WhenU.com sells pop-up ads on other websites **WITHOUT** the permission of or payment to such websites.

33. Upon information and belief, WhenU.com's unauthorized pop-up advertising scheme operates as follows:

- a) WhenU.com distributes a software program called "SaveNow" that resides on a user's desktop. WhenU.com also bundles the SaveNow software with many of the Web's most popularly downloaded software programs, including: MP3 players, screensavers, online games and shopping tools. Anyone who downloads these popular free software programs may have the SaveNow software automatically downloaded and installed on their computer.
- b) Once SaveNow software is installed on a personal computer, whenever a user initiates a browser-based Internet connection, SaveNow automatically launches and communicates frequently with WhenU.com's computer servers, monitoring the user's activities on the World Wide Web and transmitting that information over the Internet to WhenU.com. Software that operates in this manner is commonly called "spyware."
- c) When a PC user visits certain websites, WhenU.com's remote computer systems will transmit to the user's computer one or more unauthorized pop-up advertisements to be displayed directly over the content that the owner of the website intended to be displayed.
- d) WhenU.com's unauthorized pop-up advertisements typically appear at approximately the same time as the webpage that the user has requested. As a result of WhenU.com's unauthorized pop-up advertisements, users ordinarily do not see the webpage in the manner the website owner intended to display it.

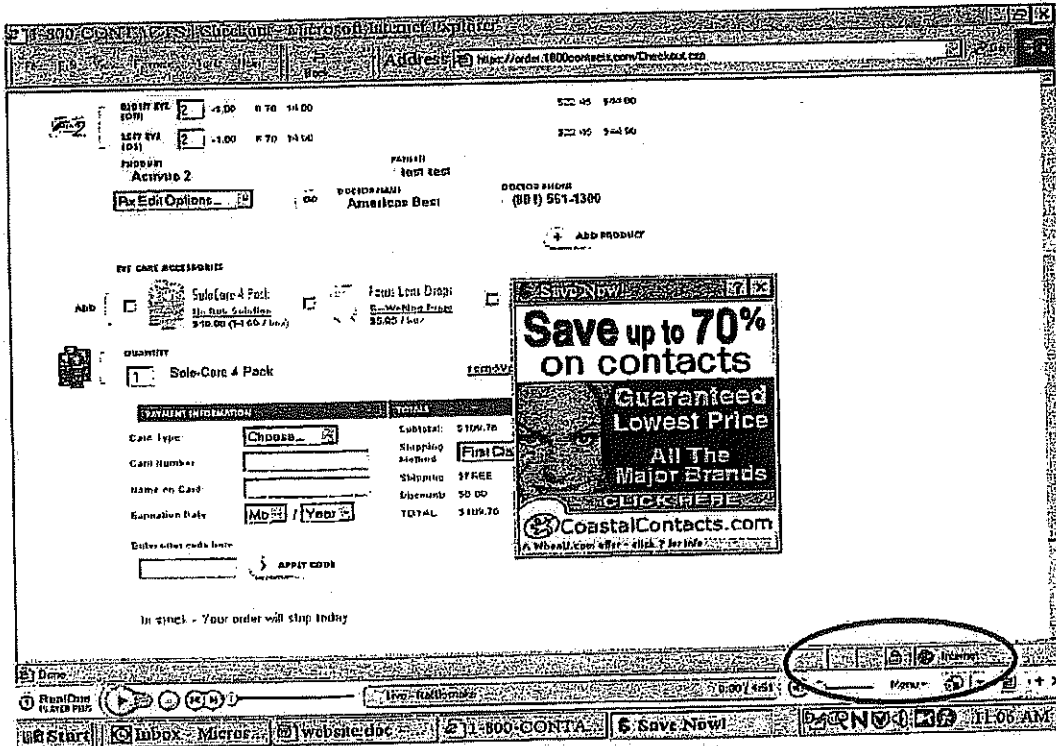
34. In order for the PC user to see the webpage displayed as intended by the website owner, the user must move their mouse to the pop-up advertisement and click the mouse to close WhenU.com's unauthorized pop-up advertisement, thus delaying access to the site's content.

35. In the example below, a WhenU.com pop-up advertisement for Defendant Vision Direct appears on the home page for Plaintiff's website.



36. Upon information and belief, WhenU.com has also caused pop-up advertisements to appear on top of viewers' copies of the 1-800Contacts.com web pages on which viewers place their orders for Plaintiff's products. These pop-up advertisements appear on the *secure* side of the 1-800Contacts.com server, on to the same web pages in which users are entering confidential payment information.

37. An example of a WhenU.com pop-up advertisement that appeared on a *secure* page of Plaintiff's website is set out below.



38. The above examples of WhenU.com pop-up advertisements appeared on the 1-800contacts.com website without 1-800 Contacts's authorization. Upon information and belief, WhenU.com does not seek or obtain the authorization of the websites upon which it causes its pop-up advertisements to appear.

39. WhenU.com asserts that SaveNow currently resides on 15 million personal computers.

40. Upon information and belief, WhenU.com offers to third-party Internet advertisers, such as Defendant Vision Direct, the opportunity to "buy" URLs on which SaveNow will cause to appear pop-up advertisements for the third party advertisers. Indeed, SaveNow software was designed to allow it to cause advertisements from any originating server to display on any website.

41. Upon information and belief, WhenU.com's software was designed to divert and lure Internet users from the websites they intend to visit to other websites owned by

WhenU.com's advertisers. Indeed, WhenU.com claims to have "industry leading click through rates." WhenU.com shares with its advertisers the revenue generated by the advertisements, offers and coupons that pop-up on to the users' screen. None of this revenue is paid to the websites targeted by WhenU.com. Thus, WhenU.com profits from free riding on other websites' content.

42. WhenU.com's pop-up advertising scheme enables WhenU.com to profit, without the permission of the websites it targets and without having to make any investment or exert any effort to create and develop content that attracts and holds viewers, from pop-up advertisements displayed over other websites that have not authorized, do not want and are directly injured by such parasitic interference with the display and appearance of their sites.

43. WhenU.com's pop-up advertising scheme is inherently deceptive and misleads users into falsely believing the pop-up advertisements supplied by WhenU.com are in actuality advertisements authorized by and originating with the underlying website.

44. WhenU.com does not prominently advise persons who have downloaded SaveNow software that unauthorized pop-up advertisements will be systematically delivered to change the display of content on particular websites.

45. Even if WhenU.com delivered such a warning message, there would be no way to eliminate the inherent confusion created by WhenU.com's wrongful conduct.

46. Because WhenU.com's unauthorized pop-up advertisements appear on a user's screen simultaneously, or nearly simultaneously, with the downloading and opening of the requested webpage of the targeted website, the WhenU.com pop-up advertisements appear to be an integral and fully authorized part of the original underlying webpage.

47. The WhenU.com advertisements fail to suggest that they are not authorized and supplied by the underlying website.

D. The Business of Vision Direct

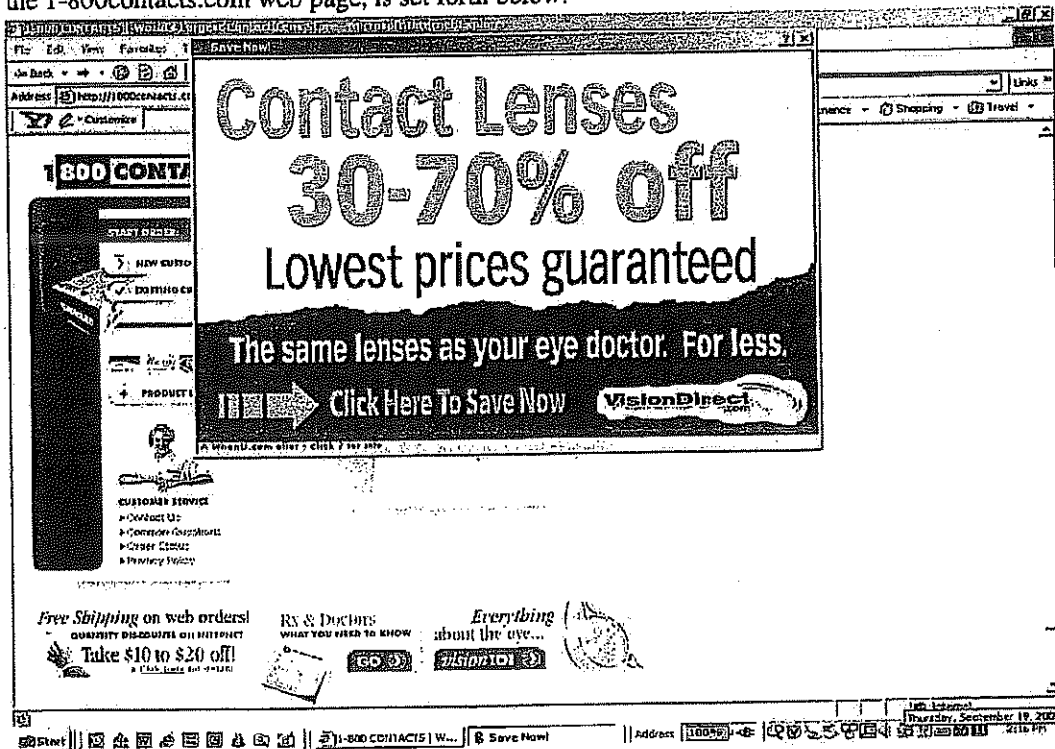
48. Defendant Vision Direct is in the business of selling contact lens via its Internet website, located at <http://www.visiondirect.com>, by telephone and by mail. Upon information

and belief, Vision Direct endeavors to compete with the Plaintiff by engaging in aggressive advertising schemes that target customers visiting Plaintiff's website.

49. Upon information and belief, on November 1, 2001, Vision Direct registered the internet domain name located at <http://www.www1800contacts.com>. The domain name www.www1800contacts.com is identical or confusingly similar to Plaintiff's 1-800 Contacts marks. Vision Direct registered and continues to maintain its registration in the domain name www.www1800contacts.com with the bad faith intent to profit from and/or damage Plaintiff's 1-800 CONTACTS marks.

50. Upon information and belief, beginning in at least the summer of 2002, Vision Direct, without Plaintiff's authorization, caused Vision Direct advertisements to appear over top of some viewers' copies of the 1-800contacts.com webpage. These unauthorized advertisements changed the appearance of the 1-800contacts.com website.

51. An example of such an unauthorized Vision Direct advertisement, as placed onto the 1-800contacts.com web page, is set forth below:



52. These unauthorized Vision Direct advertisements alter the appearance of the 1-800contacts.com webpage. These unauthorized modifications also constitute a derivative work of the 1-800contacts.com website.

E. Harm To Plaintiff

53. Since at least the summer of 2002, Defendants have specifically targeted, and continue to target, the Plaintiff's website for the delivery of unauthorized pop-up advertising.

54. Upon information and belief, Defendants have already delivered hundreds of thousands of unauthorized pop-up advertisements to Plaintiff's website.

55. Plaintiff has not given Defendants permission or a license to place advertisements on to the 1-800Contacts.com website or copies of the webpage.

56. Defendants are not licensed or otherwise authorized to use, alter, modify, change the appearance of or add to the 1-800Contacts.com website or copies of the webpage, nor are Defendants licensed to create derivative works based on the 1-800Contacts.com website.

57. All of the pop-up advertisements that Defendants have displayed on the Plaintiff's website have been displayed without the authorization or permission of the Plaintiff.

58. Upon information and belief, Defendants knew or should have known of Plaintiff's rights in its trademarks and the 1-800Contacts.com website.

59. Upon information and belief, Defendants nevertheless caused Vision Direct advertisements to be added on to viewers' copies of the 1-800Contacts.com website.

60. Upon information and belief, Defendants caused these advertisements to be added on to viewers' copies of the 1-800contacts.com website with the intent to confuse and deceive customers as to the source of Vision Direct's services and to trade upon the goodwill and substantial customer recognition associated with the 1-800 Contacts marks.

61. The Vision Direct advertisements on the 1-800Contacts.com website blur the Plaintiff's trademarks and dilute the marks' ability to identify Plaintiff as a source of goods and services.

62. Plaintiff's current customers have been and will likely continue to be confused about the origin and sponsorship of Defendants' services. Potential customers, as well as members of the general public, are also likely to be confused.

63. Confusion regarding Defendant Vision Direct's implied affiliation with Plaintiff has damaged and will continue to damage Plaintiff's reputation and customer relationships.

64. Upon information and belief, Defendants caused these advertisements to be added on to viewers' copies of the 1-800Contacts.com website with the intent to infringe and to cause viewers to infringe Plaintiff's copyright in the website. Alternatively, Defendants have acted with reckless disregard for Plaintiff's copyright.

65. In the short term, Defendants' actions steal customers from Plaintiff, erode the attractiveness of shopping on the Plaintiff's website and disrupt Plaintiff's efforts to create a "user friendly" site. In the long term, if left unchecked, Defendants' actions imperil the economic viability of the Plaintiff's business.

66. As of at least September 24, 2002, unauthorized pop-up advertisements from Defendants continue to appear over top of viewers' copies of the Plaintiff's website.

67. Defendants' actions have caused damage and irreparable injury to the Plaintiff. Further damage and irreparable injury will result if WhenU.com and Vision Direct are allowed to continue to violate Plaintiff's rights.

68. Plaintiff has no adequate remedy at law.

**FIRST CLAIM FOR RELIEF
FOR FEDERAL TRADEMARK INFRINGEMENT**

69. Paragraphs 1 through 68 are repeated and realleged as if fully set forth herein.

70. Plaintiff owns a valid, federally registered trademark entitled to protection under the Lanham Act.

71. Defendants' unauthorized use of Plaintiff's marks in commerce has caused and is likely to continue to cause consumer confusion.

72. Defendants' conduct constitutes trademark infringement in violation of Section 32(l) of the Lanham Act, 15 U.S.C. § 1114(l).

**SECOND CLAIM FOR RELIEF
FOR UNFAIR COMPETITION UNDER THE LANHAM ACT**

73. Paragraphs 1 through 72 are repeated and realleged as if fully set forth herein.

74. Plaintiff owns valid common law and federally registered trademarks entitled to protection under the Lanham Act.

75. Defendants' unauthorized use of the Plaintiff's marks in commerce has caused and is likely to continue to cause consumer confusion as to the origin or sponsorship of Defendant Vision Direct's products and services and the association of Defendant Vision Direct's products and services with Plaintiff or Plaintiff's products and services.

76. Defendants' conduct constitutes a false designation of origin and a false description and representation, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

**THRID CLAIM FOR RELIEF
FOR COMMON LAW UNFAIR COMPETITION**

77. Paragraphs 1 through 76 are repeated and realleged as if fully set forth herein.

78. Defendants' unauthorized use of the Plaintiff's marks in commerce has caused and is likely to continue to cause consumer confusion and induce consumers to believe that the Plaintiff and Defendant Vision Direct or their products or services are affiliated.

79. Defendants have misappropriated Plaintiff's marks, reputation, and good will through their actions.

80. Defendants have acted deliberately and with bad faith.

81. Defendants have engaged in unfair methods of competition in violation of the common law.

82. As a result of Defendants' conduct, Plaintiff is suffering, and will continue to suffer, damage to its reputation because of consumer confusion as to the origin or sponsorship of Defendant Vision Direct's products and services and the association of Defendant Vision Direct's products and services with Plaintiff or Plaintiff's products and services, and loss of profits.

**FOURTH CLAIM FOR RELIEF
FOR FALSE DESIGNATION OF ORIGIN**

83. Paragraphs 1 through 82 are repeated and realleged as if fully set forth herein.

84. Defendants' conduct constitutes false designation of origin and false description and representation, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

**FIFTH CLAIM FOR RELIEF
FOR DILUTION UNDER THE FEDERAL TRADEMARK DILUTION ACT**

85. Paragraphs 1 through 84 are repeated and realleged as if fully set forth herein.

86. Plaintiff owns valid common law and federally registered trademarks entitled to protection under the Lanham Act. These marks are famous within the meaning of 15 U.S.C. § 1125(c).

87. Defendants' pop-up advertising scheme has the effect of blurring Plaintiff's trademarks and thereby diluting the marks' ability to identify Plaintiff as a source of goods or services.

88. Defendants have made unauthorized commercial use of Plaintiff's marks in commerce.

89. Defendants' conduct has diluted the distinctive quality of Plaintiff's famous marks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

**SIXTH CLAIM FOR RELIEF
FOR DILUTION UNDER N.Y. Gen. Bus. Law §360-1**

90. Paragraphs 1 through 89 are repeated and realleged as if fully set forth herein.

91. Defendants' conduct has diluted the distinctive quality of Plaintiff's marks and/or caused injury to Plaintiff's business reputation in violation of N.Y. Gen. Bus. Law §360-1.

**SEVENTH CLAIM FOR RELIEF
FOR CYBERSQUATTING UNDER 15 U.S.C. §1125(d)**

92. Paragraphs 1 through 91 are repeated and realleged as if fully set forth herein.

93. The Plaintiff owns valid trademarks and or rights to valid trademarks entitled to protection under the Lanham Act.

94. Plaintiff's 1-800 CONTACTS marks are protected marks within the meaning of the Anticybersquatting Consumer Protection Act, 15 U.S.C. §1125(d)(1)(A). The 1-800 CONTACTS marks are famous marks.

95. In choosing the domain name www.www1800Contacts.com, Defendant Vision Direct intended to and has diverted customers from Plaintiff's online location to a site that is likely to harm, and has harmed the goodwill represented by Plaintiff's 1-800 CONTACTS marks, for Defendant Vision Direct's commercial gain or in an attempt to damage the marks, by creating a likelihood of confusion as to source, sponsorship, affiliation, or endorsement of Defendant Vision Direct's website.

96. Defendant Vision Direct registered and has maintained its registration in, the domain name www.www1800Contacts.com. Defendant Vision Direct registered and maintains its registration in www.www1800Contacts.com with a bad faith intent to profit from and/or damage Plaintiff's 1-800 CONTACTS marks. The domain name www.www1800Contacts.com is identical or confusingly similar to Plaintiff's 1-800 Contacts marks.

97. Defendant Vision Direct's conduct constitutes cybersquatting in violation of Section 43(c) of the Lanham Act, 15 U.S.C. §1125(d).

**EIGHTH CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT**

98. Paragraphs 1 through 97 are repeated and realleged as if fully set forth herein.

99. Plaintiff owns a valid copyright in the 1-800Contacts.com website.

100. Plaintiff has registered this copyright with the United States Copyright Office.

101. Defendants' conduct, including causing advertisements to be added on to or over top of viewers' copies of the 1-800Contacts.com web page violates Plaintiff's exclusive rights in its copyright.

102. Defendants' conduct constitutes an unauthorized display of the Plaintiff's copyrighted work and the unauthorized preparation of a derivative work based upon the copyrighted work in violation of Plaintiff's exclusive rights in its copyright.

103. Defendants' conduct constitutes copyright infringement under the Federal Copyright Act, 17 U.S.C. §§101, *et seq.*

**NINTH CLAIM FOR RELIEF
CONTRIBUTORY COPYRIGHT INFRINGEMENT**

104. Paragraphs 1 through 103 are repeated and realleged as if fully set forth herein.

105. Plaintiff owns a valid copyright in the 1-800contacts.com website.

106. Plaintiff has registered this copyright with the United States Copyright Office.

107. Defendants have knowingly (or with reckless disregard for Plaintiff's rights) induced, caused, or materially contributed to conduct by third parties, which violates Plaintiff's exclusive rights in their copyright.

108. Defendants' conduct facilitates the unauthorized and infringing public display of the Plaintiff's copyrighted work by third parties as well as the creation of unauthorized derivative works by those same third parties. Defendants have engaged in this pop-up advertising scheme knowingly, or with reckless disregard, that it was inducing, causing or materially contributing to conduct by third parties that infringed the Plaintiff's exclusive rights in its copyright.

109. Defendants' conduct constitutes contributory copyright infringement under the Federal Copyright Act, 17 U.S.C. §§101, *et seq.*

**TENTH CLAIM FOR RELIEF
TORTIOUS INTERFERENCE
WITH PROSPECTIVE ECONOMIC ADVANTAGE**

110. Paragraphs 1 through 109 are repeated and realleged as if fully set forth herein.

111. Many of the Plaintiff's customers regularly purchase contact lens from Plaintiff's website. It is probable that such customers and others will continue to visit Plaintiff's website and purchase Plaintiff's goods and services in the future. Upon information and belief, Defendants were aware of the existence of Plaintiff's reasonable expectancy of future transactions with Plaintiff's returning customers.

112. Absent Defendants' intentional and improper interference through their pop-up advertising scheme, it is reasonably certain that Plaintiff would realize additional sales from existing customers and/or new customers. Defendants' pop-up advertising scheme, however, damages Plaintiff.

113. Defendants' pop-up advertising scheme constitutes improper interference with the Plaintiff's prospective economic advantage.

WHEREFORE, Plaintiff prays for judgment in its favor and against Defendants as follows:

- A. A preliminary and a permanent injunction, prohibiting Defendants, their agents, servants, employees, officers, attorneys, and all other persons in active concert or participation with them, from:
1. placing, or causing any other entity to place, advertisements of any kind on any copy of the 1-800Contacts.com website, without the express consent of the Plaintiff;
 2. altering or modifying, or causing any other entity to alter or modify, any copy of the 1-800Contacts.com website in any way, including its appearance or how it is displayed;
 3. infringing, or causing any other entity to infringe, Plaintiff's copyright;
 4. making any designations of origin, descriptions, representations or suggestions that Plaintiff is the source, sponsor or in any way affiliated with Defendant Vision Direct's website and services;
 5. acting in any manner that causes Defendants' products, services, websites, or advertisements to be in any way associated with Plaintiff's products,

services, or website, including, but not limited to, any means of marketing, advertising, or agreements with third parties likely to induce the belief that Defendants or Defendants' websites, advertisements, products or services are in any way associated, connected, or affiliated with, or licensed or authorized by Plaintiff;

6. infringing, or causing any other entity to infringe, Plaintiff's trademarks and/or service marks rights;
 7. unfairly designating the origin of Defendant Vision Direct's website and services, or otherwise creating confusion regarding the origin of Defendant Vision Direct's website and services;
 8. unfairly competing with Plaintiff in any manner whatsoever;
 9. acting, or causing another entity to act, in any manner likely to dilute, tarnish, or blur the distinctiveness of the 1-800 Contacts marks;
 10. causing a likelihood of confusion or injuries to Plaintiff's business reputation;
 11. interfering with Plaintiff's reasonable business expectations; and
- B. An order directing Defendants, their agents, servants, employees, franchisees, licensees, attorneys, and all others in active concert or participation with Defendants to deliver to Plaintiff any agreements between Defendants and any other party or parties that relate to the use of any means by which advertisements are added on to the 1-800Contacts.com website or viewers' copies thereof;
- C. An order directing Defendants to file with this Court and serve on Plaintiff within thirty (30) days after the service of the injunction, a report in writing, under oath, that describes in detail the manner and form in which Defendants have complied with the orders of this Court;
- D. An order directing an accounting to determine all gains, profits, savings, and advantages obtained by Defendants as a result of their wrongful actions;

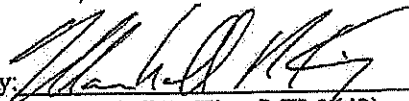
- E. Awarding restitution to Plaintiff of all gains, profits, savings, and advantages obtained by Defendants as a result of their wrongful actions;
- F. Awarding Plaintiff all damages caused by Defendants' wrongful actions;
- G. Awarding Plaintiff treble the amount of its damages, together with the costs of this suit, including reasonable attorneys' fees and expenses and prejudgment interest;
- H. Awarding Plaintiff an amount sufficient to conduct a corrective advertising campaign to dispel the effects of Defendants' wrongful conduct and confusing and misleading advertising;
- I. An order directing Defendants to post on their websites corrective advertising in a manner and form to be established by the Court;
- J. Awarding Plaintiff punitive damages in an amount sufficient to deter other and future similar conduct by Defendants and others; and
- K. Granting Plaintiff such other and further relief as the Court may deem just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues and claims so triable.

DATED: New York, New York
October 9, 2002

GIBSON, DUNN & CRUTCHER LLP

By: 
Marshall R. King (MK-1642)

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Exhibit A



THE UNITED STATES OF AMERICA

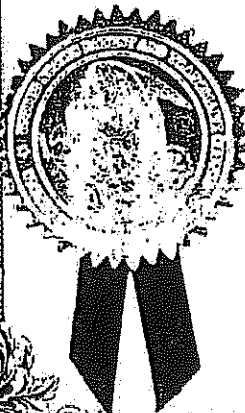
TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 13, 2002

THIS IS TO CERTIFY THAT ANNEXED IS A TRUE COPY FROM THE
RECORDS OF THIS OFFICE OF THE APPLICATION AS FILED FOR:

TRADEMARK APPLICATION: 75/746,706
FILING DATE: July 08, 1999



By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS

N. Woodson
N. WOODSON
Certifying Officer

75746706

TRADEMARK APPLICATION SERIAL NO. _____

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

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01 FC:361 245.00 00

PTO-1555
(5/87)

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MICHELLE E. BROWNLEE
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July 8, 1999

VIA EXPRESS MAIL

Assistant Commissioner for Trademarks
Box NEW APP FEE
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: New Application for Registration of an In-Use Service Mark
Our File: 1-800 CONTACTS, INC./1800CONTACTS/U.S., Class 35

Dear Assistant Commissioner:

Enclosed for filing, please find an in-use service mark application identified as follows:

Applicant: 1-800 CONTACTS, INC.
Int. Class: 35
Mark: 1800CONTACTS

Three specimens showing the mark as actually used accompany this application. Also enclosed is a check in the amount of \$245.00 to cover the filing fee. Please charge any deficiency, or credit any over payment, of this fee to Deposit Account No. 03-3118. A duplicate copy of this letter as authorization is attached for your convenience.

Please return the enclosed post card including the filing date and serial number. Thank you.

Very truly yours,

COOLEY GODWARD LLP



Michelle Brownlee

MEB:mly

Enclosures

cc: Mr. Scott Tanner
John W. Crittenden, Esq.

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070899/1350

-Certificate of Mailing: #EM517431493US

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail, postage prepaid in an envelope addressed to: Box NEW APP FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

Richard J. King (Name)
July 8th 1994 (Date)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark: 1800CONTACTS

Int'l. Class: 35

TO THE ASSISTANT COMMISSIONER FOR TRADEMARKS:

Applicant: 1-800 CONTACTS, INC., a Delaware corporation, having its principal place of business at 66 East Wadsworth Park Drive, 3rd Floor, Draper, UT 84020.

Applicant requests registration of the above-identified service mark, shown in the accompanying drawing, in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. § 1051 et seq., as amended) for the following services: retail services, featuring contact lenses and related products in International Class 35.

Applicant believes that the mark has become distinctive of Applicant's services in interstate commerce. As evidence thereof, submitted with this application is a Declaration of Applicant.

The mark was first used in connection with the services at least as early as July, 1995; was first used in interstate commerce at least as early as July, 1995 and is now in use in such commerce.

The mark is used on advertising, on computer web sites, and in other ways customary in the trade. Three (3) specimens showing the mark as actually used in commerce are presented herewith.

DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the Application or any resulting registration, declares that he is properly authorized to execute this Application on behalf of the Applicant; he believes the Applicant to be the owner of the service mark sought to be registered; to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use the above-identified mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when used in connection with the services of such other person, to cause confusion, or to cause mistake, or to deceive; and all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

POWER OF ATTORNEY

Applicant hereby appoints Michelle E. Brownlee, John W. Crittenden, Janet L. Cullum, Anne H. Peck, Susan D. Berney-Key, Todd S. Bontemps, Susan P. Gibbs, Larissa A. J. Kehoe, Beatriz Mejia, Tsan Merritt-Porée, Eugene M. Pak, Cheryl L. Sakowski, Gretchen R. Stroud and Kathryn M. Wheble, Cooley Godward LLP, One Maritime Plaza, 20th Floor, San Francisco, California 94111-3580, Attorneys at Law, to prosecute this Application to register, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the Certificate of Registration.

Applicant requests that all correspondence be directed to:

Michelle Brownlee, Esq.
COOLEY GODWARD LLP
One Maritime Plaza, 20th Floor
San Francisco, CA 94111-3580
Telephone: (415) 693-2000 ---

1-800 CONTACTS, INC.,
a Delaware corporation

Date: 7/2/99

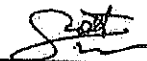
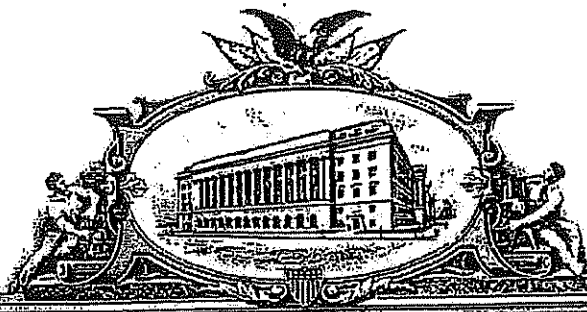
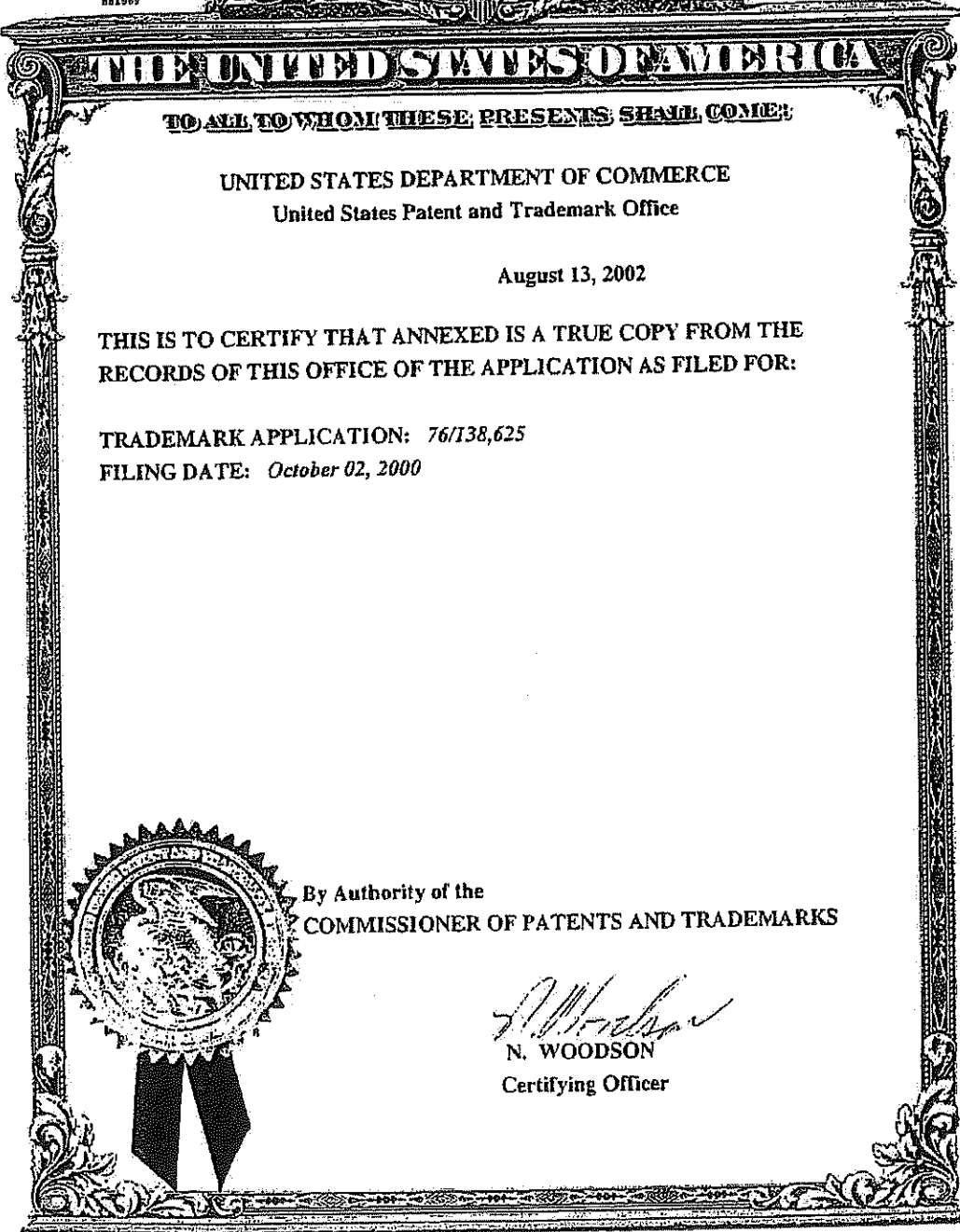
By: 
Scott Tanner
Chief Financial Officer

Exhibit B



081569



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 13, 2002

THIS IS TO CERTIFY THAT ANNEXED IS A TRUE COPY FROM THE
RECORDS OF THIS OFFICE OF THE APPLICATION AS FILED FOR:

TRADEMARK APPLICATION: 76/138,625
FILING DATE: *October 02, 2000*



By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS

N. Woodson
N. WOODSON
Certifying Officer

76138625

TRADEMARK APPLICATION SERIAL NO. _____

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

10/04/2000 ATOHES2 00990111 76138625
01 FE:361 25.00 IP

PTO-1555
(5/87)

Scott J. Slavick
312-321-4245
sslavick@brinkshofer.com

BRIN
KSHOFER
GILS
& LIC

A PROFESSIONAL
INTELLECTUAL

HBC Tower
455 N. C
CHICAGO, IL
www.brinkshofer.com
Fax 312-
TELEPHONE

SAN JOSE,
INDIANAPOLIS,
ANN ARBOR
ARLINGTON

October 2, 2000

VIA EXPRESS MAIL NO. 457 104 595 US

Commissioner for Trademarks
BOX NEW APP FEE
2900 Crystal Drive
Arlington, VA 22202-3513

Re: Application for Service Mark Registration
Based Upon Actual Use
Service Mark: 1800CONTACTS and Design
Applicant: 1-800 Contacts, Inc.
Our Case No.: 10339/14

Dear Sir:

Enclosed on behalf of the above-identified applicant are the following documents in connection with its application for registration of the service mark named above:

- (1) Application for Service Mark Registration based upon Actual Use; Power of Attorney; Declaration; Specimen, and
- (2) Check for \$325.00 to cover the filing fee.

The Commissioner is hereby authorized to charge any additional filing fees which may be required, or credit any overpayment, to Deposit Account No. 23-1925. A duplicate copy of this correspondence is enclosed. If you have any questions regarding this, please contact the undersigned.

Very truly yours,

Scott Slavick
Scott J. Slavick

SJS/slg

Enclosures

'Express Mail' mailing label number EL 457 104 595 US
Date of Deposit October 2, 2000

Our Case No. 10335

**APPLICATION FOR SERVICE MARK
REGISTRATION BASED UPON ACTUAL USE**

**SERVICE MARK: 1800CONTACTS :
Design
International Class: 35**

BOX NEW APP FEE
ASSISTANT COMMISSIONER FOR TRADEMARKS
2900 Crystal Drive
Arlington, Virginia 22202-3513

APPLICANT: 1-800 Contacts, Inc.
STATE OF INCORPORATION: Delaware
BUSINESS ADDRESS: 66 East Wadsworth Park Drive
3rd Floor
Draper, UT 84020

The above-identified applicant has adopted and is using the service mark shown accompanying drawing on or in connection with the following services: Mail order and telephone order services in the field of contact lenses and related products, and electronic retailing services via computer featuring contact lenses and related products, in International Class 35, and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. §105 as amended.)

The mark was first used at least as early as July 13, 1998; and the mark was first used in commerce at least as early as July 13, 1998, and is currently in use in commerce.

Applicant claims the colors yellow, blue and white as part of the mark. The box behind the word CONTACTS is yellow. The border around the yellow box behind the word CONTACTS is blue. The box behind the term "800" is blue. The number one and the word CONTACTS are written in blue. The term "800" is written in white.

Submitted herewith is a specimen that shows the mark as used in commerce on or in connection with the services set forth herein.

POWER OF ATTORNEY

The undersigned hereby appoints BRINKS HOFER GILSON & LIONE, a professional corporation, P.O. Box 10395, Chicago, Illinois 60610, which has associated with it Jerome Gilson, Jeffery A. Handelman, Doris Loew, Mary M. Squyres, David S. Fleming, Laura Beth Miller, John T. Gabrielides, Colleen C. Butler, Philip A. Jones, Nancy M. Norton, Joseph V. Norvell, Eric W. Gallender, Thomas M. Williams, Howard S. Michels, Scott J. Slavick, Christopher N. Bolinger, Nicholas G. de la Torre and Christopher M. Doonan (all attorneys admitted to practice before the Supreme Court of the State of Illinois) and Barbara A. Larsen (an attorney admitted to practice before the Appellate Division of the New York State Supreme Court, First Department), its attorneys to prosecute this application for registration, with full power of substitution and revocation, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the Certificate. Please address all correspondence and telephone calls to Thomas M. Williams in care of:

BRINKS HOFER GILSON & LIONE
P.O. Box 10395
Chicago, Illinois 60610
(312) 321-4200

DECLARATION

The undersigned being duly warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom, declares: that he/she is properly authorized to make this declaration on behalf of applicant; that he/she believes applicant to be the owner of the mark sought to be registered; the mark is now in use in commerce; that to the best of his/her knowledge and belief, no other person, firm, corporation, or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when used on or in connection with the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive; that all statements made herein of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

1-800 CONTACTS, INC.

Dated: 9/27/00

By: 

Name: Kevin Mckewin

Title: V.P. of Marketing

ADVERTISING

0-02-2000

INTL TRADE/TRA Mark Reg/DL 987

APPLICANT: 1-800 Contacts, Inc.

BUSINESS ADDRESS: 66 East Wadsworth
3rd Floor
Draper, UT 84020

INTERNATIONAL CLASS: 35

DATE OF FIRST USE: At least as early as July 13, 1998

**DATE OF FIRST USE
IN COMMERCE:** At least as early as July 13, 1998

SERVICES: Mail order and telephone order services in the field
of contact lenses and related products, and
electronic retailing services via computer featuring
contact lenses and related products

1 800 CONTACTS

TRADEMARK

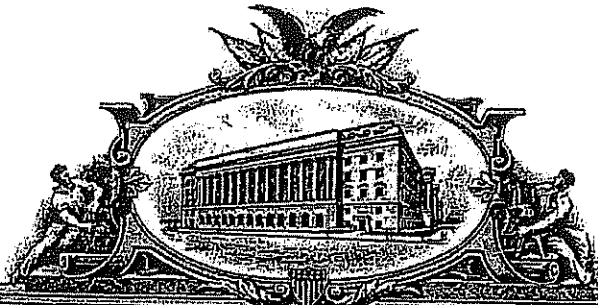


76138626

Exhibit C



663292



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

July 23, 2002

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,558,233 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *April 09, 2002*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



E. Bornett

E. BORNETT
Certifying Officer

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,558,233

United States Patent and Trademark Office

Registered Apr. 9, 2002

SERVICE MARK
PRINCIPAL REGISTER

WE DELIVER. YOU SAVE.

1-800 CONTACTS, INC. (DELAWARE CORPORATION)
66 EAST WADSWORTH PARK DRIVE
3RD FLOOR
DRAPER, UT 84020

FOR: MAIL ORDER AND TELEPHONE ORDER
SERVICES IN THE FIELD OF CONTACT LENSES
AND RELATED PRODUCTS, AND ELECTRONIC
RETAILING SERVICES VIA COMPUTER FEATUR-

ING CONTACT LENSES AND RELATED PRO-
DUCTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 7-0-1998; IN COMMERCE 7-0-1998.

SER. NO. 76-118,573, FILED 8-29-2000.

MARC LEIPZIG, EXAMINING ATTORNEY

Exhibit D

Additional certificate (17 U.S.C. 705)

CERTIFICATE OF REGISTRATION



OFFICIAL SEAL

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

REGISTER OF COPYRIGHTS
United States of America

FORM VA

For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

VA 1-032-662



EFFECTIVE DATE OF REGISTRATION

10 02 2000
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK

1800 Contacts Web site

NATURE OF THIS WORK

PREVIOUS OR ALTERNATIVE TITLES

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial give: Volume Number Issue Date Op. Pages

2

NAME OF AUTHOR

a 1-800 Contacts, Inc.

DATES OF BIRTH AND DEATH
Year Born Year Died

Was this contribution to the work a "work made for hire"?
 Yes
 No

Author's Nationality or Domicile
Name of Country
OR
Citizen of United States
Domiciled in United States

Was This Author's Contribution to the Work
Anonymous? Yes No
Pseudonymous? Yes No

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

- 3-Dimensional sculpture
- 2-Dimensional artwork
- Reproduction of work of art
- Map
- Photograph
- Jewelry design
- Technical drawing
- Text
- Architectural work

NOTE
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NAME OF AUTHOR

b

DATES OF BIRTH AND DEATH
Year Born Year Died

Was this contribution to the work a "work made for hire"?
 Yes
 No

Author's Nationality or Domicile
Name of Country
OR
Citizen of
Domiciled in

Was This Author's Contribution to the Work
Anonymous? Yes No
Pseudonymous? Yes No

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

- 3-Dimensional sculpture
- 2-Dimensional artwork
- Reproduction of work of art
- Map
- Photograph
- Jewelry design
- Technical drawing
- Text
- Architectural work

3

Year in Which Creation of This Work Was Completed
a 2000

Date and Nation of First Publication of This Particular Work
b Month: March Day: 1 Year: 2000
United States

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.
1-800 Contacts, Inc.
3rd Floor, 66 East Wadsworth Park Dr.
Draper, UT 84020

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

APPLICATION RECEIVED
OCT 02 2000
ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED
OCT 02 2000
FUNDS RECEIVED

MORE ON BACK

• Complete all applicable spaces (numbers 5-8) on the reverse side of this page.
• See detailed instructions. • Sign the form at line 8.

DO NOT WRITE HERE
Page 1 of 2 pages

EXAMINED BY 714 FORM VA

CHECKED BY _____

CORRESPONDENCE
Yes

FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?
 Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box.)

a. This is the first published edition of a work previously registered in unpublished form.
 b. This is the first application submitted by this author as copyright claimant.
 c. This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number Year of Registration

5

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates.

b. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.

6

a See instructions before completing this space.
b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name Account Number

Brinks Hofer Gilson & Lione DA 0-36722

7

a
b

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP

Thomas M. Williams Brinks Hofer Gilson & Lione
 P.O. Box 10395
 Chicago, Illinois 60610

8

Area code and daytime telephone number ▶ (312) 321-4200 Fax number ▶ (312) 321-4299

Email ▶ twilliams@brinkshofer.com

CERTIFICATION* I, the undersigned, hereby certify that I am the

check only one ▶ author
 other copyright claimant
 owner of exclusive right(s)
 authorized agent of 1-800 Contacts, Inc.

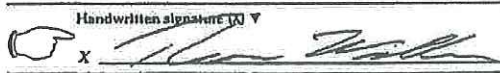
8

Name of author or other copyright claimant, or owner of exclusive right(s)

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Thomas M. Williams Date ▶ 9/29/00

Handwritten signature 

Certificate will be mailed in window envelope to this address:

Name ▼	Thomas M. Williams
Number/Street/Apt ▼	P.O. Box 10395
City/State/ZIP ▼	Chicago, Illinois 60610

9

YOU MUST:
 • Complete all necessary tasks.
 • Sign your application in space 8.

SEND ALL 3 ELEMENTS IN THE SAME PACKAGE:
 1. Application form.
 2. Nonrefundable filing fee in check or money order payable to Register of Copyrights.
 3. Deposit material.

MAIL TO:
 Library of Congress
 Copyright Office
 101 Independence Avenue, S.E.
 Washington, D.C. 20559-6000

As of July 1, 1999, the filing fee for Form Va is \$30.

*17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.
 June 1999—100,000
 WEB REV: June 1999

PRINTED ON RECYCLED PAPER

U.S. GOVERNMENT PRINTING OFFICE: 1999-454-819/1

EXHIBIT P

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

08 CV 01949

----- X
1-800 CONTACTS, INC.,

Plaintiff,

vs.

VISION DIRECT, INC.,

Defendant.
----- X

Case No.
(ECE CASE)

COMPLAINT

FEB 27 2008

JURY TRIAL

D.C.S.D.N.Y.
CASH PAID

Plaintiff 1-800 Contacts, Inc. ("1-800 Contacts" or "Plaintiff"), by and through its undersigned attorneys, for its Complaint against Defendant Vision Direct, Inc. ("Vision Direct" or "Defendant"), alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for damages, injunctive relief and specific performance, arising out of Vision Direct's breach of contract and breach of warranty, specifically, breach of an agreement dated June 24, 2004 (the "Settlement Agreement") settling an action (the "Prior Action") that was pending in this District, and breach of a guaranty and warranty contained within such agreement. The Prior Action, *1-800 Contacts, Inc. v. WhenU.com, Inc. & Vision Direct, Inc.*, No. 02 CV 8043, was filed October 9, 2002 and was dismissed on July

22, 2004. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit D.

THE PARTIES

2. Plaintiff 1-800 Contacts, Inc. is a Delaware corporation with a principal place of business at 66 East Wadsworth Park Drive, Draper, Utah 84020.

3. Plaintiff is informed and believes, and thereon alleges that Defendant Vision Direct, Inc. is a Texas corporation with a principal place of business at 411 108th Avenue NE, Suite 1400, Bellevue, Washington 98004.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. Sections 1332(a)(1), as the amount in controversy exceeds \$75,000 and there is diversity of citizenship between Plaintiff and Defendant.

5. This Court may exercise personal jurisdiction over the Defendant because the Defendant has consented and waived objection to such jurisdiction in this District.

6. Venue is appropriate because the Plaintiff and Defendant have each consented and waived objection to venue in this District.

PLAINTIFF'S AND DEFENDANT'S BUSINESSES

7. Plaintiff 1-800 Contacts has been and is now engaged in the business of selling and distributing contact lenses and eye care products via the Internet, mail, telephone and fax.

8. Plaintiff is recognized as the leading distributor of contact lenses, with sales growing from \$3.6 million in 1996 to \$169 million in 2001 to in excess of \$200 million in 2007.

9. Plaintiff is the owner of United States service mark registration No. 2,675,866 for the word mark 1800CONTACTS, for use with "mail order and telephone order services in the field of contact lenses and related products, and electronic retailing services via computer featuring contact lenses and related products." This registration is valid and existing on the Principal Register of the United States Patent and Trademark Office ("USPTO"), and has become incontestable. A true and correct copy of the USPTO record of this registration is attached hereto as Exhibit A.

10. Plaintiff is the owner of United States service mark registration No. 1,462,371 for the word mark LENS EXPRESS, for use with "retail store and mail order services in the field of contact lenses." This registration is valid and existing on the Principal Register of the United States Patent and Trademark Office

("USPTO"), and has become incontestable. A true and correct copy of the USPTO record of this registration is attached hereto as Exhibit B.

11. Plaintiff is the owner of United States service mark registration No. 2,731,114 for the mark 1800 CONTACTS and design (collectively with the mark in the two immediately foregoing paragraphs, the "Registered Marks"), for use with "mail order and telephone order services in the field of contact lenses and related products, and electronic retailing services via computer featuring contact lenses and related products." This registration is valid and existing on the Principal Register of the USPTO. A true and correct copy of the USPTO record of this registration is attached hereto as Exhibit C.

12. As part of its business, Plaintiff has established and operates a website at *www.1800contacts.com* for purposes of advertising and selling contact lenses and related products. Plaintiff prominently displays the Registered Marks on its website.

13. Plaintiff derives a substantial portion of its sales from Internet sales. As a result of extensive website design and marketing efforts, millions of customers have developed strong relationships with Plaintiff and return to the *www.1800contacts.com* website repeatedly to purchase their contact lenses and related products.

14. Defendant Vision Direct has been and is now engaged in the business of selling and distributing contact lenses and eye care products via the Internet, mail, telephone and fax, including in this District, and is a competitor of Plaintiff.

INTERNET SEARCHING AND KEYWORD ADVERTISING

15. An Internet user desiring to find information on the Internet, including information on potential vendors of products that the user may desire, may use the services of one or more Internet "search engine" providers, such as Google, MSN, or Yahoo. Upon the user entering into a search engine provider's webpage certain words or phrases, known as "search terms," representing the information that the user desires to search for, the search engine offered by any of these providers will return a list of "links" to other websites corresponding to the words or phrases entered. This list of websites returned on the basis of similarity or correspondence to the search terms are commonly referred to as the "organic search results."

16. Beyond the organic search results, however, many Internet search engine providers also simultaneously present to the user paid advertisements which are also keyed to the search terms the user entered. The Google search engine, for instance, returns these paid advertisements in a section of the webpage entitled "Sponsored Links," located above or to the right of the organic search results.

17. When purchasing advertisements with a search engine provider, an advertiser generally identifies one or more "keywords," which are words or phrases that, if entered by a user as a search term, will cause that advertiser's paid advertisement to be returned to that user. For example, either of the parties here might specify that one of its advertisements should be presented to a user if the user has entered as a search term the phrase, "contact lens."

18. An advertiser can specify its trademark as a search engine advertising keyword. Unfortunately, many search engine providers allow a *competitor's* trademark to be specified as a keyword, thus presenting a company's advertisement to a user who may have been seeking a competitor's product.

19. When purchasing advertisements with a search engine provider, an advertiser may further specify so-called "negative keywords," which are words or phrases that, if entered by a user as a search term, will cause that advertiser's advertisement *not* to be presented to that user.

20. Defendant Vision Direct, by itself or through its parent company, Drugstore.com, Inc. ("Drugstore.com") has purchased and currently purchases advertisements with various Internet search engine providers, and when purchasing such advertisements has specified and does specify keywords and, at least for some period of time, also has specified negative keywords. Drugstore.com is not a party to this Action.

THE PRIOR ACTION AND THE SETTLEMENT AGREEMENT

21. On October 9, 2002, 1-800 Contacts filed an action (the "Prior Action") in the Federal District Court for the Southern District of New York, Case No. 02 CV 8043, naming two defendants, including Vision Direct. The Prior Action included causes of action against Vision Direct for federal trademark infringement, unfair competition under the Lanham Act, common law unfair competition, false designation of origin, dilution under the Lanham Act, dilution under New York state law, cybersquatting in violation of the Lanham Act, copyright infringement, contributory copyright infringement, and tortious interference with prospective economic advantage, with allegations that Vision Direct participated in a scheme to profit from and damage 1-800 Contact's trademarks and copyrights through bad faith use of Internet domain names and Internet advertising.

22. On June 24, 2004, 1-800 Contacts and Vision Direct entered into the Settlement Agreement, which led to dismissal of the Prior Action with prejudice on July 22, 2004. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit D.

23. In entering into the Settlement Agreement, Vision Direct agreed to refrain from committing any of certain acts defined as "Prohibited Acts" by the agreement. Section 4 of the agreement includes as Prohibited Acts:

d. causing a Party's website or Internet advertisement to appear in response to any Internet search for the other Party's brand name, trademarks or URLs;

e. causing a Party's brand name, or link to the Party's Restricted Websites to appear as a listing in the search results page of an Internet search engine, when a user specifically searches for the other Party's brand name, trademarks, or URLs;

* * *

i. using the other Party's trademark or brand name to redirect users from the other Party's Restricted Websites

24. In entering into the Settlement Agreement, Vision Direct further promised and guaranteed to bring about the result that its parent, which by the time of the Settlement Agreement was Drugstore.com, would similarly refrain from the listed "Prohibited Acts," which guaranty was phrased in the form of a promise on behalf of the non-party parent; to this end, the beginning portion of Section 4 of the Settlement Agreement provides as follows, with emphasis added:

From the Effective Date of this Agreement, each Party, *its parent*, subsidiaries, agents, servants, employees, officers and other entities controlled by such Party mutually agree to refrain from and not to cause in the future any other entity to [engage in certain acts] . . . (collectively the "Prohibited Acts"). . . .

25. Vision Direct further warranted in Section 7 of the Settlement Agreement that it was “duly authorized to execute this Agreement.”

BREACH OF THE SETTLEMENT AGREEMENT, AND DEMAND

26. While the Settlement Agreement allows its parties to specify as Internet search engine keywords generic words such as “contacts,” it expressly prohibits Vision Direct from causing advertisements for Vision Direct to appear when an Internet search user searches for Plaintiff’s brand names or trademarks, such as the phrases constituting the Registered Marks, 1800CONTACTS and 1800 CONTACTS, or Plaintiff’s trade name of 1-800 CONTACTS.

27. For a period of time following execution of the Settlement Agreement, paid advertisements for Vision Direct did not appear in Internet search engine results when phrases constituting the Registered Marks were entered as search terms. Plaintiff is informed and believes, and thereon alleges that during this period Defendant Vision Direct, by itself or through Drugstore.com, achieved this outcome by specifying negative keywords when purchasing Internet search engine advertising, and was thus able to comply with the prohibitions of the Settlement Agreement.

28. Without cause or justification, and in spite of the previous course of conduct, Defendant Vision Direct, by itself or through Drugstore.com, began to

cause paid advertisements for Vision Direct to appear in Internet search engine results when phrases constituting the Registered Marks were entered as search terms. Plaintiff is informed and believes, and thereon alleges that Defendant Vision Direct, by itself or through Drugstore.com, caused this outcome by ceasing to specify negative keywords when purchasing Internet search engine advertising.

29. Section 5 of the Settlement Agreement requires a party to give the other, breaching party written notice of a breach and allow ten calendar days for response to or cure of such breach. That Section further provides that if such response to or cure of such breach is not forthcoming within that ten-day period, "the enforcing Party shall be entitled to enforce this Agreement in accordance with its terms and to seek, without limitation, all available remedies at law or equity."

30. On July 27, 2007, Plaintiff sent to Defendant and Drugstore.com a written notice of the breach of the Settlement Agreement and demand to cure. Defendant failed within the prescribed period to cure its breach. On October 12, 2007, Plaintiff's attorneys sent another notice of breach and demand to cure to Drugstore.com. A true and copy of Plaintiff's October 12, 2007 written demand, which attaches Plaintiff's prior July 27, 2007 written demand, is attached hereto as Exhibit E. Defendant again failed to cure its breach, and Defendant and Drugstore.com again have instead affirmatively and explicitly refused to cure this breach.

31. Defendant Vision Direct, by itself or through Drugstore.com, has placed and is placing with search engine providers paid advertisements for Vision Direct that appear in Internet search engine results when phrases constituting the Registered Marks are entered as search terms, in violation of Vision Direct's obligations under the Settlement Agreement. Exhibit F attached hereto comprises true and correct printouts of the results of searches performed on the Google search engine on February 23, 2008, using the Registered Marks or variants thereof as search terms, which, as indicated by the portions circled in red, each returned a paid advertisement for Vision Direct, indicating a breach of the Settlement Agreement.

FIRST CLAIM FOR RELIEF

Breach of Contract

32. Plaintiff hereby repeats and realleges paragraphs 1 through 31 hereinabove as though fully set forth herein.

33. The Settlement Agreement is a duly executed, valid, enforceable contract binding on Plaintiff and Defendant.

34. Plaintiff has performed or been excused from performing each of Plaintiff's obligations under the Settlement Agreement.

35. By the acts complained of herein, Defendant has breached and is continuing to breach the Settlement Agreement.

36. Plaintiff has given Defendant written notice of breach and demand to cure, and Defendant refuses to cure its continuing breach of the Settlement Agreement.

37. Defendant's breach of the Settlement Agreement has caused and is causing Plaintiff to suffer monetary and other harm, including without limitation damage to Plaintiff's trademarks and service marks, that is irreparable and for which Plaintiff has no adequate remedy at law, which harm Plaintiff will continue to suffer unless and until Defendant's conduct is permanently enjoined.

38. Defendant has unfairly profited from the breach alleged herein and will be unjustly enriched in the future unless and until such breach is permanently enjoined.

SECOND CLAIM FOR RELIEF

Breach of Guaranty/Warranty

39. Plaintiff hereby repeats and realleges paragraphs 1 through 31 hereinabove as though fully set forth herein.

40. The Settlement Agreement is a duly executed, valid, enforceable contract binding on Plaintiff and Defendant.

41. Plaintiff has performed or been excused from performing each of Plaintiff's obligations under the Settlement Agreement.

42. Defendant's failure to procure the promised result that its parent, Drugstore.com, would refrain from the Prohibited Acts listed in the Settlement Agreement constitutes a breach of Defendant's guaranty given in Section 4 of the Settlement Agreement to procure such result.

43. Plaintiff is informed and believes, and thereon alleges that Defendant entered into the Settlement Agreement while lacking authorization from its parent to make the aforementioned guaranty, and Defendant thus breached the warranty it in Section 7 of the Settlement Agreement that Defendant was duly authorized to execute the Settlement Agreement.

44. Defendant has unfairly profited from its breach of guaranty and breach of warranty alleged herein and has caused Plaintiff to suffer monetary and other harm as a result.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

1. For a preliminary and permanent injunction prohibiting Defendant, its officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with them, from placing or maintaining with any search engine provider any advertisement that appears in Internet search engine results when any words or phrases identical or substantially similar to any of Plaintiff's

trademarks or service marks are entered as search terms, or causing any other entity to do so, or otherwise breaching the Settlement Agreement.

2. For an order directing Defendant to file with this Court and serve on Plaintiff within thirty (30) days after service of the injunction, a report in writing and under oath describing in detail the manner and form in which Defendant has complied with the orders of this Court.

3. For an order directing Defendant's specific performance of the Settlement Agreement.

4. For an award of all actual damages sustained by Plaintiff and all profits realized by Defendant as a result of the breaches alleged herein, and that such damages and/or profits be enhanced to the maximum amount provided by law.

5. For an award of an amount sufficient to conduct a corrective advertising campaign to dispel the effects of Defendant's breaches and confusing and misleading advertising.

6. For prejudgment interest.

7. For all of Plaintiff's costs of this Action, including attorneys' fees.

8. For such other or further relief as the Court may deem just and proper.

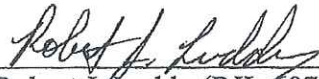
DEMAND FOR JURY TRIAL

Plaintiff 1-800 Contacts, pursuant to Federal Rule of Civil Procedure 38,
hereby demands a trial by jury of all issues so triable.

DATED: February 27, 2008

Respectfully submitted,

WINDELS MARX LANE & MITTENDORF, LLP

By: 
Robert J. Luddy (RJI-6970)
Delton Vandever (DLV-8062)
156 West 56th Street
New York, NY 10019
(212) 237-1000

CHRISTIE, PARKER & HALE, LLP
3501 Jamboree Road, Suite 6000
Newport Beach, CA 92660-2960
Tel: (949) 476-0757

David J. Steele
Howard A. Kroll
Gary Dukarich
(*pro hac vice* admission being sought)

Attorneys for Plaintiff 1-800 Contacts, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

1-800 CONTACTS, INC.,

Plaintiff,

-against-

VISION DIRECT, INC.,

Defendant.

COMPLAINT

JURY TRIAL DEMANDED

WINDELS MARX LANE & MITTENDORF, LLP
Attorneys for Plaintiff

156 WEST 56TH STREET
NEW YORK, NEW YORK 10019
212.237.1000

To: _____ Signature (Rule 130-1.1-a)

Printed name beneath Robert J. Luddy

Attorney(s) for _____
Service of a copy of the within _____ is hereby admitted.

Dated,

Attorney(s) for _____

Please take notice

NOTICE OF ENTRY
that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within court on

NOTICE OF SETTLEMENT

that an order
settlement to the HON.
of the within court, at
on _____

of which the within is a true copy will be presented for
_____ one of the judges

at _____ M

Dated,

Yours, etc.

WINDELS MARX LANE & MITTENDORF, LLP
Attorneys for

To

156 WEST 56TH STREET
NEW YORK, NEW YORK 10019
212.237.1000

Attorney(s) for

Request # 14

LENS - 00417

EXHIBIT Q

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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

<p>1-800 CONTACTS, INC., a Delaware corporation;</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>WALGREEN CO., an Illinois corporation,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">COMPLAINT</p> <p>Case No. _____</p> <p>Judge _____</p> <p style="text-align: center;">(JURY DEMAND)</p>
---	--

Plaintiff 1-800 Contacts, Inc. ("1-800 Contacts" or "Plaintiff"), by and through counsel, alleges and complains against Defendant Walgreen Company, ("Defendant") as follows:

JURISDICTION AND VENUE

1. This is an action for trademark infringement and unfair competition under §§ 32 and 43 of the Lanham Act (a.k.a. Trademark Act of 1946, 15 U.S.C. §§ 1051-1127, as amended), and state law infringement and false advertising claims.

2. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (trademarks), and 15 U.S.C. § 1121 (trademarks). This

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Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367(a), because those claims arise from the common nucleus of operative facts alleged in Plaintiff's federal claims.

3. This Court has personal jurisdiction over Defendant because, on information and belief, Defendant has transacted business in Utah and has caused damage to Plaintiff in Utah. Defendant has purposefully availed itself of the privilege of transacting business in this District by, *inter alia*, advertising its contact lens products via the Internet in this District, offering an interactive website www.walgreens.com accessible to consumers throughout the country, including in this District, which permits the consumer to create an account and order contact lenses to be shipped to the consumer in this District. Defendant has used Plaintiff's trademarks in connection with its Internet advertising, including in this District, without the authorization or consent of Plaintiff. In addition, Defendant has had such continuous and systematic business contacts with this district that Defendant is subject to general personal jurisdiction in this district.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because there is personal jurisdiction over Defendant, and because a substantial part of Defendant's acts and omissions giving rise to Plaintiff's claims occurred in this judicial district.

PARTIES

5. Plaintiff 1-800 Contacts, Inc. is a Delaware corporation having its principal place of business at 66 East Wadsworth Park Drive, Draper, Utah 84020. Plaintiff is engaged in retail sales of contact lenses, including marketing and selling contact lenses via the Internet.

6. Upon information and belief, Defendant is an Illinois corporation having a place of business at 200 Wilmot Road, Deerfield, Illinois 60015. Upon information and belief,

Defendant is engaged in retail sales of contact lenses throughout the country, including marketing and selling contact lenses via the Internet in direct competition with Plaintiff.

7. Upon information and belief, Defendant owns and operates the website www.walgreens.com, and possibly others, relating to its business of offering and selling contact lenses and vision-related products.

GENERAL ALLEGATIONS

8. For over a decade, Plaintiff has been, and continues to be, engaged in the business of advertising, offering for sale, selling and distributing contact lenses and eye care products via telephone, fax, Internet, and mail orders (the "Goods and Services"). 1-800 Contacts is the market leader, having filled over ten million orders for millions customers. Plaintiff's contact lens and eye care products can be ordered via the Internet at Plaintiff's website: www.1800contacts.com.

9. Plaintiff owns common law and federally registered trademark rights in the marks 1-800 CONTACTS, 1800 CONTACTS (U.S. Registration No. 2,731,114) and 1800CONTACTS (U.S. Registration No. 2,675,866) (the "1-800 Contacts marks").

10. Since at least as early as 1995, Plaintiff has advertised and offered its Goods and Services using one or more of the 1-800 Contacts marks in interstate commerce throughout the United States. The 1-800 Contacts marks have been used extensively in advertising and promotional media, including the Internet, radio, television, trade shows, various printed media, and direct mail.

11. Plaintiff has expended hundreds of millions of dollars advertising and marketing its Goods and Services using the 1-800 Contacts marks over many years. As a result, the 1-800 Contacts marks and Goods and Services have achieved significant commercial success and

widespread consumer fame and recognition. In addition, the consuming public has come to regard the 1-800 Contacts marks as symbols of Plaintiff, of Plaintiff's quality Goods and Services, and of Plaintiff's goodwill as the leader in the retail contact lens industry.

12. Like Plaintiff, Defendant advertises and offers contact lenses over the Internet through its www.walgreens.com website in direct competition with Plaintiff. Defendant does so via keyword advertising campaigns through various search engines such as, for example, Google, Yahoo, Ask, AOL, and Bing.

13. On information and belief, Defendant is aware of the strong consumer recognition enjoyed by the 1-800 Contacts marks and the significant goodwill Plaintiff has created in those marks.

14. In order to trade off of Plaintiff's goodwill and capitalize on the fame and recognition of the 1-800 Contacts marks, Defendant has purchased, continues to purchase, and has caused to be purchased, the 1-800 Contacts marks and/or confusingly similar variations or misspellings thereof as keywords that trigger the display of sponsored advertisements for Defendant's competitive goods and services.

15. On March 1, 2010, Plaintiff notified defendant of its infringing conduct. Following that notice, Defendant's infringing activity stopped or substantially decreased.

16. However, Defendant resumed and/or increased its infringing activity in early April 2010 despite Plaintiff's prior notice.

17. On May 21, 2010, Defendant represented to Plaintiff that Defendant "does not currently use the name 1-800 CONTACTS or any combination of '800' and 'Contacts' as a search term or keyword."

18. Contrary to Defendant's representation, sponsored links and advertisements for Defendant's goods and services have continued to be triggered by search engine keyword searches for the 1-800 Contacts marks.

19. On information and belief, the keyword advertising programs offered by the various search engines give control to the user, such as Defendant, to (a) select the keywords it wishes to purchase to trigger its sponsored advertisements, and (b) implement "negative keywords" that will ensure such advertisements are not triggered in response to a search for such negative keywords.

20. On information and belief, Defendant is aware of the control it has over the keyword advertising programs offered by the various search engines with respect to Defendant's advertisements. In particular, Defendant is aware that it can easily implement the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as "negative keywords" in its Internet advertising campaigns to ensure that Defendant's directly competitive advertisements are not displayed in response to a consumer searching for Plaintiff and/or Plaintiff's Goods and Services.

21. Notwithstanding the foregoing, Defendant has not sufficiently implemented the 1-800 Contacts marks (and confusingly similar variations or misspellings thereof) as negative keywords, but has instead voluntarily and consciously participated in causing its competitive advertisements to be displayed in response to consumers searching for the 1-800 Contacts marks and Plaintiff's Goods and Services.

22. On information and belief, Defendant uses affiliate networks to advertise over the Internet and can control what keywords its affiliates use to place sponsored ads and can require its affiliates to implement certain negative keywords in their advertising campaigns. Despite this

control, Defendant has refused to require its affiliates to stop using the 1-800 Contacts mark and variations and misspellings thereof as triggering keywords in their on-line advertising campaigns. Defendant has also refused to require its affiliates to implement the 1-800 Contacts marks as negative keywords in their advertising campaigns. Instead, Defendant wishes to profit and benefit from sponsored links to its website and paid advertisements for its goods and services being displayed in response to a user searching specifically for Plaintiff.

23. Defendant's unauthorized use of the 1-800 Contacts marks as keywords in its Internet advertising campaigns, its participation in causing its sponsored advertisements to be displayed in response to searches for Plaintiff and Plaintiff's Goods and Services, and its refusal to cause its affiliates to respect Plaintiff's trademark rights in the advertising campaigns they conduct on Defendant's behalf has caused, and will continue to cause, confusion and mistake, including initial interest confusion, as to the source or origin of Defendant's goods and services and is likely to falsely suggest a sponsorship, connection, license, endorsement or association by Plaintiff with Defendant's goods and services, thereby injuring Plaintiff and the consuming public.

24. Defendant's actions also unjustly enrich Defendant by wrongfully directing consumers searching for Plaintiff and Plaintiff's Goods and Services on the Internet to Defendant's competitive website where such consumers purchase contact lenses from Defendant rather than Plaintiff.

CAUSES OF ACTION

COUNT I

(TRADEMARK INFRINGEMENT UNDER SECTION 43(a) OF THE LANHAM ACT – 35 U.S.C. § 1125)

25. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

26. Defendant's acts as alleged herein with respect to its infringement of Plaintiff's marks are likely to cause public confusion, mistake, or deception as to the affiliation, connection, or association of Plaintiff with Defendant. Defendant's acts are also likely to cause public confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods and services by Plaintiff. Accordingly, Defendant's acts constitute trademark infringement in violation of 15 U.S.C. § 1125(a).

27. To the extent Defendant utilizes affiliates to conduct keyword advertising on its behalf, Defendant is secondarily liable for the infringing acts of its affiliates that likewise purchase the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as keywords (and fail to implement corresponding negative keywords) in order to display advertisements for Defendant's competitive goods and services in response to searches for Plaintiff and Plaintiff's Goods and Services.

28. Plaintiff has been and will continue to be damaged by such wrongful acts.

29. Because Defendant's actions, on information and belief, were intentional, willful and/or deliberate, Plaintiff is entitled to an award of treble damages under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

30. This is an exceptional case, and thus Plaintiff is entitled to an award of attorneys' fees under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

31. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief and monetary damages against Defendant.

COUNT II

(TRADEMARK INFRINGEMENT UNDER SECTION 32 OF THE LANHAM ACT – 35 U.S.C. § 1114)

32. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

33. Defendant's acts as alleged herein with respect to its infringement of Plaintiff's marks are likely to cause public confusion, mistake, or deception and, therefore, constitute trademark infringement in violation of 15 U.S.C. § 1114.

34. To the extent Defendant utilizes affiliates to conduct keyword advertising on its behalf, Defendant is secondarily liable for the infringing acts of its affiliates that likewise purchase the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as keywords (and fail to implement corresponding negative keywords) in order to display advertisements for Defendant's competitive goods and services in response to searches for Plaintiff and Plaintiff's Goods and Services.

35. Plaintiff has been and will continue to be damaged by such wrongful acts.

36. Because Defendant's actions, on information and belief, were intentional, willful and/or deliberate, Plaintiff is entitled to an award of treble damages under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

37. This is an exceptional case, and thus Plaintiff is entitled to an award of attorneys' fees under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

38. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief and monetary damages against Defendant.

COUNT III
(CONTRIBUTORY TRADEMARK INFRINGEMENT UNDER SECTIONS 43(A) AND 32 OF THE
LANHAM ACT)

39. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

40. On information and belief, the search engines through which Defendant conducts its advertising use the 1-800 Contacts marks in order to display Defendant's competitive advertisements and links to Defendant's competitive websites. Such use is a use in commerce in

connection with the advertisement of Defendant's competitive goods and services which is likely to cause public confusion, mistake, or deception as to the affiliation, connection, or association of Plaintiff with Defendant. Such use is also likely to cause public confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods and services by Plaintiff. Accordingly, the search engines' acts constitute trademark infringement in violation of 15 U.S.C. §§ 1114 and 1125(a).

41. Defendant's actions as alleged above, and particularly Defendant's failure to implement appropriate negative keywords in connection with its internet advertising campaigns through the search engines to ensure that Defendant's advertisements and/or links to Defendant's competitive websites are not displayed in response to or as a result of a search for Plaintiff's trademarks and/or Goods and Services, demonstrate a willful blindness to the infringement of the 1-800 Contacts marks and the consumer confusion being caused by its participation in its internet advertising campaigns. Such actions constitute contributory infringement, whether or not Defendant affirmatively purchases any of Plaintiff's trademarks as keywords.

42. Plaintiff has been and will continue to be damaged by such wrongful acts.

43. Plaintiff is, therefore, entitled to all damages and relief set forth under Counts I and II above due to Defendant's contributory trademark infringement.

COUNT IV

(COMMON LAW UNFAIR COMPETITION, MISAPPROPRIATION, AND TRADEMARK INFRINGEMENT – UTAH UNFAIR COMPETITION ACT, UTAH CODE ANN. §13-5a-101 *et. seq.*)

44. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

45. The 1-800 Contacts marks are distinctive of Plaintiff's Goods and Services and of Plaintiff as the source for those Goods and Services.

46. Defendant's actions, as alleged above, were intentional business acts that infringe and diminish the value of Plaintiff's trademark rights under federal common law and Utah common law and, therefore, constitute acts of unfair competition under Utah Code Ann. §13-5a-102(4)(a).

47. By reason of the foregoing, Plaintiff is entitled to injunctive relief and monetary damages against Defendant.

48. The infringing activities of Defendant, on information and belief, are willful and intentional, thereby justifying an award of exemplary and/or punitive damages.

**COUNT V
(UNJUST ENRICHMENT)**

49. Plaintiff realleges and incorporates by this reference all of the foregoing paragraphs.

50. Defendant has benefited from the improper, unfair, and unauthorized use of the 1-800 Contacts marks in its Internet advertising and its unauthorized trading off of Plaintiff's goodwill attendant thereto, as alleged above.

51. Defendant has knowledge and fully appreciates the benefits it has received from Plaintiff's trademark rights, consumer recognition, and goodwill as a result of such actions.

52. Defendant would be unjustly enriched if it were permitted to retain the proceeds obtained from such actions.

53. Equity and good conscience dictate that Defendant be required to account for and turn over to Plaintiff an amount equal to the value of the benefits involuntarily conferred upon it.

JURY DEMAND

Plaintiff demands that all claims and causes of action raised in this complaint against Defendant be tried to a jury to the fullest extent possible under the United States and Utah Constitutions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

A. Preliminarily and permanently enjoining Defendant, its affiliates, and all other persons participating or acting in concert with it, from infringing any of Plaintiff's rights in the 1-800 Contacts marks.

B. Preliminarily and permanently enjoining Defendant, its affiliates, and all other persons participating or acting in concert with it, from purchasing or using the 1-800 Contacts marks or any marks confusingly similar to the 1-800 Contacts marks as keywords in Internet search engine advertising programs and from otherwise using such marks in any manner that is likely to cause confusion or mistake as to whether Defendant and its goods and services are authorized by, affiliated with, sponsored by, or endorsed by Plaintiff;

C. Ordering Defendant, its affiliates, and all other persons participating or acting in concert with it to implement the 1-800 Contacts marks and all confusingly similar variations and misspelling thereof as negative keywords in all of their search engine advertising campaigns;

D. Ordering Defendant to provide an accounting of all revenues and profits gained by Defendant while engaging in the acts complained of in this complaint;

E. Ordering Defendant to promulgate corrective advertising pursuant to Utah Code Ann. § 13-11a-4(3);

F. Awarding Plaintiff its actual damages, and awarding Plaintiff any additional damages that the Court deems just and equitable under the circumstances of the case; but in no case less than the statutory damages mandated under Utah Code Ann. § 13-11a-4(2)(b);

G. Awarding Plaintiff, at its election, either treble or statutory damages in accordance with § 35 of the Lanham Act (15 U.S.C. § 1117) on all claims asserted under § 43 of the Lanham Act (15 U.S.C. § 1125);

H. Awarding Plaintiff damages to which it is entitled based upon Defendant's unjust enrichment;

I. Awarding Plaintiff prejudgment interest at the rate established under 26 U.S.C. § 6621(a)(2) from the date of service of the Complaint through the date of judgment;

J. Awarding Plaintiff its allowable costs and attorneys fees; and

K. Awarding Plaintiff such other and/or further relief as is just and equitable.

DATED this 8th day of June, 2010.

Respectfully submitted,

/s/ Mark A. Miller

Mark A. Miller (9563)

Bryan G. Pratt (9924)

Brett L. Foster (6089)

Plaintiff's Address:
66 East Wadsworth Park Drive
Draper, Utah 84020

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

1-800 CONTACTS

(b) County of Residence of First Listed Plaintiff Salt Lake (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Mark A. Miller, Holland & Hart, 222 South Main, Ste 2200, SLC, UT 84101 801-799-5800

DEFENDANTS

WALGREEN CO., an Illinois corporation

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Sections 32 and 43, Lanham Act; 15 U.S.C. sections 1051-1127. Brief description of cause: trademark infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

06/08/2010 /s/ Mark A. Miller

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

- Print, Save As..., Export as FDF, Retrieve FDF File, Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT R

Mark A. Miller, 9563
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 bgpratt@hollandhart.com
Brett L. Foster, 6089
 bfoster@hollandhart.com
 HOLLAND & HART LLP
 222 South Main, Suite 2200
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 Telephone: (801) 799-5800
 Facsimile: (801) 799-5700
Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

<p>1-800 CONTACTS, INC., a Delaware corporation;</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>WEB EYE CARE, INC., a Pennsylvania corporation,</p> <p style="text-align: center;">Defendant.</p>	<p>COMPLAINT</p> <p>Case No. 2:10-cv-770</p> <p>Judge Dale A. Kimball</p> <p>(JURY DEMAND)</p>
--	--

Plaintiff 1-800 Contacts, Inc. ("1-800 Contacts" or "Plaintiff"), by and through counsel, alleges and complains against Defendant Web Eye Care, Inc., ("Defendant") as follows:

JURISDICTION AND VENUE

1. This is an action for trademark infringement and unfair competition under §§ 32 and 43 of the Lanham Act (a.k.a. Trademark Act of 1946, 15 U.S.C. §§ 1051-1127, as amended), and state law infringement and false advertising claims.

2. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (trademarks), and 15 U.S.C. § 1121 (trademarks). This

4888572_1.DOC

Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367(a), because those claims arise from the common nucleus of operative facts alleged in Plaintiff's federal claims.

3. This Court has personal jurisdiction over Defendant because, on information and belief, Defendant has transacted business in Utah and has caused damage to Plaintiff in Utah. Defendant has purposefully availed itself of the privilege of transacting business in this District by, *inter alia*, advertising its contact lens products via the Internet in this District, offering an interactive website www.webeyecare.com accessible to consumers throughout the country, including in this District, which permits the consumer to order contact lenses to be shipped to the consumer in this District. Defendant has used Plaintiff's trademarks in connection with its Internet advertising, including in this District, without the authorization or consent of Plaintiff.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because there is personal jurisdiction over Defendant, and because a substantial part of Defendant's acts and omissions giving rise to Plaintiff's claims occurred in this judicial district.

PARTIES

5. Plaintiff 1-800 Contacts, Inc. is a Delaware corporation having its principal place of business at 66 East Wadsworth Park Drive, Draper, Utah 84020. Plaintiff is engaged in retail sales of contact lenses, including marketing and selling contact lenses via the Internet.

6. Upon information and belief, Defendant is a Pennsylvania corporation having a place of business at 176 N. Pine Street, Langhorne, PA, 19047. Upon information and belief, Defendant is engaged in retail sales of contact lenses, including marketing and selling contact lenses via the Internet in direct competition with Plaintiff.

7. Upon information and belief, Defendant owns and operates the website www.webeyecare.com, and possibly others, relating to its business of offering and selling contact lenses and vision-related products.

GENERAL ALLEGATIONS

8. For over a decade, Plaintiff has been, and continues to be, engaged in the business of advertising, offering for sale, selling and distributing contact lenses and eye care products via telephone, fax, Internet, and mail orders (the "Goods and Services"). 1-800 Contacts is the market leader, having filled over ten million orders for millions customers. Plaintiff's contact lens and eye care products can be ordered via the Internet at Plaintiff's website: www.1800contacts.com.

9. Plaintiff owns common law and federally registered trademark rights in the marks 1-800 CONTACTS, 1800 CONTACTS (U.S. Registration No. 2,731,114) and 1800CONTACTS (U.S. Registration No. 2,675,866) (the "1-800 Contacts marks").

10. Since at least as early as 1995, Plaintiff has advertised and offered its Goods and Services using one or more of the 1-800 Contacts marks in interstate commerce throughout the United States. The 1-800 Contacts marks have been used extensively in advertising and promotional media, including the Internet, radio, television, trade shows, various printed media, and direct mail.

11. Plaintiff has expended hundreds of millions of dollars advertising and marketing its Goods and Services using the 1-800 Contacts marks over many years. As a result, the 1-800 Contacts marks and Goods and Services have achieved significant commercial success and widespread consumer fame and recognition. In addition, the consuming public has come to

regard the 1-800 Contacts marks as symbols of Plaintiff, of Plaintiff's quality Goods and Services, and of Plaintiff's goodwill as the leader in the retail contact lens industry.

12. Like Plaintiff, Defendant advertises and offers contact lenses over the Internet through its www.webeyecare.com website in direct competition with Plaintiff. Defendant does so via keyword advertising campaigns through various search engines such as, for example, Google and AOL.

13. On information and belief, Defendant is aware of the strong consumer recognition enjoyed by the 1-800 Contacts marks and the significant goodwill Plaintiff has created in those marks.

14. In order to trade off of Plaintiff's goodwill and capitalize on the fame and recognition of the 1-800 Contacts marks, Defendant has purchased, continues to purchase, and has caused to be purchased, the 1-800 Contacts marks and/or confusingly similar variations or misspellings thereof as keywords that trigger the display of sponsored advertisements for Defendant's competitive goods and services.

15. On information and belief, the keyword advertising programs offered by the various search engines give control to the user, such as Defendant, to (a) select the keywords it wishes to purchase to trigger its sponsored advertisements, (b) select a "match type" for their selected keywords – i.e., broad match, exact match, phrase match, and (c) implement "negative keywords" that will ensure such advertisements are not triggered in response to a search for such negative keywords.

16. On information and belief, Defendant is aware of the control it has over the keyword advertising programs offered by the various search engines with respect to Defendant's advertisements. In particular, Defendant is aware that it can easily implement the 1-800 Contacts

marks and confusingly similar variations or misspellings thereof as “negative keywords” in its Internet advertising campaigns to ensure that Defendant’s directly competitive advertisements are not displayed in response to a consumer searching for Plaintiff and/or Plaintiff’s Goods and Services.

17. Notwithstanding the foregoing, Defendant has not implemented the 1-800 Contacts marks (and confusingly similar variations or misspellings thereof) as negative keywords, but has instead consciously participated in causing its competitive advertisements to be displayed in response to consumers searching for the 1-800 Contacts marks and Plaintiff’s Goods and Services.

18. In particular, in addition to purchasing the 1-800 Contacts marks as keywords, on information and belief Defendant has implemented a combination of keywords, match types, and a lack of appropriate negative keywords in its online advertising campaigns that is designed to use the 1-800 Contacts marks (when entered as a search term by a consumer) to trigger the display of their competitive advertisements and links to their competitive website.

19. On information and belief, Defendant uses affiliate networks to advertise over the Internet and can control what keywords its affiliates use to place sponsored ads and can require its affiliates to implement certain negative keywords in their advertising campaigns. Despite this control, Defendant has refused to require its affiliates to stop using the 1-800 Contacts mark and variations and misspellings thereof as triggering keywords in their on-line advertising campaigns. Defendant has also refused to require its affiliates to implement the 1-800 Contacts marks as negative keywords in their advertising campaigns. Instead, Defendant wishes to profit and benefit from sponsored links to its website and paid advertisements for its goods and services being displayed in response to a user searching specifically for Plaintiff.

20. Defendant's unauthorized use of the 1-800 Contacts marks as keywords in its Internet advertising campaigns, its participation in causing its sponsored advertisements to be displayed in response to searches for Plaintiff and Plaintiff's Goods and Services, and its refusal to cause its affiliates to respect Plaintiff's trademark rights in the advertising campaigns they conduct on Defendant's behalf has caused, and will continue to cause, confusion and mistake, including initial interest confusion, as to the source or origin of Defendant's goods and services and is likely to falsely suggest a sponsorship, connection, license, endorsement or association by Plaintiff with Defendant's goods and services, thereby injuring Plaintiff and the consuming public.

21. Defendant's actions also unjustly enrich Defendant by wrongfully directing consumers searching for Plaintiff and Plaintiff's Goods and Services on the Internet to Defendant's competitive website where such consumers purchase contact lenses from Defendant rather than Plaintiff.

CAUSES OF ACTION

COUNT I

(TRADEMARK INFRINGEMENT UNDER SECTION 43(a) OF THE LANHAM ACT – 35 U.S.C. § 1125)

22. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

23. Defendant's acts as alleged herein with respect to its infringement of Plaintiff's marks are likely to cause public confusion, mistake, or deception as to the affiliation, connection, or association of Plaintiff with Defendant. Defendant's acts are also likely to cause public confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods and services by Plaintiff. Accordingly, Defendant's acts constitute trademark infringement in violation of 15 U.S.C. § 1125(a).

24. To the extent Defendant utilizes affiliates to conduct keyword advertising on its behalf, Defendant is secondarily liable for the infringing acts of its affiliates that likewise purchase the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as keywords (and fail to implement corresponding negative keywords) in order to display advertisements for Defendant's competitive goods and services in response to searches for Plaintiff and Plaintiff's Goods and Services.

25. Plaintiff has been and will continue to be damaged by such wrongful acts.

26. Because Defendant's actions, on information and belief, were intentional, willful and/or deliberate, Plaintiff is entitled to an award of treble damages under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

27. This is an exceptional case, and thus Plaintiff is entitled to an award of attorneys' fees under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

28. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief and monetary damages against Defendant.

COUNT II

(TRADEMARK INFRINGEMENT UNDER SECTION 32 OF THE LANHAM ACT – 35 U.S.C. § 1114)

29. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

30. Defendant's acts as alleged herein with respect to its infringement of Plaintiff's marks are likely to cause public confusion, mistake, or deception and, therefore, constitute trademark infringement in violation of 15 U.S.C. § 1114.

31. To the extent Defendant utilizes affiliates to conduct keyword advertising on its behalf, Defendant is secondarily liable for the infringing acts of its affiliates that likewise purchase the 1-800 Contacts marks and confusingly similar variations or misspellings thereof as

keywords (and fail to implement corresponding negative keywords) in order to display advertisements for Defendant's competitive goods and services in response to searches for Plaintiff and Plaintiff's Goods and Services.

32. Plaintiff has been and will continue to be damaged by such wrongful acts.

33. Because Defendant's actions, on information and belief, were intentional, willful and/or deliberate, Plaintiff is entitled to an award of treble damages under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

34. This is an exceptional case, and thus Plaintiff is entitled to an award of attorneys' fees under § 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

35. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief and monetary damages against Defendant.

COUNT III
(CONTRIBUTORY TRADEMARK INFRINGEMENT UNDER SECTIONS 43(A)
AND 32 OF THE LANHAM ACT)

36. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

37. On information and belief, the search engines through which Defendant conducts its advertising use the 1-800 Contacts marks in order to display Defendant's competitive advertisements and links to Defendant's competitive websites. Such use is a use in commerce in connection with the advertisement of Defendant's competitive goods and services which is likely to cause public confusion, mistake, or deception as to the affiliation, connection, or association of Plaintiff with Defendant. Such use is also likely to cause public confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods and services by Plaintiff. Accordingly, the search engines' acts constitute trademark infringement in violation of 15 U.S.C. §§ 1114 and 1125(a).

38. Defendant's actions as alleged above, and particularly Defendant's failure to implement appropriate negative keywords in connection with its internet advertising campaigns through the search engines to ensure that Defendant's advertisements and/or links to Defendant's competitive websites are not displayed in response to or as a result of a search for Plaintiff's trademarks and/or Goods and Services, demonstrate a willful blindness to the infringement of the 1-800 Contacts marks and the consumer confusion being caused by its participation in its internet advertising campaigns. Such actions constitute contributory infringement, whether or not Defendant affirmatively purchases any of Plaintiff's trademarks as keywords.

39. Plaintiff has been and will continue to be damaged by such wrongful acts.

40. Plaintiff is, therefore, entitled to all damages and relief set forth under Counts I and II above due to Defendant's contributory trademark infringement.

COUNT IV

(COMMON LAW UNFAIR COMPETITION, MISAPPROPRIATION, AND TRADEMARK INFRINGEMENT – UTAH UNFAIR COMPETITION ACT, UTAH CODE ANN. §13-5a-101 *et. seq.*)

41. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs.

42. The 1-800 Contacts marks are distinctive of Plaintiff's Goods and Services and of Plaintiff as the source for those Goods and Services.

43. Defendant's actions, as alleged above, were intentional business acts that infringe and diminish the value of Plaintiff's trademark rights under federal common law and Utah common law and, therefore, constitute acts of unfair competition under Utah Code Ann. §13-5a-102(4)(a).

44. By reason of the foregoing, Plaintiff is entitled to injunctive relief and monetary damages against Defendant.

45. The infringing activities of Defendant, on information and belief, are willful and intentional, thereby justifying an award of exemplary and/or punitive damages.

**COUNT V
(UNJUST ENRICHMENT)**

46. Plaintiff realleges and incorporates by this reference all of the foregoing paragraphs.

47. Defendant has benefited from the improper, unfair, and unauthorized use of the 1-800 Contacts marks in its Internet advertising and its unauthorized trading off of Plaintiff's goodwill attendant thereto, as alleged above.

48. Defendant has knowledge and fully appreciates the benefits it has received from Plaintiff's trademark rights, consumer recognition, and goodwill as a result of such actions.

49. Defendant would be unjustly enriched if it were permitted to retain the proceeds obtained from such actions.

50. Equity and good conscience dictate that Defendant be required to account for and turn over to Plaintiff an amount equal to the value of the benefits involuntarily conferred upon it.

JURY DEMAND

Plaintiff demands that all claims and causes of action raised in this complaint against Defendant be tried to a jury to the fullest extent possible under the United States and Utah Constitutions.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

A. Preliminarily and permanently enjoining Defendant, its affiliates, and all other persons participating or acting in concert with it, from infringing any of Plaintiff's rights in the 1-800 Contacts marks.

B. Preliminarily and permanently enjoining Defendant, its affiliates, and all other persons participating or acting in concert with it, from purchasing or using the 1-800 Contacts marks or any marks confusingly similar to the 1-800 Contacts marks as keywords in Internet search engine advertising programs and from otherwise using such marks in any manner that is likely to cause confusion or mistake as to whether Defendant and its goods and services are authorized by, affiliated with, sponsored by, or endorsed by Plaintiff;

C. Ordering Defendant, its affiliates, and all other persons participating or acting in concert with it to implement the 1-800 Contacts marks and all confusingly similar variations and misspelling thereof as negative keywords in all of their search engine advertising campaigns;

D. Ordering Defendant to provide an accounting of all revenues and profits gained by Defendant while engaging in the acts complained of in this complaint;

E. Ordering Defendant to promulgate corrective advertising pursuant to Utah Code Ann. § 13-11a-4(3);

F. Awarding Plaintiff its actual damages, and awarding Plaintiff any additional damages that the Court deems just and equitable under the circumstances of the case; but in no case less than the statutory damages mandated under Utah Code Ann. § 13-11a-4(2)(b);

G. Awarding Plaintiff, at its election, either treble or statutory damages in accordance with § 35 of the Lanham Act (15 U.S.C. § 1117) on all claims asserted under § 43 of the Lanham Act (15 U.S.C. § 1125);

H. Awarding Plaintiff damages to which it is entitled based upon Defendant's unjust enrichment;

I. Awarding Plaintiff prejudgment interest at the rate established under 26 U.S.C. § 6621(a)(2) from the date of service of the Complaint through the date of judgment;

- J. Awarding Plaintiff its allowable costs and attorneys fees; and
- K. Awarding Plaintiff such other and/or further relief as is just and equitable.

DATED this 10th day of August, 2010.

Respectfully submitted,

/s/ Mark A. Miller
Mark A. Miller (9563)
Bryan G. Pratt (9924)
Brett L. Foster (6089)

Plaintiff's Address:
66 East Wadsworth Park Drive
Draper, Utah 84020

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

1-800 CONTACTS

(b) County of Residence of First Listed Plaintiff Salt Lake (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Mark A. Miller, Holland & Hart, 222 South Main, Ste 2200, SLC, UT 84101 801-799-5800

DEFENDANTS

WEB EYE CARE, INC., a Pennsylvania corporation

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Sections 32 and 43, Lanham Act, 15 U.S.C. sections 1051-1127. Brief description of cause: trademark infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

08/10/2010 /s/ Mark A. Miller

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

- Print, Save As..., Export as FDF, Retrieve FDF File, Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT S

IN CAMERA

SUBMITTED IN CAMERA

EXHIBIT T

IN CAMERA

SUBMITTED IN CAMERA

EXHIBIT U

IN CAMERA

SUBMITTED IN CAMERA

EXHIBIT V

IN CAMERA

SUBMITTED IN CAMERA

EXHIBIT W

IN CAMERA

SUBMITTED IN CAMERA

EXHIBIT X

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SUBMITTED IN CAMERA

EXHIBIT Y

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SUBMITTED IN CAMERA

EXHIBIT Z

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SUBMITTED IN CAMERA

EXHIBIT AA

IN CAMERA

SUBMITTED IN CAMERA

EXHIBIT BB

IN CAMERA

SUBMITTED IN CAMERA

IN CAMERA

EXHIBIT CC

IN CAMERA

SUBMITTED IN CAMERA

Notice of Electronic Service

I hereby certify that on January 03, 2017, I filed an electronic copy of the foregoing Respondent 1-800 Contacts' Opp. to Motion to Compel Response to Interrogatory No. 8 (PUBLIC Version), with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on January 03, 2017, I served via E-Service an electronic copy of the foregoing Respondent 1-800 Contacts' Opp. to Motion to Compel Response to Interrogatory No. 8 (PUBLIC Version), upon:

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PSCRIPT Page Separator

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



ORIGINAL

In the Matter of)
)
)
1-800 Contacts, Inc.,)
a corporation,)
)
Respondent.)

DOCKET NO. 9372

ORDER REQUIRING REPLY

On December 22, 2016, Federal Trade Commission ("FTC") Complaint Counsel filed a Motion to Compel Response to Interrogatory No. 8. Respondent filed an Opposition to the Motion on January 3, 2017. Pursuant to FTC Rule 3.22(d), Complaint Counsel is hereby ORDERED to file a reply to Respondent's opposition no later than January 11, 2017.

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: January 4, 2017

Notice of Electronic Service

I hereby certify that on January 04, 2017, I filed an electronic copy of the foregoing Order Requiring Reply, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
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Washington, DC, 20580

I hereby certify that on January 04, 2017, I served via E-Service an electronic copy of the foregoing Order Requiring Reply, upon:

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