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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061678
Party	Defendant Roger MAIER
Correspondence Address	TERESA LEE PRYORCASHMAN LLP 7 TIMES SQUARE NEW YORK, NY 10036 UNITED STATES tlee@pryorcashman.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Amy E. Salomon
Filer's e-mail	tmdocket@arentfox.com, salomon.amy@arentfox.com, obrien.cathy@arentfox.com, carr.karen@arentfox.com, brater.randall@arentfox.com
Signature	/Amy E. Salomon/
Date	07/27/2015
Attachments	Maier Motion to Suspend TTAB Proceeding 7-27-15.pdf(87246 bytes) ASSOS - Exhibit A (FINAL).pdf(89405 bytes) ASSOS - Exhibit B (Combined FINAL).pdf(1184630 bytes) ASSOS - Exhibit C (Final).pdf(81601 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ASOS PLC and ASOS.COM LIMITED	:	
	:	
	:	
Petitioners,	:	Cancellation No. 92061678
	:	
v.	:	Registration No. 4152198
	:	
ROGER MAIER,	:	Mark: A ASSOS & Design
	:	
Registrant.	:	

MOTION TO SUSPEND CANCELLATION PROCEEDING

Registrant Roger Maier (“Registrant”) hereby moves to suspend the above-referenced Cancellation proceeding initiated by Asos PLC and Asos.com Ltd. (collectively, the “Petitioners”) pending the disposition of an ongoing, relevant federal lawsuit, *Maier, et al. v. Asos PLC, et al.*, Civil Action No. 8:13-cv-02052-RWT (D. Md. filed July 16, 2013) (the “Federal Lawsuit”). Attached as Exhibits A, B, and C are the following documents filed in the Federal Lawsuit: (A) a copy of the Second Amended Complaint, the operative complaint filed by Registrant; (B) a public version of Defendants’ Answer and Counterclaims to Second Amended Complaint¹, filed by Petitioners; and (C) copy of Plaintiff’s Answer to Defendants’ Counterclaims, filed by Registrant. Resolution of counterclaims filed by Petitioners against Registrant in the Federal Lawsuit may be dispositive of the issues before the Board in the instant Cancellation proceeding, and thus, suspension of this proceeding is appropriate.

Registrant filed the Federal Lawsuit asserting claims of trademark infringement, false

¹ Defendants’ Answer and Counterclaims to Second Amended Complaint were filed under seal. However, the sealed portions of that document and sealed Exhibits 3 and 4 are related to counterclaims not at issue in this TTAB proceeding and are not necessary for the Board’s decision on this Motion.

designation of origin, unfair competition, reverse confusion, counterfeiting, and related state law claims against Petitioners. *See* Ex. A, Second Am. Compl., ¶ 1. Petitioners asserted various counterclaims against Registrant, including a counterclaim for cancellation of Registration No. 4152198 as void *ab initio* on the alleged ground that, *inter alia*, Registrant lacked “a bona fide intention to use the A ASSOS & Design Mark in commerce in connection with each and every good and service” listed in the application. *See* Ex. B., Answer & Countercl. to Second Am. Compl., ¶¶ 90–92, 155–159.

In the instant proceeding, Petitioners seek partial cancellation of Registration No. 4152198 on the alleged ground that Registrant does not use the mark as to certain goods and has thus abandoned the mark as to those goods. Petition ¶¶ 20–24. Even though Registrant vigorously opposes the allegations of the counterclaims in the Federal Lawsuit, if the District Court cancels Registration No. 4152198 in its entirety, the registration will be of no further effect and the claims at issue in this proceeding will be moot.

As the Board recently stated in Opposition No. 91214632 involving Petitioners and the above-referenced Federal Lawsuit, it is the Board’s “well-settled policy” to suspend a proceeding when the parties are engaged in a civil action that may be dispositive or have a bearing on the Board’s case. Furthermore, “[i]t is not necessary that the...issues, or the relief sought in the civil action and the Board proceeding be identical.” *See Asos.com Ltd. et al. v. Anson’s Herrenhaus KG*, Opp. No. 91214632 (TTAB Order, Dkt. No. 8, May 22, 2014) (currently suspended pending the final outcome of the Federal Lawsuit at issue in this proceeding). There is no doubt that the Federal Lawsuit will have a direct bearing on this proceeding, and that suspension of this proceeding will therefore preserve judicial resources and avoid unnecessary time and expense for both the parties and the Board.

Accordingly, Registrant respectfully submits that it has good cause for the suspension of this Cancellation. Registrant respectfully requests that the Board reset the date by which Registrant's Answer must be filed until after the Board rules on this Motion to Suspend.

July 27, 2015

Roger Maier

By: /Amy E. Salomon/

Anthony V. Lupo

Randall A. Brater

Karen E. Carr

Amy E. Salomon

Arent Fox LLP

1717 K Street, NW

Washington, DC 20006-5344

(202) 857 6000

tmdocket@arentfox.com

Attorneys for Registrant

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing Motion to Suspend Cancellation Proceeding (re: Reg. No. 4152198) was served via first class mail, postage prepaid, this 27th day of July, 2015, on the following counsel for Petitioners:

Julia Anne Matheson
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
901 New York Avenue, N.W.
Washington, D.C. 20001-4413
Telephone: 202.408.4000
Fax: 202.408.4400

By: /Amy E. Salomon/

Amy E. Salomon

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

ANTON MAIER

Via Bresce, 1
6854 San Pietro di Stabio
Switzerland

ROGER MAIER

Via Bresce, 1
6854 San Pietro di Stabio
Switzerland

and

ANSON'S HERRENHAUS KG

Berliner Allee 2
D-40212 Düsseldorf
Germany

Plaintiffs,

vs.

ASOS PLC

Greater London House
Hampstead Road
London
NW1 7FB
United Kingdom

ASOS.COM LIMITED

Greater London House
Hampstead Road
London
NW1 7FB
United Kingdom

Defendants.

Civil Action No. 8:13-cv-2052-RWT

SECOND AMENDED COMPLAINT

**JURY TRIAL
DEMANDED**

Plaintiffs Anton Maier and Roger Maier (collectively, "Maier") and Plaintiff Anson's Herrenhaus KG ("Anson's") (collectively, "Plaintiffs"), through their undersigned counsel, allege as follows, upon actual knowledge with respect to themselves and their own acts, and

upon information and belief as to all other matters:

NATURE OF THE ACTION

1. This is a civil action for trademark infringement, trademark counterfeiting, false designation of origin, unfair competition, and reverse confusion under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and related causes of action arising under Maryland common law. Maier and Anson's seek equitable and monetary relief against Defendants Asos PLC and Asos.com Limited (collectively, "AP") based on their unauthorized and infringing use of the word ASOS (the "ASOS Mark") – a word that is confusingly similar to Maier's federally registered ASSOS trademarks (the "ASSOS Marks").

2. The goods sold by Maier through Assos of Switzerland SA ("Assos") under the ASSOS Marks are similar to the goods sold by AP under the ASOS Mark. Both the ASOS Mark and the ASSOS Marks are used on men's and women's clothing, accessories, and related consumer products sold to U.S. consumers. Both Maier's and Asos' goods are sold through similar channels of trade and are marketed to the same prospective consumers.

3. The ASOS Mark is substantially indistinguishable from the ASSOS Marks in sight, sound, and impression.

4. AP was aware of Maier's prior rights in the federally registered ASSOS Marks before it began targeting U.S. consumers, yet AP acted and continues to act in willful disregard of Maier's trademark rights. AP's conduct has caused consumer confusion in the marketplace and irreparable damage to Maier. As a result, Maier is entitled to a permanent injunction, monetary damages, and other relief as alleged herein.

PARTIES

5. Plaintiff Roger Maier is a citizen of Switzerland with an address of Via Bresce, 1

6854 San Pietro di Stabio, Switzerland.

6. Plaintiff Anton Maier is a citizen of Switzerland with an address of Via Bresce, 1 6854 San Pietro di Stabio, Switzerland.

7. Plaintiff Anson's Herrenhaus KG is a limited partnership organized and existing under the laws of Germany, with a principal place of business at Berliner Allee 2, 40212 Düsseldorf, Germany.¹

8. Defendant Asos PLC is a public company organized and existing under the laws of the United Kingdom, with a principal place of business at Greater London House, Hampstead Road, London, NW1 7FB, United Kingdom.

9. Defendant Asos.com Limited is a private limited company organized and existing under the laws of the United Kingdom, with a principal place of business at Greater London House, Hampstead Road, London, NW1 7FB, United Kingdom.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1331, 1338 (a) and (b). The Court has supplemental jurisdiction over Maier's state law claims pursuant to 28 U.S.C. § 1367(a), because the state law claims are substantially related to the federal claims and arise out of the same case or controversy.

11. This Court has personal jurisdiction over AP because AP has purposefully availed itself of the privilege of conducting business in Maryland and has continuous and systemic contacts with Maryland. AP, either directly or through its authorized agents, specifically targets consumers located in the United States, including the State of Maryland, via its website. AP

¹ Anson's does not have any intellectual property rights in the ASSOS Marks. However, through a Cooperation Agreement that Anson's entered into with Maier, Anson's has certain rights to enforce Maier's intellectual property rights on Maier's behalf. Anson's joins this case as a plaintiff following the Court's invitation for it to do so, but not to enforce any of its own intellectual property rights.

also, either directly or indirectly, sells and ships goods, labels, and packaging bearing the ASSOS Mark to consumers located in the United States, including the State of Maryland. Maier’s claims arise in part out of AP’s contacts with Maryland and Maryland consumers.

12. Venue lies in this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Maier’s claims have occurred and are continuing to occur in this District.

BACKGROUND FACTS COMMON TO ALL CLAIMS FOR RELIEF

Maier’s Products, Services, and Trademarks

13. Since 1986, Roger Maier has been the CEO of Assos of Switzerland SA, a Swiss corporation. The company was founded by his father, Anton Maier, in or before 1980. Since that time, Assos has sold its products to U.S. consumers via third-party retailers in the United States.

14. Assos built its business by designing and creating specialized cycling apparel and accessories. In addition to cycling apparel and accessories, Assos also markets casual, everyday apparel through its “After Bike” collection.

15. In connection with the sale and advertising of Assos products to U.S. consumers, Maier owns four valid, federal registrations for the ASSOS Marks:

Mark	Filing Date	Reg. No. / Reg. Date	Products and Services
	July 10, 2001	Reg. No. 2648797 Nov. 12, 2002	Clothing and related accessories in Class 25.
ASSOS	Feb. 17, 2010	Reg. No. 4152174 June 5, 2012	Perfumery, cosmetics, and related items in Class 3; bicycles and component parts in Class 12; and clothing and related accessories in Class 25.

	July 21, 2010	Reg. No. 4152198 June 5, 2012	Perfumery, cosmetics, and related items in Class 3; dietetic foods, food supplements, and related items in Class 5; protective helmets for sports in Class 9; bicycles and component parts in Class 12; leather and imitation leather goods in Class 18; clothing and accessories in Class 25; training in the field of sports, including the organization of cycling competitions, in Class 41.
<p style="text-align: center;">ASSOS</p>	July 21, 2010	Reg. No. 4144664 May 22, 2012	Food supplements and related items in Class 5; protective helmets for sports in Class 9; leather and imitation leather goods in Class 18; training in the field of sports, including the organization of cycling competitions, in Class 41.

16. Based on U.S. Registration No. 2648797, Maier has provided notice of its constructive use of the ASSOS Mark in the United States dating back to July 10, 2001.

17. The ASSOS Marks are each licensed by Maier to Assos, which sells goods bearing the ASSOS Marks to U.S. consumers via approximately five Internet retailers located in the United States. A list of the Internet retailers located in the United States that sell ASSOS-branded goods to U.S. consumers is available at Assos' website, at www.assos.com/en/116/north-america.aspx.

18. Assos also sells products bearing the ASSOS Marks to U.S. consumers via numerous retail stores. A list of approximately eighty-five retail stores located in the United States that sell ASSOS-branded goods to U.S. consumers is available at Assos' website, at www.assos.com/en/60/buy-in-store.aspx?whereToBuyCountry=USA.

The Cooperation between the Maiers and Anson's

19. Anson's and Asos are engaged in a worldwide trademark conflict due to Asos' infringement upon Anson's trademark rights in its trademark ANSON'S. The conflict originated

in Germany, as the trademarks ANSON'S and ASOS are almost identical when pronounced in the German language, and Asos uses the ASOS Mark on goods and services identical to Anson's goods and services.

20. When further investigating the matter, Anson's became aware of proceedings that Maier led against Asos based on Asos' infringement of the ASSOS Marks. Maier and Anson's decided to join forces to defend their trademark rights jointly against Asos' persisting infringement.

21. In 2011, Maier and Assos entered into a Cooperation Agreement with Anson's in which they authorized Anson's to challenge any use of the mark "asos" on a global level, on Maier's behalf and based on Maier's trademark rights. Anson's does not have any intellectual property rights in the ASSOS Marks, but the Cooperation Agreement gives Anson's certain rights to enforce Maier's intellectual property rights on Maier's behalf. Anson's joins this case as a plaintiff following the Court's invitation for it to do so, but not to enforce any of its own intellectual property rights.

AP and Its Wrongful Acts

22. AP is an online clothing retailer offering men's and women's clothing, shoes, and related accessories to consumers worldwide via its website asos.com.

23. AP offers goods bearing the ASOS Mark as its house brand. AP has been using the ASOS Mark as its house brand in connection with the sale of clothing, shoes, and accessories to U.S. consumers via its website since at least 2010.

24. AP also offers goods under other third-party marks. Goods bearing other third-party marks are shipped to consumers by AP or its independent boutiques with labels and/or packaging that includes the ASOS Mark.

AP's Application for the ASOS Mark

25. On July 15, 2005, AP filed an application for the ASOS Mark with the U.S. Patent and Trademark Office (the "ASOS Application") based on an international registration with an intent to use the ASOS Mark in the United States.

26. Trademark applications may be based on use in commerce or on an intent to use a mark in commerce. AP's filing of the ASOS Application on an intent-to-use basis indicates that AP intended to use the ASOS Mark in the United States.

27. In filing the ASOS Application, AP sought the right to use the ASOS Mark in connection with the sale of perfumery, cosmetics, and related items in Class 3; jewelry, watches, and related items in Class 14; leather and imitation leather goods in Class 18; and clothing and accessories in Class 25. AP further sought rights to provide retail store services in Class 35.

28. On March 14, 2007, Anton Maier filed a Notice of Opposition to the ASOS Application, on the grounds that he would be damaged by AP's registration and use of the ASOS Mark in the United States.

29. Thereafter, on March 5, 2010, AP abandoned its ASOS Application.

AP's Infringing Use of the ASOS Mark in the United States

30. Despite AP's awareness that Maier owns the ASSOS Marks, and despite AP's abandonment of the ASOS Application, AP nonetheless began using the ASOS Mark in connection with the sale of men's and women's clothing, shoes, and related accessories in the United States, without authorization from Maier.

31. AP continues to use the ASOS Mark in connection with the sale of men's and women's clothing, shoes, and related accessories in the United States, without authorization from Maier.

32. AP sells goods bearing the ASOS Mark to U.S. consumers via its website asos.com. When a consumer located in the United States tries to access asos.com, a pop-up window appears asking if the consumer is in the United States. The pop-up window provides a link to the AP website specifically designed for and targeted to consumers located in the United States – us.asos.com (the “U.S. ASOS Website”).

33. The U.S. ASOS Website offers men’s and women’s clothing, accessories, and shoes to U.S. consumers. The prices displayed on the U.S. ASOS Website are in U.S. dollars, and a small U.S. flag is shown in the top right corner of the screen. The U.S. ASOS Website contains other indicia that it is designed specifically for U.S. consumers – it offers promotions for the Fourth of July and “americana” clothing described as red, white, and blue. A copy of the homepage of the U.S. ASOS Website is attached as **Exhibit 1**.

34. On the top of the U.S. ASOS Website, there is a tab or link to the ASOS Marketplace. The ASOS Marketplace provides access to numerous independent boutiques located throughout the world, including at least two boutiques located in Maryland, and several other boutiques throughout the United States. The boutiques sell men’s and women’s clothing and accessories.

35. AP launched the U.S. ASOS Website with full knowledge of Maier’s ASSOS Marks.

Similarity of the ASSOS Marks and the ASOS Mark

36. The ASOS Mark is nearly identical and confusingly similar to the ASSOS Marks. The marks are similar in sight, sound, and impression. Both marks are frequently depicted in black and white, in all lower case, in sans serif fonts, and with letters that are all the same height. Copies of the marks as they appear on the top left side of their respective homepages are below:



37. Indeed, the only difference between the ASOS Mark and the ASSOS Marks, as they appear on their respective homepages, is that they sometimes use slightly different fonts, the black and white colors are reversed, and the first syllable of the ASOS Mark contains only one “s,” whereas the first syllable of the ASSOS Mark contains two.

Similarity of the Goods Sold under the ASOS Mark and the ASSOS Marks

38. AP uses the ASOS Mark and the U.S. ASOS Website to advertise and sell goods that are similar or identical in nature to those goods sold by Maier under the ASSOS Marks, through the same channels of trade, and to the same prospective consumers.

39. AP sells goods bearing the ASOS Mark as its house brand via the U.S. ASOS Website. The clothing labels sewn into these goods bear the ASOS Mark. The packaging and shipping materials used to send these goods to U.S. consumers also contain the ASOS Mark.

40. The goods sold by AP as its house brand under the ASOS Mark are confusingly similar to the goods sold by Maier under the ASSOS Marks. Representative samples of confusingly similar goods bearing the ASOS Mark and the ASSOS Marks are attached as **Exhibit 2.**

41. AP also sells goods under third-party marks via the U.S. ASOS Website. AP sends these goods to U.S. consumers using packaging and shipping materials bearing the ASOS Mark.

42. The goods sold by AP under third-party marks, via the U.S. ASOS Website, and shipped with packaging materials bearing the ASOS Mark are confusingly similar to the goods sold by Maier under the ASSOS Marks. Representative samples of such confusingly similar

goods are attached as **Exhibit 3**.

43. Independent boutiques sell goods under third-party marks via the U.S. ASOS Website's ASOS Marketplace. When goods sold via the ASOS Marketplace are shipped to consumers, they include labels and/or receipts bearing the ASOS Mark. Representative samples of such goods, which are confusingly similar to goods sold by Maier under the ASSOS Marks, are attached as **Exhibit 4**.

44. AP's use of the ASOS Mark is likely to cause confusion, mistake, and deception among U.S. consumers as to the source or origin of AP's and/or Maier's products, and it is likely to falsely suggest a sponsorship, connection, or association of AP and its products with Maier and its products. Consumers are likely to believe, mistakenly, that AP's products are manufactured or otherwise affiliated with Maier, or that Maier's products are manufactured or otherwise affiliated with AP.

45. AP's use of the ASOS Mark is likely to create a misimpression that AP is the source of the goods bearing the ASSOS Marks, or that Maier is the source of goods bearing the ASOS Mark. AP has created these misimpressions among the purchasing public intentionally, willfully, recklessly, deliberately, and in bad faith.

46. AP's use of the ASOS Mark is damaging to Maier because Maier does not have any means of controlling the quality of the goods sold by AP under the ASOS Mark.

47. AP is planning to continue using the ASOS Mark and the U.S. ASOS Website, despite having full knowledge of Maier's prior rights in the ASSOS Marks.

48. AP's use of the ASOS Mark has damaged and irreparably injured Maier. If permitted to continue, AP's use of the ASOS Mark will further damage and irreparably injure Maier.

FIRST CLAIM FOR RELIEF
Trademark Infringement Under
Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1)

49. Plaintiffs repeat and reallege each allegation set forth in the paragraphs above.

50. Maier owns four valid and protectable ASSOS Marks, Registration Nos. 2648797, 4152174, 4152198, and 4144664.

51. AP has used and continues to use the ASOS Mark in commerce in connection with the advertising, sale, offering for sale, distribution, and/or provision of goods, without authorization from Maier, with knowledge of and/or a reckless disregard for Maier's federally registered rights in the ASSOS Marks.

52. AP's use of the ASOS Mark is likely to cause confusion with Maier's use of the ASSOS Marks.

53. AP's extensive use of the ASOS Mark in the United States is likely to cause confusion, to cause mistake, or to deceive U.S. consumers, including Maryland consumers, and to create the misimpression that goods bearing the ASSOS Marks are affiliated with AP and/or the ASOS Mark.

54. AP's extensive use of the ASOS Mark has induced purchasers and others to believe, contrary to fact, that the goods sold by AP are rendered, sponsored, approved by, or otherwise affiliated with Maier. AP's acts have damaged and impaired Maier's goodwill as symbolized by the ASSOS Marks to Maier's irreparable damage.

55. AP's infringing use of the ASOS Mark has been willful, intentional, purposeful, and/or in reckless disregard of Maier's rights.

56. AP's infringing use of the ASOS Mark constitutes trademark infringement entitling Maier to remedies under 15 U.S.C. §§ 1114 and 1117.

SECOND CLAIM FOR RELIEF
Trademark Counterfeiting Under
Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1)

57. Plaintiffs repeat and reallege each allegation set forth in the paragraphs above.

58. AP has intentionally used and continues to use the ASOS Mark in commerce in connection with the advertising, sale, offering for sale, distribution, and/or provision of goods.

59. As used by AP, the ASOS Mark is a counterfeit mark within the meaning of 15 U.S.C. § 1127, in that it is a spurious mark that is substantially indistinguishable from Maier's federally registered ASSOS Marks as shown in Registration Nos. 2648797, 4152174, 4152198, and 4144664.

60. AP has used and continues to use the ASOS Mark in commerce with full knowledge that the ASOS Mark is a counterfeit mark.

61. AP's use of the counterfeit ASOS Mark is likely to cause confusion with Maier's use of the ASSOS Marks.

62. AP's extensive use of the counterfeit ASOS Mark in the United States is likely to cause confusion, to cause mistake, or to deceive U.S. consumers, including Maryland consumers.

63. AP's extensive use of the counterfeit ASOS Mark has induced purchasers and others to believe, contrary to fact, that the goods sold by AP are rendered, sponsored, approved by, or otherwise affiliated with Maier. AP's acts have damaged and impaired Maier's goodwill as symbolized by the ASSOS Marks to Maier's irreparable damage.

64. AP's use of the counterfeit ASOS Mark has been willful, intentional, purposeful, and/or in reckless disregard of Maier's federally registered rights in the ASSOS Marks.

65. AP's use of the counterfeit ASOS Mark constitutes trademark counterfeiting entitling Maier to remedies under 15 U.S.C. §§ 1114 and 1117.

THIRD CLAIM FOR RELIEF
Reverse Confusion Under
Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1)

66. Plaintiffs repeat and reallege each allegation set forth in the paragraphs above.

67. Maier owns four valid and protectable ASSOS Marks, Registration Nos. 2648797, 4152174, 4152198, and 4144664.

68. AP has used and continues to use the ASOS Mark in commerce in connection with the advertising, sale, offering for sale, distribution and/or provision of goods, without authorization from Maier, with knowledge of and/or a reckless disregard for Maier's federally registered rights in the ASSOS Marks.

69. AP's use of the ASOS Mark is likely to cause confusion with Maier's use of the ASSOS Marks.

70. AP's extensive use of the ASOS Mark in the United States is likely to confuse U.S. consumers and create the misimpression that goods bearing the ASSOS Marks are affiliated with AP and/or the ASOS Mark, such that Maier's reputation with respect to the ASSOS Marks will be injured and their goodwill will be impaired. AP's acts have damaged and impaired Maier's goodwill as symbolized by the ASSOS Marks to Maier's irreparable damage.

71. AP's infringing use of the ASOS Mark has been willful, intentional, purposeful, and/or in reckless disregard of Maier's rights.

72. AP's infringing use of the ASOS Mark constitutes trademark infringement entitling Maier to remedies under 15 U.S.C. §§ 1114 and 1117.

FOURTH CLAIM FOR RELIEF
False Designation of Origin and Unfair Competition
Under Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A)

73. Plaintiffs repeat and reallege each allegation set forth in the paragraphs above.

74. Maier owns four valid and protectable ASSOS Marks, Registration Nos. 2648797, 4152174, 4152198, and 4144664.

75. AP has used and continues to use the ASOS Mark in commerce in connection with the advertising, sale, offering for sale, distribution, and/or provision of goods, without authorization from Maier, with knowledge of and/or a reckless disregard for Maier's federally registered rights in the ASSOS Marks.

76. AP's use of the ASOS Mark is likely to cause confusion with Maier's use of the ASSOS Marks.

77. AP's extensive use of the ASOS Mark in the United States is likely to cause confusion, to cause mistake, or to deceive U.S. consumers, including Maryland consumers, and to create the misimpression that goods bearing the ASSOS Marks are affiliated with AP and/or the ASOS Mark.

78. AP's extensive use of the ASOS Mark has induced purchasers and others to believe, contrary to fact, that the goods sold by AP are rendered, sponsored, approved by, or otherwise affiliated with Maier. AP's acts have damaged and impaired Maier's goodwill as symbolized by the ASSOS Marks to Maier's irreparable damage.

79. AP's infringing use of the ASOS Mark has been willful, intentional, purposeful, and/or in reckless disregard of Maier's rights.

80. AP's infringing use of the ASOS Mark constitutes false designation of origin and unfair competition entitling Maier to remedies under 15 U.S.C. §§ 1125 and 1117.

FIFTH CLAIM FOR RELIEF
Trademark Infringement and Unfair Competition
Under Maryland Common Law

81. Plaintiffs repeat and reallege each allegation set forth in the paragraphs above.

82. Maier owns four valid and protectable ASSOS Marks, Registration Nos. 2648797, 4152174, 4152198, and 4144664.

83. AP has used and continues to use the ASOS Mark in commerce in connection with the advertising, sale, offering for sale, distribution, and/or provision of goods, without authorization from Maier, with knowledge of and/or a reckless disregard for Maier's federally registered rights in the ASSOS Marks.

84. AP's use of the ASOS Mark is likely to cause confusion with Maier's use of the ASSOS Marks.

85. AP's extensive use of the ASOS Mark in the United States is likely to cause confusion, to cause mistake, or to deceive U.S. consumers, including Maryland consumers, and to create the misimpression that goods bearing the ASSOS Marks are affiliated with AP and/or the ASOS Mark.

86. AP's extensive use of the ASOS Mark has induced purchasers and others to believe, contrary to fact, that the goods sold by AP are rendered, sponsored, approved by, or otherwise affiliated with Maier. AP's acts have damaged and impaired Maier's goodwill as symbolized by the ASSOS Marks to Maier's irreparable damage.

87. AP's infringing use of the ASOS Mark has been willful, intentional, purposeful, and/or in reckless disregard of Maier's rights.

88. AP's use of the ASOS mark constitutes infringement of Maier's proprietary rights in the ASSOS Marks, misappropriation of Maier's goodwill in its Marks, and unfair competition

in violation of Maryland common law, entitling Maier to the remedies available under Maryland common law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor on each and every claim for relief set forth above and award it relief, including but not limited to the following:

A. Pursuant to 15 U.S.C. §§ 1114 and 1125, and the laws of the State of Maryland, an Order declaring that AP's use of the ASOS Mark infringes Maier's ASSOS Marks and constitutes unfair competition.

B. Pursuant to 15 U.S.C. § 1116, and the laws of the State of Maryland, a permanent injunction enjoining AP and its employees, agents, partners, officers, directors, owners, and all others in privity or acting in concert with them from:

1. using, registering, or seeking to register the ASOS Mark or any other mark confusing similar to Maier's ASSOS Marks in the United States; and
2. representing, directly or indirectly, that AP and its products are associated with, connected to, sponsored by, or affiliated with Maier or Assos in any way.

C. Pursuant to 15 U.S.C. § 1116, an Order directing AP to file with the Court and serve on Plaintiffs, within thirty days after the service on AP of such injunction, a report in writing under oath setting forth in detail the manner and form in which AP has complied with the injunction.

D. Pursuant to 15 U.S.C. § 1118, and the laws of the State of Maryland, an Order directing AP to deliver for destruction all products, advertisements, labels, signs, prints, packages, wrappers, promotional materials, and other things or materials in its possession or

under its control bearing the ASOS Mark and targeted to U.S. consumers.

E. Pursuant to 15 U.S.C. § 1117, and the laws of the State of Maryland, an Order requiring AP to pay to Plaintiffs any and all profits attributable to AP's sale of goods under the ASOS Mark in the United States, and further trebling the amount of the monetary award granted herein in view of the willful and deliberate nature of AP's unlawful conduct.

F. Pursuant to 15 U.S.C. § 1117(c), an Order requiring AP to pay statutory damages in an amount to be assessed by the Court.

G. Pursuant to 15 U.S.C. § 1117, and the laws of the State of Maryland, an Order requiring AP to pay to Plaintiffs all of its litigation expenses, including reasonable attorney's fees.

H. Other relief as the Court may deem just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury, pursuant to Fed. R. Civ. P. 38(b), for all issues so triable.

Dated: November 26, 2014

Respectfully submitted,

/s/ Randall A. Brater

Randall A. Brater (Bar No. 15413)
Leah C. Montesano (Bar No. 18020)
Karen Ellis Carr (Bar No. 17366)
Kathleen R. Heilman (Bar No. 29547)
ARENT FOX LLP
1717 K Street, NW
Washington, DC 20036-5342
Telephone: 202.857.6000
Fax: 202.857.6395
randall.brater@arentfox.com
leah.montesano@arentfox.com

*Counsel for Plaintiffs Anton Maier, Roger Maier,
and Anson's Herrenhaus KG*

CERTIFICATE OF SERVICE

I, Leah Montesano, certify that on November 26, 2014, a copy of the foregoing Plaintiffs'

Second Amended Complaint was served upon the following via the Court's ECF system:

Douglas A. Rettew
Julia Anne Matheson
Mark Sommers
Whitney D. Cooke
Morgan E. Smith
FINNEGAN, HENDERSON,
FARRABOW, GARRETT & DUNNER, L.L.P.
901 New York Avenue, N.W.
Washington, DC 20001-4413

/s/ Leah C. Montesano

Leah C. Montesano

Counsel for Anton Maier and Roger Maier

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION**

ANTON MAIER, ROGER MAIER, and ANSON’S HERRENHAUS KG)	
)	
Plaintiffs,)	
)	Civil Action No. 8:13-cv-02052 RWT
v.)	
)	PUBLIC VERSION
ASOS PLC and ASOS.COM LIMITED,)	
)	
Defendants.)	
)	

ANSWER AND COUNTERCLAIMS TO SECOND AMENDED COMPLAINT

Defendants ASOS Plc and ASOS.COM Limited (collectively “ASOS”), through their counsel, answer Plaintiffs’ Anton Maier, Roger Maier, and Anson’s Herrenhaus KG’s (collectively, “Plaintiffs”) Amended Complaint as follows:

NATURE OF THE ACTION

1. ASOS admits that this is a civil action in which Plaintiffs have alleged claims of trademark infringement, trademark counterfeiting, false designation of origin, unfair competition, and reverse confusion under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and related causes of action arising under Maryland common law. The remaining allegations in Paragraph 1 are denied.

2. Denied. By way of further response, ASOS specifically denies that Anton Maier and Roger Maier’s (collectively, “the Maiers”) and ASOS’ respective goods are “similar,” are “sold through similar channels of trade,” and/or “are marketed to the same prospective consumers.” ASOS sells fashion apparel, accessories, and beauty products online exclusively through its website at www.asos.com and country specific websites, including us.asos.com in the United States (collectively, the “ASOS Website”). The Maiers,

together with their affiliated entity, Assos of Switzerland, sell high performance, heavily engineered, specialized cycling apparel and cycling-related accessories exclusively at and through independently-owned bicycle stores.

3. Denied.

4. Denied. By way of further response, at the time ASOS completed its transition to the ASOS mark in or around July/August 2003, only Anton Maier's U.S. Trademark Reg. No. 2648797 had issued on November 12, 2002, covering a limited range of cycling clothing. ASOS specifically denies any "knowledge" of either the Maiers or of Assos of Switzerland in July 2003. ASOS further denies that it acted in willful disregard of any trademark rights Plaintiffs may viably claim and that its conduct "has caused confusion in the marketplace" and/or "irreparable damage" to the Maiers.

PARTIES

5. ASOS is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 5, and therefore denies them.

6. ASOS is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 6, and therefore denies them.

7. ASOS is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 7, and therefore denies them. Regarding Footnote 1 to Paragraph 7, ASOS denies the characterization of the Cooperation Agreement. ASOS admits that Anson's joined this case only after the Court granted ASOS' Motion to Join Anson's and gave Plaintiffs Anton Maier and Roger Mailer sixty days to amend their complaint by joining Anson's as a plaintiff. The remaining allegations of Paragraph 7, Footnote 1 are denied.

8. ASOS admits that ASOS Plc is a public company organized and existing under the laws of the United Kingdom, with a principal place of business at Greater London House, Hampstead Road, NW1 7FB, United Kingdom.

9. ASOS admits that ASOS.COM Limited is a private limited company organized and existing under the laws of the United Kingdom, with a principal place of business at Greater London House, Hampstead Road, London, NW1 7FB, United Kingdom.

JURISDICTION AND VENUE

10. Admitted.

11. ASOS admits that its website is accessible to consumers located in the State of Maryland and throughout the United States and that it has shipped products bearing the ASOS trademark to customers throughout the United States, including in Maryland. ASOS denies the remaining allegations of Paragraph 11.

12. ASOS is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 12, and therefore denies them.

FACTS

13. ASOS is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 13, and therefore denies them.

14. ASOS is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 14, and therefore denies them.

15. Denied as written. ASOS specifically rejects Plaintiffs' attempts to identify Anton Maier and Roger Maier as a single unified entity, rejects its misidentification of the goods covered by the cited registrations, and contests the validity of those registrations. Ownership of the various identified ASSOS registrations (collectively, the "ASSOS Marks") is divided between the two separate individuals, and covers the following specified goods:

Mark	Filing Date	Reg. No./Reg. Date	Products and Services	Owner
	July 10, 2001	Reg. No. 2648797 Reg. Date: Nov. 12, 2002 (formerly App. No. 76282473)	“Clothing for sports, namely, pants, shorts, shirts, caps, visors, hats, gloves, hosiery, stockings, and body stockings, jerseys, jackets” in Class 25.	Anton Maier
ASSOS	Feb. 17, 2010	Reg. No. 4152174 Reg. Date: June 5, 2012 (formerly App. No. 79084650)	After-shave, make-up, perfumery, cosmetics, cosmetic creams for skin care, body creams, soaps, essential oils, hair lotions; dentifrices in Class 3; Bicycles and their component parts, namely, dials, handlebars, posts, seat posts, saddles, seats, wheels, tires, brakes, brake levers, bicycle chains, hubs, axles, gear-shift levers, kickstands for bicycles, mudflaps, pedals and water bottle holders, handlebar accessories for bicycles, namely, bicycle grip tape, bicycle horns, bicycle bells and baskets in Class 12; Dresses, caps, hats, belts, skirts, jackets, coats, sweaters, singlets, overalls, dressing gowns, housecoats, bathing suits, underwear, stockings, socks, neckties, scarves, gloves, capes, trousers, slippers, parkas, pajamas, fur coats, fur jackets, pullovers, garters, brassieres, sandals, footwear, shawls, sashes for wear, overcoats, fur stoles, dungarees, boots, tee-shirts, shirts, panties, shorts, briefs, jeans, pareos, sun visors, hosiery, sleeveless jackets, arm warmers, clothing for sports, namely, clothing for cyclists, namely, bicyclist jerseys, bicyclist shorts, bicyclist pants and bicyclist gloves in Class 25	Roger Maier
	July 21, 2010	Reg. No. 4152198	After-shaves, make-up, perfumery, cosmetics, cosmetic	Roger Maier

		<p>Reg. Date: June 5, 2012 (formerly App. No. 79090301)</p>	<p>creams for skin care, body creams, soaps, essential oils, hair lotions; dentifrices in Class 3;</p> <p>Sanitary preparations for medical purposes; dietetic foods adapted for medical use; medical plasters; food supplements for medical purposes, namely, mineral and vitamin supplements in Class 5</p> <p>Protective helmets for sports in Class 9</p> <p>Bicycles and component parts thereof, namely, frames, handlebars, posts, seat posts, saddles, seats, wheels, pneumatic tires, brakes, brake levers, bicycle chains, hubs, axles, levers, kickstands for bicycles, mudguards, handlebar accessories for bicycles, namely, bicycle grip tape, bicycle horns, bicycle bells and baskets, pedals and water bottle clips specifically adapted for use on bicycles in Class 12;</p> <p>Leather and imitations of leather and goods made of these materials and not included in other classes, namely, belts, wallets, purses, key-rings, pen holders and duffel bags; trunks and traveling bags, umbrellas, parasols, backpacks, all-purpose carrying bags; leather cases; purses, credit card holders, sports bags, handbags; key cases; sports and all-purpose leisure bags; travel baggage; valises; plastic baggage labels; wallets; pouches of leather; purses; saddlebags; school bags in Class 18;</p> <p>Dresses, caps, hats, belts, skirts, jackets, coats, sweaters, singlets, smocks, dressing gowns, housecoats, bathing suits, underwear, stockings, socks, neckties, scarves, gloves, capes, trousers, slippers, parkas,</p>	
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			<p>pajamas, fur coats, fur jackets, pullovers, garters, brassieres, sandals, footwear, shawls, sashes for wear, overcoats, stoles, dungarees, boots, tee-shirts, shirts, breeches, shorts, briefs, jeans, wraparounds, eyeshades, hosiery, sleeveless jackets, attachable sleeves, sportswear, namely, cyclists' clothing, namely, bicyclist jerseys, bicyclist pants and bicyclist gloves; gloves of leather, jackets of leather and suede in Class 25;</p> <p>Training in the field of sports; entertainment services, namely, organizing of exhibitions for sports purposes in the field of sports; organization of sports activities, namely, organization of cycling competitions in Class 41</p>	
ASSOS	July 21, 2010	<p>Reg. No. 4144664</p> <p>Reg. Date: May 22, 2012 (formerly App. No. 79090075)</p>	<p>Sanitary preparations for medical purposes; medical plasters; all-purpose disinfectants; food supplements, mineral and vitamin supplements in Class 5;</p> <p>Protective helmets for sports in Class 9;</p> <p>Leather and imitations of leather and goods made of these materials and not included in other classes, namely, shoulder belts, saddle belts, wallets, purses, key-rings, pen holders, duffel bags, trunks and traveling bags, umbrellas, parasols, backpacks, all-purpose carrying bags; leather cases, change purses, credit card cases, sports bags, handbags, key cases, sports and all-purpose leisure bags; luggage for travel; valises; plastic baggage labels, wallets; pouches of leather; purses; saddlebags; school bags in Class 18;</p> <p>Training in the field of sport; entertainment services, namely, organization or exhibitions for</p>	Roger Maier

			sports purposes in the field of sports; organization of sporting activities, namely, organization of cycling competitions in Class 41.	
--	--	--	--	--

16. Denied as written.

17. Denied as written. ASOS denies that the ASSOS Marks are “licensed by Maier to Assos of Switzerland,” as these marks are not owned by “Maier” collectively, but individually by either Roger Maier or Anton Maier. ASOS acknowledges that Paragraph 17 includes a link to www.assos.com/en/116/north-america.aspx. ASOS specifically denies Plaintiffs’ classification of the five (5) listed entities as “Internet retailers.” To the contrary, most, if not all, of the identified entities are retailers specializing in cycling apparel and merchandise. ASOS is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph 17, and therefore denies them.

18. Denied as written. ASOS acknowledges that Plaintiffs provide a link in Paragraph 18 to www.assos.com/en/60/buy-in-store.aspx?whereToBuyCountry=USA. ASOS denies Plaintiffs’ characterization of the stores listed at that link as “retail stores.” To the contrary, each of the identified entities is a retailer specializing in cycling apparel and merchandise. ASOS is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph 18, and therefore denies them.

19. Denied as written. ASOS denies that Anson’s and ASOS are engaged in a “worldwide trademark conflict due to Asos’ infringement” of the ANSON’S mark. ASOS likewise specifically denies that the trademarks ANSON’S and ASOS are “almost identical” or even similar when pronounced in the German language. The remaining allegations of Paragraph 19 are denied.

20. Denied as written. ASOS denies that the Maiers instituted any “infringement” proceedings against ASOS prior to Anson’s involvement and the Maiers’ and Anson’s entry into the 2011 Cooperation Agreement. To the contrary, until Anson’s involvement, the only disputes between the Maiers, Assos of Switzerland, and ASOS were limited to registration disputes in various trademark offices. ASOS is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph 20, and therefore denies them.

21. Denied as written. ASOS admits that a document titled “Cooperation Agreement” was signed by the Maiers, Assos of Switzerland, and Anson’s in November 2011 and that the Cooperation Agreement gives Anson’s the *exclusive* right to enforce the Maiers’ ASSOS Marks against ASOS worldwide. The remaining allegations of Paragraph 21 are denied.

22. Admitted.

23. ASOS admits that it sells ASOS branded apparel, footwear, and accessories through its retail website at www.asos.com (and the U.S. dedicated website at us.asos.com). ASOS further admits that it has sold ASOS branded products to U.S. consumers via us.asos.com since at least as early as 2010. Indeed, ASOS has sold ASOS branded products to U.S. consumers via asos.com since at least as early as 2005.

24. ASOS admits that it sells products designed and manufactured by third parties and offers third party branded products on its website at www.asos.com (and us.asos.com). ASOS further admits that products purchased by consumers from ASOS’ primary retail website at www.asos.com (and us.asos.com) are shipped to consumers by ASOS in packaging bearing ASOS branding. ASOS admits that where the purchased products are ASOS branded products, those products are shipped with ASOS labels and in packaging

bearing ASOS branding. ASOS admits that, as of the date of this Answer, it operates a boutique-to-consumer marketplace platform called ASOS Marketplace at <https://marketplace.asos.com> (the "ASOS Marketplace"). ASOS Marketplace is an online marketplace from which third party boutiques can sell new, pre-owned, and vintage fashion and fashion accessories to ASOS customers. ASOS specifically denies that products sold by third parties through ASOS Marketplace are shipped to consumers by ASOS. ASOS is not involved in the fulfillment, packaging, or shipment of products sold by the boutiques through ASOS Marketplace and ASOS specifically denies that products sold via third party boutiques through ASOS Marketplace are shipped in packaging bearing ASOS branding. ASOS also does not process the payments for orders placed through ASOS Marketplace; payments are between the consumers and the boutiques and are processed by third party vendor, PayPal. ASOS denies the remaining allegations of Paragraph 24.

25. ASOS admits that it filed U.S. Trademark Application Serial No. 79016885 with the PTO on July 15, 2005 based upon International Registration No. 0866394 and Section 1(b) of the Lanham Act. To the extent there are remaining allegations in Paragraph 25, ASOS denies them.

26. ASOS admits that Application Serial No. 79016885 was filed on a dual basis of 66(a) and Section 1(b) of the Lanham Act. ASOS denies the remaining allegations of Paragraph 26.

27. Denied.

28. ASOS admits that Anton Maier filed a Notice of Opposition on March 14, 2007 against the Class 25 goods covered by Application Serial No. 79016885. The remaining allegations of Paragraph 28 are denied.

29. ASOS admits that it abandoned Application No. 79016885 on March 5, 2010.

30. Denied.

31. Denied.

32. Admitted.

33. ASOS admits that the U.S. ASOS website offers men's and women's fashion clothing, accessories, and footwear to U.S. consumers. ASOS admits that the prices displayed on the U.S. ASOS website are listed in U.S. dollars and that a small U.S. flag appears in the top right corner of the screen to indicate that the website visitor is in the U.S. ASOS admits that the page attached as Exhibit 1 to the Complaint is a true and correct copy of the U.S. ASOS website as of the listed date. To the extent there are remaining allegations in Paragraph 33, ASOS denies them.

34. ASOS admits that its U.S. ASOS website includes a link to ASOS Marketplace. ASOS admits that third party boutiques from around the world list items for sale on ASOS Marketplace. ASOS is not affiliated with the boutiques who sell merchandise through ASOS Marketplace. Nor does ASOS sell its products through independent boutiques or at brick-and-mortar stores in Maryland or anywhere else in the world. ASOS branded products are sold exclusively through its online retail store at www.asos.com and its country-specific versions of its website, including the U.S. ASOS website at us.asos.com. Any stores that sell ASOS branded products do so without ASOS' knowledge or permission. ASOS denies the remaining allegations of Paragraph 34.

35. Denied.

36. Denied. By way of further response, ASOS specifically denies that the logos as depicted in the Complaint are accurate depictions of the Maiers' and ASOS' respective marks as they appear on the top left hand side of their respective homepages.

37. Denied.

38. Denied. By way of further response, ASOS specifically denies that the Maiers and ASOS advertise or sell goods that “are similar or identical in nature,” “through the same channels of trade,” and “to the same prospective purchasers.” ASOS sells fashion apparel and accessories online exclusively through its website at www.asos.com (and its country-specific websites, including the U.S. ASOS website at us.asos.com) directed primarily to fashion conscious consumers in their 20s. The Maiers, together with their affiliated entity, Assos of Switzerland, sell high performance, heavily engineered, specialized cycling apparel and cycling-related accessories exclusively at and through independently-owned bicycle stores.

39. ASOS admits that it sells ASOS branded clothing and accessories to customers located within the U.S. ASOS admits that ASOS branded clothing includes neck tags and labels featuring ASOS branding. ASOS admits that products purchased through the primary website at www.asos.com (and the U.S. ASOS website at us.asos.com) are shipped to consumers in packaging bearing ASOS branding. ASOS denies the remaining allegations of Paragraph 39.

40. Denied.

41. ASOS admits that it sells products under third-party marks on its website at www.asos.com (and the U.S. ASOS website). ASOS further admits that such third-party brand products purchased by consumers from the primary retail store at www.asos.com (and U.S. ASOS website) are shipped to consumers by ASOS in packaging bearing ASOS branding.

42. Denied.

43. ASOS admits that, as of the date of this Answer, ASOS Marketplace is an online marketplace from which third party boutiques can sell new, pre-owned, and vintage

fashion and fashion accessories to ASOS customers. ASOS is not affiliated with the boutiques who sell merchandise through ASOS Marketplace. ASOS specifically denies that products sold by third party boutiques through ASOS Marketplace are shipped to consumers by ASOS. ASOS is not involved in the fulfillment, packaging, or shipment of products sold by others through ASOS Marketplace. ASOS specifically denies that when goods sold via ASOS Marketplace are shipped to consumers, they include labels and/or receipts bearing the ASOS Mark. ASOS also does not process the payments for orders placed through ASOS Marketplace; payments are between the consumers and the boutiques and are processed by third party vendor, PayPal. ASOS further denies that the ASOS Marketplace is specific to or part of the U.S. ASOS website. ASOS denies the remaining allegations of Paragraph 43.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

FIRST CLAIM FOR RELIEF
Trademark Infringement Under
Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1)

49. ASOS repeats and incorporates by reference its answers to Paragraphs 1 through 48 of the Complaint.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied. ASOS further denies that its conduct has caused any actual or likely confusion in the marketplace and/or damaged and impaired any goodwill the Maiers hold in the ASSOS Marks.

55. Denied.

56. Denied.

SECOND CLAIM FOR RELIEF
Trademark Counterfeiting Under
Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1)

57. ASOS repeats and incorporates by reference its answers to Paragraphs 1 through 56 of the Complaint.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

THIRD CLAIM FOR RELIEF
Reverse Confusion Under
Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1)

66. ASOS repeats and incorporates by reference its answers to Paragraphs 1 through 65 of the Complaint.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

FOURTH CLAIM FOR RELIEF
False Designation of Origin and Unfair Competition Under
Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A)

73. ASOS repeats and incorporates by reference its answers to Paragraphs 1 through 72 of the Complaint.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

FIFTH CLAIM FOR RELIEF
Trademark Infringement and Unfair Competition
Under Maryland Common Law

81. ASOS repeats and incorporates by reference its answers to Paragraphs 1 through 80 of the Complaint.

82. Denied.

83. Denied.

84. Denied.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

ASOS denies the balance and remainder of all of the allegations contained in all paragraphs, counts, and sub-parts of Plaintiffs' Complaint, including any and all demands for judgment or relief asserted, that are not expressly admitted.

AFFIRMATIVE DEFENSES

89. Plaintiffs fail to state a claim upon which relief may be granted.

90. Plaintiffs' claims are barred in whole or in part by laches, estoppel, and/or waiver.

91. Plaintiffs' claims are barred by unclean hands.

92. ASOS reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, the Lanham Act, and any other defenses at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation in this case.

COUNTERCLAIMS

Defendants ASOS Plc and ASOS.COM Limited (collectively, "ASOS"), through their undersigned counsel, allege as follows, upon actual knowledge with respect to themselves and their own acts, and upon information and belief as to all other matters.

Parties

1. ASOS Plc is a public company organized and existing under the laws of the United Kingdom, with a principal place of business at Greater London House, Hampstead Road, NW1 7FB, United Kingdom.

2. ASOS.COM Limited is a private limited company organized and existing under the laws of the United Kingdom, with a principal place of business at Greater London House, Hampstead Road, London, NW1 7FB, United Kingdom. ASOS.COM Limited is wholly owned by ASOS Plc.

3. Roger Maier is a citizen of Switzerland with an address of Via Bresce, 1 6854 San Pietro di Stabio, Switzerland.

4. Anton Maier is a citizen of Switzerland with an address of Via Bresce, 1 6854 San Pietro di Stabio, Switzerland.

5. Anson's Herrenhaus KG ("Anson's") is a limited partnership organized and existing under the laws of Germany, with a principal place of business at Berliner Allee 2, 40212 Düsseldorf, Germany.

Jurisdiction

6. This Court has jurisdiction over the subject matter of this counterclaim pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331, 1338(a) and (b).

7. By their Complaint, Anton Maier, Roger Maier, and Anson's (collectively, "Plaintiffs") have charged ASOS with trademark infringement, trademark counterfeiting, false designation of origin, unfair competition, and reverse confusion under the Lanham Act and common-law trademark infringement and unfair competition—all of which ASOS denies.

8. As a result of Plaintiffs' Complaint and allegations, Plaintiffs have submitted themselves to the jurisdiction and venue of this Court.

Counterclaimants and Their ASOS Mark

9. ASOS operates an online fashion and beauty destination from its website at www.asos.com (and its eight country-specific websites, including the U.S. ASOS website located at us.asos.com). The www.asos.com website is visited by more than ten million shoppers and fashion lovers around the world and across the U.S. each month. ASOS offers women and men "fast fashion," or clothing that reflects fast-moving fashion trends.

10. ASOS has been exclusively an Internet retailer since its launch in June 2000 under the original name "AsSeenOnScreen" at www.asseenonscreen.com. From the launch of AsSeenOnScreen in June 2000, customers have been able to purchase and receive deliveries internationally.

11. The business was referred to internally as "ASOS", an abbreviation for AsSeenOnScreen, almost immediately after inception. The www.asos.com domain name was acquired shortly after launch in October 2000 and used to redirect traffic to www.asseenonscreen.com, the central site for the AsSeenOnScreen online retail business.

12. During 2001-2002, ASOS began to transition away from the name "AsSeenOnScreen" to ASOS. In September 2002, the business commenced use of the ASOS mark in a logo form at www.asseenonscreen.com. In July 2003, the "shop front" for the AsSeenOnScreen online retail business was shifted from www.asseenonscreen.com to www.asos.com. The business formally changed its corporate name to ASOS in August 2003.

13. The www.asos.com website, and the fashion apparel, accessories, jewelry, and beauty products offered and sold through that site, have been accessible to consumers in the United States since the shift from www.asseenonscreen.com to www.asos.com in July 2003.

ASOS branding has been prominently featured across ASOS' full range of services (e.g., online shopping, advertising and promotional, customer loyalty, customer club) since that time.

14. In or around 2005, ASOS launched its own line of fashion clothing under the ASOS brand. The success of the ASOS brand led to its expansion into fashion bags, accessories, and jewelry—all sold exclusively through the www.asos.com website. These products have been available for shopping and purchase by U.S. consumers since their respective product category launches.

15. Over the past decade, ASOS has become an online retail success across the globe, including in the U.S.

16. Today, ASOS is a highly respected fashion brand and has received extensive unsolicited attention from the local, national, and international media.

An Overview of the Maiers, Their Business, and Their Products

17. Assos of Switzerland, S.A. (“Assos of Switzerland”), is a Swiss manufacturer of heavily engineered, high performance, and high-end road cycling apparel and accessories.

18. Plaintiff Roger Maier (aka Roche Maier), is the current Chief Executive Officer of Assos of Switzerland and the son of its founder, co-Plaintiff Anton Maier.

19. Anton Maier (aka Toni Maier) began designing and making clothing for road cyclists in the late 1970s and is credited with creating the first pair of Lycra[®] cycling shorts. Anton Maier subsequently founded the business known today as Assos of Switzerland in or around 1980. Anton Maier is currently the acting President of Assos of Switzerland.

20. The name of the company is derived from the Greek word ASSOS meaning “ace” or “the best.” The name ASSOS was chosen to signal that Assos of Switzerland’s

cycling clothes occupy the very top end of the ranges of cycling apparel in terms of quality and price.

21. Assos of Switzerland's core products are a range of high performance, highly engineered and specialized cycling apparel and accessories designed to appeal to professional, semi-professional, and dedicated amateur cyclists. Its core products include a range of cycling shorts; cycling jerseys; all-in-one body cycling suits; cycling tights; cycling base layers; cycling arm, leg, and knee warmers; cycling gloves; cycling jackets and vests; cycling socks; cycling hats; and cycling shoe covers.

22. Assos of Switzerland is particularly known among cyclists for its cycling shorts and other products directed at "sitting comfort."

23. Assos of Switzerland carefully directs the cut, construction, fabric, and design of each of its core products to balance the competing needs for the garment to be comfortable, lightweight, durable, and, where appropriate, aerodynamic.

24. In addition to its "core" or "performance" products, Assos of Switzerland has historically offered a small selection of collateral merchandise featuring ASSOS branding (namely, its A ASSOS & Design mark ()) and designed to appeal to Assos of Switzerland cycling brand loyalists.

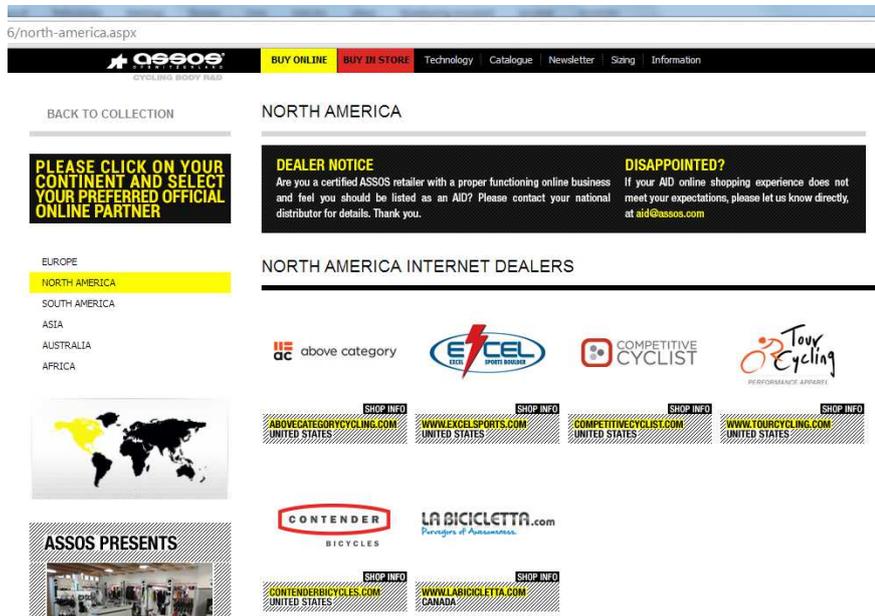
25. Since its inception, Assos of Switzerland has historically exercised tight control over the advertising, marketing, display, and sale of its products to ensure the highest quality of customer experience.

26. In the U.S., Assos of Switzerland's products are stocked and sold exclusively through independent bike shops, as well as some retail cycling product mail-order companies. Assos of Switzerland products are not available in chain stores, big box stores, department stores, or other general retail stores.

27. In the U.S. retail marketplace, Assos of Switzerland’s products are generally displayed or shown near or in proximity to bicycles, bicycle parts and components, bicycle equipment and accessories, as well as competing brands of cycling apparel.

28. Assos of Switzerland’s advertising and marketing activities in the U.S. are consistent with its high-end high-performance focus. In the U.S., Assos of Switzerland advertises its goods primarily, if not exclusively, in the specialty cycling press or trade.

29. Assos of Switzerland has historically shied away from Internet trade channels, preferring to control its customer experience through brick-and-mortar sales. Assos of Switzerland’s products cannot be purchased directly from Assos of Switzerland’s website at www.assos.com. Instead, U.S.-based customers interested in purchasing Assos of Switzerland products online are directed to the websites of five (5) U.S.-based cycling mail-order retailers who are part of Assos of Switzerland’s “certified” Internet distributor network.



An Overview of Anson’s and Its Products

30. Anson’s is a German bricks-and-mortar retailer that sells third-party-brand menswear apparel and accessories in approximately twenty stores located in northwest Germany. Anson’s also sells a small number of items under the ANSON’S brand. Anson’s

is part of the large, Germany-based retail group, Peek & Cloppenburg KG Düsseldorf.

**An Overview of the Disputes Between the Maiers
and ASOS Prior to Anson's' Involvement**

31. The Maiers and ASOS operated independently, and without knowledge of each other, their respective marks, goods, or trade channels until mid-2006. The Maiers and ASOS' conflicts originated from trademark filings in various foreign trademark offices.

32. In November 2002, the USPTO issued U.S. Registration No. 2648797 to Plaintiff Anton Maier for the mark A ASSOS & Design [] covering:

- a. bicycles and parts of bicycles, namely, frames, handle bars, stems, seat posts, saddles, seats, wheels, tires, brakes, brake levers, drive chains, hubs, axels, shifters, kick stands, mudguards, ahead stem, quill stem, pedals, bottle cage in Class 12; and
- b. clothing for sports, namely, pants, shorts, shirts, caps, visors, hats, gloves, hosiery, stockings, and body stockings; jerseys, jackets in Class 25.

33. In the June-July 2005 time period, Counterclaimant ASOS Plc applied to register the ASOS mark in the UK, the European Community, and in the U.S. (U.S. App. No. 79016885, or the "885 Application") for a broad range of fashion and personal-care products. The '885 Application covered the following:

- a. soaps; cosmetics; perfumery; essential oils; eau de parfum; eau de toilette; cologne; fragrances and fragrance products for personal use, namely, skin balms and aftershave balms; massage oils; hair lotions; dentifrices; cosmetics; cosmetic preparations for skin care; skin care cosmetics; non-medicated skin care preparations; astringents for cosmetic purposes; non-medicated preparations for the bath and shower; shower gel; bath gels; scented body lotions and creams; scented moisturizing skin cream; moisturizers; body lotions and creams; moisturizing creams; scented skinsoap; body oil; face, lip and cheek make-up; face powder; face glitter; lipstick, lip gloss, non-medicated lip balm, lip pencils; make-up in the nature of perfumed shimmer sticks; eye shadow, eye pencils, mascara, eye make-up, eyeliners, eye creams, eye gels, eye balms; facial highlighters; beauty masks; facial cleansers; toners; skin clarifiers; skin exfoliants; foundation make-up; blusher; compacts containing cosmetics; make-up remover; fragrance sachets; room fragrances; beauty care preparations; beauty care products, namely, anti-cellulite body creams, serums and scrubs, and skin conditioners; beauty creams; beauty tonics for application to the body; beauty tonics for application to the face; non-medicated skin

care beauty products, namely, anti-blemish preparations, skin ointments, eye treatment preparations for the removal of under-eye bags and circles; skin care products for personal use, namely face, eye and lip moisturizers; face and skin creams; lotions and serums; anti-aging treatments, namely, skin uplifting gels; foundation for the face; hair care products, namely, shampoo, hair conditioners, hair gel and hairspray; nail care preparations, nail polish, nail strengtheners, and nail polish remover. shaving cream, shaving gel, after-shave preparations, namely, after-shave lotion; depilatory preparations; personal deodorant; antiperspirants; potpourri; sun tanning preparations; cosmetic preparations for skin tanning; artificial tanning preparations in Class 3;

- b. precious and semi-precious stones; jewelry; fashion jewelry; amulets; bracelets; brooches and lapel pins; jewelry chains; charms; cuff links; earrings; rings; tie clips and pins; horological and chronometric instruments; wrist watches; clocks; boxes, cases and containers of precious metals, namely, jewelry boxes; decorative boxes of precious metal; hat and shoe ornaments of precious metals; figurines and statuettes of precious metals; badges of precious metal in Class 14;
- c. articles of leather and imitations of leather, namely, trunks and traveling bags; travel cases; luggage; suitcases; holdalls; portmanteaux; valises; bags, namely, tote bags, drawstring bags, overnight bags, duffel bags; handbags; shoulder bags; toilet bags; carrier bags; rucksacks; backpacks; bumbags; sports bags; casual bags, namely, clutch bags; briefcases; attaché cases; carrying cases for music; satchels; beauty cases, namely, cosmetic cases sold empty; luggage in the nature of carriers for suits, for shirts and for dresses; carrying cases for ties; credit card cases and holders; wallets; purses; umbrellas; parasols; walking sticks; saddle belts; parts and fittings for all the aforesaid goods in Class 18;
- d. footwear; boots, shoes, slippers, sandals, trainers, socks and hosiery; headgear, namely, hats; caps; berets; scarves; gloves; mittens; belts being articles of clothing; shirts, casual shirts, t-shirts, polo shirts, sports shirts, football and rugby shirts; trousers, jeans, shorts, sports shorts, football shorts, rugby shorts; swimwear; underwear; lingerie; tracksuits; football boots, rugby boots; articles of outerwear, namely, coats, jackets, ski jackets, casual jackets, waterproof and weatherproof jackets and coats, parkas, ski wear; suits; jumpers and cardigans; knitwear; namely sweaters and cardigans; leggings; neckties; pajamas; waistcoats; headbands and wristbands; men's wear, namely, men's suits, blazers, shirts, camouflage trousers and jackets, hooded jackets; women's wear, namely, women's suits, blouses, shirts in Class 25;
- e. retail store services in the fields of perfumery, toiletries and cosmetics, bathing and personal cleansing and care products, candles, pharmacy goods, hardware and metal goods, cutlery, electrical goods, computers, computer programs, photographic and video equipment and accessories, optical goods and sunglasses, books and printed materials, audio tapes, audio, video and television systems, CDs, records and video tapes, films, telephones and mobile phones, lighting equipment and fixtures, bicycles, jewelry, watches, horological and chronometric goods, musical

instruments, stationery, printed publications and printed matter, diaries and personal organizers, greeting cards, gift wrap and ribbons, furniture, furnishings and decorations, kitchenware, domestic utensils, crystal, glassware, porcelain and chinaware, brassware, ornaments, hair accessories, hampers, piece goods, sewing accessories, bags made from canvas, straw, plastic and pvc, bed and table linen, towels, bags, leather and travel goods, luggage, clothing and accessories, footwear, carpets and rugs, artwork, toys (including novelty toys), games, playthings and sporting goods, fitness equipment, equestrian goods, decorations, food and confectionery, non-alcoholic and alcoholic beverages, pets, apparatus for use in assisting relaxation; mail order catalog services and online and Internet retail store services relating to the aforesaid goods in Class 35.

34. On April 27, 2006, Plaintiff Roger Maier filed an opposition against ASOS Plc's European Community ("CTM") application.

35. In the U.S., the '885 Application was examined and passed by the USPTO to publication without incident. Notably, during the application examination process, the USPTO did not cite Anton Maier's U.S. Reg. No. 2648797 for the A ASSOS & Design mark covering clothing for sport in Class 25 as a bar to ASOS' registration in the U.S. of the ASOS mark.

36. On March 14, 2007, Plaintiff Anton Maier initiated U.S. Trademark Opposition No. 91176236 against the '885 Application in Class 25.

37. Following multiple extensions of the trial calendar, and unsuccessful efforts to amicably resolve the Maiers and ASOS' dispute through settlement, ASOS Plc. abandoned the '885 Application in all classes. The opposition never advanced beyond its initial stages and no decision was reached on the merits.

38. Over the next several years, the Maiers and ASOS engaged in a number of additional registration-related disputes before trademark offices around the world.

39. As a result of their registration-related actions against ASOS in the UK, CTM, U.S., and elsewhere, Plaintiffs Roger Maier and Anton Maier, by themselves and/or in their roles as officers for Assos of Switzerland, had actual knowledge of ASOS, its website at

www.asos.com, and the nature and scope of its fashion-oriented goods and services at least as early as early 2006.

An Overview of the Disputes Between Anson's and ASOS

40. In early 2010, Anson's challenged ASOS' use and registration of its ASOS mark in multiple jurisdictions based upon alleged conflict with its ANSON'S mark. Specifically, on February 24, 2010, Anson's threatened to oppose ASOS' UK trademark application No. 2530115. On March 19, 2010, Anson's sent a demand letter claiming that the ASOS mark infringed Anson's rights in the ANSON'S trademark in Germany and the CTM.

41. On March 10, 2010, with no notice to ASOS, Anson's applied for an *ex parte* injunction against an ASOS advertisement in Germany before the Regional Court of Düsseldorf. On March 17, 2010, after the Düsseldorf court indicated it would likely refuse the injunction, Anson's withdrew that case and, yet again, with no notice to ASOS, filed a nearly identical *ex parte* application with the Regional Court of Hamburg. At the time Anson's filed these duplicative pleadings, it failed to advise the Hamburg court of the earlier Düsseldorf proceeding and result. Following the Hamburg lower court's ruling in Anson's favor and upon learning of the earlier Düsseldorf proceeding, the appeals court strongly advised that Anson's withdraw its injunction request and threatened to overturn the injunction as improperly obtained if Anson's did not do so. Thereafter, on August 19, 2014, Anson's withdrew its second-filed injunction request.

42. In April 2010, Anson's filed UK trademark opposition No. O-333/11 against ASOS' UK trademark application No. 2530115 for the ASOS mark alleging conflict with Anson's CTM registration for the ANSON'S trademark. On October 3, 2011, the Registrar for the Intellectual Property Office of the United Kingdom concluded there was no likelihood of confusion or likelihood of association between the ASOS and ANSON'S marks.

43. In June 2010, Anson's filed yet another infringement suit against ASOS in the Regional Court of Hamburg, Germany, claiming the ASOS mark infringed Anson's German and CTM trademark registrations, and company name rights, in the ANSON'S mark, covering clothing and retail services. While successful before the lower court, on appeal the Court of Appeals of Hamburg reversed the decision at a hearing on October 2, 2014, concluding that the ASOS mark did not infringe Anson's ANSON'S trademark or company name rights. Subsequently, on December 11, 2014, the appeals court dismissed Anson's claim in its entirety and refused to grant leave to appeal to the Federal Supreme Court.

44. On October 15, 2010, long after ASOS and Anson's were engaged in both registration and infringement disputes in various countries around the world, and despite its knowledge of ASOS' longstanding rights in the ASOS mark, Anson's filed U.S. Application Serial No. 85153826 ("the '826 Application") to register the mark ASOS, covering a range of goods in Classes 3, 18, and 25 identical and closely related to those long offered by ASOS under its ASOS mark. Anson's filed the '826 Application pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b) claiming a bona fide intent to use the ASOS mark on such goods in the U.S.

45. In addition to a U.S. application for the ASOS mark, Anson's also filed trademark applications to register ASOS in Hong Kong, India, Turkey, and China. ASOS has challenged each of those applications on multiple grounds, including bad faith.

46. During prosecution of the '826 Application, the USPTO issued a refusal of registration, citing a likelihood of confusion with two third-party registrations, one of which is owned by Anton Maier. In a July 26, 2011 Office Action response, Anson's stated that it was "discussing an amicable co-existence relationship" with Anton Maier. A copy of Anson's July 26, 2011 Office Action response is attached as **Exhibit 1**. Ultimately, Anson's

amended its description of goods and services and, on that basis, requested that the USPTO withdraw the refusals.

47. The '826 Application was published for opposition on November 26, 2013. ASOS timely opposed the '826 Application on January 24, 2014, filing Opposition No. 91214632. Anson's successfully moved to suspend the Opposition based upon this district court action. In its motion to suspend, Anson's argued that ASOS' "claims of ownership over the ASOS name and mark . . . are directly at issue" in this action and that the outcome of this action "may have a direct and material impact" on ASOS' challenge to the '826 Application. A copy of Anson's Motion to Suspend Opposition Proceeding is attached as **Exhibit 2**.

Collusion Between the Maiers and Anson's

48. In or around July 2011, following the failure of Anson's efforts to oppose the ASOS mark in the UK on the basis of its ANSON'S mark, Anson's approached the Maiers to obtain the right to enforce the Maiers' trademarks against ASOS. Thereafter, in November 2011, Anson's and the Maiers entered into a "Cooperation Agreement," a copy of which is attached as **Exhibit 3**.

49. In the Cooperation Agreement, the Maiers granted to Anson's all rights of enforcement of the ASSOS Marks against ASOS worldwide in exchange for, among other things, Anson's bearing all costs related to such enforcement.

50. Prior to signing the Cooperation Agreement, the Maiers and ASOS were only involved in *registration-related* disputes before various trademark offices around the world. These actions did not concern allegations of infringement in the marketplace.

51. In the Cooperation Agreement, in addition to giving away all rights of enforcement against ASOS and all control therein, the Maiers also consented to Anson's use

and registration of the ASOS mark for any goods and services in any country around the world, including in the U.S.

52. The Cooperation Agreement memorialized the agreement and conspiracy between and among the Plaintiffs to interfere with ASOS' business; to misappropriate ASOS' goodwill in the ASOS name and mark; to preclude, prevent, or obstruct ASOS' continued use of its marks in the U.S.; and to block future registrations of the ASOS marks for ASOS' fashion-related goods and services.

53. Following the parties' execution of the Cooperation Agreement, on December 16, 2011, Anson's filed a trademark infringement and passing off action against ASOS in the High Court of Justice of England and Wales in the name of Roger Maier and Assos of Switzerland (hereafter, the "U.K. case"). Following a full trial on the merits (discussed in more detail below), the court found no infringement. Anson's has appealed that decision.

54. On October 4, 2013, Anson's, in the name of Anton Maier, filed a trademark infringement action in the Regional Court of Hamburg, Germany. On May 28, 2014, Anson's, in the name of Anton Maier and Assos of Switzerland, filed a trademark infringement claim in the Paris Civil Court, France. Both actions are currently pending.

55. In accordance with the terms of the Cooperation Agreement, Anson's has provided the Maiers and/or Assos of Switzerland with financial assistance, funding, and/or other forms of compensation, including the reimbursement of sums ordered by various courts relative to unsuccessful infringement and registration-related actions initiated by Anson's against ASOS in the name of the Maiers' and/or Assos of Switzerland.

THE MAIERS' FRAUDULENT ACTS
Roger Maier and Registration No. 4152174

56. On February 17, 2010, pursuant to Section 66(a) of the Lanham Act, 15 U.S.C. § 1141, Roger Maier, in his individual capacity, filed U.S. Trademark Application No. 79084650 (the "'650 Application") for the mark ASSOS seeking protection in the U.S. for goods in Classes 3, 12, and 25.

57. The '650 Application was notable for two reasons. First, because it covered items of apparel identical to those already covered in his father's U.S. Reg. No. 2648797. Second, because it covered various goods in Classes 3 and 25 not directed at cycling or cyclists and directly overlapping with ASOS' fashion product range. The goods covered by the '650 Application included:

- a. After-shave, make-up, perfumery, cosmetics, cosmetic creams for skin care, body creams, soaps, essential oils, hair lotions; dentifrices in Class 3;
- b. Bicycles and their component parts, namely, dials, handlebars, posts, seat posts, saddles, seats, wheels, tires, brakes, brake levers, bicycle chains, hubs, axles, gear-shift levers, kickstands for bicycles, mudflaps, pedals and water bottle holders, handlebar accessories for bicycles, namely, bicycle grip tape, bicycle horns, bicycle bells and baskets in Class 12; and
- c. Dresses, caps, hats, belts, skirts, jackets, coats, sweaters, singlets, overalls, dressing gowns, housecoats, bathing suits, underwear, stockings, socks, neckties, scarves, gloves, capes, trousers, slippers, parkas, pajamas, fur coats, fur jackets, pullovers, garters, brassieres, sandals, footwear, shawls, sashes for wear, overcoats, fur stoles, dungarees, boots, tee-shirts, shirts, panties, shorts, briefs, jeans, pareos, sun visors, hosiery, sleeveless jackets, arm warmers, clothing for sports, namely, clothing for cyclists, namely, bicyclist jerseys, bicyclist shorts, bicyclist pants and bicyclist gloves in Class 25.

58. At the time Roger Maier filed the '650 Application, he was acting CEO for Assos of Switzerland.

59. During prosecution of the '650 Application, the USPTO issued a refusal of registration on grounds of likelihood of confusion with Anton Maier's Registration No. 2648797 for the A ASSOS & Design mark.

60. To overcome the USPTO's refusal, Roger Maier submitted a Trademark Consent and Coexistence Agreement signed by his father and himself on December 15, 2011. In that agreement, Anton Maier and Roger Maier state and represent to the USPTO that:

The basis for this consent is the mutual determination and belief of the parties hereto that there is no likelihood that consumers have been or will be confused by the use in commerce and registration of the two marks. This determination and belief is supported by the fact that neither party knows of any instances of actual confusion over five years of co-existence of both of our marks in a common geographic region.

61. The Trademark Consent and Coexistence Agreement submitted by Roger Maier in support of the '650 Application and executed by both Roger Maier and Anton Maier deceptively omitted to disclose the father-son relationship between them; falsely implied that Roger Maier and Anton Maier had operated independently in the marketplace under their respective marks for the prior five-year period without confusion when all use of the ASSOS mark was being made by a single entity, namely, Assos of Switzerland; and deceptively omitted each individual's position as officers of Assos of Switzerland.

62. Roger Maier did not have, and could not have had, a bona fide intention to use the ASSOS mark in commerce on or in connection with each and every good in Classes 3, 12, and 25 identified in the '650 Application at the time of filing, as required under Section 66(a), 15 U.S.C. § 1141(a).

63. At the time Roger Maier filed the '650 Application and signed the sworn declaration in support of this application, Roger Maier knew that his claim of a bona fide intent-to-use the ASSOS mark in commerce on or in connection with each of the listed goods in Classes 3, 12, and 25 was false and misleading.

64. At no time after Roger Maier filed the '650 Application and signed the sworn declaration in support of the application did Roger Maier disclose to the USPTO that he did

not have a bona fide intent-to-use the ASSOS mark in commerce on or in connection with each and every good identified in Classes 3, 12, and 25.

65. Roger Maier omitted to disclose to the USPTO that the ASSOS mark covered by Anton Maier's Registration No. 2648797 and cited by the USPTO as a bar to registration was used by Assos of Switzerland and that Roger Maier was the CEO of that company.

66. Roger Maier omitted to disclose to the USPTO that Anton Maier was his father and that his father was President of Assos of Switzerland.

67. At the time Roger Maier filed the '650 Application and signed the sworn declaration in support thereof, Roger Maier was aware of ASOS and its business and products as a result of the numerous disputes in which the Maiers and ASOS were engaged.

68. Roger Maier purposely and knowingly filed the '650 Application and signed the sworn declaration in support of this application for goods in Classes 3 and 25 not directed to cycling or cyclists with the bad faith intent of interfering with ASOS' trademark rights or otherwise precluding, preventing, and/or obstructing ASOS' lawful exercise of such rights.

69. The '650 Application subsequently matured into Registration No. 4152174 on June 5, 2012.

Roger Maier and Registration No. 4144664

70. On July 21, 2010, Roger Maier, in his individual capacity, filed U.S. Trademark Application No. 79090075 (the "'075 Application") pursuant to Section 66(a) of the Lanham Act, 15 U.S.C. § 1141, for the mark ASSOS seeking protection in the U.S. for goods and services in classes 5, 9, 18, and 41.

71. The '075 application was notable for its coverage of various goods in Class 18 not directed at cycling or cyclists and directly overlapping with ASOS' fashion product range. The goods and services covered by the '075 application included:

- a. sanitary preparations for medical purposes; medical plasters; all-purpose disinfectants; food supplements, mineral and vitamin supplements in Class 5;
- b. protective helmets for sports in Class 9;
- c. leather and imitations of leather and goods made of these materials and not included in other classes, namely, shoulder belts, saddle belts, wallets, purses, key-rings, pen holders, duffel bags; trunks and traveling bags, umbrellas, parasols, backpacks, all-purpose carrying bags; leather cases, change purses, credit card cases, sports bags, handbags, key cases, sports and all-purpose leisure bags; luggage for travel; valises; plastic baggage labels, wallets; pouches of leather; purses; saddlebags; school bags in Class 18; and
- d. training in the field of sport; entertainment services, namely, organization of exhibitions for sports purposes in the field of sports; organization of sporting activities, namely, organization of cycling competitions in Class 41.

72. At the time Roger Maier filed the '075 Application, he was acting CEO for Assos of Switzerland.

73. During prosecution of the '075 Application, the USPTO issued a refusal of registration citing a likelihood of confusion with Anton Maier's Registration No. 2648797.

74. To overcome the USPTO's refusal, Roger Maier submitted a Trademark Consent and Coexistence Agreement signed by both his father and himself on January 5, 2012. In that agreement, Anton Maier and Roger Maier state and represent to the USPTO that:

The basis for this consent is the mutual determination and belief of the parties hereto that there is no likelihood that consumers have been or will be confused by the use in commerce and registration of the two marks. This determination and belief is supported by the fact that neither party knows of any instances of actual confusion over five years of co-existence of both of our marks in a common geographic region.

75. The Trademark Consent and Coexistence Agreement submitted by Roger Maier in support of the '075 Application and executed by both Roger Maier and Anton Maier deceptively omitted to disclose the father-son relationship between them; falsely implied that Roger Maier and Anton Maier had operated independently in the marketplace under their

respective marks for the prior five years without confusion when all use of the ASSOS mark was being made by a single entity, namely, Assos of Switzerland; and deceptively omitted each individual's position as officers of Assos of Switzerland.

76. At the time Roger Maier filed the '075 Application and signed the sworn declaration in support thereof, Roger Maier did not have, and could not have had, a bona fide intention to use the ASSOS mark in commerce on or in connection with each and every good and service in Classes 5, 9, 18, and 41 identified in the '075 Application, as required under Section 66(a), 15 U.S.C. § 1141(a).

77. At the time Roger Maier filed the '075 Application and signed the sworn declaration in support of the application, Roger Maier knew that his claim of a bona fide intent-to-use the ASSOS mark in commerce on or in connection with each and every good and service in Classes 5, 9, 18, and 41 was false and misleading.

78. At no time after Roger Maier filed the '075 Application and signed the sworn declaration in support of this application did Roger Maier disclose to the USPTO that he did not have a bona fide intent-to-use the ASSOS mark in commerce on or in connection with each and every good and service identified in Classes 5, 9, 18, and 41.

79. Roger Maier omitted to disclose to the USPTO that the ASSOS mark covered by Anton Maier's Registration No. 2648797 and cited by the USPTO as a bar to registration was used by Assos of Switzerland and that Roger Maier was the CEO of that company.

80. Roger Maier omitted to disclose to the USPTO that Anton Maier was his father and the President of Assos of Switzerland.

81. At the time Roger Maier filed the '075 Application and signed the sworn declaration in support thereof, Roger Maier was aware of ASOS and its business and products as a result of the numerous disputes in which the Maiers and ASOS were engaged.

82. Roger Maier purposely and knowingly filed the '075 Application and signed the sworn declaration in support of this application for goods in Class 18 not directed at cycling or cyclists, with the bad faith intent of interfering with ASOS' trademark rights or otherwise precluding, preventing, and/or obstructing ASOS' lawful exercise of such rights.

83. The '075 Application subsequently matured into Registration No. 4144664 on May 22, 2012.

Roger Maier and Registration No. 4152198

84. On July 21, 2010, Roger Maier, in his individual capacity, filed U.S. Trademark Application No. 79090301 (the "'301 Application'") pursuant to Section 66(a) of the Lanham Act, 15 U.S.C. § 1141, for the mark A ASSOS & Design  seeking protection in the U.S. for goods and services in Classes 3, 5, 9, 12, 18, 25, and 41.

85. The '301 Application was notable for its coverage of a mark and goods identical to those previously covered by Anton Maier's Reg. No. 2648797. The '301 Application was also notable for its coverage of various goods in Classes 3, 18, and 25 not directed at cycling or cyclists and directly overlapping with ASOS' fashion product range. The '301 Application covered the following goods and services:

- a. after-shaves, make-up, perfumery, cosmetics, cosmetic creams for skin care, body creams, soaps, essential oils, hair lotions; dentifrices in Class 3;
- b. sanitary preparations for medical purposes; dietetic foods adapted for medical use; medical plasters; food supplements for medical purposes, namely, mineral and vitamin supplements in Class 5;
- c. protective helmets for sports in Class 9;
- d. bicycles and component parts thereof, namely, frames, handlebars, posts, seat posts, saddles, seats, wheels, pneumatic tires, brakes, brake levers, bicycle chains, hubs, axles, levers, kickstands for bicycles, mudguards, handlebar accessories for bicycles, namely, bicycle grip tape, bicycle horns, bicycle bells and baskets, pedals and water bottle clips specifically adapted for use on bicycles in Class 12;
- e. leather and imitations of leather and goods made of these materials and not included in other classes, namely, belts, wallets, purses, key-rings, pen

holders and duffel bags; trunks and traveling bags, umbrellas, parasols, backpacks, all-purpose carrying bags; leather cases; purses, credit card holders, sports bags, handbags; key cases; sports and all-purpose leisure bags; travel baggage; valises; plastic baggage labels; wallets; pouches of leather; purses; saddlebags; school bags in Class 18;

- f. dresses, caps, hats, belts, skirts, jackets, coats, sweaters, singlets, smocks, dressing gowns, housecoats, bathing suits, underwear, stockings, socks, neckties, scarves, gloves, capes, trousers, slippers, parkas, pajamas, fur coats, fur jackets, pullovers, garters, brassieres, sandals, footwear, shawls, sashes for wear, overcoats, stoles, dungarees, boots, tee-shirts, shirts, breeches, shorts, briefs, jeans, wraparounds, eyeshades, hosiery, sleeveless jackets, attachable sleeves, sportswear, namely, cyclists' clothing, namely, bicyclist jerseys, bicyclist pants and bicyclist gloves; gloves of leather, jackets of leather and suede in Class 25; and
- g. training in the field of sports; entertainment services, namely, organizing of exhibitions for sports purposes in the field of sports; organization of sports activities, namely, organization of cycling competitions in Class 41.

86. At the time Roger Maier filed the '301 Application, he was acting CEO for Assos of Switzerland.

87. During prosecution of the '301 Application, the USPTO refused registration on grounds of likelihood of confusion with Anton Maier's Registration No. 2648797.

88. To overcome the USPTO's refusal, Roger Maier submitted a Trademark Consent and Coexistence Agreement signed by both his father and himself on January 5, 2012. In that agreement, Anton Maier and Roger Maier state and represent to the USPTO that:

The basis for this consent is the mutual determination and belief of the parties hereto that there is no likelihood that consumers have been or will be confused by the use in commerce and registration of the two marks. This determination and belief is supported by the fact that neither party knows of any instances of actual confusion over five years of co-existence of both of our marks in a common geographic region.

89. The Trademark Consent and Coexistence Agreement submitted by Roger Maier in support of the '301 Application and executed by both Roger Maier and Anton Maier deceptively omitted to disclose the father-son relationship between them; falsely implied that Roger Maier and Anton Maier had operated independently in the marketplace under their

respective marks for the prior five years without confusion when all use of the ASSOS mark was being made by a single entity, namely, Assos of Switzerland; and deceptively omitted each individual's position as officers of Assos of Switzerland.

90. At the time Roger Maier filed the '301 Application and signed the sworn declaration in support of this application, Roger Maier did not have, and could not have had, a bona fide intention to use the A ASSOS & Design mark in commerce in connection with each and every good and service in Classes 3, 5, 9, 12, 18, 25, and 41 as required under Section 66(a), 15 U.S.C. § 1141(a).

91. At the time Roger Maier filed the '301 Application and signed the sworn declaration in support of the application, Roger Maier knew that his claim of a bona fide intent-to-use the A ASSOS & Design mark in commerce on or in connection with each and every good and service in Classes 3, 5, 9, 12, 18, 25, and 41 was false and misleading.

92. At no time after Roger Maier filed the '301 Application and signed the sworn declaration in support of this application did Roger Maier disclose to the USPTO that he did not have a bona fide intent-to-use the A ASSOS & Design mark in commerce on or in connection with each and every good and service identified in Classes 3, 5, 9, 12, 18, 25, and 41.

93. Roger Maier omitted to disclose to the USPTO that the A ASSOS & Design mark covered by Anton Maier's Registration No. 2648797 and cited by the USPTO as a bar to registration was used by Assos of Switzerland and that Roger Maier was the CEO of that company.

94. Roger Maier omitted to disclose to the USPTO that Anton Maier was his father, and his father was the President of Assos of Switzerland.

95. At the time Roger Maier filed the '301 Application and signed the sworn declaration in support thereof, Roger Maier was aware of ASOS and its business and products as a result of the numerous disputes in which the Maiers and ASOS were engaged.

96. Roger Maier purposely and knowingly filed the '301 Application and signed the sworn declaration in support of this application for goods in Classes 3, 18, and 25 not directed at cycling or cyclists with the bad faith intent of interfering with ASOS' trademark rights or otherwise precluding, preventing, and/or obstructing ASOS' lawful exercise of such rights.

97. The '301 Application subsequently matured into Registration No. 4152198 on June 5, 2012.

Additional Knowledge and Facts Relevant to Counterclaimants' Assertions Against Roger Maier's Registration Nos. 4152174, 4144664, and 4152198

98. At the time Roger Maier filed each of the '650, '075, and '301 Applications, he was on notice that his father Anton Maier was the owner of a prior registration for the ASSOS & Design mark covering cycling-related goods and apparel in Classes 12 and 25.

99. At the time Roger Maier filed each of the '650, '075, and '301 Applications, he had taken no steps in his individual capacity towards use of the applied-for marks on any goods.

100. At the time Roger Maier filed each of the '650, '075, and '301 Applications, he had no bona fide intention in his individual capacity to use the applied-for marks on any goods.

101. At the time Roger Maier filed each of the '650, '075, and '301 Applications, in his corporate capacity with Assos of Switzerland, he had taken no steps towards use of the applied-for marks on any goods not directed at cycling or cyclists.

102. At the time Roger Maier filed each of the '650, '075, and '301 Applications, in his corporate capacity with Assos of Switzerland, he had no bona fide intention to use the applied-for marks on any goods other than those directed at cycling or cyclists.

103. Roger Maier did not obtain permission from Assos of Switzerland prior to filing each of the '650, '075, and '301 Applications in his individual capacity.

104. Roger Maier did not obtain permission from Anton Maier prior to filing each of the '650, '075, and '301 Applications in his individual capacity.

Testimony from the UK Case Relevant to Counterclaimants' Assertions Against Roger Maier's Registration Nos. 4152174, 4144664, and 4152198

105. As part of the UK case, the parties undertook discovery including document production relating to their respective worldwide business models, product offerings, expansions plans, and otherwise.

106. In addition, and as part of the UK case, witnesses for Assos of Switzerland were examined and testified about Assos of Switzerland's business model, range of products, expansion plans, and otherwise.

107. With respect to toiletry and personal care products, witness testimony for Assos of Switzerland clarified, and the UK court found, that Assos of Switzerland's line of products is currently, and has always been, narrowly limited to a total of three specialty products developed for and specifically directed to cyclists, namely:

- a. a skin repair gel for relieving discomfort and repairing skin damage caused by friction of the genital area against the saddle;
- b. chamois crème aimed at reducing friction and preventing bacterial or fungal infections on the skin; and
- c. a specialty liquid detergent for use in the cleaning of performance fabrics.

108. Witness testimony for Assos of Switzerland clarified that Assos of Switzerland has never offered, has never planned to offer, and has taken no steps to offer,

generalized personal care products such as “after shave, make-up, perfumery, cosmetics, cosmetic creams (e.g., as contrasted with medical creams), essential oils, hair lotions, or dentifrices” under the ASSOS brand.

109. With respect to apparel, witness testimony for Assos of Switzerland clarified, and the UK court found, that Assos of Switzerland has “maintained a very focused approach” and offered only a distinct and narrow sub-set of clothing described as specialist clothing for cyclists and after-bike wear, all available exclusively through specialist cycling trade channels.

110. Witness testimony for Assos of Switzerland clarified that Assos of Switzerland has never offered, has never planned to offer, and has taken no steps to offer, generalized fashion apparel products under the ASSOS brand such as the “dresses, belts, skirts, sweaters, smocks, dressing gowns, housecoats, bathing suits, underwear, neckties, scarves, capes, parkas, pajamas, fur coats, fur jackets, pullovers, garters, brassieres, sandals, footwear, shawls, sashes for wear, overcoats, stoles, dungarees, boots, jeans, hosiery, and/or jackets of leather and suede” covered by Roger Maier’s ‘650 and ‘301 Applications.

111. With respect to bags and leather and imitation leather goods and accessories falling generally into Class 18, witness testimony for Assos of Switzerland clarified, and the UK court found, that Assos of Switzerland has likewise only ever offered a few collateral products falling generally in Class 18, all designed to appeal to the Assos of Switzerland cycling brand aficionado.

112. Witness testimony for Assos of Switzerland clarified that Assos of Switzerland has never offered, has never planned to offer, and has taken no steps to offer, generalized fashion-style leather or non-leather handbags, purses, wallets, billfolds, key rings, luggage, and related accessories under the ASSOS brand.

ANSON'S' FRAUDULENT ACTS

113. Beginning in 2010, as part of a strategy to interfere, in bad faith, with ASOS' continued use and registration of its ASOS name and mark around the world, Anson's filed trademark applications to register the ASOS trademark in the U.S., Hong Kong, Turkey, India, and China for goods and services identical or closely related to those already offered by ASOS under its ASOS mark in those countries. Each of these applications was filed by Anson's with full knowledge of ASOS' prior use of the ASOS name and mark. Anson's filed such applications with the bad faith intent of interfering with ASOS' global business activities and ability to protect its valuable trademark in those countries and/or manufacture, import, or export its products to or therefrom.

114. In addition to the various infringement actions initiated against ASOS by Anson's in the name of the Maiers, Assos of Switzerland, and in its own name, Anson's also contracted with a third party, Thomas Klimeck, to obtain a German trademark registration for the ASOS mark, to file an infringement action against ASOS based upon this registration, and to register an ASOS-formative domain name. ASOS has prevailed in all four legal actions in Germany involving Thomas Klimeck, including trademark infringement and unfair competition actions, and his German trademark registration was ordered cancelled.

115. Anson's had actual knowledge of ASOS, its website at www.asos.com, and the nature and scope of its fashion-oriented goods and services long prior to filing the '826 Application.

116. The '826 Application is for the identical mark ASOS and covers goods directly overlapping with ASOS' fashion product range. The goods covered by the '826 Application initially included:

- a. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices in Class 3;
- b. Precious metals and their alloys and goods in precious metals or coated therewith, included in this class; jewellery [sic], costume jewellery [sic], precious stones; horological and chronometric instruments in Class 14;
- c. Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides, trunks and travelling bags, suitcases, bags, handbags, billfolds, purses, key cases, backpacks, pouches; umbrellas, parasols and walking sticks; whips, harness and saddlery in Class 18;
- d. Clothing, footwear, headgear in Class 25; and
- e. Advertising; business management; business administration; office functions; retail services, also via websites and teleshopping, in relation to clothing, footwear, headgear, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, sun glasses, precious metals and their alloys and goods in precious metals or coated therewith, jewellery [sic], precious stones; horological and chronometric instruments, leather and imitations of leather, and goods made of these materials, animal skins, hides, trunks and travelling bags, suitcases, bags, handbags, billfolds, purses, key cases, backpacks, pouches, umbrellas, parasols and walking sticks, whips, harness and saddlery; organization and realization of promotional events and customer loyalty schemes in Class 35.

117. During prosecution of the '826 Application, the PTO cited a likelihood of confusion with two third-party registrations, one owned by Anton Maier. In a July 26, 2011 Office Action response, Anson's stated that it was "discussing an amicable co-existence relationship" with Anton Maier. Ultimately, Anson's amended its description of goods and services and, on that basis, requested that the USPTO withdraw the refusals. On November 26, 2013, the '826 Application was published for opposition for the following amended goods and services:

- a. Bleaching preparations and other substances for laundry use, namely, fabric softeners, laundry soap, laundry detergents and laundry starch; cleaning, polishing, scouring and abrasive preparations in Class 3;
- b. Goods in precious metals or coated therewith, namely jewelry boxes of precious metal, ornaments of precious metal; precious metal door

knobs and key chains of precious metal; cufflinks; horological and chronometric instruments in Class 14; and

- c. Advertising and promotional services; business management; business administration; office functions; demonstration of goods and services by electronic means, also for the benefit of the so-called teleshopping services; arranging and conducting marketing promotional events for others; providing incentive award programs for customers through issuance and processing of loyalty coupons for frequent use of participating businesses; customer loyalty services and customer club services, for commercial, promotional and/or advertising purposes in Class 35.

118. As noted above, ASOS timely opposed the '826 Application, which opposition Anson's subsequently successfully moved to stay.

FIRST COUNTERCLAIM AGAINST THE MAIERS
Cancellation of Registration No. 4152174 as Void Ab Initio and for
Fraud in Procurement of Registration

119. ASOS repeats and realleges each and every allegation above.

120. On February 17, 2010, Roger Maier filed Application Serial No. 79084650 pursuant to Section 66(a) of the Lanham Act, 15 U.S.C. § 1141.

121. As required by Section 66(a) of the Lanham Act, 15 U.S.C. § 1141(a), Roger Maier included with the '650 Application a "declaration of bona fide intention to use the mark in commerce" on each and every good covered by the subject application.

122. Roger Maier did not have a bona fide intention to use the ASSOS Mark in commerce or in connection with each and every good identified in the '650 Application at the time of filing as required under Section 66(a), 15 U.S.C. § 1141(a).

123. At the time Roger Maier filed the '650 Application and signed the sworn declaration in support thereof, Roger Maier knew that his claim of a bona fide intent-to-use the ASSOS Mark in commerce on or in connection with each and every good identified in the '650 Application was false and misleading.

124. At the time Roger Maier filed the '650 Application, Roger Maier was aware of ASOS, its business, and the general and specific nature of its goods and services as a result of the numerous disputes in which the Maiers and ASOS were already engaged.

125. At the time Roger Maier filed the '650 Application, he made a material false representation regarding his intention to use the ASSOS Mark in commerce on or in connection with those goods in Classes 3 and 25 not directed at cycling and cyclists with the intent to deceive the PTO in order to interfere with or to otherwise preclude, prevent, or obstruct ASOS' continued use of its marks in the U.S., and block future registrations of the ASOS mark for its fashion-related goods.

126. At the time Roger Maier filed his false and misleading declaration in support of the '650 Application, Roger Maier intended for the USPTO to rely upon the representations made therein to procure a registration.

127. The PTO did in fact rely upon Roger Maier's false and misleading declaration submitted in support of the '650 Application in issuing Registration No. 4152174. But for the false representations set forth in Roger Maier's declaration, the PTO would not have issued Registration No. 4152174.

128. Roger Maier made further false and misleading representations to the PTO during the prosecution of the '650 Application in responding to the PTO's refusal of registration citing his father's Registration No. 2648797.

129. To overcome the PTO's refusal of Roger Maier's '650 application on the basis of Anton Maier's Registration No. 2648797, Roger Maier submitted a false and misleading Trademark Consent and Coexistence Agreement signed by both Roger Maier and Anton Maier.

130. The Trademark Consent and Coexistence Agreement omitted to truthfully disclose the father-son relationship between Roger Maier as applicant and Anton Maier as the cited registrant; falsely implied that Roger Maier and Anton Maier operated independently under their respective marks when, in fact, use of the ASSOS mark was being made exclusively by Assos of Switzerland; and deceptively omitted each individual's position as officers of Assos of Switzerland.

131. At the time the Trademark Consent and Coexistence Agreement was signed and submitted to the PTO, each of Roger and Anton Maier knew that its contents were false and misleading.

132. At the time they filed the Trademark Consent and Coexistence Agreement in support of the '650 Application, each of Roger and Anton Maier intended for the USPTO to rely upon the false and misleading representations made therein.

133. The false representations set forth in the Trademark Consent and Coexistence Agreement were material to the PTO's decision to issue Registration No. 4152174, because PTO Examining Attorneys are instructed to give consent agreements "great weight" when determining likelihood of confusion, and the PTO Examining Attorney did, in fact, withdraw the refusal to register Roger Maier's '650 Application on the basis of Anton Maier's Registration No. 2648797.

134. The PTO relied upon the false representations set forth in the Trademark Consent and Coexistence Agreement in issuing Registration No. 4152174. But for Roger and Anton Maier's false representations in the Trademark Consent and Coexistence Agreement, the PTO would not have issued Registration No. 4152174.

135. Roger Maier and Anton Maier committed fraud in the procurement of Registration No. 4152174.

136. Accordingly, Application Ser. No. 79084650, and resulting Registration No. 4152174, should be cancelled in its entirety.

SECOND COUNTERCLAIM AGAINST THE MAIERS
Cancellation of Registration No. 4144664 as Void Ab Initio and for
Fraud in Procurement of Registration

137. ASOS repeats and realleges each and every allegation above.

138. On May 22, 2012, Roger Maier filed Application Serial No. 79090075 to register the ASSOS Mark pursuant to Section 66(a) of the Lanham Act, 15 U.S.C. § 1141.

139. As required by Section 66(a) of the Lanham Act, 15 U.S.C. § 1141(a), Roger Maier included with the '075 Application a "declaration of bona fide intention to use the mark in commerce" on each and every good covered by a subject application.

140. Roger Maier did not have a bona fide intention to use the ASSOS Mark in commerce or in connection with each and every good and service identified in the '075 Application as of filing as required under Section 66(a), 15 U.S.C. § 1141(a).

141. As described in more detail above, at the time Roger Maier filed the '075 Application and signed the sworn declaration in support of this application, Roger Maier knew that his claim of a bona fide intent-to-use the ASSOS Mark in commerce on or in connection with each and every good and service identified in the '075 Application was false and misleading.

142. At the time Roger Maier filed the '075 Application, Roger Maier was aware of ASOS, its business, and the general and specific nature of its goods and services as a result of the numerous disputes in which the Maiers and ASOS were already engaged.

143. Roger Maier made a material false representation regarding his intention to use the ASSOS Mark in commerce on or in connection with those goods in Class 18 not directed at cycling or cyclists with the intent to deceive the PTO in order to interfere with or

otherwise preclude, prevent, or obstruct ASOS' continued use of its marks in the U.S., and block future registrations of the ASOS mark for its fashion-related goods.

144. At the time Roger Maier filed his false and misleading declaration in support of the '075 Application, Roger Maier intended for the USPTO to rely upon the representations made therein to procure a registration.

145. The PTO relied upon the false and misleading declaration submitted in support of the '075 Application in issuing Registration No. 4144664. But for the false representations set forth in Roger Maier's declaration, the PTO would not have issued Registration No. 4144664.

146. Roger Maier made further false and misleading representations to the PTO during the prosecution of the '075 Application in responding to PTO's refusal of registration citing his father's Registration No. 2648797.

147. To overcome the PTO's refusal of Roger Maier's '075 Application on the basis of Anton Maier's Registration No. 2648797, Roger Maier submitted a false and misleading Trademark Consent and Coexistence Agreement signed by both Roger Maier and Anton Maier.

148. The Trademark Consent and Coexistence Agreement omitted to truthfully disclose the father-son relationship between Roger Maier as applicant and Anton Maier as the cited registrant; falsely implied that Roger Maier and Anton Maier operated independently under their respective marks when, in fact, use of the ASSOS mark was being made exclusively by Assos of Switzerland; and deceptively omitted each individual's position as officers of Assos of Switzerland.

149. At the time the Trademark Consent and Coexistence Agreement was signed and submitted to the PTO, each of Roger and Anton Maier knew that its contents were false and misleading.

150. At the time they filed the Trademark Consent and Coexistence Agreement in support of the '075 Application, each of Roger and Anton Maier intended for the USPTO to rely upon the false and misleading representations made therein.

151. The false representations set forth in the Trademark Consent and Coexistence Agreement were material to the PTO's decision to issue Registration No. 4144664, because PTO Examining Attorneys are instructed to give consent agreements "great weight" when determining likelihood of confusion, and the PTO Examining Attorney did, in fact, withdraw the refusal to register Roger Maier's '075 Application on the basis of Anton Maier's Registration No. 2648797.

152. The PTO relied upon the false representations set forth in the Trademark Consent and Coexistence Agreement in issuing Registration No. 4144664. But for Roger and Anton Maier's false representations in the Trademark Consent and Coexistence Agreement, the PTO would not have issued Registration No. 4144664.

153. Roger Maier and Anton Maier committed fraud in the procurement of Registration No. 4144664.

154. Accordingly, Application Ser. No. 79090075, and resulting Registration No. 4144664, should be cancelled in its entirety.

THIRD COUNTERCLAIM AGAINST THE MAIERS
Cancellation of Registration No. 4152198 as Void Ab Initio and for
Fraud in Procurement of Registration

155. ASOS repeats and realleges each and every allegation above.

156. On July 21, 2010, Roger Maier filed Application Serial No. 79090301 for the ASSOS (Stylized) mark pursuant to Section 66(a) of the Lanham Act, 15 U.S.C. § 1141.

157. As required by Section 66(a) of the Lanham Act, 15 U.S.C. § 1141(a), Roger Maier included with the '301 Application a "declaration of bona fide intention to use the mark in commerce" on each and every good covered by a subject application.

158. As described in more detail above, Roger Maier did not have a bona fide intention to use the ASSOS (Stylized) mark in commerce or in connection with each and every good and service identified in the '301 Application at the time of filing as required under Section 66(a), 15 U.S.C. § 1141(a).

159. As described in more detail above, at the time Roger Maier filed the '301 Application and signed the sworn declaration in support of this application, Roger Maier knew that his claim of a bona fide intent-to-use the ASSOS (Stylized) mark in commerce on or in connection with each and every good and service identified in the '301 Application was false and misleading.

160. At the time Roger Maier filed the '301 Application, Roger Maier was aware of ASOS, its business, and the general and specific nature of its goods and services as a result of the numerous disputes in which the Maiers and ASOS were already engaged.

161. Roger Maier made a material false representation regarding his intention to use the ASSOS Mark in commerce on or in connection with those goods in Classes 3, 18, and 25 not directed at cycling or cyclists with the intent to deceive the PTO in order to interfere

with, or otherwise preclude, prevent, or obstruct ASOS' continued use of its marks in the U.S., and block future registrations of the ASOS mark for its fashion-related goods.

162. At the time Roger Maier filed his false and misleading declaration in support of the '301 Application, Roger Maier intended for the USPTO to rely upon the representations therein to procure a registration.

163. The PTO relied upon the false and misleading declaration submitted in support of the '301 Application in issuing Registration No. 4152198. But for the false representations set forth in Roger Maier's declaration, the PTO would not have issued Registration No. 4152198.

164. Roger Maier made further false and misleading representations to the PTO during the prosecution of the '301 Application in responding to PTO's refusal of registration citing his father's Registration No. 2648797.

165. To overcome the PTO's refusal of Roger Maier's '301 Application on the basis of Anton Maier's Registration No. 2648797, Roger Maier submitted a false and misleading Trademark Consent and Coexistence Agreement signed by both Roger Maier and Anton Maier.

166. The Trademark Consent and Coexistence Agreement omitted to truthfully disclose the father-son relationship between Roger Maier as applicant and Anton Maier as the cited registrant; falsely implied that Roger Maier and Anton Maier operated independently under their respective marks when, in fact, use of the ASSOS mark was being made exclusively by Assos of Switzerland; and deceptively omitted each individual's position as officers of Assos of Switzerland.

167. As described in more detail above, at the time the Trademark Consent and Coexistence Agreement was signed and submitted to the PTO, each of Roger and Anton Maier knew that its contents were false and misleading.

168. At the time they filed the Trademark Consent and Coexistence Agreement in support of the '301 Application, each of Roger and Anton Maier intended for the USPTO to rely upon the false and misleading representations made therein.

169. The false representations set forth in the Trademark Consent and Coexistence Agreement were material to the PTO's decision to issue Registration No. 4152198, because PTO Examining Attorneys are instructed to give consent agreements "great weight" when determining likelihood of confusion, and the PTO Examining Attorney did, in fact, withdraw the refusal to register Roger Maier's '301 Application on the basis of Anton Maier's Registration No. 2648797.

170. The PTO relied upon the false representations set forth in the Trademark Consent and Coexistence Agreement in issuing Registration No. 4152198. But for Roger and Anton Maier's false representations in the Trademark Consent and Coexistence Agreement, the PTO would not have issued Registration No. 4152198.

171. Roger Maier and Anton Maier committed fraud in the procurement of Registration No. 4152198.

172. Accordingly, Application Ser. No. 79090301, and resulting Registration No. 4152198, should be cancelled in its entirety.

**FOURTH CLAIM FOR RELIEF AGAINST ANSON'S
Declaration of Application No. 85153826 as Void Ab Initio for
Lack of Ownership/Entitlement to Use**

173. ASOS repeats and realleges each and every allegation above.

174. On October 15, 2010, pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), Anson's filed U.S. Application Serial No. 85153826 ("the '826 Application") for the mark ASOS, seeking protection in the U.S. for goods and services in Classes 3, 14, 18, 25, and 35.

175. On or about March 15, 2013, Dr. Horst Clemens and Dr. Michael Prüßner, Anson's authorized representatives, signed a declaration under Section 1001 of Title 18 of the United States Code (the "Declaration") in support of the '826 Application stating, *inter alia*, that "Applicant believes that it is entitled to use the mark in commerce and that no other person, firm, corporation, or association, to the best of its knowledge and belief, has the right to use such mark in commerce either in the identical form or in such near resemblance thereto as to be likely to cause confusion, or to cause mistake, or to deceive, and that all statements are true."

176. ASOS is the sole and exclusive owner of the ASOS name and mark and has the exclusive right to use and register the mark in the U.S.

177. ASOS commenced use of its name and mark in the U.S. long before Anson's, by and through its authorized representatives, signed and filed the Declaration.

178. Anson's, by and through its authorized representatives, had actual knowledge of ASOS' prior and superior rights in its ASOS name and mark at the time the Declaration was filed and continuing to this date.

179. Anson's is not now and has never been the owner of the ASOS mark or entitled to use or register the ASOS name and mark. ASOS has never given Anson's or its representatives permission to use or register the ASOS name and mark.

180. Accordingly, the '826 Application is void ab initio because Anson's had actual knowledge of ASOS' prior and superior rights in the ASOS name and mark at the time the

Declaration in support of the '826 Application was filed; and Anson's had actual knowledge that it was not the owner of nor was it entitled to use or register the ASOS mark in commerce for the identified goods and services at the time the '826 Application was signed and filed and continuing to this date.

**FIFTH CLAIM FOR RELIEF AGAINST ANSON'S
Declaration of Application No. 85153826 as Void Ab Initio for Fraud in
Signing, Filing, and Prosecuting the Application Before the USPTO**

181. ASOS repeats and realleges each and every allegation above.

182. At the time Anson's, by and through its authorized representatives, filed the '826 Application and signed the sworn declaration, Anson's knew that its claim of ownership and entitlement to use the ASOS mark in commerce was false and misleading.

183. Anson's was aware of ASOS, its business, and the general and specific nature of its goods and services as a result of the numerous disputes in which Anson's and ASOS were engaged.

184. At the time Anson's, by and through its authorized representatives, filed the '826 Application, it made a material false representation regarding its claim of ownership and entitlement to use the ASOS mark in commerce with the intent to deceive the PTO and in order to interfere with or to otherwise preclude, prevent, or obstruct ASOS' continued use of its marks in the U.S., and block future registrations of the ASOS mark for its fashion-related goods and services.

185. At the time Anson's, by and through its authorized representatives, filed its false and misleading declaration in support of the '826 Application, Anson's intended for the PTO to rely on the representations made therein to procure a registration.

186. The PTO did in fact rely upon Anson's false and misleading declaration submitted in support of the '826 Application in publishing the '826 Application for

opposition. But for the false representations set forth in Anson's declaration, the PTO would not have published the '826 Application for opposition.

187. Anson's committed fraud signing, filing, and prosecuting the '826 Application.

188. Accordingly, Application Ser. No. 85153826 should be voided in its entirety.

SIXTH CLAIM FOR RELIEF AGAINST ALL PLAINTIFFS
Unfair Competition and Misappropriation Under Maryland Common Law

189. ASOS repeats and realleges each and every allegation above.

190. With Anton Maier's assistance, Roger Maier fraudulently obtained U.S. Registration Nos. 4152174, 4144664, and 4152198 without a bona fide intent to use the ASSOS Marks for various goods within ASOS' range of fashion products and services in order to interfere with or to otherwise preclude, prevent, or obstruct ASOS' continued use of its marks in the U.S., and block future registrations of the ASOS mark for its fashion-related goods and services. Thus, Anton Maier and Roger Maier have engaged in unfair competition and misappropriation in violation of the common law of Maryland by interfering with ASOS' right and ability to capitalize on the goodwill of its ASOS mark and name and thereby misappropriating the benefits and substantial effort and money expended by ASOS in establishing its rights in and to the ASOS mark and name.

191. Plaintiff Anson's fraudulently submitted U.S. Application No. 85153826 for goods directly overlapping with ASOS' range of fashion products and services to interfere with or to otherwise preclude, prevent, or obstruct ASOS' continued use of its marks in the U.S., and block future registrations of the ASOS mark for its fashion-related goods and services. Thus, Anson's has engaged in unfair competition and misappropriation in violation of the common law of Maryland by interfering with ASOS' right and ability to capitalize on the goodwill of its ASOS mark and name and thereby misappropriating the benefits and

substantial effort and money expended by ASOS in establishing its rights in and to the ASOS mark and name.

192. At the time the Maiers entered into the Cooperation Agreement, they knew of Anson's malicious intent to interfere with ASOS' business and misappropriate the goodwill of the ASOS mark and name. The parties entered into the Cooperation Agreement to individually and collectively interfere with ASOS' business; to preclude, prevent, and/or obstruct ASOS' continued use of its marks in the U.S.; and to block future registrations of the ASOS mark for ASOS' fashion-related goods and services.

193. In this action, the Maiers allege that ASOS' use of the ASOS name and mark infringes their rights in the ASSOS Marks. Yet, in the Cooperation Agreement, the Maiers recognize and expressly agree to Anson's use and registration of the very same ASOS name and mark for the very same goods and services.

194. An injunction against ASOS' use of the ASOS name and mark cannot remedy any harm alleged by the Maiers, as they have contractually recognized Anson's right to use and register the very same ASOS name and mark for the very same goods and services at issue in this case.

195. The Maiers cannot credibly claim to be harmed by use and registration of a mark that they have expressly authorized in the name of another party. Thus, all of the claims asserted in this action, and the harm alleged, are without merit and for the sole purpose of interfering with ASOS' business; precluding, preventing, and/or obstructing ASOS' continued use of its marks in the U.S.; and blocking future registrations of the ASOS mark for ASOS' fashion-related goods and services.

196. Plaintiffs are using this lawsuit, and others, for the unlawful and malicious purpose of misappropriating ASOS' rights in the ASOS name and mark and vesting those same rights in the name of Anson's.

197. All of the Plaintiffs' actions were done in bad faith, were intentional, malicious, and willful, and have caused substantial harm to ASOS.

**SEVENTH CLAIM FOR RELIEF AGAINST ANSON'S
Tortious Interference with Prospective Advantage Under Maryland Common Law**

198. ASOS repeats and realleges each and every allegation above.

199. An expectancy of a business relationship exists between ASOS and the purchasers and prospective purchasers of ASOS-branded and third-party-branded products sold on ASOS' websites.

200. Over the past decade, ASOS has become an online retail success across the globe, including in the U.S. ASOS has spent considerable time and money building ASOS as its company name and brand and the ASOS name and mark is an asset of incalculable value. Today, ASOS is a highly respected fashion brand, known both for its ASOS-brand clothing and its fashion retail services, and has received extensive unsolicited attention from the local, national, and international media.

201. The ASOS name and brand is an essential part of ASOS' business, as ASOS customers and prospective customers are readily familiar with the ASOS name and brand, and ASOS enjoys a high degree of consumer recognition and trust in the marketplace, both in the U.S. and worldwide.

202. Anson's was aware, at the time it filed the '826 Application and continuing to this date, of the importance of the ASOS mark and name to ASOS' business.

203. Anson's has and continues to intentionally interfere with ASOS' prospective advantages through improper and wrongful means.

204. Anson's fraudulently submitted U.S. Application No. 85153826 for goods and services directly overlapping with ASOS' range of fashion products and services to interfere with ASOS' business; misappropriate ASOS' goodwill in the ASOS name and mark; preclude, prevent, or obstruct ASOS' continued use of its marks in the U.S.; and block future registrations of the ASOS mark for ASOS' fashion-related goods and services.

205. Anson's intentionally entered into the Cooperation Agreement with the Maiers for the wrongful and malicious purposes of interfering with ASOS' business; misappropriating ASOS' goodwill in the ASOS name and mark; precluding, preventing, or obstructing ASOS' continued use of its marks in the U.S.; and blocking future registrations of the ASOS mark for ASOS' fashion-related goods and services.

206. By virtue of the Cooperation Agreement, Anson's controls whether, when, and where to file enforcement and infringement suits against ASOS. Anson's intentionally and maliciously chose to **REDACTED**
REDACTED to maximize damage to ASOS. German-language and translated copies of email correspondence between Dr. Michael Prüßner (Anson's' General Counsel) and Roger Maier in which Dr. Prüßner acknowledges this purpose are attached as **Exhibit 4**.

207. Anson's engaged in the acts of interference set forth herein with a conscious desire to prevent ASOS' relationships from occurring, or Anson's knew that the interference was certain or substantially certain to occur as a result of its conduct.

208. ASOS has expended significant resources to prevent Anson's from misappropriating the ASOS name and brand, and its attendant goodwill. ASOS has been proximately damaged and continues to be damaged as a result of Anson's interference.

EIGHTH CLAIM FOR RELIEF AGAINST ALL PLAINTIFFS
Civil Conspiracy Under Maryland Common Law

209. ASOS repeats and realleges each and every allegation above.

210. As detailed above, an agreement and conspiracy existed and continues to exist between and among the Plaintiffs to interfere with ASOS' business; to misappropriate ASOS' goodwill in the ASOS name and mark; to preclude, prevent, or obstruct ASOS' continued use of its marks in the U.S.; and to block future registrations of the ASOS mark for ASOS' fashion-related goods, which violates the common law of the State of Maryland.

211. Each Plaintiff knowingly agreed to engage, and did engage in, one or more overt acts as set forth with more particularity in these Counterclaims.

212. ASOS has been proximately damaged and continues to be damaged by the conspiracy and Plaintiffs' actions in furtherance thereof.

WHEREFORE, ASOS prays for the following relief:

a. That Plaintiffs' Complaint be dismissed in its entirety with prejudice, that judgment be entered in favor of ASOS and against Plaintiffs, and that Plaintiffs be denied all relief requested in their Complaint;

b. That the Court award ASOS its attorneys' fees, costs, and expenses in this action;

c. That the Court issue an Order declaring Roger Maier's Registration Nos. 4152174, 414664, and 4152198 be cancelled in their entireties or, in the alternative, be limited to the specific goods on which use has already occurred;

- d. That the Court issue an Order voiding Anson's ASOS Application No. 85153826 in its entirety;
- e. That the Court issue an Order, pursuant to the laws of the State of Maryland, awarding ASOS its compensatory, consequential, statutory, and special damages including, without limitation, its damages incurred in preventing Anson's and the Maiers from misappropriating the ASOS mark and name, loss of goodwill and damage to ASOS' reputation, as well as punitive damages, together with pre- and post-judgment interest, as provided by law;
- f. That the Court issue an Order holding the Maiers and Anson's jointly and severally liable to ASOS for any and all awards of compensatory, consequential, statutory, special, and/or punitive damages, and attorneys' fees; and
- g. That the Court award ASOS such further relief as this Court may deem just and proper.

Dated: December 22, 2014

/s/ Douglas A. Rettew

Douglas A. Rettew, Bar No. 29815
Julia Anne Matheson
Mark Sommers
Whitney D. Cooke
Morgan E. Smith
Laura K. Johnson
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
901 New York Avenue, N.W.
Washington, D.C. 20001-4413
(202) 408-4000 (phone)
(202) 408-4400 (fax)

*Attorneys for Defendants ASOS Plc and
ASOS.com Limited*

CERTIFICATE OF SERVICE

I, Douglas A. Rettew, hereby certify that on December 22, 2014, a copy of the foregoing ANSWER AND COUNTERCLAIMS TO SECOND AMENDED COMPLAINT was filed and served using the Court's CM/ECF system upon:

Randall A. Brater
Leah Montesano
Karen Ellis Carr
Kathleen R. Heilman
ARENT FOX LLP
1717 K Street, N.W.
Washington, DC 20006-5344
braterr@arentfox.com
leah.montesano@arentfox.com
karen.carr@arentfox.com
katie.heilman@arentfox.com

*Attorneys for Plaintiffs Anton Maier, Roger Maier,
and Anson's Herrenhaus KG*

/s/ Douglas A. Rettew

EXHIBIT 1
TO ANSWER AND COUNTERCLAIMS TO
SECOND AMENDED COMPLAINT

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85153826
LAW OFFICE ASSIGNED	LAW OFFICE 103
MARK SECTION (no change)	
ARGUMENT(S)	
<p><u>REFUSAL TO REGISTER UNDER SECTION 2(d)</u></p> <p>The Examining Attorney has initially refused registration of Applicant's mark because it allegedly resembles U.S. Registration Nos. 3,168,975 and 2,648,797, so as to be likely to cause confusion. For the following reasons, Applicant respectfully asks that the refusal be reconsidered and withdrawn.</p> <p style="text-align: center;">A. Refusal Based Upon No. 2,648,797</p> <p>The Application is currently in discussions with Anton Maier, the owner of U.S. Registration No. 2,648,797. The parties are discussing an amicable co-existence relationship and expect to have a resolution shortly. Therefore, the Applicant respectfully requests additional time to resolve this potential conflict.</p> <p style="text-align: center;">B. Refusal Based Upon No. 3,168,975</p> <p style="text-align: center;"><i>1. Amended Class 14 Identification</i></p> <p>As an initial matter, without conceding a likelihood of confusion, Applicant has revised its Class 14 goods in an attempt to avoid any conflict with the owner of U.S. Registration 3,168,975 (the "Cited Mark"). Therefore, there should be no likelihood of confusion between the goods offered by Applicant's Mark and the Cited Mark.</p> <p style="text-align: center;"><i>2. The Marks Are Different in Appearance.</i></p>	

Further, no likelihood of confusion exists between Applicant’s mark and the Cited Mark because the marks are different in appearance, sound, connotation, and overall commercial impression. It is clear that marks are not confusingly similar if they differ in “appearance, sound, connotation and commercial impression.” In re E. I. Du Pont de Nemours & Co., 177 U.S.P.Q. 563, 567 (C.C.P.A. 1973). The Cited Mark contains the additional “S” within the mark, which not only distinguishes it in appearance but it also changes its pronunciation. Specifically, the Cited Mark would be pronounced as “ASS OS,” while the Applicant’s Mark is pronounced as “AS OS.” While this may seem to be a minor change, it is in fact significant as it gives the marks two distinct pronunciations and connotations.

3. *The Goods Covered by the Marks are Distinguishable.*

No likelihood of confusion exists between Applicant’s mark ASOS and the Cited Mark because of the differences in the nature of the goods provided under these marks. In re E. I. Du Pont de Nemours & Co., 177 USPQ 563, 567 (C.C.P.A. 1973).

Applicant’s goods are jewelry boxes and ornamental items made of precious metals, such as door knobs, key chains and cufflinks. The Cited Mark, on the other hand, clearly covers jewelry and related precious metals. Thus, the goods do not overlap.

Ultimately, in the “practicalities of the commercial world,” consumers will not be confused as to the source of goods that are so different in their nature. In re Massey & Ferguson Inc. 222 USPQ 367, 368 (TTAB 1983) (no likelihood of confusion between marks E&C&COM and ECOM) Because of the distinct nature of the goods involved here, these marks will likely travel in different channels of trade and therefore appeal to different customers. Thus, there is little chance that the respective goods will be encountered by the same consumer. And, if the goods ever happen to be encountered by the same consumer, there is little chance that such a consumer will believe that the goods and services emanate from the same source since the marks are different in appearance and sound.

GOODS AND/OR SERVICES SECTION (003)(current)	
INTERNATIONAL CLASS	003
DESCRIPTION	
Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices	
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (003)(proposed)	

INTERNATIONAL CLASS	003
TRACKED TEXT DESCRIPTION	
Bleaching preparations and other substances for laundry use ; Bleaching preparations and other substances for laundry use, namely, fabric softeners, laundry soap, laundry detergents and laundry starch ; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices	
FINAL DESCRIPTION	
Bleaching preparations and other substances for laundry use, namely, fabric softeners, laundry soap, laundry detergents and laundry starch; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices	
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (014)(current)	
INTERNATIONAL CLASS	014
DESCRIPTION	
Precious metals and their alloys and goods in precious metals or coated therewith, included in this class; jewellery, costume jewellery, precious stones; horological and chronometric instruments	
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (014)(proposed)	
INTERNATIONAL CLASS	014
TRACKED TEXT DESCRIPTION	
Precious metals and their alloys and goods in precious metals or coated therewith, included in this class ; Goods in precious metals or coated therewith, namely, jewelry boxes of precious metal, ornaments of precious metal ; jewellery, costume jewellery, precious stones ; precious metal door knobs and key chains of precious metal ; cufflinks ; horological and chronometric instruments	
FINAL DESCRIPTION	
Goods in precious metals or coated therewith, namely, jewelry boxes of precious metal, ornaments of precious metal; precious metal door knobs and key chains of precious metal; cufflinks; horological and chronometric instruments	
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (018)(current)	
INTERNATIONAL CLASS	018
DESCRIPTION	
Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides, trunks and travelling bags, suitcases, bags, handbags, billfolds, purses, key cases, backpacks, pouches; umbrellas, parasols and walking sticks; whips, harness and saddlery	
FILING BASIS	Section 1(b)

GOODS AND/OR SERVICES SECTION (018)(proposed)	
INTERNATIONAL CLASS	018
TRACKED TEXT DESCRIPTION	
Leather and imitations of leather, and goods made of these materials and not included in other classes; <u>Leather and imitations of leather, and goods made of these materials, namely, cases of leather and imitation leather, imitation leather and leather shoes, imitation leather and leather keychains, imitation leather and leather handbags; animal skins, hides, trunks and travelling bags, suitcases, bags, handbags, billfolds, purses, key cases, backpacks, pouches; imitation leather and leather bags, suitcases, trunks and traveling bags, billfolds, purses, key cases, backpacks, pouches;</u> umbrellas, parasols and walking sticks; <u>shoetrees; coat hangers;</u> whips, harness and saddlery	
FINAL DESCRIPTION	
Leather and imitations of leather, and goods made of these materials, namely, cases of leather and imitation leather, imitation leather and leather shoes, imitation leather and leather keychains, imitation leather and leather handbags; imitation leather and leather bags, suitcases, trunks and traveling bags, billfolds, purses, key cases, backpacks, pouches; umbrellas, parasols and walking sticks; shoetrees; coat hangers; whips, harness and saddlery	
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (025)(current)	
INTERNATIONAL CLASS	025
DESCRIPTION	Clothing, footwear, headgear
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (025)(proposed)	
INTERNATIONAL CLASS	025
TRACKED TEXT DESCRIPTION	
Clothing, footwear, headgear; <u>Clothing, namely, suits, pants, jackets, shirts, vests, coats, shorts, dresses, evening gowns, skirts, blouses, sweaters, footwear and headwear</u>	
FINAL DESCRIPTION	
Clothing, namely, suits, pants, jackets, shirts, vests, coats, shorts, dresses, evening gowns, skirts, blouses, sweaters, footwear and headwear	
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (035)(current)	
INTERNATIONAL CLASS	035
DESCRIPTION	
Advertising; business management; business administration; office functions; retail services, also via websites and teleshopping, in relation to clothing, footwear, headgear, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery,	

essential oils, cosmetics, hair lotions, dentifrices, sun glasses, precious metals and their alloys and goods in precious metals or coated therewith, jewellery, precious stones; horological and chronometric instruments, leather and imitations of leather, and goods made of these materials, animal skins, hides, trunks and travelling bags, suitcases, bags, handbags, billfolds, purses, key cases, backpacks, pouches, umbrellas, parasols and walking sticks, whips, harness and saddlery; organisation and realisation of promotional events and customer loyalty schemes

FILING BASIS

Section 1(b)

GOODS AND/OR SERVICES SECTION (035)(proposed)**INTERNATIONAL CLASS**

035

TRACKED TEXT DESCRIPTION

~~Advertising; Advertising and promotional services;~~ business management; business administration; office functions; ~~retail services, also via websites and teleshopping, in relation to clothing, footwear, headgear, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, sun glasses, precious metals and their alloys and goods in precious metals or coated therewith, jewellery, precious stones;~~ retail store services and online retail stores services in the field of clothing, footwear, headgear, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, sun glasses, precious metals and their alloys and goods in precious metals or coated therewith, jewelry, precious stones; horological and chronometric instruments, leather and imitations of leather, and goods made of these materials, animal skins, hides, trunks and travelling bags, suitcases, bags, handbags, billfolds, purses, key cases, backpacks, pouches, umbrellas, parasols and walking sticks, whips, harness and saddlery; ~~organisation and realisation of promotional events and customer loyalty schemes;~~ Demonstration of goods and services by electronic means, also for the benefit of the so-called teleshopping services; Arranging and conducting marketing promotional events for others; Organization of events for commercial, promotional and advertising purposes; Providing incentive award programs for customers through the issuance and processing of loyalty coupons for frequent use of participating businesses Customer loyalty services and customer club services, for commercial, promotional and/or advertising purposes

FINAL DESCRIPTION

Advertising and promotional services; business management; business administration; office functions; retail store services and online retail stores services in the field of clothing, footwear, headgear, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, sun glasses, precious metals and their alloys and goods in precious metals or coated therewith, jewelry, precious stones; horological and chronometric instruments, leather and imitations of leather, and goods made of these materials, animal skins, hides, trunks and travelling bags, suitcases, bags, handbags, billfolds, purses, key cases, backpacks, pouches, umbrellas, parasols and walking sticks, whips, harness and saddlery; Demonstration of goods and services by electronic means, also for the benefit of the so-called teleshopping services; Arranging and conducting marketing promotional events for others; Organization of events for commercial, promotional and advertising purposes; Providing incentive award programs for customers through the issuance and processing of loyalty coupons for frequent use of participating businesses Customer loyalty services and customer club services, for commercial, promotional and/or advertising purposes

FILING BASIS	Section 1(b)
ADDITIONAL STATEMENTS SECTION	
MISCELLANEOUS STATEMENT	SIGNED DECLARATION: Applicant is coordinating the execution of the declaration and will submit it to the PTO shortly. MULTIPLE-CLASS APPLICATION: In the event that any additional fees are needed to cover any additional classes of goods or services, please charge our Deposit Account No. 01-2300, referencing our docket number of 023210.00033. CONCLUSION: Whereas Applicant has responded to the issues raised by the Examining Attorney, and believes that it has or will shortly successfully traverse the likelihood of confusion refusal, Applicant respectfully requests that the Examining Attorney withdraw the refusal to register and publish the subject mark for opposition.
SIGNIFICANCE OF MARK	ASOS appearing in the mark has no significance nor is it a term of art in the relevant trade or industry or as applied to the goods/services listed in the application, or any geographical significance.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Sarah Bruno/
SIGNATORY'S NAME	Sarah Bruno
SIGNATORY'S POSITION	Attorney of record (Arent Fox LLP), DC bar member
DATE SIGNED	07/26/2011
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Tue Jul 26 16:57:25 EDT 2011
TEAS STAMP	USPTO/ROA-204.4.75.35-201 10726165725085032-8515382 6-480fe146cf7b98de74729a8 57f6c252275f-N/A-N/A-2011 0726164111189564

Response to Office Action
To the Commissioner for Trademarks:

Application serial no. **85153826** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

REFUSAL TO REGISTER UNDER SECTION 2(d)

The Examining Attorney has initially refused registration of Applicant's mark because it allegedly resembles U.S. Registration Nos. 3,168,975 and 2,648,797, so as to be likely to cause confusion. For the following reasons, Applicant respectfully asks that the refusal be reconsidered and withdrawn.

A. Refusal Based Upon No. 2,648,797

The Application is currently in discussions with Anton Maier, the owner of U.S. Registration No. 2,648,797. The parties are discussing an amicable co-existence relationship and expect to have a resolution shortly. Therefore, the Applicant respectfully requests additional time to resolve this potential conflict.

B. Refusal Based Upon No. 3,168,975

1. Amended Class 14 Identification

As an initial matter, without conceding a likelihood of confusion, Applicant has revised its Class 14 goods in an attempt to avoid any conflict with the owner of U.S. Registration 3,168,975 (the "Cited Mark"). Therefore, there should be no likelihood of confusion between the goods offered by Applicant's Mark and the Cited Mark.

2. The Marks Are Different in Appearance.

Further, no likelihood of confusion exists between Applicant's mark and the Cited Mark because the marks are different in appearance, sound, connotation, and overall commercial impression. It is clear that marks are not confusingly similar if they differ in "appearance, sound, connotation and commercial impression." In re E. I. Du Pont de Nemours & Co., 177 U.S.P.Q. 563, 567 (C.C.P.A. 1973). The Cited Mark contains the additional "S" within the mark, which not only distinguishes it in appearance but it also changes its pronunciation. Specifically, the Cited Mark would be pronounced as "ASS OS," while the Applicant's Mark is pronounced as "AS OS." While this may seem to be a minor change, it is in fact significant as it gives the marks two distinct pronunciations and connotations.

3. *The Goods Covered by the Marks are Distinguishable.*

No likelihood of confusion exists between Applicant's mark ASOS and the Cited Mark because of the differences in the nature of the goods provided under these marks. In re E. I. Du Pont de Nemours & Co., 177 USPQ 563, 567 (C.C.P.A. 1973).

Applicant's goods are jewelry boxes and ornamental items made of precious metals, such as door knobs, key chains and cufflinks. The Cited Mark, on the other hand, clearly covers jewelry and related precious metals. Thus, the goods do not overlap.

Ultimately, in the "practicalities of the commercial world," consumers will not be confused as to the source of goods that are so different in their nature. In re Massey & Ferguson In 222 USPQ 367, 368 (TTAB 1983) (no likelihood of confusion between marks E&C'COM and ECOM) Because of the distinct nature of the goods involved here, these marks will likely travel in different channels of trade and therefore appeal to different customers. Thus, there is little chance that the respective goods will be encountered by the same consumer. And, if the goods ever happen to be encountered by the same consumer, there is little chance that such a consumer will believe that the goods and services emanate from the same source since the marks are different in appearance and sound.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 003 for Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices
Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Proposed:

Tracked Text Description: ~~Bleaching preparations and other substances for laundry use;~~ [Bleaching preparations and other substances for laundry use, namely, fabric softeners, laundry soap, laundry detergents and laundry starch](#); cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices

Class 003 for Bleaching preparations and other substances for laundry use, namely, fabric softeners, laundry soap, laundry detergents and laundry starch; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 014 for Precious metals and their alloys and goods in precious metals or coated therewith, included in this class; jewellery, costume jewellery, precious stones; horological and chronometric instruments

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Proposed:

Tracked Text Description: ~~Precious metals and their alloys and goods in precious metals or coated therewith, included in this class;~~ Goods in precious metals or coated therewith, namely, jewelry boxes of precious metal, ornaments of precious metal; jewellery, costume jewellery, precious stones; precious metal door knobs and key chains of precious metal; cufflinks; horological and chronometric instruments

Class 014 for Goods in precious metals or coated therewith, namely, jewelry boxes of precious metal, ornaments of precious metal; precious metal door knobs and key chains of precious metal; cufflinks; horological and chronometric instruments

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 018 for Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides, trunks and travelling bags, suitcases, bags, handbags, billfolds, purses, key cases, backpacks, pouches; umbrellas, parasols and walking sticks; whips, harness and saddlery

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Proposed:

Tracked Text Description: ~~Leather and imitations of leather, and goods made of these materials and not included in other classes;~~ Leather and imitations of leather, and goods made of these materials, namely, cases of leather and imitation leather, imitation leather and leather shoes, imitation leather and leather keychains, imitation leather and leather handbags; ~~animal skins, hides, trunks and travelling bags, suitcases, bags, handbags, billfolds, purses, key cases, backpacks, pouches;~~ imitation leather and leather bags, suitcases, trunks and traveling bags, billfolds, purses, key cases, backpacks, pouches; umbrellas, parasols and walking sticks; shoetrees; coat hangers; whips, harness and saddlery

Class 018 for Leather and imitations of leather, and goods made of these materials, namely, cases of leather and imitation leather, imitation leather and leather shoes, imitation leather and leather keychains, imitation leather and leather handbags; imitation leather and leather bags, suitcases, trunks and traveling bags, billfolds, purses, key cases, backpacks, pouches; umbrellas, parasols and walking sticks; shoetrees; coat hangers; whips, harness and saddlery

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 025 for Clothing, footwear, headgear

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Proposed:

Tracked Text Description: ~~Clothing, footwear, headgear;~~ Clothing, namely, suits, pants, jackets, shirts, vests, coats, shorts, dresses, evening gowns, skirts, blouses, sweaters, footwear and headwear

Class 025 for Clothing, namely, suits, pants, jackets, shirts, vests, coats, shorts, dresses, evening gowns, skirts, blouses, sweaters, footwear and headwear

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 035 for Advertising; business management; business administration; office functions; retail services, also via websites and teleshopping, in relation to clothing, footwear, headgear, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, sun glasses, precious metals and their alloys and goods in precious metals or coated therewith, jewellery, precious stones; horological and chronometric instruments, leather and imitations of leather, and goods made of these materials, animal skins, hides, trunks and travelling bags, suitcases, bags, handbags, billfolds, purses, key cases, backpacks, pouches, umbrellas, parasols and walking sticks, whips, harness and saddlery; organisation and realisation of promotional events and customer loyalty schemes

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Proposed:

Tracked Text Description: ~~Advertising;~~ Advertising and promotional services; business management; business administration; office functions; ~~retail services, also via websites and teleshopping, in relation to clothing, footwear, headgear, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, sun glasses, precious metals and their alloys and goods in precious metals or coated therewith, jewellery, precious stones;~~ retail store services and online retail stores services in the field of clothing, footwear, headgear, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, sun glasses, precious metals and their alloys and goods in precious metals or coated therewith, jewelry, precious stones; horological and chronometric instruments, leather and imitations of leather, and goods made of these materials, animal skins, hides, trunks and travelling bags, suitcases, bags, handbags, billfolds, purses, key cases, backpacks, pouches, umbrellas, parasols and walking sticks, whips, harness and saddlery; ~~organisation and realisation of promotional events and customer loyalty schemes;~~ Demonstration of goods and services by electronic means, also for the benefit of the so-called teleshopping services; Arranging and conducting marketing promotional events for others; Organization of

events for commercial, promotional and advertising purposes; Providing incentive award programs for customers through the issuance and processing of loyalty coupons for frequent use of participating businesses Customer loyalty services and customer club services, for commercial, promotional and/or advertising purposes

Class 035 for Advertising and promotional services; business management; business administration; office functions; retail store services and online retail stores services in the field of clothing, footwear, headgear, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, sun glasses, precious metals and their alloys and goods in precious metals or coated therewith, jewelry, precious stones; horological and chronometric instruments, leather and imitations of leather, and goods made of these materials, animal skins, hides, trunks and travelling bags, suitcases, bags, handbags, billfolds, purses, key cases, backpacks, pouches, umbrellas, parasols and walking sticks, whips, harness and saddlery; Demonstration of goods and services by electronic means, also for the benefit of the so-called teleshopping services; Arranging and conducting marketing promotional events for others; Organization of events for commercial, promotional and advertising purposes; Providing incentive award programs for customers through the issuance and processing of loyalty coupons for frequent use of participating businesses Customer loyalty services and customer club services, for commercial, promotional and/or advertising purposes

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

ADDITIONAL STATEMENTS

SIGNED DECLARATION: Applicant is coordinating the execution of the declaration and will submit it to the PTO shortly. **MULTIPLE-CLASS APPLICATION:** In the event that any additional fees are needed to cover any additional classes of goods or services, please charge our Deposit Account No. 01-2300, referencing our docket number of 023210.00033. **CONCLUSION:** Whereas Applicant has responded to the issues raised by the Examining Attorney, and believes that it has or will shortly successfully traverse the likelihood of confusion refusal, Applicant respectfully requests that the Examining Attorney withdraw the refusal to register and publish the subject mark for opposition.

Significance of wording, letter(s), or numeral(s)

ASOS appearing in the mark has no significance nor is it a term of art in the relevant trade or industry or as applied to the goods/services listed in the application, or any geographical significance.

SIGNATURE(S)

Response Signature

Signature: /Sarah Bruno/ Date: 07/26/2011

Signatory's Name: Sarah Bruno

Signatory's Position: Attorney of record (Arent Fox LLP), DC bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to

withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 85153826

Internet Transmission Date: Tue Jul 26 16:57:25 EDT 2011

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EXHIBIT 2
TO ANSWER AND COUNTERCLAIMS TO
SECOND AMENDED COMPLAINT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<hr/>		:
ASOS PLC and		:
ASOS.COM LIMITED,		:
		:
	Opposers,	:
		:
	v.	:
		:
ANSON'S HERRENHAUS KG,		:
		:
	Applicant.	:
<hr/>		:

Opposition No.: 91214632

Serial No.: 85/153826

Mark: ASOS

MOTION TO SUSPEND OPPOSITION PROCEEDING

Applicant Anson's Herrenhaus KG ("Applicant") hereby moves to suspend the above-referenced Opposition proceeding pending the disposition of an on-going, relevant federal lawsuit. The federal case involves Asos PLC and Asos.com Ltd. (collectively, the "Opposers") and directly challenges their federal common law trademark rights. Because the on-going federal case challenges the very trademark rights that Opposers rely on to oppose the Applicant's Application, the suspension of this proceeding is appropriate.

The Opposers oppose the Applicant's application for the mark ASOS by arguing that they have priority in the mark as a result of "longstanding use in U.S. commerce of the ASOS name and mark[.]" Notice of Opp'n ¶ 21. Moreover, the Opposers contend that they are "the sole and exclusive owner of the ASOS name and mark, and ha[ve] the exclusive right to use and register that mark in the U.S." *Id.* ¶ 25.

The Opposers' claims of ownership over the ASOS name and mark, however, are directly at issue in *Maier, et al. v. Asos PLC, et al.* – a federal lawsuit filed against the Opposers that is currently pending in the U.S. District Court for the District of Maryland. *See* Civil Action No.



8:13-cv-02052-RWT (D. Md. filed July 16, 2013) (“Federal Lawsuit”). A copy of the Complaint filed in the Federal Lawsuit is attached hereto as Exhibit A.

The plaintiffs in the Federal Lawsuit are asserting claims of trademark infringement, false designation of origin, unfair competition, reverse confusion, and related state law claims against the Opposers. *See* Ex. A, Compl., ¶ 1. In their Complaint, the plaintiffs allege that any use in the United States on the part of the Opposers of the ASOS mark is unlawful and likely to cause confusion with the plaintiffs’ ASSOS marks. They further allege that the Opposers filed an application for the ASOS mark with the U.S. Patent and Trademark Office in 2005, but that application was abandoned in 2010 after it was opposed on the basis of the plaintiffs’ registrations of their ASSOS marks. *Id.* ¶¶ 20, 24. Accordingly, the Opposers had notice at least as early as 2010 that their claims to exclusive rights in the ASOS mark were at best uncertain. Moreover, the prior ASSOS registrations preclude any claim by the Opposers that they have acquired common law rights in the ASOS mark.

The plaintiffs in the Federal Lawsuit have requested a declaration from the District Court of Maryland that the Opposers’ use of the ASOS mark infringes their ASSOS marks and constitutes unfair competition. The plaintiffs have requested an injunction prohibiting the Opposers’ use and registration of the ASOS mark and directing the Opposers to destroy all products, advertisements, labels, and other materials bearing the ASOS mark and targeted to U.S. consumers. Should the Court order this relief, the Opposers will have no grounds to pursue the Opposition. Because the outcome of the Federal Lawsuit may have a direct and material impact on the Opposers to challenge the Application, suspension of the Opposition proceeding is appropriate.

The Federal Lawsuit, moreover, is not the only on-going dispute between the Applicant

and the Opposers. In July 2010, the Applicant and one Opposer – Asos.com Ltd. – were involved in a proceeding in the Regional Court located in Hamburg, Germany, Case No. 312 O 409/10 (“German Lawsuit”). In the German Lawsuit, the Applicant alleged and prevailed on claims of trademark infringement against Asos.com Ltd., based on Asos.com Ltd.’s use of “ASOS,” “asos” “asos.com,” and “asos.de” in the course of trade in Germany. The Regional Court in Hamburg ruled in favor of the Applicant and held that there was a likelihood of confusion between the company name “Anson’s Herrenhaus KG” and “ASOS”/”asos”/”asos.com”/”asos.de.” That decision is now on appeal at the Higher Regional Court in Hamburg, Case No. 3 U 108/12, and remains pending.

Given that the Federal Lawsuit may materially affect the Opposers’ rights, if any, to use the ASOS mark in the United States, the Applicant respectfully submits that it has demonstrated good cause for the suspension of this Opposition. Applicant respectfully requests that the Board reset the date by which Applicant’s Answer must be filed until after the Board rules on this Motion to Suspend.

March 4, 2014

Anson’s Herrenhaus KG

By: /s/ Randall A. Brater

Randall A. Brater
Leah C. Montesano
Arent Fox LLP
1717 K Street, NW
Washington, DC 20036-5342
Telephone: 202.857.6000
Fax: 202.857.6395
randall.brater@arentfox.com
leah.montesano@arentfox.com

Attorneys for Applicant

CERTIFICATE OF MAILING

It is hereby certified that the attached Motion to Suspend Opposition Proceeding (re: Serial No. 85/153826) is being deposited with FedEx, addressed to the United States Patent And Trademark Office, Trademark Trial and Appeal Board, Madison East, Concourse Level Room C 55, 600 Dulany Street, Alexandria, Virginia 22313-1451, this 4th day of March, 2014, for overnight delivery.

By: /s/ Randall A. Brater
Randall A. Brater

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing Motion to Suspend Opposition Proceeding (re: Serial No. 85/153826) was served via FedEx, overnight delivery, this 4th day of March, 2014, on the following counsel for Opposers:

Julia Anne Matheson
Mark Sommers
Whitney D. Cooke
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
901 New York Avenue, N.W.
Washington, D.C. 20001-4413
Telephone: 202.408.4000
Fax: 202.408.4400

By: /s/ Randall A. Brater
Randall A. Brater

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

ANTON MAIER

Via Bresce, 1
6854 San Pietro di Stabio
Switzerland

ROGER MAIER

Via Bresce, 1
6854 San Pietro di Stabio
Switzerland

Plaintiffs,

vs.

ASOS PLC

Greater London House
Hampstead Road
London
NW1 7FB
United Kingdom

ASOS.COM LIMITED

Greater London House
Hampstead Road
London
NW1 7FB
United Kingdom

Defendants.

Civil Action No.

COMPLAINT

**JURY TRIAL
DEMANDED**

Plaintiffs Anton Maier and Roger Maier (collectively, "Maier"), through their undersigned counsel, allege as follows, upon actual knowledge with respect to themselves and their own acts, and upon information and belief as to all other matters:

NATURE OF THE ACTION

1. This is a civil action for trademark infringement, false designation of origin, unfair competition, and reverse confusion under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and

related causes of action arising under Maryland common law. Maier seeks equitable and monetary relief against Defendants Asos PLC and Asos.com Limited (collectively, “AP”) based on their unauthorized and infringing use of the word ASOS (the “ASOS Mark”) – a word that is confusingly similar to Maier’s federally registered ASSOS trademarks (the “ASSOS Marks”).

2. The goods sold by Maier through Assos of Switzerland SA (“Assos”) under the ASSOS Marks are similar to the goods sold by AP under the ASOS Mark. Both the ASOS Mark and the ASSOS Marks are used on men’s and women’s clothing, accessories, and related consumer products sold to U.S. consumers. Both parties’ goods are sold through similar channels of trade and are marketed to the same prospective consumers.

3. AP was aware of Maier’s prior rights in the federally registered ASSOS Marks before it began targeting U.S. consumers, yet AP acted and continues to act in willful disregard of Maier’s trademark rights. AP’s conduct has caused consumer confusion in the marketplace and irreparable damage to Maier. As a result, Maier is entitled to a permanent injunction, monetary damages, and other relief as alleged herein.

PARTIES

4. Plaintiff Roger Maier is a citizen of Switzerland with an address of Via Bresce, 1 6854 San Pietro di Stabio, Switzerland.

5. Plaintiff Anton Maier is a citizen of Switzerland with an address of Via Bresce, 1 6854 San Pietro di Stabio, Switzerland.

6. Defendant Asos PLC is a public company organized and existing under the laws of the United Kingdom, with a principal place of business at Greater London House, Hampstead Road, London, NW1 7FB, United Kingdom.

7. Defendant Asos.com Limited is a private limited company organized and existing

under the laws of the United Kingdom, with a principal place of business at Greater London House, Hampstead Road, London, NW1 7FB, United Kingdom.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1331, 1338 (a) and (b). The Court has supplemental jurisdiction over Maier's state law claims pursuant to 28 U.S.C. § 1367(a), because the state law claims are substantially related to the federal claims and arise out of the same case or controversy.

9. This Court has personal jurisdiction over AP because AP has purposefully availed itself of the privilege of conducting business in Maryland and has continuous and systemic contacts with Maryland. AP, either directly or through its authorized agents, specifically targets consumers located in the United States, including the State of Maryland, via its website. AP also, either directly or indirectly, sells and ships goods, labels, and packaging bearing the ASOS Mark to consumers located in the United States, including the State of Maryland. Maier's claims arise in part out of AP's contacts with Maryland and Maryland consumers.

10. Venue lies in this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Maier's claims have occurred and are continuing to occur in this District.

BACKGROUND FACTS COMMON TO ALL CLAIMS FOR RELIEF

Maier's Products, Services, and Trademarks

11. Since 1986, Roger Maier has been the CEO of Assos of Switzerland SA, a Swiss corporation. The company was founded by his father, Anton Maier, in or before 1980. Since that time, Assos has sold its products to U.S. consumers via third-party retailers in the United States.

12. Assos built its business by designing and creating specialized cycling apparel and

accessories. In addition to cycling apparel and accessories, Assos also markets casual, everyday apparel through its “After Bike” collection.

13. In connection with the sale and advertising of Assos products to U.S. consumers, Maier owns four valid, federal registrations for the ASSOS Marks:

Mark	Filing Date	Reg. No. / Reg. Date	Products and Services
	July 10, 2001	Reg. No. 2648797 Nov. 12, 2002	Clothing and related accessories in Class 25.
ASSOS	Feb. 17, 2010	Reg. No. 4152174 June 5, 2012	Perfumery, cosmetics, and related items in Class 3; bicycles and component parts in Class 12; and clothing and related accessories in Class 25.
	July 21, 2010	Reg. No. 4152198 June 5, 2012	Perfumery, cosmetics, and related items in Class 3; dietetic foods, food supplements, and related items in Class 5; protective helmets for sports in Class 9; bicycles and component parts in Class 12; leather and imitation leather goods in Class 18; clothing and accessories in Class 25; training in the field of sports, including the organization of cycling competitions, in Class 41.
ASSOS	July 21, 2010	Reg. No. 4144664 May 22, 2012	Food supplements and related items in Class 5; protective helmets for sports in Class 9; leather and imitation leather goods in Class 18; training in the field of sports, including the organization of cycling competitions, in Class 41.

14. Based on U.S. Registration No. 2648797, Maier has provided notice of its constructive use of the ASSOS Mark in the United States dating back to July 10, 2001.

15. The ASSOS Marks are each licensed by Maier to Assos, which sells goods bearing the ASSOS Marks to U.S. consumers via approximately five Internet retailers located in the United States. A list of the Internet retailers located in the United States that sell ASSOS-

branded goods to U.S. consumers is available at Assos' website, at www.assos.com/en/116/north-america.aspx.

16. Assos also sells products bearing the ASSOS Marks to U.S. consumers via numerous retail stores. A list of approximately eighty-five retail stores located in the United States that sell ASSOS-branded goods to U.S. consumers is available at Assos' website, at www.assos.com/en/60/buy-in-store.aspx?whereToBuyCountry=USA.

AP and Its Wrongful Acts

17. AP is an online clothing retailer offering men's and women's clothing, shoes, and related accessories to consumers worldwide via its website asos.com.

18. AP offers goods bearing the ASOS Mark as its house brand. AP has been using the ASOS Mark as its house brand in connection with the sale of clothing, shoes, and accessories to U.S. consumers via its website since at least 2010.

19. AP also offers goods under other third-party marks. Goods bearing other third-party marks are shipped to consumers by AP or its independent boutiques with labels and/or packaging that includes the ASOS Mark.

AP's Application for the ASOS Mark

20. On July 15, 2005, AP filed an application for the ASOS Mark with the U.S. Patent and Trademark Office (the "ASOS Application") based on an international registration with an intent to use the ASOS Mark in the United States.

21. Trademark applications may be based on use in commerce or on an intent to use a mark in commerce. AP's filing of the ASOS Application on an intent-to-use basis indicates that AP intended to use the ASOS Mark in the United States.

22. In filing the ASOS Application, AP sought the right to use the ASOS Mark in

connection with the sale of perfumery, cosmetics, and related items in Class 3; jewelry, watches, and related items in Class 14; leather and imitation leather goods in Class 18; and clothing and accessories in Class 25. AP further sought rights to provide retail store services in Class 35.

23. On March 14, 2007, Anton Maier filed a Notice of Opposition to the ASOS Application, on the grounds that he would be damaged by AP's registration and use of the ASOS Mark in the United States.

24. Thereafter, on March 5, 2010, AP abandoned its ASOS Application.

AP's Infringing Use of the ASOS Mark in the United States

25. Despite AP's awareness that Maier owns the ASSOS Marks, and despite AP's abandonment of the ASOS Application, AP nonetheless began using the ASOS Mark in connection with the sale of men's and women's clothing, shoes, and related accessories in the United States, without authorization from Maier.

26. AP continues to use the ASOS Mark in connection with the sale of men's and women's clothing, shoes, and related accessories in the United States, without authorization from Maier.

27. AP sells goods bearing the ASOS Mark to U.S. consumers via its website asos.com. When a consumer located in the United States tries to access asos.com, a pop-up window appears asking if the consumer is in the United States. The pop-up window provides a link to the AP website specifically designed for and targeted to consumers located in the United States – us.asos.com (the "U.S. ASOS Website").

28. The U.S. ASOS Website offers men's and women's clothing, accessories, and shoes to U.S. consumers. The prices displayed on the U.S. ASOS Website are in U.S. dollars, and a small U.S. flag is shown in the top right corner of the screen. The U.S. ASOS Website

contains other indicia that it is designed specifically for U.S. consumers – it offers promotions for the Fourth of July and “americana” clothing described as red, white, and blue. A copy of the homepage of the U.S. ASOS Website is attached as **Exhibit 1**.

29. On the top of the U.S. ASOS Website, there is a tab or link to the ASOS Marketplace. The ASOS Marketplace provides access to numerous independent boutiques located throughout the world, including at least two boutiques located in Maryland, and several other boutiques throughout the United States. The boutiques sell men’s and women’s clothing and accessories.

30. AP launched the U.S. ASOS Website with full knowledge of Maier’s ASSOS Marks.

Similarity of the ASSOS Marks and the ASOS Mark

31. The ASOS Mark is nearly identical and confusingly similar to the ASSOS Marks. The marks are similar in sight, sound, and impression. Both marks are frequently depicted in black and white, in all lower case, in sans serif fonts, and with letters that are all the same height. Copies of the marks as they appear on the top left side of their respective homepages are below:



32. Indeed, the only difference between the ASOS Mark and the ASSOS Marks, as they appear on their respective homepages, is that they sometimes use slightly different fonts, the black and white colors are reversed, and the first syllable of the ASOS Mark contains only one “s,” whereas the first syllable of the ASSOS Mark contains two.

Similarity of the Goods Sold under the ASOS Mark and the ASSOS Marks

33. AP uses the ASOS Mark and the U.S. ASOS Website to advertise and sell goods

that are similar or identical in nature to those goods sold by Maier under the ASSOS Marks, through the same channels of trade, and to the same prospective consumers.

34. AP sells goods bearing the ASOS Mark as its house brand via the U.S. ASOS Website. The clothing labels sewn into these goods bear the ASOS Mark. The packaging and shipping materials used to send these goods to U.S. consumers also contain the ASOS Mark.

35. The goods sold by AP as its house brand under the ASOS Mark are confusingly similar to the goods sold by Maier under the ASSOS Marks. Representative samples of confusingly similar goods bearing the ASOS Mark and the ASSOS Marks are attached as **Exhibit 2**.

36. AP also sells goods under third-party marks via the U.S. ASOS Website. AP sends these goods to U.S. consumers using packaging and shipping materials bearing the ASOS Mark.

37. The goods sold by AP under third-party marks, via the U.S. ASOS Website, and shipped with packaging materials bearing the ASOS Mark are confusingly similar to the goods sold by Maier under the ASSOS Marks. Representative samples of such confusingly similar goods are attached as **Exhibit 3**.

38. Independent boutiques sell goods under third-party marks via the U.S. ASOS Website's ASOS Marketplace. When goods sold via the ASOS Marketplace are shipped to consumers, they include labels and/or receipts bearing the ASOS Mark. Representative samples of such goods, which are confusingly similar to goods sold by Maier under the ASSOS Marks, are attached as **Exhibit 4**.

39. AP's use of the ASOS Mark is likely to cause confusion, mistake, and deception among U.S. consumers as to the source or origin of AP's and/or Maier's products, and it is likely

to falsely suggest a sponsorship, connection, or association of AP and its products with Maier and its products. Consumers are likely to believe, mistakenly, that AP's products are manufactured or otherwise affiliated with Maier, or that Maier's products are manufactured or otherwise affiliated with AP.

40. AP's use of the ASOS Mark is likely to create a misimpression that AP is the source of the goods bearing the ASSOS Marks, or that Maier is the source of goods bearing the ASOS Mark. AP has created these misimpressions among the purchasing public intentionally, willfully, recklessly, deliberately, and in bad faith.

41. AP's use of the ASOS Mark is damaging to Maier because Maier does not have any means of controlling the quality of the goods sold by AP under the ASOS Mark.

42. AP is planning to continue using the ASOS Mark and the U.S. ASOS Website, despite having full knowledge of Maier's prior rights in the ASSOS Marks.

43. AP's use of the ASOS Mark has damaged and irreparably injured Maier. If permitted to continue, AP's use of the ASOS Mark will further damage and irreparably injure Maier.

FIRST CLAIM FOR RELIEF
Trademark Infringement Under
Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1)

44. Maier repeats and realleges each allegation set forth in the paragraphs above.

45. Maier owns four valid and protectable ASSOS Marks, Registration Nos. 2648797, 4152174, 4152198, and 4144664.

46. AP has used and continues to use the ASOS Mark in commerce in connection with the advertising, sale, offering for sale, distribution, and/or provision of goods, without authorization from Maier, with knowledge of and/or a reckless disregard for Maier's federally

registered rights in the ASSOS Marks.

47. AP's use of the ASOS Mark is likely to cause confusion with Maier's use of the ASSOS Marks.

48. AP's extensive use of the ASOS Mark in the United States is likely to cause confusion, to cause mistake, or to deceive U.S. consumers, including Maryland consumers, and to create the misimpression that goods bearing the ASSOS Marks are affiliated with AP and/or the ASOS Mark.

49. AP's extensive use of the ASOS Mark has induced purchasers and others to believe, contrary to fact, that the goods sold by AP are rendered, sponsored, approved by, or otherwise affiliated with Maier. AP's acts have damaged and impaired Maier's goodwill as symbolized by the ASSOS Marks to Maier's irreparable damage.

50. AP's infringing use of the ASOS Mark has been willful, intentional, purposeful, and/or in reckless disregard of Maier's rights.

51. AP's infringing use of the ASOS Mark constitutes trademark infringement entitling Maier to remedies under 15 U.S.C. §§ 1114 and 1117.

SECOND CLAIM FOR RELIEF
Reverse Confusion Under
Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1)

52. Maier repeats and realleges each allegation set forth in the paragraphs above.

53. Maier owns four valid and protectable ASSOS Marks, Registration Nos. 2648797, 4152174, 4152198, and 4144664.

54. AP has used and continues to use the ASOS Mark in commerce in connection with the advertising, sale, offering for sale, distribution and/or provision of goods, without authorization from Maier, with knowledge of and/or a reckless disregard for Maier's federally

registered rights in the ASSOS Marks.

55. AP's use of the ASOS Mark is likely to cause confusion with Maier's use of the ASSOS Marks.

56. AP's extensive use of the ASOS Mark in the United States is likely to confuse U.S. consumers and create the misimpression that goods bearing the ASSOS Marks are affiliated with AP and/or the ASOS Mark, such that Maier's reputation with respect to the ASSOS Marks will be injured and their goodwill will be impaired. AP's acts have damaged and impaired Maier's goodwill as symbolized by the ASSOS Marks to Maier's irreparable damage.

57. AP's infringing use of the ASOS Mark has been willful, intentional, purposeful, and/or in reckless disregard of Maier's rights.

58. AP's infringing use of the ASOS Mark constitutes trademark infringement entitling Maier to remedies under 15 U.S.C. §§ 1114 and 1117.

THIRD CLAIM FOR RELIEF
False Designation of Origin and Unfair Competition
Under Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A)

59. Maier repeats and realleges each allegation set forth in the paragraphs above.

60. Maier owns four valid and protectable ASSOS Marks, Registration Nos. 2648797, 4152174, 4152198, and 4144664.

61. AP has used and continues to use the ASOS Mark in commerce in connection with the advertising, sale, offering for sale, distribution, and/or provision of goods, without authorization from Maier, with knowledge of and/or a reckless disregard for Maier's federally registered rights in the ASSOS Marks.

62. AP's use of the ASOS Mark is likely to cause confusion with Maier's use of the ASSOS Marks.

63. AP's extensive use of the ASOS Mark in the United States is likely to cause confusion, to cause mistake, or to deceive U.S. consumers, including Maryland consumers, and to create the misimpression that goods bearing the ASSOS Marks are affiliated with AP and/or the ASOS Mark.

64. AP's extensive use of the ASOS Mark has induced purchasers and others to believe, contrary to fact, that the goods sold by AP are rendered, sponsored, approved by, or otherwise affiliated with Maier. AP's acts have damaged and impaired Maier's goodwill as symbolized by the ASSOS Marks to Maier's irreparable damage.

65. AP's infringing use of the ASOS Mark has been willful, intentional, purposeful, and/or in reckless disregard of Maier's rights.

66. AP's infringing use of the ASOS Mark constitutes false designation of origin and unfair competition entitling Maier to remedies under 15 U.S.C. §§ 1125 and 1117.

FOURTH CLAIM FOR RELIEF
Trademark Infringement and Unfair Competition
Under Maryland Common Law

67. Maier repeats and realleges each allegation set forth in the paragraphs above.

68. Maier owns four valid and protectable ASSOS Marks, Registration Nos. 2648797, 4152174, 4152198, and 4144664.

69. AP has used and continues to use the ASOS Mark in commerce in connection with the advertising, sale, offering for sale, distribution, and/or provision of goods, without authorization from Maier, with knowledge of and/or a reckless disregard for Maier's federally registered rights in the ASSOS Marks.

70. AP's use of the ASOS Mark is likely to cause confusion with Maier's use of the ASSOS Marks.

71. AP's extensive use of the ASOS Mark in the United States is likely to cause confusion, to cause mistake, or to deceive U.S. consumers, including Maryland consumers, and to create the misimpression that goods bearing the ASSOS Marks are affiliated with AP and/or the ASOS Mark.

72. AP's extensive use of the ASOS Mark has induced purchasers and others to believe, contrary to fact, that the goods sold by AP are rendered, sponsored, approved by, or otherwise affiliated with Maier. AP's acts have damaged and impaired Maier's goodwill as symbolized by the ASSOS Marks to Maier's irreparable damage.

73. AP's infringing use of the ASOS Mark has been willful, intentional, purposeful, and/or in reckless disregard of Maier's rights.

74. AP's use of the ASOS mark constitutes infringement of Maier's proprietary rights in the ASSOS Marks, misappropriation of Maier's goodwill in its Marks, and unfair competition in violation of Maryland common law, entitling Maier to the remedies available under Maryland common law.

PRAYER FOR RELIEF

WHEREFORE, Maier respectfully 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. Pursuant to 15 U.S.C. §§ 1114 and 1125, and the laws of the State of Maryland, an Order declaring that AP's use of the ASOS Mark infringes Maier's ASSOS Marks and constitutes unfair competition.

B. Pursuant to 15 U.S.C. § 1116, and the laws of the State of Maryland, a permanent injunction enjoining AP and its employees, agents, partners, officers, directors, owners, and all

others in privity or acting in concert with them from:

1. using, registering, or seeking to register the ASOS Mark or any other mark confusing similar to Maier's ASSOS Marks in the United States; and
2. representing, directly or indirectly, that AP and its products are associated with, connected to, sponsored by, or affiliated with Maier or Assos in any way.

C. Pursuant to 15 U.S.C. § 1116, an Order directing AP to file with the Court and serve on Maier, within thirty days after the service on AP of such injunction, a report in writing under oath setting forth in detail the manner and form in which AP has complied with the injunction.

D. Pursuant to 15 U.S.C. § 1118, and the laws of the State of Maryland, an Order directing AP to deliver for destruction all products, advertisements, labels, signs, prints, packages, wrappers, promotional materials, and other things or materials in its possession or under its control bearing the ASOS Mark and targeted to U.S. consumers.

E. Pursuant to 15 U.S.C. § 1117, and the laws of the State of Maryland, an Order requiring AP to pay to Maier any and all profits attributable to AP's sale of goods under the ASOS Mark in the United States, and further trebling the amount of the monetary award granted herein in view of the willful and deliberate nature of AP's unlawful conduct.

F. Pursuant to 15 U.S.C. § 1117, and the laws of the State of Maryland, an Order requiring AP to pay Maier all of its litigation expenses, including reasonable attorney's fees.

G. Other relief as the Court may deem just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff Maier demands a trial by jury, pursuant to Fed. R. Civ. P. 38(b), for all issues so triable.

Dated: July 16, 2013

Respectfully submitted,

/s/ Randall A. Brater

Randall A. Brater (Bar No. 15413)
Leah C. Montesano (Bar No. 18020)
ARENT FOX LLP
1717 K Street, NW
Washington, DC 20036-5342
Telephone: 202.857.6000
Fax: 202.857.6395
randall.brater@arentfox.com
leah.montesano@arentfox.com

*Counsel for Plaintiffs Anton Maier and Roger
Maier*

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

**ANTON MAIER, ROGER MAIER, and
ANSON'S HERRENHAUS KG**

**Plaintiffs/Counterclaim
Defendants,**

v.

**ASOS PLC and
ASOS.COM LIMITED**

**Defendants/Counterclaim
Plaintiffs.**

Civil Action No. 13-cv-02052-RWT

**ANTON MAIER AND ROGER MAIER'S
ANSWER TO ASOS PLC AND ASOS.COM'S COUNTERCLAIMS**

Plaintiffs/Counterclaim Defendants Anton Maier and Roger Maier (collectively, the "Maiers") respond to Defendants/Counterclaim Plaintiffs Asos PLC and Asos.com's (collectively, "Asos") Counterclaims as follows:

Parties

1. Upon information and belief, the Maiers admit the allegations of Paragraph 1.
2. Upon information and belief, the Maiers admit that Asos.com Limited is a private limited company organized and existing under the laws of the United Kingdom, with a principal place of business at Greater London House, Hampstead Road, London, NW1 7FB, United Kingdom. The Maiers lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 2, and therefore, they are denied.
3. The Maiers admit the allegations of Paragraph 3.
4. The Maiers admit the allegations of Paragraph 4.
5. Upon information and belief, the Maiers admit the allegations of Paragraph 5.

Jurisdiction

6. The Maiers do not dispute the jurisdictional allegations of Paragraph 6.
7. The Maiers admit that they filed a Second Amended Complaint against Asos PLC and Asos.com Limited (collectively, "Asos") and aver that the Second Amended Complaint and ASOS's Answer speak for themselves.
8. The Maiers do not dispute the allegations of Paragraph 8.

Counterclaimants and their ASOS Mark

9. The Maiers admit that ASOS is an online clothing retailer that offers men's and women's clothing, shoes, and related accessories via its website at www.asos.com. The Maiers lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 9, and therefore, they are denied.
10. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 10, and therefore, they are denied.
11. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 11, and therefore, they are denied.
12. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 12, and therefore, they are denied.
13. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 13, and therefore, they are denied.
14. The Maiers admit that Asos offers goods for sale under the ASOS brand. The Maiers lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 14, and therefore, they are denied.

15. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 15, and therefore, they are denied.

16. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 16, and therefore, they are denied.

An Overview of the Plaintiffs and Their Products

17. The Maiers admit that Assos of Switzerland (“Assos”) is a Swiss corporation that designs and creates specialized cycling apparel and accessories, in addition to casual and everyday apparel. The Maiers deny the remaining allegations of Paragraph 17.

18. The Maiers admit the allegations of Paragraph 18.

19. The Maiers admit that Anton Maier is a pioneer in the field of cycling apparel, founded Assos in or before 1980, is credited with creating the first pair of Lycra[®] cycling shorts, and is currently the acting President of Assos.

20. The Maiers admit that the name of the company is derived from the Greek word for “the best” and aver that the trademark signals to consumers that clothing bearing the ASSOS mark are of the highest quality.

21. The Maiers admit that Assos designs and sells a range of high performance cycling apparel and accessories, as well as casual and everyday apparel. The Maiers deny the remaining allegations of Paragraph 21.

22. The Maiers admit that Assos manufactures cycling shorts. The Maiers lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 22, and therefore, they are denied.

23. The Maiers admit that Assos directs the design and manufacture of its products. The Maiers deny the remaining allegations of Paragraph 23.

24. The Maiers admit that Assos offers merchandise featuring the A ASSOS & Design mark () on a range of apparel. The Maiers deny the remaining allegations of Paragraph 24.

25. The Maiers admit that Assos closely monitors the quality of its products, marketing, and advertising. The Maiers deny the remaining allegations of Paragraph 25.

26. The Maiers admit that products bearing the Assos marks are sold in independent retail stores, catalogs, and online in the United States. The Maiers deny the remaining allegations of Paragraph 26 as stated.

27. Upon information and belief, the Maiers admit that some products bearing the ASSOS marks are sold in proximity to bicycles. The Maiers deny the remaining allegations of Paragraph 27.

28. Upon information and belief, the Maiers admit that some advertisements for products bearing the ASSOS marks appear in the cycling press. The Maiers deny the remaining allegations of Paragraph 28.

29. The Maiers admit that U.S.-based customers can buy ASSOS-branded products online through online dealers. The Maiers deny the remaining allegations of Paragraph 29 as stated.

An Overview of Anson's and Its Products

30. Upon information and belief, the Maiers admit that Anson's is a German retailer associated with Peek & Cloppenburg. The Maiers lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 30.

An Overview of the Disputes Between the Maiers and ASOS Prior to Anson's Involvement

31. The Maiers admit that Roger Maier and Asos have been involved in various disputes related to international trademark filings and aver that the court records from those proceedings speak for themselves. The Maiers deny the remaining allegations of Paragraph 31.

32. The Maiers admit the allegations of Paragraph 32.

33. Upon information and belief, the Maiers admit that Asos PLC filed U.S. Application No. 79016885 and aver that the application speaks for itself. The Maiers lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 33, and therefore, they are denied.

34. The Maiers admit the allegations of Paragraph 34. The Maiers further aver the trademark proceedings outside the United States are not relevant to Asos' Counterclaims.

35. The Maiers aver that the record for the '885 Application speaks for itself.

36. The Maiers admit the allegations of Paragraph 36.

37. The Maiers aver that the record for the '885 Application speaks for itself.

38. Upon information and belief, the Maiers admit that disputes involving the ASSOS and ASOS marks have occurred around the world.

39. The Maiers admit that they are aware of Asos, the ASOS mark, and www.asos.com.

They deny the remaining allegations of Paragraph 39.

An Overview of the Disputes Between Anson's and ASOS

40. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 40, and therefore, they are denied.

41. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 41, and therefore, they are denied.

42. The Maiers aver that the record for UK trademark application '115 and Opposition No.0-333/11 speak for themselves. The Maiers further aver that trademark applications and proceedings outside the United States are not relevant to Asos' Counterclaims. The Maiers lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 42, and therefore, they are denied.

43. The Maiers aver that the record for the Regional Court of Hamburg, Germany suit speaks for itself. The Maiers further aver that trademark applications and proceedings outside the United States are not relevant to Asos' Counterclaims. The Maiers lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 43, and therefore, they are denied.

44. Upon information and belief, the Maiers admit that Anson's filed the '826 Application. The Maiers aver that the record for the '826 Application speaks for itself. The Maiers lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 44, and therefore, they are denied.

45. The Maiers lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 45, and therefore, they are denied.

46. The Maiers aver that the record for the '826 Application speaks for itself.

47. The Maiers aver that the record for the '826 Application speaks for itself. The Maiers lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 47, and therefore, they are denied.

Collusion Between the Maiers and Anson's

48. The Maiers admit that they entered into the Cooperation Agreement with the Anson's in November 2011. The Maiers deny the remaining allegations in Paragraph 48.

49. The Maiers aver that the Cooperation Agreement speaks for itself. The Maiers deny the remaining allegations of Paragraph 49 as stated.

50. The Maiers aver that the record of the proceedings between the Maiers and ASOS speak for themselves. The Maiers deny the remaining allegations of Paragraph 50 as stated.

51. The Maiers aver that the Cooperation Agreement speaks for itself. The Maiers deny the remaining allegations of Paragraph 51.

52. The Maiers deny the allegations in Paragraph 52.

53. The Maiers admit that an action was filed by Roger Maier and Assos of Switzerland in the High Court of Justice of England and Wales. The Maiers aver that the record of the U.K. case speaks for itself. The Maiers further aver that trademark proceedings outside the United States are not relevant to Asos' Counterclaims.

54. The Maiers admit that an action was filed by Anton Maier in the Regional Court of Hamburg, Germany. The Maiers further admit that an action was filed by Anton Maier and Assos of Switzerland in the Paris Civil Court, France. The records of the actions in the Regional Court of Hamburg, Germany and Paris Civil Court, France speak for themselves. The Maiers further aver that trademark proceedings outside the United States are not relevant to Asos' Counterclaims.

55. The Maiers admit that the parties have complied with the terms of the Cooperation Agreement. The Maiers further aver that compliance with the terms of the Cooperation Agreement and the other allegations of paragraph 55 are not relevant to Asos' Counterclaims. The Maiers aver that the terms of the Cooperation Agreement speak for themselves. The Maiers deny the remaining allegations of Paragraph 55 as stated.

The Maiers' Fraudulent Acts
Roger Maier and Registration No. 4152174

56. The Maiers admit the allegations of Paragraph 56.
57. The Maiers aver that the '650 Application speaks for itself. The Maiers deny the remaining allegations of Paragraph 57.
58. The Maiers admit the allegations of Paragraph 58.
59. The Maiers aver that the record from the '650 prosecution speaks for itself.
60. The Maiers admit that the agreement exists and aver that the agreement and the record of the '650 prosecution speak for themselves.
61. The Maiers deny the allegations of Paragraph 61.
62. The Maiers deny the allegations of Paragraph 62.
63. The Maiers deny the allegations of Paragraph 63.
64. The Maiers admit that Roger Maier filed U.S. Trademark Application No. 79084650 and that the Application speaks for itself. The Maiers aver that the remaining allegations of Paragraph 64 contain a double negative, and thus the Maiers are not capable of providing a coherent response, and therefore, they are denied.
65. The Maiers admit that Roger Maier filed U.S. Trademark Application No. 79084650 and aver that the Application speaks for itself. The Maiers further aver that all necessary and relevant information was disclosed in the Application, supporting declaration, and during the prosecution of the '650 Application. The Maiers deny the remaining allegations of Paragraph 65.
66. The Maiers admit that Roger Maier filed U.S. Trademark Application No. 79084650 and aver that the Application speaks for itself. The Maiers further aver that all necessary and relevant information was disclosed in the Application, supporting declaration, and during the

prosecution of the '650 Application. The Maiers deny the remaining allegations of Paragraph 66.

67. Roger Maier admits that he was aware of Asos and its business in the United Kingdom when the '650 Application was filed. Upon information and belief, Anton Maier admits that Roger Maier was aware of Asos and its business in the United Kingdom when the '650 Application was filed. The Maiers deny the remaining allegations of Paragraph 67.

68. The Maiers deny the allegations of Paragraph 68.

69. The Maiers admit the allegations of Paragraph 69.

Roger Maier and Registration No. 4144664

70. The Maiers admit the allegations of Paragraph 70.

71. The Maiers admit that Roger Maier filed U.S. Trademark Application No. 79090075 and aver that the Application speaks for itself. The Maiers deny the remaining allegations of Paragraph 71.

72. The Maiers admit the allegations of Paragraph 72.

73. The Maiers aver that the record from the '075 Application speaks for itself.

74. The Maiers admit that the agreement exists and aver that the agreement and the record of the '075 Application speak for themselves.

75. The Maiers deny the allegations of Paragraph 75.

76. The Maiers deny the allegations of Paragraph 76.

77. The Maiers deny the allegations of Paragraph 77.

78. The Maiers admit that Roger Maier filed U.S. Trademark Application No. 79090075 and aver that the Application speaks for itself. The Maiers aver that the remaining allegations of

Paragraph 78 contain a double negative, and thus the Maiers are not capable of providing a coherent response, and therefore, they are denied.

79. The Maiers admit that Roger Maier filed U.S. Trademark Application No. 79090075 and aver that the Application speaks for itself. The Maiers further aver that all necessary and relevant information was disclosed in the Application, supporting declaration, and during the prosecution of the '075 Application. The Maiers deny the remaining allegations of Paragraph 79.

80. The Maiers admit that Roger Maier filed U.S. Trademark Application No. 79090075 and aver that the Application speaks for itself. The Maiers further aver that all necessary and relevant information was disclosed in the Application, supporting declaration, and during the prosecution of the '075 Application. The Maiers deny the remaining allegations of Paragraph 80.

81. Roger Maier admits that he was aware of Asos and its business in the United Kingdom when the '075 Application was filed. Upon information and belief, Anton Maier admits that Roger Maier was aware of Asos and its business in the United Kingdom when the '075 Application was filed. The Maiers deny the remaining allegations of Paragraph 81.

82. The Maiers deny the allegations of Paragraph 82.

83. The Maiers admit the allegations of Paragraph 83.

Roger Maier and Registration No. 4152198

84. The Maiers admit the allegations of Paragraph 84.

85. The Maiers admit that Roger Maier filed U.S. Trademark Application No. 79090301 and aver that the Application speaks for itself. The Maiers deny the remaining allegations of Paragraph 85.

86. The Maiers admit the allegations of Paragraph 86.

87. The Maiers aver that the record from the '301 Application speaks for itself.

88. The Maiers admit that the agreement exists and aver that the agreement and the record of the '301 Application speak for themselves.

89. The Maiers deny the allegations of Paragraph 89.

90. The Maiers deny the allegations of Paragraph 90.

91. The Maiers deny the allegations of Paragraph 91.

92. The Maiers admit that Roger Maier filed U.S. Trademark Application No. 79090301 and aver that the Application speaks for itself. The Maiers aver that the remaining allegations of Paragraph 92 contain a double negative, and thus the Maiers are not capable of providing a coherent response, and therefore, they are denied.

93. The Maiers admit that Roger Maier filed U.S. Trademark Application No. 79090301 and aver that the Application speaks for itself. The Maiers further aver that all necessary and relevant information was disclosed in the Application, supporting declaration, and during the prosecution of the '301 Application. The Maiers deny the remaining allegations of Paragraph 93.

94. The Maiers admit that Roger Maier filed U.S. Trademark Application No. 79090301 and aver that the Application speaks for itself. The Maiers further aver that all necessary and relevant information was disclosed in the Application, supporting declaration, and during the prosecution of the '301 Application. The Maiers deny the remaining allegations of Paragraph 94.

95. Roger Maier admits that he was aware of Asos and its business in the United Kingdom when the '301 Application was filed. Upon information and belief, Anton Maier admits that

Roger Maier was aware of Asos and its business in the United Kingdom when the '301 Application was filed. The Maiers deny the remaining allegations of Paragraph 95.

96. The Maiers deny the allegations of Paragraph 96.

97. The Maiers admit the allegations of Paragraph 97.

Additional Knowledge and Facts Relevant to Counterclaimants' Assertions Against Roger Maier's Registration Nos. 4152174, 4144664, and 4152198

98. The Maiers admit that Roger Maier knew of Anton Maier's prior trademark registration for the A ASSOS & Design Mark.

99. The Maiers deny the allegations of Paragraph 99.

100. The Maiers deny the allegations of Paragraph 100.

101. The Maiers deny the allegations of Paragraph 101.

102. The Maiers deny the allegations of Paragraph 102.

103. The Maiers aver that the use of the word "permission" in Paragraph 103 is vague, rendering the Maiers incapable of providing a coherent response. The Maiers deny the remaining allegations of Paragraph 103.

104. The Maiers aver that the use of the word "permission" in Paragraph 104 is vague, rendering the Maiers incapable of providing a coherent response. The Maiers deny the remaining allegations of Paragraph 104.

Testimony from the UK Case Relevant to Counterclaimants' Assertions Against Roger Maier's Registration Nos. 4152174, 4144664, and 4152198

105. The Maiers admit that Roger Maier was involved in a dispute with Asos in the United Kingdom and aver that the court record from that proceeding speaks for itself. The Maiers further aver that the UK case and any trademark use in the United Kingdom is not relevant to Asos' Counterclaims.

106. The Maiers admit that Roger Maier was involved in a dispute with Asos in the United Kingdom and aver that the court record from that proceeding speaks for itself. The Maiers further aver the UK case and any trademark use in the United Kingdom is not relevant to Asos' Counterclaims.

107. The Maiers admit that Roger Maier was involved in a dispute with Asos in the United Kingdom and aver that the court record from that proceeding speaks for itself. The Maiers further aver the UK case and any trademark use in the United Kingdom is not relevant to Asos' Counterclaims.

108. The Maiers admit that Roger Maier was involved in a dispute with Asos in the United Kingdom and aver that the court record from that proceeding speaks for itself. The Maiers further aver the UK case and any trademark use in the United Kingdom is not relevant to Asos' Counterclaims.

109. The Maiers admit that Roger Maier was involved in a dispute with Asos in the United Kingdom and aver that the court record from that proceeding speaks for itself. The Maiers further aver the UK case and any trademark use in the United Kingdom is not relevant to Asos' Counterclaims.

110. The Maiers admit that Roger Maier was involved in a dispute with Asos in the United Kingdom and aver that the court record from that proceeding speaks for itself. The Maiers further aver the UK case and any trademark use in the United Kingdom is not relevant to Asos' Counterclaims.

111. The Maiers admit that Roger Maier was involved in a dispute with Asos in the United Kingdom and aver that the court record from that proceeding speaks for itself. The Maiers

further aver the UK case and any trademark use in the United Kingdom is not relevant to Asos' Counterclaims.

112. The Maiers admit that Roger Maier was involved in a dispute with Asos in the United Kingdom and aver that the court record from that proceeding speaks for itself. The Maiers further aver the UK case and any trademark use in the United Kingdom is not relevant to Asos' Counterclaims.

Anson's' Fraudulent Acts

113. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 113, and therefore, they are denied.

114. The Maiers admit that Roger Maier and Assos of Switzerland were involved in a dispute with Asos in the United Kingdom. The Maiers lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 114, and therefore, they are denied.

115. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 115, and therefore, they are denied.

116. The Maiers aver that the '826 Application speaks for itself.

117. The Maiers aver that the record of the '826 Application prosecution speaks for itself.

118. The Maiers aver that the record of the '826 Application prosecution speaks for itself.

First Counterclaim

119. The Maiers repeat and incorporate by reference their responses to each and every allegation set forth in Paragraphs 1 through 118 of the Counterclaims.

120. The Maiers admit the allegations of Paragraph 120.

121. The Maiers admit the allegations of Paragraph 121.

122. The Maiers deny the allegations of Paragraph 122.
123. The Maiers deny the allegations of Paragraph 123.
124. Roger Maier admits that he was aware of Asos and its business in the United Kingdom when the '650 Application was filed. Upon information and belief, Anton Maier admits that Roger Maier was aware of Asos and its business in the United Kingdom when the '650 Application was filed. The Maiers deny the remaining allegations of Paragraph 124.
125. The Maiers deny the allegations of Paragraph 125.
126. The Maiers deny the allegations of Paragraph 126.
127. The Maiers deny the allegations of Paragraph 127.
128. The Maiers deny the allegations of Paragraph 128.
129. The Maiers deny the allegations of Paragraph 129.
130. The Maiers deny the allegations of Paragraph 130.
131. The Maiers deny the allegations of Paragraph 131.
132. The Maiers deny the allegations of Paragraph 132.
133. The Maiers deny the allegations of Paragraph 133.
134. The Maiers deny the allegations of Paragraph 134.
135. The Maiers deny the allegations of Paragraph 135.
136. The Maiers deny the allegations of Paragraph 136.

Second Counterclaim

137. The Maiers repeat and incorporate by reference their responses to each and every allegation set forth in Paragraphs 1 through 136 of the Counterclaims.
138. The Maiers admit the allegations of Paragraph 138.
139. The Maiers admit the allegations of Paragraph 139.

140. The Maiers deny the allegations of Paragraph 140.

141. The Maiers deny the allegations of Paragraph 141.

142. Roger Maier admits that he was aware of Asos and its business in the United Kingdom when the '075 Application was filed. Upon information and belief, Anton Maier admits that Roger Maier was aware of Asos and its business in the United Kingdom when the '075 Application was filed. The Maiers deny the remaining allegations of Paragraph 142.

143. The Maiers deny the allegations of Paragraph 143.

144. The Maiers deny the allegations of Paragraph 144.

145. The Maiers deny the allegations of Paragraph 145.

146. The Maiers deny the allegations of Paragraph 146.

147. The Maiers deny the allegations of Paragraph 147.

148. The Maiers deny the allegations of Paragraph 148.

149. The Maiers deny the allegations of Paragraph 149.

150. The Maiers deny the allegations of Paragraph 150.

151. The Maiers deny the allegations of Paragraph 151.

152. The Maiers deny the allegations of Paragraph 152.

153. The Maiers deny the allegations of Paragraph 153.

154. The Maiers deny the allegations of Paragraph 154.

Third Counterclaim

155. The Maiers repeat and incorporate by reference their responses to each and every allegation set forth in Paragraphs 1 through 154 of the Counterclaims.

156. The Maiers admit the allegations of Paragraph 156.

157. The Maiers admit the allegations of Paragraph 157.

158. The Maiers deny the allegations of Paragraph 158.

159. The Maiers deny the allegations of Paragraph 159.

160. Roger Maier admits that he was aware of Asos and its business in the United Kingdom when the '301 Application was filed. Upon information and belief, Anton Maier admits that Roger Maier was aware of Asos and its business in the United Kingdom when the '301 Application was filed. The Maiers deny the remaining allegations of Paragraph 160.

161. The Maiers deny the allegations of Paragraph 161.

162. The Maiers deny the allegations of Paragraph 162.

163. The Maiers deny the allegations of Paragraph 163.

164. The Maiers deny the allegations of Paragraph 164.

165. The Maiers deny the allegations of Paragraph 165.

166. The Maiers deny the allegations of Paragraph 166.

167. The Maiers deny the allegations of Paragraph 167.

168. The Maiers deny the allegations of Paragraph 168.

169. The Maiers deny the allegations of Paragraph 169.

170. The Maiers deny the allegations of Paragraph 170.

171. The Maiers deny the allegations of Paragraph 171.

172. The Maiers deny the allegations of Paragraph 172.

Fourth Counterclaim

173. The Maiers repeat and incorporate by reference their responses to each and every allegation set forth in Paragraphs 1 through 172 of the Counterclaims.

174. Upon information and belief, the Maiers admit that Anson's filed the '826 Application. The Maiers aver that the '826 Application speaks for itself. The Maiers lack knowledge or

information sufficient to form a belief about the truth of the remaining allegations of Paragraph 174, and therefore, they are denied.

175. The Maiers aver that the record in the '826 Application prosecution speaks for itself. The Maiers lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 175, and therefore, they are denied.

176. The Maiers deny the allegations in Paragraph 176.

177. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 177, and therefore, they are denied.

178. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 178, and therefore, they are denied.

179. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 179, and therefore, they are denied.

180. The Maiers deny the allegations of Paragraph 180.

Fifth Counterclaim

181. The Maiers repeat and incorporate by reference their responses to each and every allegation set forth in Paragraphs 1 through 180 of the Counterclaims.

182. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 182, and therefore, they are denied.

183. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 183, and therefore, they are denied.

184. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 184, and therefore, they are denied.

185. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 185, and therefore, they are denied.

186. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 186, and therefore, they are denied.

187. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 187, and therefore, they are denied.

188. The Maiers deny the allegations of Paragraph 188.

Sixth Counterclaim

189. The Maiers repeat and incorporate by reference their responses to each and every allegation set forth in Paragraphs 1 through 188 of the Counterclaims.

190. The Maiers deny the allegations of Paragraph 190.

191. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 191, and therefore, they are denied.

192. The Maiers deny the allegations of Paragraph 192.

193. The Maiers aver that the Cooperation Agreement and the Second Amended Complaint speak for themselves. The Maiers deny the remaining allegations of Paragraph 193.

194. The Maiers deny the allegations in Paragraph 194.

195. The Maiers deny the allegations of Paragraph 195.

196. The Maiers deny the allegations of Paragraph 196.

197. The Maiers deny the allegations of Paragraph 197.

Seventh Counterclaim

198. The Maiers repeat and incorporate by reference their responses to each and every allegation set forth in Paragraphs 1 through 197 of the Counterclaims.

199. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 199, and therefore, they are denied.

200. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 200, and therefore, they are denied.

201. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 201, and therefore, they are denied.

202. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 202, and therefore, they are denied.

203. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 203, and therefore, they are denied.

204. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 204, and therefore, they are denied.

205. Upon information and belief, the Maiers deny the allegations of Paragraph 205.

206. The Maiers aver that the Cooperation Agreement speaks for itself. The Maiers further aver that the email correspondence between Roger Maier and Dr. Michael Prüßner speaks for itself. Upon information and belief, the Maiers deny the remaining allegations of Paragraph 206.

207. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 207, and therefore, they are denied.

208. The Maiers lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 208, and therefore, they are denied.

Eighth Counterclaim

209. The Maiers repeat and incorporate by reference their responses to each and every allegation set forth in Paragraphs 1 through 208 of the Counterclaims.

210. The Maiers deny the allegations of Paragraph 210.

211. The Maiers deny the allegations of Paragraph 211.

212. The Maiers deny the allegations of Paragraph 212.

The Maiers' Response to Counterclaimants' Prayer for Relief

The Maiers deny any alleged wrongdoing, and the Maiers deny that the Counterclaimants are entitled to any relief they seek in their Counterclaims. The Maiers respectfully demand judgment in their favor and against the Counterclaimants on each and every count and counterclaim for liability and damages.

The Maiers deny each and every allegation of Asos' Counterclaims not expressly admitted herein.

THE MAIERS' AFFIRMATIVE DEFENSES

The Maiers assert the affirmative defenses listed below. By asserting these defenses here, the Maiers do not concede that they have the burden of proof or production for any of these defenses. The Maiers expressly reserve the right to assert any other legal or equitable defenses that they are entitled to assert.

FIRST AFFIRMATIVE DEFENSE

1. Asos' Counterclaims fail to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. Asos' Counterclaims are barred because Asos does not have trademark rights in the ASOS mark in the United States and thus lacks standing to bring the asserted claims against the Maiers.

THIRD AFFIRMATIVE DEFENSE

3. Asos' Counterclaims are barred as overly broad because it seeks to cancel U.S. Registration Nos. 4152174, 414664, and 4152198 in their entirety, even though the allegations in the Counterclaims relate only to certain classes of goods in those registrations.

FOURTH AFFIRMATIVE DEFENSE

4. Asos' Counterclaims are barred by the doctrines of waiver, estoppel, and/or laches.

FIFTH AFFIRMATIVE DEFENSE

5. Asos' Counterclaims are barred with respect to Anton Maier because it names him as a defendant but does not assert any material allegations or causes of action against him.

SIXTH AFFIRMATIVE DEFENSE

6. Asos' Counterclaims are barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

7. The Maiers did not participate, engage, or assist in any act or conduct which could form the basis for an award of special damages or punitive damages and special or punitive damages are, therefore, not recoverable to any extent whatsoever against the Maiers.

EIGHTH AFFIRMATIVE DEFENSE

8. Asos' Counterclaims are barred, in whole or in part, because the Maiers did not proximately cause any of the violations, losses, damages, injuries or harms alleged in the Counterclaims.

NINTH AFFIRMATIVE DEFENSE

9. Asos' Counterclaims are barred, in whole or in part, by the equitable doctrine of acquiescence.

TENTH AFFIRMATIVE DEFENSE

10. The Counterclaims fail to allege causes of action with particularity to enable the Maiers to raise all appropriate defenses and, therefore, the Maiers reserves the right to add additional defenses, as the factual basis for each defense becomes known.

ELEVENTH AFFIRMATIVE DEFENSE

11. The Maiers expressly reserve the right to assert any other legal or equitable defenses that it is entitled to assert now or in the future based on discovery and the factual investigation that will be conducted in this case.

THE MAIERS' PRAYER FOR RELIEF

WHEREFORE, Roger Maier and Anton Maier respectfully pray for judgment as follows:

1. That the Counterclaims be dismissed with prejudice and judgment entered in favor of Roger Maier and Anton Maier;
2. That Roger Maier and Anton Maier be awarded their reasonable costs and attorneys' fees; and
3. That Roger Maier and Anton Maier be awarded such further relief as the Court deems equitable and just.

January 15, 2015

Respectfully submitted,

/s/ Randall A. Brater

Randall A. Brater (Bar No. 15413)

Karen Ellis Carr (Bar No. 17366)

Kathleen R. Heilman (Bar No. 29547)

ARENT FOX LLP

1717 K Street, N.W.

Washington, DC 20006

Tel: (202) 857-6000

randall.brater@arentfox.com

karen.carr@arentfox.com

katie.heilman@arentfox.com

Counsel for Anton Maier and Roger Maier

