

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

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CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS, FLORIDA

EXXEL OUTDOORS, LLC,
a Delaware Limited Liability Company,

Plaintiff,

v.

CIVIL ACTION NO. _____

AA OUTDOORS, LLC,
a New York Limited Liability Company,
JACOB FRIEDMAN, an individual,
and **VARIOUS JOHN DOES,**
JANE DOES, and **ABC COMPANIES,**

2:16-cv-902-RM-99CM

Defendants,
_____ /

VERIFIED COMPLAINT

INJUNCTIVE RELIEF SOUGHT

Plaintiff, **EXXEL OUTDOORS, LLC**, a Delaware Limited Liability Company,
(hereinafter "Plaintiff"), by and through its undersigned counsel, hereby files this Verified
Complaint against Defendants **AA OUTDOORS, LLC**, a New York Limited Liability
Company, **JACOB FRIEDMAN**, an individual, and **VARIOUS JOHN DOES, JANE
DOES,** and **ABC COMPANIES**, (hereinafter collectively referred to as "Defendants"),
and alleges, all upon information and belief, the following:

JURISDICTION

1. This is a Verified Complaint for the various counts and wrongs set forth herein.
2. This Court has original jurisdiction over this action under 28 U.S.C. §§ 1331, 1332, and the Lanham Act, 15 U.S.C. § 1051 et seq., including §§ 1114, 1116, 1117 and 1125 and related statutes and the principles of pendent jurisdiction.
3. The matter in controversy exceeds, exclusive of interest and costs, the sum of TEN MILLION DOLLARS (\$10,000,000.00).
4. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391 and 1400(a), in that Defendants regularly and continually advertise, solicit and/or conduct business in this District, Plaintiff's claim arises in and a substantial part of the events or omissions giving rise to the claims and the harm and damage to Plaintiff as complained of hereinafter have occurred here, are occurring here and will occur here if not enjoined by the Court.

THE PARTIES

5. Plaintiff is a Delaware Limited Liability Company, organized and existing under the laws of the State of Delaware and does business in interstate commerce and within this Middle District, with its principal places of business in this Middle District.
6. Defendant, **AA OUTDOORS, LLC**, at all times material to the issues presented herein, was and is engaged in the illegal and infringing activities complained of hereinafter, had regular and systematic contacts with and currently solicits and does

substantial business within this Middle District.

7. Defendant, **JACOB FRIEDMAN**, is an individual and, at all times material to the issues presented herein, was and is the principal of and the active, conscious and dominant force behind the illegal activities of Defendant, **AA OUTDOORS, LLC**, in the registration of an internet domain name, as is described in greater detail hereinafter and which infringed Plaintiff's rights and was otherwise engaged in the illegal and infringing activities complained of hereinafter.
8. Defendants, **VARIOUS JOHN DOES, JANE DOES, and ABC COMPANIES**, upon information and belief, are individuals and/or business entities who, along with the other herein named Defendants, have engaged in the unauthorized and illegal acts complained of herein. The identities of these unnamed Defendants and the details of their legal associations and participation with the named Defendants herein presently are not and cannot be known to Plaintiff, in large part because such information is not a matter of public record and further because they have concealed their identities from public disclosure.
9. Defendants, either individually and/or acting by and through their principals, officers, agents, employees and other active, conscious and dominant forces behind the illegal activities of the other Defendants as complained of herein, had regular and systematic contacts with and currently do substantial business within this Middle District and have committed the acts complained of herein in interstate commerce.
10. Defendants, either individually and/or acting by and through their principals, officers, agents, employees and other active, conscious and dominant forces behind

their activities, were acting in concert with or in joint venture with the other at all times and were and are the agents of each other in doing the illegal and wrongful acts alleged herein and were acting within the course and scope of such agency.

11. Defendants have committed the acts complained of herein in this Middle District for their individual gain and profit, have purposely caused and/or directed the torts complained of hereinafter into this Middle District, have caused harm to Plaintiff in this Middle District, and by reason thereof all Defendants are subject to both the general and specific the jurisdiction of this Court.

FACTS COMMON TO ALL COUNTS

The previous allegations, as set forth above, and the following facts are common to all Counts asserted by Plaintiff hereafter in its Verified Complaint:

12. Plaintiff is the leading provider of high quality, innovative outdoor recreation products in the United States. Plaintiff is also the largest manufacturer of sleeping bags made in the United States.
13. Plaintiff is a highly successful and respected business offering a broad and growing range of authentic outdoor brands in equipment and apparel for the backyard camper to the high alpine expedition mountaineer.
14. Many of Plaintiff's products are the leading brands in their field, including outdoor equipment, backpacks, gear, hiking and camping related products, boots, shoes, tents, shelters, sleeping bags and mattresses, chairs, military items, clothing, apparel and accessories for a wide variety of uses by consumers of all ages and many other goods and services.

15. Plaintiff has succeeded in separating itself from the competition over the many years in which it has been in business and commercial identity which has been firmly established in the mind of the relevant consuming public.
16. Plaintiff has built exceedingly valuable goodwill which is associated solely with Plaintiff's business as well as a continually expanding brand presence, which features the regular launching of new and innovative products, product lines, and has experienced remarkable commercial success, widespread consumer following, and brand recognition unequalled by the competition.
17. Plaintiff's success, enviable reputation and approach to providing the public with high quality goods and services have made it a leader in its field.
18. Plaintiff's success is in large part due to Plaintiff's innovation, hard work, as well as Plaintiff's significant and ongoing investment in its portfolio of valuable intellectual property, including trademarks, owned exclusively by Plaintiff, and which are in fact source identifiers, designations of origin with valuable brand identity distinguishing Plaintiff's products from all others.

PLAINTIFF'S TRADEMARK RIGHTS

19. Among many other trademarks owned by Plaintiff, Plaintiff is the owner of all right, title, and interest in its protected and proprietary trademarks and trademark registrations, which prominently use and display the WENZEL® mark, including without limitation U.S. Trademark Registration No. 1010087 for WENZEL (a mark and registration which has attained the status of incontestable under the U.S. Trademark Act); and U.S. Trademark Registration No. 1935918 (a mark and

registration which has attained the status of incontestable under the U.S. Trademark Act) for Plaintiff's many goods and services, U.S. Trademark Registration No. 4387354 for the Mark WENZEL (hereinafter "Plaintiff's Family of Wenzel Marks").

20. The aforesaid registrations for Plaintiff's Family of WENZEL Marks provide nationwide, constructive notice to the public of Plaintiff, Plaintiff's Family of WENZEL Marks and the goods and services offered under the same.
21. Plaintiff's Family of WENZEL Marks and registrations for the same are well known to the relevant consuming public, which specifically includes Defendants, and are fully valid, legally subsisting and enforceable.
22. Plaintiff's goods and services have been widely advertised and extensively offered to the public under Plaintiff's Family of WENZEL Marks throughout the United States and in commerce by Plaintiff or its predecessors in interest since at least as early as 1887, which is long before Defendants' infringing use, as is described herein.
23. Plaintiff has used Plaintiff's Family of WENZEL Marks to establish a strong connection between Plaintiff's Family of WENZEL Marks and the goods and services advertised under the same.
24. Plaintiff enjoys considerable success and an enviable reputation in its profession and commercial enterprises due in large part to its use of, and rights in, Plaintiff's Family of WENZEL Marks.
25. Plaintiff openly, prominently and conspicuously uses and promotes its goods and services under Plaintiff's Family of WENZEL Marks to create and benefit from

brand and trade identity and to distinguish its goods and services from those sold by others.

26. Plaintiff has made considerable expenditures to build its brand so successfully. As a result of Plaintiff's many investments of time and money, Plaintiff's Family of WENZEL Marks has become synonymous with Plaintiff's high quality goods and services, have become well known and the same have resulted in goodwill as well as assets of substantial value.
27. Plaintiff's Family of WENZEL Marks has been widely, prominently and continuously advertised and promoted to the public with the well known ® trademark registration symbol, which notifies the public that Plaintiff's Family of WENZEL Marks is federally registered.
28. Plaintiff's Family of WENZEL Marks has been widely, prominently and continuously advertised and promoted to the public through many and various means and modes, including but not limited to via the internet on Plaintiff's well known and frequented websites featuring the genuine article distinguished by Plaintiff's incontestable WENZEL brand, such as shown below.
29. By reason of such advertising and promotion, the public has come to recognize Plaintiff's goods and services offered under Plaintiff's Family of WENZEL Marks as emanating from Plaintiff.
30. Plaintiff's well known products are sold via their website at www.wenzelco.com and also by some of the largest retailers in the world, such as Walmart, REI, Camping World, Sears, Kohl's and many others.

31. Plaintiff's genuine and authentic products distinguished by the WENZEL brand are shown below:



(Genuine WENZEL® product)

32. Plaintiff enforces its rights in Plaintiff's Family of WENZEL Marks in order to protect itself and the public from infringers and in order to preserve what Plaintiff has worked hard to build as a valuable brand portfolio and highly successful business model.

ILLEGAL ACTS OF DEFENDANTS

33. Defendants have acted willfully and with intent to profit from Plaintiff's Family of WENZEL Marks and the goodwill associated with the same by registering, directly

causing the registration of and/or actively participating in the registration and commercial use of the top level domain name www.wenzelstore.com (hereinafter the “Infringing Domain Name”), which wholly incorporates, is identical to and confusingly similar to or dilutive of Plaintiff’s Family of WENZEL Marks.

34. Additionally, and despite Plaintiff’s prior use, ownership and registration of Plaintiff’s Family of WENZEL Marks, Defendants used, offered and/or sold goods or services under the same or confusingly similar trademark, WENZEL, to the public in connection with commercial advertising in interstate commerce and on the internet through Defendants’ fully interactive website at

www.wenzelstore.com.

35. The following is a representative example of the Defendants’ unauthorized use and display of the Infringing Mark:



36. Defendants’ website and/or web content bearing the Infringing Mark has been, and

is accessible in the State of Florida, directed to consumers in the State of Florida, and has in fact been accessed by users in the State of Florida.

37. The use of the Infringing Mark and the registration of the Infringing Domain Name by Defendants violates, among other laws, the Lanham Act, 15 U.S.C. § 1051 et seq., including §§ 1114, 1117 and 1125.
38. Defendants either knew or should have known of Plaintiff's prior rights in and to Plaintiff's Family of WENZEL Marks, which makes their acts willful.
39. Defendants have been openly and actively engaged in the unauthorized, infringing, unlicensed, and imitative use of the Infringing Mark for their commercial gain, on an ongoing basis.
40. The public offering for sale of goods and services under the Infringing Mark and the Infringing Domain Name by Defendants is and has been without the consent, permission or authority of Plaintiff.
41. Defendants' conduct harms Plaintiff and Plaintiff's trademark rights and has, and is, causing damage to Plaintiff needlessly.
42. The Infringing Mark and the Infringing Domain Name have been used by Defendants and offered to the public utilizing this District as a forum for its infringing activities with actual and/or constructive knowledge that neither are genuine nor authorized by Plaintiff.
43. By using the Infringing Mark and the Infringing Domain Name and offering services and goods for sale under the same, Defendants, on a widespread basis, have misrepresented and/or falsely described to the general public the origin and source of Defendants' goods and services so as to deceive the public and

deliberately create the likelihood of consumer confusion.

44. By using the Infringing Mark and the Infringing Domain Name, and offering goods and services for sale under the same, Defendants have caused and continues to cause mistake, or to deceive the consuming public as to the affiliation, connection, or association of Defendants with Plaintiff, or as to the origin, sponsorship, or approval of Defendants' goods and services, or commercial activities by the ultimate purchaser as to both the source and sponsorship of Defendants' goods and services.
45. Defendants' goods and services offered under the Infringing Mark and the Infringing Domain Name, to the extent that they are not the genuine article of Plaintiff and not fully authorized by Plaintiff, are or may be of lesser quality to the goods and services authorized to be sold by Plaintiff, and the sale thereof has, does, and will continue to damage and dilute the goodwill Plaintiff has developed in connection with offering legitimate, authorized goods and services under one or more of Plaintiff's Family of WENZEL Marks.
46. Defendants traded upon the goodwill that belonged solely to Plaintiff, and has misled and will continue to confuse, deceive and mislead the public in this regard.
47. Defendants have advertised, distributed, offered for sale, and/or sold in the State of Florida and in interstate commerce, the same or highly related goods and/or services under the Infringing Mark, thus creating the likelihood of confusion, deception, and mistake as to the source, affiliation, connection, or association of Plaintiff's genuine goods and services, or as to the origin, sponsorship, or approval of Defendants' goods, services or commercial activities.

48. The use by Defendants of the Infringing Mark and the Infringing Domain Name falsely designates that Defendants' goods and services which are offered to the public by Defendants originate from, or are connected with Plaintiff.
49. The use by Defendants of the Infringing Mark and the Infringing Domain Name constitutes a false description of fact and/or misrepresentations in commerce, a knowing use of a false designation of origin, a false description or representation that wrongly trades upon Plaintiff's favorable reputation and goodwill and a false marking of said goods.
50. The imitation, reproduction, and unauthorized use of the Infringing Mark and the Infringing Domain Name causes irreparable injury to Plaintiff, including injury to its business reputation and dilution of the distinctive quality of Plaintiff's Family of WENZEL Marks.
51. Defendants' use of the Infringing Mark and the Infringing Domain Name is likely to, and/or does, cause Defendants to pass off their goods and services as those of Plaintiff's, all to the detriment of Plaintiff and to the unjust enrichment of Defendants.
52. Defendants' use of the Infringing Mark and the Infringing Domain Name has caused, does cause, and/or is likely to continue to cause, damage to Plaintiff's valuable reputation and image associated with Plaintiff and its goods and services.
53. The wrongful acts of Defendants, as are set forth herein, are negligent and/or intentional and are calculated to provide Defendants with commercial benefit to the detriment Plaintiff.
54. The wrongful acts of Defendants, as are set forth herein, are directed to the same or

highly similar consumers as those to which Plaintiff directs its advertising and is likely to deceive consumers into making a decision to purchase Defendants' products over those offered by Plaintiff under Plaintiff's Family of WENZEL Marks.

55. Defendants' unlawful activities results in irreparable harm and injury to Plaintiff.

Among other harms, it:

- a. deprives Plaintiff of its absolute right to determine the manner in which its goods and services are presented to the general public, including but not limited to the right to determine the scope, manner and expansion of its rights;
- b. damages Plaintiff's valuable and distinctive trademark rights;
- c. deceives the public as to the origin and sponsorship of such goods and services;
- d. wrongfully trades upon and cashes in on Plaintiff's reputation and exclusive rights in its trademarks; and
- e. deceives the public as to the nature, quality and characteristics of Defendants' goods and services and, to the extent Defendants' goods and services are or may be of inferior quality or unauthorized for sale or distribution, irreparably harms and injures Plaintiff's reputation.

56. Among the other relief sought herein, Plaintiff is entitled to a preliminary and permanent injunction restraining Defendants, its and their principals, officers, agents, servants, employees, and attorneys, and all persons acting in concert with them, from engaging in any further acts in violation of the applicable law.

57. Plaintiff is further entitled to recover from Defendants all of the damages available under the applicable law, including but not limited to actual damages, treble damages and/or statutory damages, interest, and attorney fees and costs it has sustained and will sustain, and any gains, profits and advantages obtained by

Defendants as a result of the acts as alleged herein. At present, the amount of such damages, gains, profits, and advantages cannot be fully ascertained by Plaintiff.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT
(15 U.S.C. §1051 et seq., §§ 1114, 1117)

58. Defendants' acts, as alleged herein, including the use, advertising and displaying of the Infringing Mark constitute federal trademark infringement, in violation of 15 U.S.C. § 1051 et seq., §§ 1114 and 1117.
59. Defendants' use of the Infringing Mark, as alleged herein, have caused irreparable injury and damage to Plaintiff and, unless restrained, will continue to do so.
60. As a result, Plaintiff has suffered damages with interest.
61. Plaintiff has no adequate, complete remedy at law.

COUNT II
FEDERAL UNFAIR COMPETITION
FALSE DESIGNATION OF ORIGIN
FALSE DESCRIPTION
(15 U.S.C. §1051 et seq., § 1125)

62. Defendants' acts, as alleged herein, including the use, advertising and displaying of the Infringing Mark, constitute federal unfair competition, false designation of origin and false description of fact, all of which is causing, or is likely to cause, confusion, mistake, deception, and/or misrepresentation, in violation of 15 U.S.C. § 1051 et seq., §1125.
63. Defendants' use of the Infringing Mark, as alleged herein, have caused irreparable injury and damage to Plaintiff and, unless restrained, will continue to do so.

- 64. As a result, Plaintiff has suffered damages with interest.
- 65. Plaintiff has no adequate, complete remedy at law.

COUNT III
CYBERPIRACY/CYBERSQUATTING
(15 U.S.C. § 1125 (d))

- 66. Defendants' registration and use of the Infringing Domain Name constitutes cyberpiracy/cybersquatting, among other wrongs set forth herein, and is a separate violation of the Lanham Act, 15 U.S.C. § 1125 (d).
- 67. The Infringing Domain Name is, for all intents and purposes, identical or confusingly similar to Plaintiff's Family of WENZEL Marks.
- 68. Defendants had the requisite intent to profit from Plaintiff's Family of WENZEL Marks and willfully undertook the foregoing acts for commercial gain and with actual knowledge of or disregard for Plaintiff's rights, causing a diversion of internet users from Plaintiff to Defendants, a likelihood of confusion in the marketplace, including but not limited to initial interest confusion, and a resultant loss of business and other harm and damage to Plaintiff.
- 69. Defendants' registration and use of the Infringing Domain Name, as alleged herein, has caused irreparable injury and damage to Plaintiff and, unless restrained, will continue to do so.
- 70. As a result, Plaintiff has suffered damages with interest.
- 71. Plaintiff has no adequate, complete remedy at law.

COUNT IV
**FLORIDA TRADEMARK INFRINGEMENT/
UNFAIR COMPETITION/FALSE DESIGNATION OF ORIGIN**
(Florida Statutes § 495.131 et seq.)

72. Defendants' acts, as alleged herein, constitute infringement of Plaintiff's rights pursuant to Florida Statutes § 495.131 et seq., Florida unfair competition, and Florida false designation of origin.
73. Defendants' acts, as alleged herein, have caused irreparable injury and damage to Plaintiff, and, unless restrained, will continue to do so.
74. As a result, Plaintiff has suffered damages with interest.
75. Plaintiff has no adequate complete remedy at law.

COUNT V
FLORIDA INJURY TO BUSINESS REPUTATION AND DILUTION
(Florida Statutes § 495.151 et seq.)

76. Defendants' acts, as alleged herein, have caused, and are likely to cause, damage to Plaintiff by injuring Plaintiff's valuable reputation and by diluting the distinctiveness of Plaintiff's Family of WENZEL Marks in violation of Florida Statutes § 495.151 et seq.
77. Defendants' acts, as alleged herein, have caused irreparable injury to Plaintiff, and, unless restrained, will continue to do so.
78. As a result, Plaintiff has suffered damages with interest.
79. Plaintiff has no adequate, complete remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendants on all of the above Counts, and on each and every claim for relief set forth above and award it full relief including, but not limited to, the following:

- a. a preliminary and permanent injunction enjoining and restraining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:
 - i. from causing likelihood of confusion, or causing mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff or Plaintiff's Family of WENZEL Marks, or as to the origin, sponsorship, or approval of its goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of Plaintiff's Family of WENZEL Marks, or Plaintiff's forms of advertisement;
 - ii. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with, or originating from, Plaintiff;
 - iii. from directly or indirectly using the Infringing Mark and the Infringing Domain Name or any confusingly similar variants, iterations, or forms thereof, which is likely to cause confusion or further irreparable harm to Plaintiff's business reputation or goodwill;
 - iv. from utilizing the Infringing Mark and the Infringing Domain Name or any confusingly similar variants in any shape or manner;
 - v. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, advertisements, signs, or any other representations, regardless of the medium, which bear the Infringing Mark and the Infringing Domain Name or any confusingly similar variants, and from

otherwise unfairly competing in any way with Plaintiff;

- vi. to deliver up to Plaintiff for destruction, at its option, all goods, literature, advertisements, business forms, signs, and any other representations, regardless of form, which are in, or come to be in, Defendants' possession, custody, or control and which bear the Infringing Mark and the Infringing Domain Name or any confusingly similar variants;
- vii. to notify their direct customers, agents, and representatives that the Infringing Mark and the Infringing Domain Name or any confusingly similar variants are not connected with Plaintiff;
- viii. to immediately institute full compliance with any order entered by this Court, and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement, under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;

and for:

- b. an accounting and payment of all profits gained by Defendants while engaging in the acts complained of herein;
- c. all monetary damages suffered by Plaintiff, in an amount to be determined, including statutory, enhanced or treble damages;
- d. an Order requiring Defendants to disseminate pre-approved corrective advertising to all customers, prospective customers, agents and representatives to address the likelihood of confusion caused by Defendants' acts;
- e. an Order directing the removal, forfeiture or transfer of the Infringing Domain Name to Plaintiff;
- f. an award of all attorneys fees and costs as allowed by law;

- g. and such other interlocutory and permanent relief as this Court may deem just and proper.

Respectfully submitted,

/s/JENNIFER L. WHITE LAW
JENNIFER L. WHITE LAW
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VERIFICATION

I DECLARE, under penalty of perjury, that I am duly authorized in the premises,
have read the foregoing Complaint and that the same is true and correct.

Executed this 14 day of December, 2016.

EXXEL OUTDOORS, LLC

By: 