

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

ROLEX WATCH U.S.A., INC.,

Plaintiff

No. _____

vs.

JEFFREY L. RHINE, individually
and d/b/a VIRTUAL EMPIRE,
VIRTUALEMPIRE.COM, and
VIRTUAL EMPIRE WEB HOSTING,

Defendant.

COMPLAINT

Plaintiff Rolex Watch U.S.A., Inc. (“Rolex”), through its attorneys, complains as follows:

STATEMENT OF THE CASE

This is an action for injunctive relief and profits under the Lanham Act, Wisconsin Statutes §100.18 and the common law. Plaintiff seeks relief arising from Defendant’s knowingly hosting Web sites that offer for sale and sell counterfeit Rolex watches over the Internet.

PARTIES

1. Plaintiff Rolex Watch U.S.A., Inc. (“Rolex”) is a corporation organized and existing under the laws of the State of New York, having an office and principal place of business at 665 Fifth Avenue, New York, New York.

2. Upon information and belief, Defendant Jeffrey L. Rhine (“Rhine”) is a Wisconsin resident residing at 5620 W. Abbott Avenue, Greenfield, WI 53220.

3. Upon information and belief, Rhine does business under the fictitious names “Virtual Empire” “virtualempire.com” and “Virtual Empire Web Hosting” and has a post office box at P.O. Box 371002, Milwaukee, WI 53237.

4. Upon information and belief, Rhine owns and operates the Web site www.virtualempire.com.

5. Upon information and belief, Rhine has established e-mail addresses at: jeffr@virtualempire.com, netadmin@virtualempire.com and support@virtualempire.com.

6. Upon information and belief, neither Virtual Empire nor Virtual Empire Web Hosting is incorporated in Wisconsin or in any other state.

7. Upon information and belief, the administrative contact for the domain name virtualempire.com was at one time listed as “John Borie.”

8. Upon information and belief, there is no such person as John Borie who is or has been associated with Rhine or Virtual Empire or Virtual Empire Web Hosting, or John Borie is an alias of Rhine’s.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over the claims in this action which relate to trademark counterfeiting and infringement and false designation of origin and false description pursuant to the provisions of 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a).

10. The state law claims in this Complaint that arise under the statutory and common law of the State of Wisconsin are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative fact. As a result, this Court has supplemental jurisdiction over these claims pursuant to 28 U.S.C. § 1367(a).

11. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b).

FACTS COMMON TO ALL CLAIMS FOR RELIEF

Plaintiff Rolex's Famous Trademarks

12. Rolex is the exclusive distributor of Rolex watches in the United States.
13. Rolex is responsible for assembling, finishing, marketing and selling in interstate commerce Rolex watches, watch bracelets and related products (hereinafter "Rolex Watches").
14. Rolex has developed an outstanding reputation in the mark "Rolex" because of the uniform high quality of Rolex Watches.
15. Rolex Watches are identified by the trade name and trademark "Rolex" and one or more of the following trademarks owned by Rolex: President, Crown Device, DateJust, Day-Date, Oyster, Oyster Perpetual, GMT-Master, Yacht-Master, Submariner, and Rolex Daytona (the "Rolex Trademarks").
16. Rolex is the owner of the following registrations in the U.S. Patent and Trademark Office:
 - Registration No. 101,819 of January 12, 1915 for the trademark **ROLEX (Stylized Text)** for watches, clocks, parts of watches and clocks, and their cases;
 - Registration No. 520,309 of January 24, 1950 for the trademark **PRESIDENT** for wristbands and bracelets for watches made wholly or in part or plated with precious metals, sold separately from watches;
 - Registration No. 657,756 of January 28, 1958 for the **CROWN DEVICE** trademark for timepieces of all kinds and parts thereof;
 - Registration No. 674,177 of February 17, 1959 for the **DATEJUST** trademark for timepieces and parts thereof;

- Registration No. 683,249 of August 11, 1959 for the **GMT-MASTER** trademark for watches;
- Registration No. 831,652 of July 4, 1967 for the **DAY-DATE** trademark for wristwatches;
- Registration No. 239,383 of March 6, 1928 for the **OYSTER** trademark for watches, movements, cases, dials, and other parts of watches;
- Registration No. 1,105,602 of November 7, 1978 for the **OYSTER PERPETUAL** trademark for watches and parts thereof;
- Registration No. 1,749,374 of January 26, 1993 for the **YACHT-MASTER** trademark for watches;
- Registration No. 1,753,843 of February 23, 1999 for the **ROLEX** trademark for jewelry;
- Registration No. 1,782,604 of July 20, 1993 for the **SUBMARINER** trademark for watches; and
- Registration No. 1,960,768 of March 5, 1996 for the **ROLEX DAYTONA** trademark for watches (the “Rolex Registrations”).

Copies of the Rolex Registrations are attached and identified as Exhibits 1A through 1L.

17. The Rolex Registrations are in full force and effect and, with the exception of Registration No. 1,960,768, which has been registered for less than five years, have become incontestable pursuant to 15 U.S.C. § 1065.

18. Rolex and its predecessors have used the Rolex Trademarks for many years on and in connection with Rolex Watches.

19. The Rolex Trademarks identify high quality products originating with Rolex.

20. Rolex has gone to great lengths to protect its name and enforce its trademarks, spending millions of dollars a year on their advertising and promotion.

Defendant's Business

21. For purposes of this Complaint, a “server” may be defined as a computer in a network shared by multiple users, such as the Internet.

22. A computer on a network, such as the Internet, that is a repository for services available to other computers on the network is referred to as a “host” computer. The act of providing such services is referred to as “hosting.”

23. Internet Service Providers (“ISP”s) provide Internet hosting for individuals and business, enabling these customers to place data and other computerized resources on the Internet’s World Wide Web.

24. Every Web site requires a host computer in order to offer Internet access. Although it is possible for private individuals or businesses to provide their own host computers on the Internet, doing so is prohibitively difficult for most because of the expense and the technological expertise required. For this reason, without an ISP to facilitate Internet access, no Web site could function as such.

25. Long after Rolex’s adoption and use of the Rolex Trademarks, Rhine went into business as Virtual Empire, Virtual Empire Web Hosting and virtualempire.com (collectively “Virtual Empire”), an ISP.

26. In its capacity as an ISP, Virtual Empire hosts Web sites on its servers. These Web sites are accessible to the public on the Internet’s World Wide Web. Virtual Empire’s customers provide the content and consumer business operations for their respective Web sites.

27. The Virtual Empire servers host the computer data or Web files of the Web site owners who use Virtual Empire's Web hosting service.

28. Rhine, upon information and belief, owns or has effective control over the Virtual Empire computer servers.

29. Virtual Empire receives a fee from its customers in consideration for hosting their Web sites.

30. Virtual Empire is not now nor has it ever been associated, affiliated or connected with, or endorsed or sanctioned by Rolex.

Defendant's Contributory Counterfeiting and Infringement Activities

31. Certain Web sites hosted by Virtual Empire advertise, distribute, offer for sale and sell counterfeit Rolex Watches ("Counterfeit Rolex Watches") bearing one or more counterfeit Rolex Registered Trademarks, or have done so in the past six months.

32. Virtual Empire is or in the recent past has been the ISP for, among other Web sites:

- www.showtimereplicawatches.com,
- www.amazingreplicas.com,
- www.replicaheaven.com,
- www.replicaheaven.virtualempire.com,
- www.jon777.virtualempire.com,
- www.replicagifts.com, and
- www.fakeminutes.com

(the “Infringing Web Sites”). See “Whois” database printouts for the Infringing Web Sites attached as Exhibit 2.

33. The Infringing Web sites offer for sale and sell Counterfeit Rolex Watches. Representative samples from the Infringing Web Sites offering Counterfeit Rolex Watches for sale are attached as Exhibit 3.

34. The Infringing Web Site Owners are not now nor have they ever been associated, affiliated or connected with, or endorsed or sanctioned by Rolex.

35. Upon information and belief, the owners of the Infringing Web Sites (“Infringing Web Site Owners”) pay a fee to Virtual Empire in exchange for the maintenance of their Web sites on Virtual Empire’s servers.

36. While the Infringing Web Site Owners own the computer data and code that comprise the Infringing Web Sites, the files containing them are stored on and distributed over the Internet from Virtual Empire’s computer servers.

37. Virtual Empire, as a technical matter, controls the Web sites hosted on the Virtual Empire servers and may unilaterally delete selected pages or entire Web sites from its servers.

38. Web site owners wishing to have their Web sites hosted by Virtual Empire must agree to Virtual Empire’s Terms of Service contract.

39. Virtual Empire’s Terms of Service Agreement states (in relevant part) :

Virtual Empire reserves the right to cancel service to any existing customer found to have seriously violated these terms.

...

The Customer represents and warrants to Virtual Empire that it holds the necessary rights to permit the use of any of the items on his/her Web site, and, that the use, reproduction, distribution, transmission or display of any data to the public, and any material to which the public can link through,

or any products of services made available to the public through his/her Web site, will not:

- violate any criminal laws or any rights of any third parties, including, but not limited to, such violations as **infringement or misappropriation of any** copyright, patent, **trademark**, trade secret, music, image, or other proprietary or property right, false advertising, **unfair competition**, defamation, business or personal dispute or argument, invasion of privacy or rights of celebrity, violation of any anti discrimination law or regulation, or any other right of any person or entity, or any personal or business argument or dispute; or
- The Customer understands and agrees that hosting of the Web Site Owners's [*sic*] Web site is at the sole discretion of Virtual Empire. **Virtual Empire may at its sole discretion discontinue Web site hosting service to any Customer operating a Web site that Virtual Empire deems to be in violation of these Terms and Conditions.**

(Emphasis added). A printout of the Web page from Virtual Empire's own Web site containing Virtual Empire's Terms of Service, from <http://www.virtualempire.com/terms>, is attached as Exhibit 4.

40. Rolex takes all necessary means to enforce its trademark rights against Internet based counterfeiters and infringers, among others.

41. Pursuant to its normal policy, Rolex's counsel notified the administrative contacts for the Infringing Web Sites, by electronic mail and regular mail, of the illegality and potential penalties of selling watches bearing counterfeit Rolex Trademarks.

42. To date, Rolex's counsel has not received replies to its communications to the administrative contacts of these pages.

43. In addition to contacting infringing Web sites themselves, Rolex routinely contacts the ISP for such Web sites and requests that the site be taken down, advising the ISPs of their exposure to liability.

44. Responsible ISPs are concerned by illegal activities being conducted on Web sites they host and cooperate fully with Rolex.

45. This procedure avoids litigation against individual Web site owners, who in any event are often impossible to identify, locate and serve.

46. In addition to its fruitless efforts to act against the owners of the Infringing Web Sites individually, Rolex’s counsel contacted Virtual Empire via e-mail and U.S. Mail on various occasions to provide notice to Virtual Empire that one or more Web sites it was hosting were selling counterfeit Rolex Watches.

47. The following chart details Rolex’s counsel’s contact with Virtual Empire:

Web site(s) referenced in letter and Name and address(es) to which letter was sent	Date of letter	Date of response	Status 4/17/01
<p><u>www.amazingreplicas.com</u></p> <p><i>By e-mail:</i> <u>netadmin@virtualempire.com</u></p> <p><i>First class mail:</i> Virtual Empire 4720 Erie Street Racine, WI 53402 Attention: John Borie</p>	4/11/00	None received	Still selling counterfeit Rolex watches
<p><u>www.jon777.virtualempire.com</u></p> <p><i>By e-mail:</i> <u>Netadmin@virtualempire.com</u></p> <p><i>First class mail:</i> Virtual Empire 4720 Erie Street Racine, WI 53402 Attention: John Borie</p>	5/1/00	None received	Site down
<p><u>www.replicaworld.net</u></p> <p><i>By e-mail:</i> <u>Netadmin@virtualempire.com</u></p> <p><i>First class mail:</i></p>	6/7/00	None received	Site down

<p><u>www.fakeminutes.com</u></p> <p><i>By e-mail:</i> Netadmin@virtualempire.com</p> <p><i>First class mail:</i> Virtual Empire 4720 Erie Street Racine, WI 53402 Attention: John Borie</p>	10/13/00	None received	Links to: www.replicaheaven.com
<p><u>www.replicagifts.com</u></p> <p><i>By e-mail:</i> Netadmin@virtualempire.com</p> <p><i>First class mail:</i> Virtual Empire 4720 Erie Street Racine, WI 53402 Attention: John Borie</p> <p><i>By e-mail:</i> Support@virtualempire.com</p> <p><i>First class mail:</i> Professional Web Services PMB 160 Racine, WI 53402 Attention: Jeff Rhine Administrative Contact</p>	11/3/00 and 1/5/01	None received	Not currently selling counterfeit Rolex watches, but using an image of a counterfeit Rolex watch on its site
<p><u>www.replicaheaven.com</u></p> <p><i>By e-mail:</i> Support@virtualempire.com</p> <p><i>First class mail:</i> Professional Web Services PMB 160 Racine, WI 53402 Attention: Jeff Rhine Administrative Contact</p>	1/2/01	None received	Not currently selling counterfeit Rolex watches, but using an image of a counterfeit Rolex watch on its site

<p><u>www.quartzreplicas.com</u></p> <p><i>By e-mail:</i> <u>Jeifr@virtualempire.com</u></p> <p><i>First class mail:</i> Jeff Rhine Virtual Empire Web Hosting P.O. Box 371002 Milwaukee, WI 53237</p>	2/9/01	None received	Site down
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Copies of the above-referenced letters or e-mails are attached as Exhibit 5.

48. No letters or e-mails sent to Virtual Empire have been returned to Rolex's counsel as undeliverable.

49. No responses were received from Rhine or Virtual Empire prior to January 25, 2001.

50. On January 25, 2001, a non-legal staff member of Rolex's counsel contacted Virtual Empire by telephone to determine why there had been no response to the above-referenced letters. She was directed to Rhine, who denied ever receiving any e-mail notifications from Rolex's counsel.

51. After January 25, 2001, Rolex's counsel learned of additional Infringing Web Sites that were hosted by Virtual Empire. Rolex's counsel sent correspondence to the administrative contacts for these Infringing Web Sites, by electronic mail and regular mail, notifying those administrative contacts of the illegality and potential penalties of selling watches bearing counterfeit Rolex Trademarks.

52. Shortly after the January 25, 2001 telephone communication with Rhine, another member of Rolex's counsel's non-legal staff, and two of Rolex's attorneys, exchanged several letters and e-mails with Rhine concerning Virtual Empire's response to removing Websites

hosted by the service that were selling Counterfeit Rolex Watches. Printouts or copies of this correspondence are attached as Exhibit 6.

53. In one of the above-referenced messages, Rhine wrote: “In order to speed up the removal of content which Rolex has a conflict with from customers who Virtual Empire provides service to please contact the offending Websites directly as Virtual Empire does not want to be held responsible for relaying legal matters.” See *id.*

54. Another message sent from Rhine forwarded a message from one of the Infringing Web Site Owners stating, in relevant part, “Our site CLEARLY indicates that the products are replica and not ‘the real thing.’” Rhine added to this message, “We have asked the customer to provide to us the contact phone number to relay to your offices to allow you the lawfirm [sic] and our customer to work this issue out with our busniess [sic] not in the middle.” See *id.*

55. As of the date of this Complaint, Counterfeit Rolex Watches are being offered for sale on at least two sites hosted by Defendant: www.showtimereplicawatches.com and www.amazingreplicas.com. Representative printouts from these Web sites are attached as Exhibit 7.

56. As of the date of this Complaint, the Web sites www.replicaheaven.com, www.replicagifts.com, and www.replicaheaven.virtualempire.com display a picture or likeness of Counterfeit Rolex Watches on at least the first page of each of those Web sites. Representative printouts from these Web sites are attached as Exhibit 8.

57. Although Counterfeit Rolex Watches are apparently not currently available on fakeminutes.com, www.replicagifts.com, www.replicaheaven.virtualempire.com and www.replicaheaven.com, these sites still offer for sale counterfeit watches of other makes.

58. As a consequence of Virtual Empire's conduct, Rolex has suffered irreparable damage.

59. Rolex has no adequate remedy at law.

COUNT I

Contributory Trademark Counterfeiting (15 U.S.C. §1114)

60. Rolex realleges and incorporates by reference the foregoing paragraphs of this Complaint.

61. The Infringing Web Site Owners have through their Infringing Web Sites offered for sale and sold Counterfeit Rolex Watches bearing counterfeit Rolex Trademarks, despite knowledge that such sales are illegal.

62. The Infringing Web Site Owners' acts are deliberately calculated to confuse and to deceive the public and are performed with full knowledge of Rolex's rights and said acts constitute willful and deliberate infringement of Rolex's rights in its Rolex Trademarks.

63. Virtual Empire has hosted the Infringing Web Sites on its servers despite knowing and having been placed on notice of the illegal activities of the Infringing Web Site Owners and of its own legal exposure.

64. The Infringing Web Site Owners have intentionally used spurious designations that are identical with, or substantially indistinguishable from, the Rolex Trademarks on goods covered by the Rolex Registrations.

65. The Infringing Web Site Owners' unauthorized use of the Rolex Trademarks as set forth above is likely to:

- (a) cause confusion, mistake and deception;

- (b) cause the public to believe that the Infringing Web Site Owners' watches are the same as Rolex Watches and that the Web Site Owners are authorized, sponsored or approved by Rolex or that the Web Site Owners are affiliated, connected or associated with or in some way related to Rolex;
- (c) result in the Web Site Owners unfairly benefiting from Rolex's advertising and promotion and profiting from the reputation of Rolex and its Registered Marks all to the substantial and irreparable injury of the public, Rolex and its Rolex Trademarks and the substantial goodwill represented thereby.

66. The Infringing Web Site Owners via the Infringing Web Sites are openly and notoriously engaging in illegal conduct by virtue of the fact that the advertisement and sale of counterfeit goods as described herein violates 18 U.S.C. §2320.

67. The foregoing acts by the Infringing Web Site Owners would be impossible but for their facilitation by defendant.

68. Defendant has actual and constructive knowledge that its customers, the Infringing Web Site Owners, have been selling counterfeit products bearing the Registered Trademarks of Rolex at least from the time it was put on notice by Rolex.

69. Defendant, with knowledge of the infringing activities of the Infringing Web Site Owners, has materially contributed to the infringing conduct of the Infringing Web Site Owners.

70. Defendant has provided a safe haven and marketplace for the Infringing Web Sites.

71. Defendant is providing the Infringing Web Site Owners with a facility for the Infringing Web Sites and a marketplace in which counterfeit products bearing the Registered Trademarks of Rolex could be advertised, sold, and have been openly advertised and sold with impunity.

72. Defendant has materially contributed to the infringing conduct of the Infringing Web Site Owners by maintaining the servers where the Infringing Web Sites are stored, providing a facility whereby the Infringing Web Sites are connected to the Internet.

73. Defendant refused to prevent these sales from taking place via Virtual Empire's servers, choosing instead to remain willfully blind to the activities of the Infringing Web Sites.

74. Defendant has thus induced and aided the infringement of Rolex's Registered Trademarks in violation of the Trademark Act of 1946, 15 U.S.C. §§ 1051, *et seq.*

75. Defendant knows of the illegal acts of the Infringing Web Site Owners to whom it provides Web hosting, and knows that its servers are being used, wholly or in part, for this unlawful counterfeiting trade.

76. Defendant has knowingly provided the means whereby the Infringing Web Site Owners have used spurious designations, knowing they are counterfeit marks in connection with the advertisement, sale, offering for sale and distribution of goods.

77. Defendant's knowledge of these illegal acts and its continued availment of its servers for the Infringing Web Sites' infringing use, plus its failure to prevent such use and its profiting from such use, makes it liable jointly and severally with the Infringing Web Site Owners, for the damages sustained by Rolex as a result of the Infringing Web Site Owners' unlawful conduct.

78. Defendant's acts constitute contributory trademark counterfeiting in violation of Section 32 of the Lanham Act, 15 U.S.C. §1114.

79. Rolex has suffered and continues to suffer irreparable harm and damage as a result of defendant's acts in an amount thus far not determined.

80. Rolex has no adequate remedy at law.

COUNT 2

Contributory False Designations of Origin, False Descriptions and Representations (15 U.S.C. §1125(a))

81. Rolex realleges and incorporates by reference the foregoing paragraphs of this Complaint.

82. Defendant' acts constitute knowing contribution to the use in commerce of false designations of origin and false and misleading descriptions or representations, tending to falsely or misleadingly describe and represent the Infringing Web Site Owners' products as those of Rolex, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

COUNT 3

Contributory Federal Trademark Dilution (15 U.S.C. §1125(c))

83. Rolex realleges and incorporates by reference the foregoing paragraphs of this Complaint.

84. The Rolex Trademarks are world famous and distinctive.

85. Rolex is suffering and will continue to suffer irreparable harm from the dilutive conduct occurring as a result of the activities of the Infringing Web Site Owners and Defendant.

86. Defendant' acts are contributing to the dilution of the distinctive quality of the Rolex Trademarks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c).

87. Rolex has no adequate remedy at law.

COUNT 4

Contributory Trademark Infringement (Wisconsin Common Law)

88. Rolex realleges and incorporates by reference the foregoing paragraphs of this Complaint.

89. The Infringing Web Site Owners have infringed the Rolex Trademarks with the intent to deceive the public into believing that goods advertised and sold on the Infringing Web Sites are made by, approved by, sponsored by or affiliated with, Rolex.

90. These acts were committed with the intent to pass off and palm off the goods on the Infringing Web Sites as the goods of Rolex, with the intent to deceive and defraud the public.

91. The use of Rolex's designations by the Infringing Web Sites has caused confusion and is likely to continue to cause confusion.

92. The activities of the Infringing Web Sites as described in this Complaint constitute an infringement of Rolex's common law trademark rights in the Rolex Trademarks.

93. By its acts of knowingly maintaining the servers used to store the Infringing Web Sites and, thus, providing the conduit whereby the Infringing Web Sites are connected to the Internet, defendant has contributed to the infringement of Rolex's common law tradename and trademark rights in the Rolex names and Trademarks.

94. As a result of defendant's actions, Rolex has suffered detriment to its business, goodwill, reputation and profits, all to its damage in an amount to be determined.

95. If the aforesaid acts are permitted to continue, Rolex will sustain further loss and damage and irreparable injury.

96. Rolex has no adequate remedy at law.

COUNT 5

Contributory Misappropriation and Unfair Competition (Wisconsin Common Law)

97. Rolex realleges and incorporates by reference the foregoing paragraphs of this Complaint.

98. Defendant's acts constitute contributory misappropriation and infringement of Rolex's property rights, goodwill and reputation and unfair competition under the common law of the state of Wisconsin.

99. Rolex has no adequate remedy at law.

COUNT 6

Contributory Trademark Dilution and Injury To Business Reputation (Wisconsin Common Law)

100. Rolex realleges and incorporates by reference the foregoing paragraphs of this Complaint.

101. The Infringing Web Site Owners' conduct, and defendant's conduct in knowingly facilitating the same, constitutes common law trademark dilution and injury to business reputation.

102. By its actions described in this Complaint, defendant has also materially contributed to the dilution and will likely continue to contribute to the dilution of the distinctive quality of the Rolex Trademarks.

103. Such contributory dilution and injury to business reputation has caused, and unless enjoined, will continue to cause Rolex irreparable harm.

104. Rolex has no adequate remedy at law.

COUNT 7

**Contributory Fraudulent Representations
(Wis. Stats. 100.18)**

105. Rolex realleges and incorporates by reference the foregoing paragraphs of this Complaint.

106. By its actions, defendant is contributing to deceptive or misleading representations of fact regarding Rolex's affiliation with the Infringing Web Site Owners and the Infringing Web Sites.

107. Defendant is knowingly contributing to those representations, which are intended to increase the consumption of the counterfeit products featured on the Infringing Web Sites.

108. As a result of defendant's actions, Internet users in Wisconsin have been misdirected to the Infringing Web Site Owners' Web Sites.

109. Defendant is thereby knowingly contributing to deceptive advertising in violation of section 100.18, Wis. Stats.

110. In addition, defendant's knowing conduct has contributed to causing Rolex to suffer detriment to its business, goodwill, reputation, and profits, all to its damage in an amount to be determined.

111. If defendant's acts continue, Rolex will sustain further loss, damage and irreparable injury.

112. Rolex has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Rolex respectfully requests that the Court order the following relief:

I. That the Court enter an injunction ordering that defendant, its agents, servants, employees, and all other persons in privity or acting in concert with it be enjoined and restrained from acting as ISP for or hosting any Web sites which defendant knows:

- a) use any reproduction, counterfeit, copy, or colorable imitation of the Rolex Trademarks to identify any goods or the rendering of any services not authorized by Rolex;
- b) engage in any course of conduct likely to cause confusion, deception or mistake, or injure Rolex's business reputations or dilute the distinctive quality of Rolex's names and the Rolex Trademarks; and
- c) use a false description or representation including words or other symbols tending to falsely describe or represent the Infringing Web Site Owners' unauthorized goods as being those of Rolex or sponsored by or associated with either Rolex and from offering such goods in commerce.

II. That defendant, within ten (10) days of judgment, take all steps necessary to remove from its servers and all servers under its control or authority, all Web sites and all text or other media offering for sale any genuine or counterfeit Rolex products.

III. That defendant, within thirty (30) days of Judgment, file and serve Rolex with a sworn statement setting forth in detail the manner and form in which defendant has complied with this injunction, pursuant to 15 U.S.C. § 1116(a).

IV. That defendant be required to account to Rolex for all profits resulting from its hosting of Web sites that sell counterfeit merchandise bearing Rolex's Registered Trademarks, and that the award to Rolex be trebled as provided for under 15 U.S.C. § 1117; alternatively, that Rolex be awarded statutory damages under 15 U.S.C. § 1117 (c) of up to \$1,000,000 for each mark Defendant have caused or allowed to be counterfeited.

V. That Rolex have a recovery from defendant of the costs and disbursements of this action in addition to reasonable counsel and investigator fees pursuant to 15 U.S.C. § 1117.

VI. That Rolex be awarded punitive damages for defendant's willful and malicious acts of common law contributory trademark infringement, unfair competition and fraudulent representation.

VII. That the Court require defendant to pay to Rolex all reasonable attorneys' fees and the costs of this action.

VIII. That Rolex have all other and further relief as the Court may deem just and proper under the circumstances.

Dated this _____ day of April, 2001.

Mark F. Foley (WBN 1005627)
Anat Hakim (WBN 1031587)
Jeffrey A. Simmons (WBN 1031984)

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