

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-01751

Spyderco, Inc.,
a Colorado corporation,

Plaintiff,

v.

eBay Inc.,
a Delaware corporation,

Defendant.

COMPLAINT WITH JURY DEMAND

Plaintiff Spyderco, Inc. ("Spyderco"), for its Complaint against Defendant eBay Inc. ("eBay"), alleges as follows:

NATURE OF THE ACTION

1. In this action against Defendant eBay, Spyderco seeks injunctive and monetary relief for acts of counterfeiting, trademark infringement, and unfair competition under the federal Lanham Act, violations of the Colorado Consumer Protection Act (C.R.S. §§ 6-1-101 *et seq.*), and unfair competition under Colorado common law. The action arises in connection with eBay's direct and contributory infringement on Spyderco's Marks (as defined herein) notwithstanding reports by Spyderco and others to eBay that there have been thousands of intentional and unlawful listings on www.ebay.com by more than three hundred www.ebay.com registered sellers ("Unauthorized

Sellers")¹ of obvious counterfeit Spyderco products (sometimes referred to herein as "Fake Spyderco Products") that display Spyderco's trademarks, in violation of the Lanham Act (15 U.S.C. § 1051, *et seq.*), the Colorado Consumer Protection Act (C.R.S. §§ 6-1-101 *et seq.*), and Colorado common law.

2. The Internet has opened the door for unauthorized merchants to reach a wide range of consumers in their efforts to sell obvious counterfeit versions of products that are not manufactured, licensed, or approved by the duly registered owner(s) of the product's trademark(s) ("Fake Products"). "Counterfeiting is a \$1 trillion global criminal enterprise, and e-commerce websites, including eBay, are an ideal platform to distribute counterfeits directly to the consumer. e-Commerce websites reap billions in revenue, and profit from transaction fees for the counterfeit product web sales." *See* www.thecounterfeitreport.com. The sale of products that infringe on U.S. trademarks threaten the health and safety of American consumers and the U.S. economy. In 2016, the total value of customs-related seizures in the United States was \$1.38 Billion (MSRP), which likely represents only a small fraction of the counterfeit products shipped into the United States. *See* U.S. Department of Homeland Security, Intellectual Property Rights Seizures Statistics, Fiscal Year 2016.

3. Since February 2009, Spyderco has sent eBay more than 500 Notices of Claimed Infringement ("NOCI") by at least 300 individual www.ebay.com registered sellers identifying thousands of Fake Spyderco Products. At all relevant times, eBay had direct control and the ability to monitor www.ebay.com, the instrumentality used by www.ebay.com registered sellers to infringe on Spyderco's Marks, and has had reasonable means available to withdraw its services so that

¹ As used herein, the term "Unauthorized Sellers" refers to every person or entity who has infringed on Spyderco's Marks in connection with the promotion, advertisement, offer for sale, sale, and distribution of counterfeit Spyderco products using the eBay platform in violation of the Lanham Act, the Colorado Consumer Protection Act, and Colorado common law.

www.ebay.com could not be used by Unauthorized Sellers to directly infringe on Spyderco's Marks. For example, it is reported that the most successful avenue for shutting down a counterfeiter is to cut off its flow of funding from credit card companies and banks, such as the flow of funding facilitated by eBay.

4. Recognizing eBay's role and expecting, among other things, that eBay would use the reasonable means it has available to take prophylactic and other action against Unauthorized Sellers' continuing counterfeiting and trademark infringement, Spyderco's NOCIs request eBay's cooperation in identifying to Spyderco eBay's source for the infringing products and the identities of the Unauthorized Sellers.

5. Instead of cooperating or taking effective remedial action against known counterfeiters, (i) eBay does not take the reasonable means it has available to withdraw its services to Unauthorized Sellers; and (ii) eBay continues to allow www.ebay.com to be used by thousands of Unauthorized Sellers to advertise Fake Products that display unauthorized Spyderco trademarks that infringe on Spyderco's Marks.

6. Spyderco is informed and believes that eBay intentionally turns a blind eye to the infringing activity on www.ebay.com. Because eBay cannot continue to enjoy the enormous profits derived from the proliferation of Fake Products sold on the eBay website if the unauthorized sellers are excluded from selling their counterfeit goods, eBay's policies and practices are designed to, among other things, (i) promote the unlawful activities of its Unauthorized Sellers by soliciting eBay buyers to purchase Fake Spyderco Products knowingly using listings that infringe on Spyderco's Marks; and (ii) ignore evidence of the unlawful activities by its Unauthorized Sellers. On account of eBay's policies and practices, eBay has reason to know and suspect that users of www.ebay.com are infringing on legitimate rights of trademark holders, such as Spyderco.

PARTIES

7. Spyderco is a Colorado corporation having its principal place of business at 820 Spyderco Way, Golden, Colorado 80403.

8. Upon information and belief, eBay is a Delaware corporation having its principal place of business at 2025 Hamilton Avenue, San Jose, California 95125. eBay may be served via its registered agent for service of process: The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. eBay is a multinational corporation and e-commerce company, providing consumer-to-consumer and business-to-consumer sales services via the Internet.

JURISDICTION AND VENUE

9. Spyderco owns and has continuously used the Spyderco Marks to designate Spyderco as the origin of the goods sold thereunder. eBay has been using and selling products under Spyderco's Marks, without authorization from Spyderco, on its website, www.ebay.com. Spyderco thus makes this Complaint for counterfeiting, trademark infringement, and contributory trademark infringement arising under the Lanham Act, unfair competition arising under the Lanham Act, deceptive trade practices under Colo. Rev. Stat. §§ 6-1-101 *et seq.*, and unfair competition under Colorado common law.

10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, as there is complete diversity between the parties and the amount in controversy exceeds \$75,000. This Court also has original subject matter jurisdiction over Spyderco's claims pursuant to 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1121.

11. The Court has personal jurisdiction over eBay as the claims arise from eBay's transactions of business in this judicial district, as Spyderco's claims arise from eBay's commission

of tortious acts in this judicial district, and as Spyderco is being damaged in this judicial district by eBay's tortious conduct. Further, eBay has a regular and systematic business presence in Colorado, and is thus also subject to general personal jurisdiction.

12. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

FACTUAL BACKGROUND

A. Spyderco, Its Use of Its Marks, and Its Rights in Its Marks

13. Spyderco is a well-known designer, manufacturer, and distributor of high-quality folding knife products of numerous configurations and styles. Spyderco's business and product reputation are among its most prized business assets.

14. Spyderco is the owner of various intellectual property rights related to knives, knife accessories, and the sale thereof within the United States and worldwide. These include, for example, rights in U.S. Trademark Registration Nos. 1,965,458 and 2,169,685 for "SPYDERCO," 1,957,810 for "Spider Design," 2,033,317 for "Round Hole Mark," 4,884,288 for "Packaging Design," 3,169,987 for "Comet Design," and 3,131,425 for "BYRD" ("Spyderco's Marks" or "the Spyderco Marks"). All of the registrations set forth in Exhibit 1 are valid and subsisting, and Spyderco also owns common law rights in the Spyderco Marks for use in connection with Spyderco's products. Attached hereto as Exhibit 1 are true and accurate copies of the U.S. Patent and Trademark Office ("USPTO") registration certificates showing Spyderco's ownership of these trademarks and printouts from the USPTO's website setting forth the status of these trademarks, and each is incorporated herein.

15. Spyderco's Marks are in full force and effect. Spyderco has never abandoned the Spyderco Marks nor has Spyderco ever abandoned the goodwill of its businesses associated

therewith. Spyderco intends to continue to preserve and maintain its rights with respect to the Spyderco Marks and has and continues to undertake substantial and continuing policing of the Spyderco Marks.

16. Spyderco sells its products on its website at www.spyderco.com, through authorized distributors and dealers, at the Spyderco Store located in Golden, Colorado, and on www.amazon.com.

17. Upon information and belief, some of Spyderco's authorized distributors and dealers sell authorized and authentic Spyderco products on www.ebay.com. However, Spyderco does not sell its products directly on www.ebay.com.

18. Spyderco sells hundreds of models of knives, including folding knives and fixed-blade knives, and various knife accessories, including knife sharpeners, all of which include one or more of the Spyderco Marks on the actual product and all of which are sold in packaging bearing two or more of the Spyderco Marks. Examples of Spyderco's products are shown below with the applicable Spyderco Marks.





PRODUCTS ▾ EDGE-U-CATION ▾ FORUM RESOURCES ▾ COMMUNITY ▾ SERVICE & SUPPORT ▾
CONTACT MY ACCOUNT ▾



**ENDURA® 4 LIGHTWEIGHT
BLACK**

C10BK

\$119.95 MSRP

Endura 4 Lightweight Blade CombinationEdge

Quantity **ADD TO CART**



PRODUCTS ▾ EDGE-U-CATION ▾ FORUM RESOURCES ▾ COMMUNITY ▾ SERVICE & SUPPORT ▾
CONTACT MY ACCOUNT ▾



**SPYDERCO ATLANTIC SALT
YELLOW FRN**

C89YL

H-1 Will Not Rust!

\$134.95 MSRP

● Atlantic Salt Yellow FRN — SpyderEdge

Quantity **ADD TO CART**



PRODUCTS ▾ EDGE-U-CATION ▾ FORUM RESOURCES ▾ COMMUNITY ▾ SERVICE & SUPPORT ▾
CONTACT MY ACCOUNT ▾



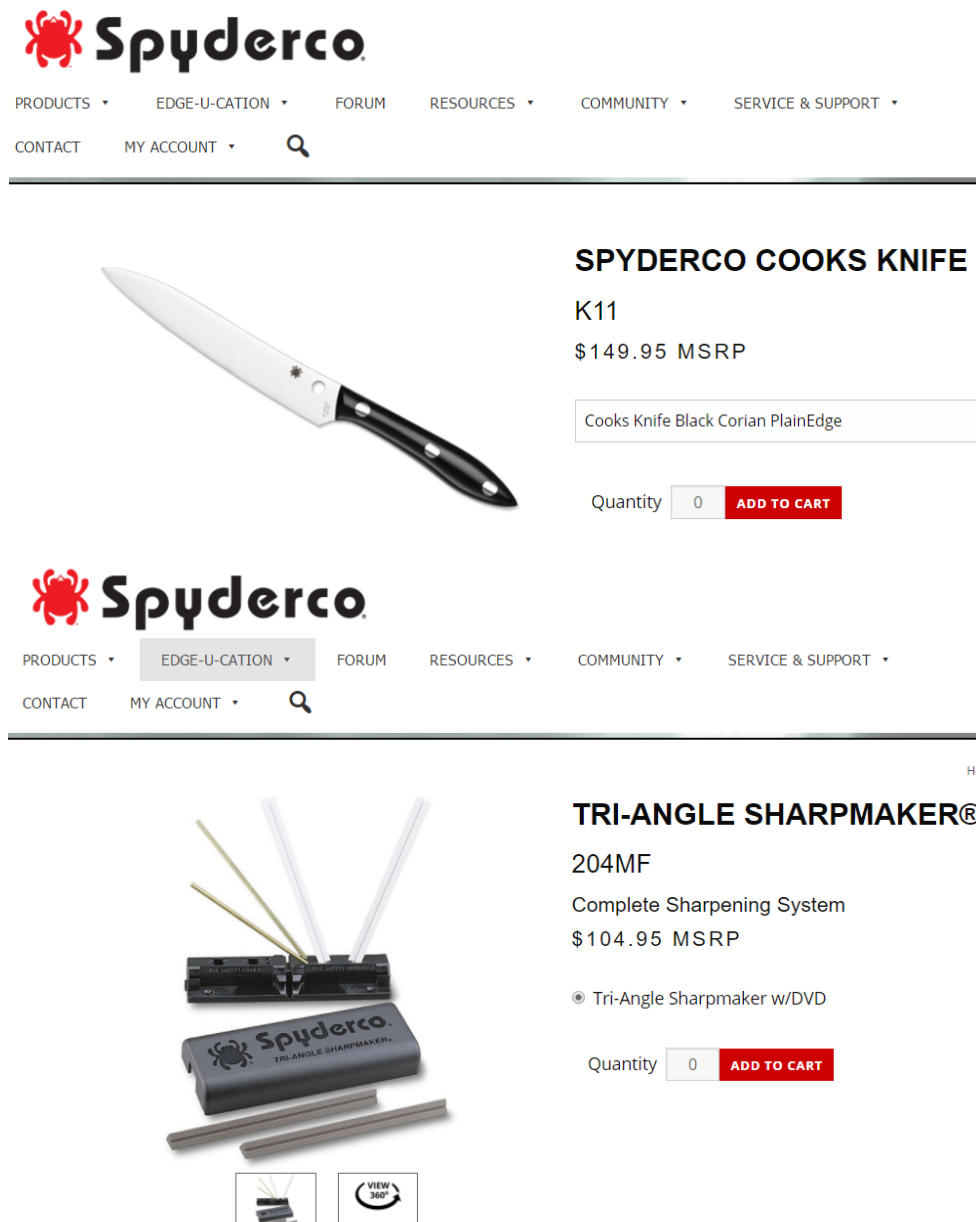
**BYRD MEADOWLARK 2 FRN
HANDLE**

BY04BK2

\$32.95 MSRP

byrd Meadowlark 2 Black FRN Handle PlainEdge

Quantity **ADD TO CART**



19. Through Spyderco's consistent use of the Spyderco Marks on or in connection with high-quality products, these marks have become indicators of source for Spyderco's products.

20. Spyderco maintains strict quality control standards for its products. Customers, potential customers, and other members of the public and industry associate Spyderco's products with high-quality materials, style, and functionality. Spyderco's products are among the most

sought after folding knives offered for sale in the United States and abroad. On information and belief, many consumers purchase Spyderco's products because of Spyderco's reputation for high-quality, durable, long-lasting products—characteristics that result from Spyderco's strict material and manufacturing standards.

21. To date, Spyderco has spent millions of dollars on advertising and promoting products marked with one or more of the Spyderco Marks, and Spyderco has enjoyed hundreds of millions of dollars in sales.

22. Spyderco's reputation, which translates into product sales, is a direct result of its extensive advertising and promotion, the care and skill utilized in the manufacturing of its products, the uniform high quality of such products sold under or in connection with Spyderco's Marks, and the public acceptance thereof. Spyderco has created invaluable goodwill throughout the United States and elsewhere by selling products of consistent dependable quality. Based on the extensive sales of Spyderco's products and the wide popularity of the Spyderco brand, Spyderco's Marks have developed a secondary meaning and significance in the minds of the purchasing public, and the services and products utilizing and/or bearing such marks and names are immediately identified with Spyderco by the purchasing public. Spyderco's valuable goodwill and brand value is being blurred and has been tarnished by the rampant infringement and counterfeiting alleged herein, all of which is being facilitated for profit by eBay.

B. eBay's Business

23. Founded in 1995, eBay is the proprietor of www.ebay.com, an Internet-based marketplace that allows those who register with it to purchase goods from and sell goods to one another. Through its aggressive marketing and solicitation, eBay connects buyers and sellers and enables transactions that are carried out directly between eBay members. In its auction and listing

services, eBay provides the venue for the sale of goods and material support for the transactions. eBay is one of the world's largest online marketplaces with an estimated 167 million active buyers worldwide and the eBay app has over 348 million active users worldwide. *See* <https://partnernetwork.ebay.com/why-epn>.

24. In 2016, individual buyers and sellers and businesses sold over \$84 billion worth of goods on eBay (using Gross Merchandise Volume or GMV) and 59% of that was sold by sellers outside of the U.S. 2016 eBay Annual Report. eBay defines GMV as the total value of all successfully closed transactions between users on Marketplaces platforms (excluding eBay's classifieds websites, brands4friends, and Shopping.com) during the applicable period, regardless of whether the buyer and seller actually consummated the transaction. *Id.*

25. eBay had over 1 billion live listings in 2016. 2016 eBay Annual Report. In 2016, eBay's operating profit margin was 25.89%. *See* <https://www.stock-analysis-on.net/NASDAQ/Company/eBay-Inc/Ratios/Profitability#Operating-Profit-Margin>.

26. Indeed, "eBay Inc. is a global commerce leader [that] connect[s] millions of buyers and sellers around the world." 2016 eBay Annual Report. eBay's "technologies and services that power [its] platforms are designed to enable sellers worldwide to organize and offer their inventory for sale, and buyers to find and purchase it, virtually anytime and anywhere." *Id.*

27. According to eBay, "Our business model and pricing are designed so that our business is successful primarily when our sellers are successful. We partner, but do not compete with, our sellers to enable their success on eBay's platforms." 2016 eBay Annual Report. "We generate revenue from the transactions we successfully enable and through marketing services, including classifieds and advertising. The majority of our revenue comes from a take rate on the GMV of transactions closed on our Marketplace and StubHub platforms." *Id.*

28. eBay's Marketplaces offer the following features: (i) www.ebay.com is a leading commerce platform for users and merchants; (ii) www.ebay.com provides a variety of access points for consumers to shop virtually anytime, anywhere; and (iii) www.ebay.com provides a large selection of inventory globally. 2016 eBay Annual Report.

29. eBay's payment platform offers the following features: (i) eBay enables payment in the online and physical worlds; (ii) eBay's global reach and scale provides value for consumers and merchants; and (iii) eBay's payment solutions offer leading fraud prevention and protection. 2016 eBay Annual Report.

30. eBay generates revenue by charging sellers to use its listing services. For any listing, eBay charges the seller a listing fee, which is recognized ratably over the estimated period of the listing, and a final value fee, which is recognized at the time the transaction is successfully closed and is based on the final sale price of the item. 2016 eBay Annual Report.

31. The success of the eBay business model relies, at least in part, on its active promotion and facilitation of the sale of an enormous number of Fake Products through www.ebay.com. The acts and omissions of eBay provide manufacturers, distributors, and unauthorized sellers of Fake Products with a global marketplace for such goods, which variously includes, *inter alia*, aggressive online marketing, credit card processing, financing, and shipping services. Recognizing that the sale of Fake Products on www.ebay.com may significantly contribute to reported profits, eBay's policies and practices actually are designed to promote the unlawful activities of unauthorized sellers by soliciting buyers to purchase Fake Products and ignore evidence of the unlawful activities by its unauthorized sellers. On account of eBay's policies and practices, eBay has reason to know and suspect that users of www.ebay.com are infringing on legitimate rights of trademark holders, such as Spyderco.

32. eBay exercises significant control over the Unauthorized Sellers' means of trademark infringement. Specifically, it has significant control over the transactions and listings facilitated by and conducted through www.ebay.com, having the ability to, among other things, identify and take action against recidivist counterfeiters based on activities on www.ebay.com, among other available enforcement tools.

C. Facts Evidencing Infringement

33. eBay understands the value and importance of protecting intellectual property: "We regard the protection of our intellectual property, including our trademarks (particularly those covering the eBay name), patents, copyrights, domain names, trade dress and trade secrets as critical to our success. We aggressively protect our intellectual property rights by relying on federal, state and common law rights in the U.S. and internationally, as well as a variety of administrative procedures." 2016 eBay Annual Report.

34. eBay admits that,

The listing or sale by our users of unlawful, counterfeit or stolen goods or unlawful services, or sale of goods or services in an unlawful manner, has resulted and may continue to result in allegations of civil or criminal liability for unlawful activities against us (including the employees and directors of our various entities) involving activities carried out by users through our services. In a number of circumstances, third parties, including government regulators and law enforcement officials, have alleged that our services aid and abet violations of certain laws, including laws regarding the sale of counterfeit items, laws restricting or prohibiting the transferability (and by extension, the resale) of digital goods (e.g., event tickets, books, music and software), the fencing of stolen goods, selective distribution channel laws, customs laws, distance selling laws, anti-scalping laws with respect to the resale of tickets, and the sale of items outside of the United States that are regulated by U.S. export controls. . . .

...

In addition, allegations of infringement of intellectual property rights, including but not limited to counterfeit items, have resulted in threatened and actual litigation from time to time by rights owners, including the following luxury brand owners: Tiffany & Co. in the United States; Rolex S.A. and Coty Prestige Lancaster Group GmbH in Germany; Louis Vuitton Malletier and Christian Dior Couture in France;

and L'Oréal SA, Lancôme Parfums et Beauté & Cie, and Laboratoire Garnier & Cie in several European countries. Plaintiffs in these and similar suits seek, among other remedies, injunctive relief and damages. Statutory damages for copyright or trademark violations could range up to \$150,000 per copyright violation and \$2,000,000 per trademark violation in the United States, and may be even higher in other jurisdictions.

2016 eBay Annual Report, pp. 19-20.

35. eBay expressly acknowledges and agrees that unauthorized copies or Fake Products that are advertised and appear on its website may infringe on the manufacturer's trademark. For example, it is eBay's publicly stated position that an item that has a company's name or logo on it, but not made or endorsed by the owner of the trademark, is not allowed on eBay. "These kinds of things may infringe on someone's copyright or trademark." www.ebay.com warns: "Make sure your listing follows these guidelines. If it doesn't, it may be removed, and you may be subject to a range of other actions, including limits of your buying and selling privileges and suspension of your account." <http://pages.ebay.com/help/policies/replica-counterfeit.html>.

36. Notwithstanding eBay's knowledge of these claims and practices by its sellers, and the fact that "[eBay has] received significant media attention relating to the listing or sale of illegal or counterfeit goods, which could damage [its] reputation, diminish the value of [its] brand names, and make users reluctant to use [eBay's] products and services," eBay publicly admits that it has resisted modifying its business practices because such changes could possibly increase costs, lower revenue, make eBay's websites and mobile platforms less convenient to customers, and require eBay to spend substantial resources to take additional protective measures or discontinue certain service offerings in order to combat these known and acknowledged user practices. 2016 eBay Annual Report, p. 20.

37. eBay is well aware that: (i) it directly solicits eBay buyers to purchase obvious counterfeit Spyderco products from its Unauthorized Sellers; (ii) Unauthorized Sellers are using www.ebay.com to list products that display products affixed with counterfeit marks that infringe on Spyderco's Marks; (iii) eBay has an essential role in these infringements, since it is via www.ebay.com that the advertisements and offers for sale of these products are communicated by eBay and others to buyers on its site; (iv) given what www.ebay.com does and does not state in response to a shopper's request for Spyderco's trademarked products, these advertisements are likely to cause confusion as to the source of the product displayed with the Spyderco Marks; (v) eBay's take down procedures are at best reactionary rather than proactive; and (vi) changes in eBay's practices, policies and procedures that would assist trademark owners, such as Spyderco, by proactively removing Fake Products and blocking repeat offenders would lead www.ebay.com to being less attractive to the sellers of counterfeit products, hurting eBay's reported profits.

38. Moreover, upon information and belief, eBay encourages the sale of counterfeit products specifically coming from China and Hong Kong through eBay's negotiation of highly favorable trilateral agreements between the U.S. Postal Service, eBay China, and the Hong Kong Post Office to offer China and Hong Kong eBay sellers fast and low-cost shipping options to the U.S. An important postal service negotiated by eBay to benefit Chinese sellers involved in the sale of Fake Products, launched in or about May 2011, is referred to as ePacket. ePacket offers local pick-up service, label printing, online tracking and pre-customs declaration for a 7- to 10-day guaranteed delivery period at a 30% to 50% discounted price compared with many equivalent shipping methods. <http://www.sellertools.org/epacket>.

39. An example of an Unauthorized Seller listing Fake Spyderco Products on www.ebay.com and advertising "FREE ePacket delivery from China" is shown in Exhibit 8, which is incorporated by reference herein in its entirety (ePacket advertisement highlighted).

40. Since at least February 2009, Spyderco has incurred substantial costs actively monitoring listings on www.ebay.com and uncovered evidence of multiple counterfeit products being listed for sale. Spyderco then generates and sends eBay a notice of the listings that display counterfeit marks that infringe on Spyderco Marks. These are known as NOCIs, and literally hundreds have been sent to eBay, with about one-third of those involving sellers identified as being located in Hong Kong or China.

41. Spyderco and others have repeatedly placed eBay on notice that many of its Unauthorized Sellers are repeat infringers. *See* Exhibit 2 attached (letters to eBay identifying repeat offenders), which is incorporated by reference herein in its entirety. Nevertheless, eBay has taken no effective steps, such as de-listing the Unauthorized Sellers, to prevent these recidivist Unauthorized Sellers from continuing to operate on eBay and infringing on the Spyderco Marks. *See* Exhibit 3 attached (responses from eBay regarding the letters identifying repeat offenders).

D. eBay's Infringement of Spyderco's Marks

42. The search engine at eBay's www.ebay.com website allows visitors to the website to search for items to purchase by entering a search query and to receive a listing of products offered for sale as a result of that query. This search engine feature allows for the entry of any individual words or strings of text desired by the user. On information and belief, the results generated by eBay's search engine depend, at least in part, on the search query entered by the user. For example, visitors to www.ebay.com may search for items to purchase by using generic search terms, such as "knife," and will receive results including all manner of knife products.

43. Visitors to www.ebay.com interested in purchasing a particular brand of product may also use eBay's search engine to search for that brand. However, visitors who utilize the search engine to search for a "Spyderco" knife using the SPYDERCO trademark will receive results containing numerous counterfeit and authentic Spyderco knives. A true and correct copy of print-out results for the search query "Spyderco" on June 28, 2017 is attached hereto as Exhibit 4 and incorporated herein by reference. The search results include numerous knives identified as SPYDERCO knives. Additionally, on page 6 of the results, one listing is self-titled "Spyderco Stretch Knife COPY" and describes the knife as "Up for sale is a CLONE of a Spyderco Stretch. D2 Steel bladeMade in China." Ex. 4, p. 6.

44. A search for "Spyderco clone" on www.ebay.com returns results for self-identified clones and replicas. A true and correct copy of print-out results for the search query "Spyderco clone" on June 28, 2017 is attached hereto as Exhibit 5 and incorporated herein by reference. These Unauthorized Sellers specifically chose to use the term "clone" when deciding how to mark the knives and in deciding how the knives would be represented on the eBay listings. Further, eBay is aware of exactly what its sellers are selling when it chose to permit the listings even with the term "clone" in the titles. In short, these Unauthorized Sellers and eBay knowingly and wantonly chose to offer and sell the Fake Spyderco Products and to damage, perhaps irreparably, Spyderco's superior, perendinate and valuable reputational rights reflected in the Spyderco Marks.

45. 35 U.S.C. §1116(d)(1)(B)(i) & (ii) defines a counterfeit designation as any symbol used on a good sold in interstate commerce that is identical to or substantially indistinguishable from a symbol that is registered on the Principle Register of the United States. Knowledge of the registration is irrelevant. eBay has and is currently offering for sale and selling and/or enabling the offer for sale and selling of counterfeit knives in connection with trademarks that are identical

or confusingly similar to Spyderco's Marks, including, for example, eBay item number 152578957022. A true and correct copy of a print-out of the foregoing product listing at www.ebay.com is attached hereto as Exhibit 6 and incorporated herein by reference. This "Spyderco Civilian 9Cr18Mov BLADE g-10 Serrated Folding Knife C12 *MADE IN CHINA*" sold by eBay is described as "an extremely high quality replica" and includes the following Spyderco trademarks: U.S. Trademark Registration Nos. 1,965,458 for "SPYDERCO," 1,957,810 for "Spider Design," 2,033,317 for "Round Hole Mark," and 4,884,288 for "Packaging Design." Spyderco is not the source of this product and Spyderco has not authorized eBay or third-party sellers to use or allowed the use of the Spyderco Marks in this manner. eBay's unauthorized advertisement, offer for sale, and sale of these knives constitutes distribution in interstate commerce of counterfeit goods under 15 U.S.C. § 1114(1)(a) and 1117(c).

46. eBay's willful counterfeiting and infringement make this an exceptional case, entitling Spyderco to: (1) an award of treble actual damages in the form of Spyderco's lost profits and eBay's gross profits due to infringement of Spyderco's common-law trademarks under 15 U.S.C. § 1117(a); (2) an award of attorneys' fees and costs (including expert costs) under 15 U.S.C. § 1117(a) for infringement of Spyderco's Marks and common-law trademarks; (3) an award of prejudgment and post judgment interest under 15 U.S.C. § 1117(a) and (b) for infringement of Spyderco's federally registered and common-law trademarks; and, perhaps most significantly, (4) an award from this Court of statutory damages for willful counterfeiting under 15 U.S.C. § 1117(c)(2) of not less than \$200,000 or more than \$2,000,000 per counterfeited mark.

47. Additionally, many of the Fake Spyderco Products include on each of their blades "Golden, CO, USA, Earth" and numbers and letters indicating the metal type (e.g., "CPM S30V") indicating to reasonable consumers that the products were manufactured in Golden, Colorado and

that the blade was made of a specific type of metal (e.g., CPM S30V steel). See Exhibit 7, which is a true and correct copy of a print-out of a product listing at www.ebay.com titled "spyderco paramilitary 2 clone" and which is incorporated herein by reference. These markings are literally false and a willful fraud upon both Spyderco and the consuming public. The Fake Spyderco Products being offered for sale by and being sold by eBay as Spyderco knives are made of inferior materials and have an inferior build quality.

48. Sale of the Fake Spyderco Products with the false product ingredient and location of manufacture markings cause special/actual damages and reputational damages. The reputation damages include the fact that these Fake Spyderco Products will not perform as advertised (i.e., the blades are not made of CPM S30V steel) and will fail in use much more quickly than an authentic Spyderco knife that has a blade made of CPM S30V steel. When the Fake Spyderco Products fail early and/or do not perform as expected, the original purchaser and/or a subsequent purchaser, another acquirer, or just a person viewing unflattering use of the knives, will think less of Spyderco and the quality of Spyderco products. Spyderco's reputation is a prized business asset, and the reputational loss visited upon Spyderco by eBay's sale of the Fake Spyderco Products, which is completely out of Spyderco's control, could and has resulted in significant reputational damage to Spyderco, its brand, and its products.

49. Actual (special) damages also flow from a loss of product sales and profits that would typically flow from sales of authentic products. For instance, eBay is selling both authentic Spyderco knives and Fake Spyderco Products that are identical or almost identical in appearance to the authentic knives. Had eBay not listed on its website the Fake Spyderco Products, but instead carried authentic knives made in Colorado of quality steel, customers who wanted knives that looked like and were marked to indicate they were or were as good as authentic Spyderco knives

would have purchased the authentic Spyderco knives and Spyderco would have generated its usual profit. That has not occurred, causing actual damage to Spyderco.

50. Many Unauthorized Sellers are knowingly selling Fake Spyderco Products, as is indicated from the use of "clone" or "replica" in the product listing or the Unauthorized Seller photoshops the SPYDERCO mark and Spider Design mark off of the knife blade. *See* Ex. 8, pp. 11, 13 (annotated red circles).

51. The above-identified use of similar or identical trademarks for Fake Spyderco Products is likely to cause consumer confusion as to the source and origin of those knives or cause consumers to falsely believe that those knives are affiliated with Spyderco.

52. The Unauthorized Sellers list the infringing products on www.ebay.com with eBay's knowledge, consent, and encouragement. Through its actions described above, eBay has knowingly and intentionally misled consumers to believe that these infringing Fake Spyderco Products were made by Spyderco or associated with Spyderco, and/or contributed to such misleading activities by third-party sellers on www.ebay.com. As a result, consumers have mistakenly purchased Fake Spyderco Products, and/or have suffered at least initial interest confusion leading those consumers to purchase Fake Spyderco Products instead of authentic Spyderco products.

FIRST CLAIM FOR RELIEF
(Trademark Infringement, 15 U.S.C. § 1114(1))

53. Spyderco realleges and incorporates herein each and every allegation contained in paragraphs 1 through 52 above.

54. Spyderco owns valid and enforceable trademark rights in the Spyderco Marks as indicated by the registrations in Exhibit 1.

55. eBay's acts as described herein are likely to cause, and/or have contributed to, confusion, deception, and/or mistake. eBay's conduct also constitutes an attempt to trade on the goodwill that Spyderco has developed in the Spyderco Marks, all to the damage of Spyderco.

56. eBay's acts as described herein constitute, and/or have contributed to, the use in commerce of a reproduction, counterfeit, copy of colorable imitation of registered trademarks, in connection with the sale, offering for sale, distribution, or advertising of products, on or in connection with such use is likely to cause confusion or to cause a mistake or to deceive, in violation of 15 U.S.C. § 1114(1).

57. eBay's acts have been without consent from Spyderco.

58. eBay's acts have been committed willfully and with intent, making this an exceptional case and entitling Spyderco to recover its costs of this action and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

59. As a direct and proximate result of eBay's acts, eBay has been unjustly enriched, entitling Spyderco to an accounting and disgorgement of eBay's profits.

60. By its conduct, eBay has caused Spyderco irreparable harm and injury and will continue to do so unless eBay is restrained and enjoined by this Court from further violation of Spyderco's rights.

SECOND CLAIM FOR RELIEF
(Willful Federal Counterfeiting, 15 U.S.C. §§ 1114(1)(a) & (b))

61. Spyderco incorporates paragraphs 1 through 60 as though fully set forth herein.

62. Without Spyderco's consent, eBay has used, on and in connection with the sale, offering for sale, distribution, and advertising of the Fake Spyderco Products designations that are identical to Spyderco's Marks.

63. eBay's acts as described herein were committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

64. These acts constitute willful trademark counterfeiting in violation of 15 U.S.C. § 1114(1)(a) and (b).

65. eBay's acts violate 15 U.S.C. § 1114(1)(a) and involve the use of a counterfeit mark knowing such mark is a counterfeit mark, entitling Spyderco to recover three times the profits or damages, whichever amount is greater, under 15 U.S.C. § 1117(b) or entitling Spyderco to recover statutory damages of \$2,000,000 per counterfeit mark per type of goods sold, offered for sale, or distributed, under 15 U.S.C. § 1117(c).

66. eBay's counterfeiting renders this case exceptional and intentional, entitling Spyderco to, among other things, an award of attorneys' fees under 15 U.S.C. §§ 1117(a) and (b).

67. Spyderco is entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a).

THIRD CLAIM FOR RELIEF
(Trademark Infringement, Unfair Competition,
and False Designation of Designation of Origin, 15 U.S.C. § 1125(a)(1))

68. Spyderco realleges and incorporates herein each and every allegation contained in paragraphs 1 through 67 above.

69. Without Spyderco's consent, eBay has used, on and in connection with the sale, offering for sale, distribution, and advertising of counterfeit Spyderco knives incorporating Spyderco's Marks.

70. eBay's acts as alleged herein constitute, and/or have contributed to, false designations of origin, false or misleading descriptions of fact, or false or misleading of facts which are likely to cause confusion or mistake, or to deceive the public as to the origin, sponsorship, or

approval of eBay's goods, and otherwise constitute infringement and unfair competition in violation of 15 U.S.C. § 1125(a)(1).

71. eBay's unauthorized use of Spyderco's Marks has caused actual consumer confusion.

72. eBay's unauthorized use of Spyderco's Marks in connection with Fake Spyderco Products, despite knowing Spyderco's rights in and to the Spyderco Marks, is a willful violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

73. eBay's acts have been committed willfully and with intent, making this an exceptional case and entitling Spyderco to recover its costs of this action and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

74. As a direct and proximate result of eBay's acts, eBay has been unjustly enriched, entitling Spyderco to an accounting and disgorgement of eBay's profits.

75. By its conduct, eBay has caused Spyderco irreparable harm and injury and will continue to do so unless eBay is restrained and enjoined by this Court from further violation of Spyderco's rights. Spyderco is entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a).

FOURTH CLAIM FOR RELIEF
(Common Law Unfair Competition)

76. Spyderco realleges and incorporates herein each and every allegation contained in paragraphs 1 through 75 above.

77. eBay's acts and omissions as described herein constitute, and/or contributed to, unfair competition against Spyderco at common law.

78. eBay's unfair competition has been willful and with intent to deceive the consuming public and the marketplace.

79. eBay's unfair competition has harmed Spyderco in its business and goodwill.

80. eBay's unfair competition has damaged Spyderco in an amount to be determined at trial.

81. Spyderco has suffered and is continuing to suffer irreparable harm as a result of eBay's unfair competition, and Spyderco has no adequate remedy at law for such injury.

FIFTH CLAIM FOR RELIEF
(Deceptive Trade Practices, Colo. Rev. Stat. § 6-1-105)

82. Spyderco realleges and incorporates herein each and every allegation contained in paragraphs 1 through 81 above.

83. By the actions described above, eBay has engaged in deceptive trade practices, as defined by the Colo. Rev. Stat §§ 6-1-101 *et seq.*

84. Through the acts complained of herein, eBay has violated at least sections (a)-(e) and (h)-(i) of Colo. Rev. Stat. § 6-1-105(1) and thus engaged in unfair and deceptive trade practices.

85. These acts occurred during and as part of eBay's actual and continuing business.

86. The complained of acts significantly impact the public who purchased the counterfeit knives in that they or those acquiring the products from eBay acquired inferior products under false pretenses that could cause grave bodily harm to those individuals or others. While the total number of consumers who may be affected by the inferior counterfeit knives may be low when compared to the total number of authentic Spyderco knives that have been sold, the damage that could be caused by a failure of a counterfeit knife could be very significant (perhaps including death), and this is the type of impact for which the C.C.P.A. was designed to address.

87. Spyderco has suffered actual and reputational injury due to eBay's fraudulent and deceitful conduct as outlined herein, and eBay has intentionally and willfully caused that injury.

88. eBay's wrongful actions were committed with an intent to deceive the public and with willful and wanton disregard of the laws of the State of Colorado and Spyderco's superior rights.

89. eBay's deceptive trade practices have substantially affected the public as consumers and potential consumers of Spyderco's products.

90. As a result of eBay's unlawful actions, Spyderco has suffered commercial harm.

91. Spyderco is entitled to an award of statutory damages in the amount of \$500 for each deceptive trade practice committed by eBay.

92. Spyderco is also entitled to an award of its reasonable attorneys' fees and costs pursuant to the Colorado Consumer Protection Act.

93. Because Spyderco's legal remedies for eBay's deceptive trade practices are inadequate, and because Spyderco has suffered and will continue to suffer irreparable harm as a result of eBay's deceptive trade practices, Spyderco is entitled to injunctive relief prohibiting those deceptive trade practices.

PRAYER FOR RELIEF

WHEREFORE, Spyderco prays for judgment in its favor and against eBay as follows:

A. Judgment that:

1. Spyderco's Marks are valid and enforceable and are the exclusive property of Spyderco;

2. eBay has infringed Spyderco's Marks and competed unfairly with Spyderco and that such infringement and unfair competition has been willful, deliberate, intentional, and malicious;

3. eBay has willfully counterfeited the Spyderco Marks; and

4. eBay has engaged in deceptive trade practices in violation of Colo. Rev. Stat. § 6-1-105.

B. That eBay, and its agents, servants, employees, attorneys, successors, and assigns, and all person in active concert or participation with eBay, be enjoined and restrained, preliminarily, perpetually, and permanently from:

1. Using in any manner the Spyderco Marks, or any other mark which so resembles the Spyderco Marks, as to be likely to cause confusion, deception or mistake, on or in connection with the advertising, offering for sale, or sale of any product or service which is not authorized by Spyderco, including in eBay's search engine at www.ebay.com;

2. Counterfeiting, inducing others to counterfeit, or contributing to the counterfeiting of the Spyderco Marks;

3. Manufacturing, distributing, delivering, shipping, importing, exporting, advertising, marketing, promoting, selling, or otherwise offering for sale Fake Spyderco Products or any other products confusingly similar to Spyderco's authentic products, or that otherwise bear, contain, display, or utilize any of the Spyderco Marks, any derivation or colorable imitation thereof, or any mark confusingly similar thereto or likely to dilute or detract from Spyderco's Marks;

4. Processing credit card transactions or otherwise facilitating the sales of Fake Spyderco Products or any other products confusingly similar to Spyderco's authentic

products, or that otherwise bear, contain, display, or utilize any of the Spyderco Marks, any derivation or colorable imitation thereof, or any mark confusingly similar thereto or likely to dilute or detract from Spyderco's Marks;

5. Using, or assisting or encouraging any third party in using, any false or misleading designation of origin which tends to pass off eBay's goods, services, or commercial activities, or those of third-party sellers, as those of Spyderco, including at www.ebay.com;

6. Using, or assisting or encouraging any third party in using, any false or misleading designation or representation of fact which misrepresents the nature, characteristics, qualities, or geographic origin of eBay's goods, services, or commercial activities, including at www.ebay.com; and

7. Unfair and illegal business practices or any conduct that otherwise infringes Spyderco's Marks or competes unfairly with Spyderco, including at www.ebay.com; and

C. That eBay, within thirty (30) days after service of judgment with notice of entry thereof upon eBay, be required to file with the Court and serve upon Spyderco's attorneys a written report under oath setting forth in detail the manner in which eBay has complied with the paragraphs above, pursuant to 15 U.S.C. § 1116(a).

D. That eBay recall and remove from all websites, online markets, or other channels of commerce any Fake Spyderco Products or any other products confusingly similar to Spyderco's authentic products, or that otherwise bear, contain, display, or utilize any of the Spyderco Marks, any derivation or colorable imitation thereof, or any mark confusingly similar thereto or likely to dilute or detract from Spyderco's Marks, that are in eBay's possession or control, and all means of making the same.

E. That eBay deliver up for destruction all Fake Spyderco Products or any other products confusingly similar to Spyderco's products, or that otherwise bear, contain, display or utilize any of the Spyderco Marks, any derivation or colorable imitation thereof, or any mark confusingly similar thereto or likely to dilute or detract from Spyderco's Marks, that are in eBay's possession or control, and all means of making the same, in accordance with 15 U.S.C. § 1118.

F. That eBay deliver up for destruction any and all guarantees, circulars, price lists, labels, signs, prints, packages, wrappers, pouches, receptacles, advertising matter, promotional, and other materials in the possession or control of eBay bearing any of the Spyderco Marks, any derivation or colorable imitation thereof, or any mark confusingly similar thereto or likely to dilute or detract from Spyderco's Marks, in accordance with 15 U.S.C. § 1118.

G. That eBay supply Spyderco with a complete list of entities from whom it collected and to whom it distributed and/or sold Fake Spyderco Products or any other products confusingly similar to Spyderco's products, or that otherwise bear, contain, display or utilize any of the Spyderco Marks, any derivation or colorable imitation thereof, or any mark confusingly similar thereto or likely to dilute or detract from Spyderco's Marks, and to provide documentation of the manner through which the Fake Spyderco Products or other products were paid, including any bank accounts to, through or from which funds were wired.

H. An accounting of all profits received by eBay from the sale of products in connection with eBay's unlawful acts.

I. An award to Spyderco and against eBay of the actual damages sustained by Spyderco on account of eBay's unlawful acts.

J. An award to Spyderco and against eBay of statutory damages in an amount to be determined representing \$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, pursuant to 15 U.S.C. § 1117(c).

K. An award to Spyderco and against eBay of statutory damages in the amount of \$500 for each deceptive trade practice committed by eBay, pursuant to C.R.S. § 6-1-113.

L. An award to Spyderco and against eBay of treble damages and/or enhanced profits pursuant to common law, C.R.S. § 6-1-113, and/or 15 U.S.C. § 1117.

M. An award to Spyderco and against eBay of punitive and/or exemplary damages.

N. An award to Spyderco and against eBay of all costs, disbursements, and reasonable attorneys' fees pursuant to C.R.S. § 6-1-113, 15 U.S.C. § 1117, and/or other authority.

O. An award to Spyderco and against eBay of interest, including prejudgment interest, for any monetary award to Spyderco.

P. An award to Spyderco and against eBay of such and further relief as this Court deems just and proper.

JURY DEMAND

Spyderco hereby demands a jury trial on issues so triable.

Respectfully submitted,

Dated: July 19, 2017

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