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12 Attorneys for Plaintiffs ROGER CLEVELAND GOLF COMPANY INC.  
 13 and DUNLOP SPORTS CO. LTD.

14  
 15 **UNITED STATES DISTRICT COURT**  
 16 **CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**

17 ROGER CLEVELAND GOLF  
 18 COMPANY, INC., a California  
 19 corporation, and DUNLOP SPORTS CO.  
 LTD., a Japanese corporation,

20 Plaintiffs,

21 v.

22  
 23 CALLAWAY GOLF COMPANY, a  
 24 California corporation,

25 Defendant.

Case No.

**COMPLAINT for:**

1. **Federal Trademark Infringement,  
15 USC §1114**
2. **Federal False Designation of Origin,  
15 USC. §1125(a)(1)(A)**
3. **California Unfair Competition;  
Cal. Bus. and Prof. Code §17200 et seq**
4. **Federal Trademark Dilution  
15 USC §1125(c)**
5. **California Trademark Dilution,  
Cal. Bus. and Prof. Code §14330**
6. **Common Law Trademark  
Infringement**
7. **Common Law Unfair Competition**

**AND DEMAND FOR JURY TRIAL**

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1 Plaintiffs, ROGER CLEVELAND GOLF COMPANY, INC. (hereinafter  
2 “Cleveland Golf” or “plaintiff”), and DUNLOP SPORTS CO. LTD., a Japanese  
3 corporation (formerly known as SRI SPORTS LIMITED) (hereinafter “DSP,”  
4 “Dunlop Sports” or “plaintiff”), (collectively hereinafter “Roger Cleveland Golf” or  
5 “plaintiffs”) by their counsel, hereby state their complaint against defendant  
6 CALLAWAY GOLF COMPANY (hereinafter “Callaway” or “defendant,”) and  
7 allege as follows:

8  
9 **NATURE OF THE DISPUTE**

10  
11 Plaintiffs Roger Cleveland Golf brings this suit against defendant Callaway  
12 for federal trademark infringement, statutory (federal and state) and common law  
13 unfair competition, and federal and state trademark dilution. Plaintiffs seek to  
14 permanently restrain and enjoin defendant from using and infringing the famous  
15 CLEVELAND® trademark—used by Cleveland Golf for over thirty years—in  
16 connection with Callaway’s manufacture, marketing and sale of golf products,  
17 including golf clubs, thereby giving the false impression that defendant or certain of  
18 its golf products are made by Roger Cleveland Golf, or that Roger Cleveland Golf  
19 sponsored or is affiliated with defendant or certain of its products. Plaintiffs also  
20 seek monetary damages and profits arising from defendant’s infringing activities.

21  
22 **THE PARTIES**

23  
24 1. ROGER CLEVELAND GOLF COMPANY, INC. is a corporation  
25 organized under the laws of the State of California, and has a principal place of  
26 business at 5601 Skylab Road, Huntington Beach, California 92647, U.S.A., and is a  
27 wholly-owned subsidiary of plaintiff DUNLOP SPORTS CO. LTD.  
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1 action occurred in this judicial district, and the adverse impact and damage to  
2 plaintiffs occurred in this judicial district.

3  
4 **FACTS**

5  
6 7. Plaintiff ROGER CLEVELAND GOLF COMPANY, INC., is a large  
7 U.S. manufacturer and marketer of golf equipment, including among other items,  
8 golf clubs, and plaintiff DUNLOP SPORTS CO. LTD., (formerly known as SRI  
9 SPORTS LIMITED) is a large manufacturer of golf equipment, including, among  
10 other items, golf clubs and golf balls. Plaintiff ROGER CLEVELAND GOLF  
11 COMPANY, INC. is a wholly-owned subsidiary of plaintiff DUNLOP SPORTS  
12 CO. LTD.

13  
14 8. ROGER CLEVELAND GOLF COMPANY, INC. was founded in  
15 1979 by Mr. Roger Cleveland. CLEVELAND® brand golf clubs marketed by  
16 ROGER CLEVELAND GOLF COMPANY, INC. continued to grow and to become  
17 famous as the source of high quality CLEVELAND® brand golf clubs, all of which  
18 bore the CLEVELAND® trademark, under which a full line of golf clubs and  
19 accessories are marketed. Since the company's inception the CLEVELAND®  
20 trademark has become one of the most recognized brands in the golf equipment  
21 business.

22 A photograph of a representative CLEVELAND® brand golf club appears  
23 below:

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9. Cleveland Golf is now one of the largest golf companies in the world. It sponsors numerous PGA Tour players including recent major tournament champions Keegan Bradley and Graeme McDowell. In the more than 30 years Cleveland Golf has been in existence, the CLEVELAND® name and trademark, and golf goods bearing that mark, have been heavily promoted.

10. Cleveland Golf has invested millions of dollars and decades of time and effort to create consumer recognition in the CLEVELAND® brand and trademarks, and to ensure that the public associates the CLEVELAND® brand and trademarks with high quality golf clubs and related golf equipment emanating exclusively from Cleveland Golf.

11. As a result of the wide renown acquired by the CLEVELAND® by the trademarks, Cleveland's reputation for high quality golf products and the extensive sales of various products bearing the CLEVELAND® trademarks, these trademarks have become famous in the minds of the purchasing public within the meaning of 15 USC § 1125(c), Section 43 (c) of the Trademark Act of 1946 (the Lanham Act). The CLEVELAND® trademarks of inestimable value to Roger Cleveland Golf.

12. The CLEVELAND® trademark is protected by several federal trademark registrations including:

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1 CLEVELAND -- U.S. Trademark Registration 2,070,054

2 (Exhibit A, attached),

3 CLEVELAND -- U.S. Trademark Registration 2,070,051

4 (Exhibit B, attached),

5 CLEVELAND GOLF -- U.S. Trademark Registration 3,286,218

6 (Exhibit C, attached).

7 All of these registrations have become incontestable.

8  
9 13. In September 1990, ownership of all shares of ROGER CLEVELAND  
10 GOLF COMPANY, INC., including those owned by Mr. Roger Cleveland, were  
11 sold. At that time, Mr. Roger Cleveland continued his duties as a full-time  
12 Executive Vice President and member of the Board of Directors of that company.  
13 In late 1995 Mr. Roger Cleveland left the company he started and that still bears his  
14 name. He left Cleveland Golf with no rights in or to the famous CLEVELAND®  
15 trademarks which were owned by the company.

16  
17 14. In early 1996, Mr. Roger Cleveland became an employee of defendant  
18 Callaway. Since that time, Mr. Roger Cleveland has supported Callaway in the  
19 development of its golf clubs. Until recently, however, his name never appeared on  
20 any commercial product of Callaway.

21  
22 15. In about July 2013, defendant Callaway, for the first time commenced  
23 marketing a golf club bearing Mr. Roger Cleveland's name. That club, the Roger  
24 Cleveland Mac Daddy 2, bears the words "DESIGNED BY ROGER  
25 CLEVELAND." A photograph of such golf club head appears below:

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16. At no time have plaintiffs or either of them ever consented in any way to permit the mark “CLEVELAND” or “ROGER CLEVELAND” or “DESIGNED BY ROGER CLEVELAND,” to be displayed on any golf product by any person or entity other than plaintiffs.

17. Defendant Callaway’s use of plaintiffs’ mark CLEVELAND® on its recently marketed clubs has already resulted in actual confusion in the marketplace, and is likely to mislead and confuse consumers into believing that the infringer’s products originate from Cleveland Golf or are connected to or affiliated with Cleveland Golf.

18. Plaintiffs have demanded that defendant Callaway cease making unauthorized use of plaintiffs’ CLEVELAND® brand on defendant Callaway’s golf clubs, but to date defendant Callaway has refused to cease and desist its infringing acts.

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**FIRST CLAIM FOR RELIEF**

**(Federal Trademark Infringement, 15 USC § 1114)  
(By Plaintiff Dunlop Sports)**

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4 19. Plaintiffs reallege and incorporate herein by reference the foregoing  
5 paragraphs 1-18 of this Complaint.

6  
7 20. Plaintiff Dunlop Sports' federal registrations for the CLEVELAND®  
8 mark are incontestable, and the mark is distinctive and has acquired secondary  
9 meaning as to the source of all goods advertised, marketed, sold, or used in  
10 connection with the mark.

11  
12 21. Dunlop Sports has not authorized, licensed or given permission to  
13 defendant to use the mark in any manner whatsoever including, without limitation,  
14 on the infringing products being marketed, advertised, distributed and sold by  
15 defendant.

16  
17 22. Defendant's use of an infringing version of the CLEVELAND® mark  
18 on defendant's products is likely to cause confusion, mistake, or to deceive as to  
19 source, origin, affiliation, or sponsorship.

20  
21 23. Dunlop Sports lacks an adequate remedy at law.

22  
23 24. Unless an injunction is issued enjoining any continuing or future  
24 infringing use of the CLEVELAND® mark by defendant on defendant's golf  
25 products, such use is likely to continue to cause confusion, mistake, or to deceive as  
26 to source, origin, affiliation, or sponsorship, thereby irreparably damaging Dunlop  
27 Sports.





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1 has come to identify plaintiffs as the source of such high quality golf products, and  
2 has also established enormous goodwill in the mark.

3  
4 29. Defendant's unauthorized use of the CLEVELAND® mark on golf  
5 clubs, and its promotion, marketing and advertising thereof is a false designation of  
6 origin and a false or misleading representation of fact that is likely to cause  
7 confusion, or to cause mistake, or to deceive as to an affiliation, connection, or  
8 association between plaintiffs and defendant, and is likely to cause confusion,  
9 mistake or deception as to the origin, sponsorship or approval of defendant's  
10 products by plaintiffs or, conversely, plaintiffs' products by defendant.

11  
12 30. Plaintiffs, upon information and belief, allege that defendant intended  
13 to, and did, confuse and mislead the public, and did represent and create the false  
14 impression that plaintiffs authorized, originated, sponsored, approved, licensed or  
15 participated by defendant's use of a mark confusingly similar to plaintiffs'  
16 CLEVELAND® mark in connection with defendant's golf products.

17  
18 31. In fact, there is no connection, association, sponsorship, approval or  
19 licensing relationship between plaintiffs, on the one hand, and defendant, on the  
20 other hand. Plaintiffs have not authorized, sponsored, approved, licensed or given  
21 permission to defendant to use the CLEVELAND® mark, or any mark similar  
22 thereto, in any manner whatsoever on golf products including golf clubs.

23  
24 32. Thus, defendant has created and will continue to create a false  
25 impression concerning an association between plaintiffs and defendant, a false  
26 designation of the origin of defendant's goods, and confusion as to a connection  
27 between the respective parties.







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1 49. Plaintiff's CLEVELAND® mark constitutes a valid trademark under  
2 California law, is distinctive and has acquired secondary meaning.

3  
4 50. Defendant's unauthorized use of plaintiff's CLEVELAND® mark is  
5 causing a likelihood of dilution of the mark whereby the mark is deprived of its  
6 exclusive capacity to identify and distinguish the source of goods distributed  
7 thereunder.

8  
9 51. Defendant's actions constitute injury to business reputation and/or  
10 dilution within the meaning of California Business and Professions Code § 14330,  
11 plaintiffs are entitled to an injunction prohibiting defendant from continuing its  
12 infringing use on golf products of any mark dilutive of plaintiffs' CLEVELAND®  
13 mark.

14  
15 **SIXTH CLAIM FOR RELIEF**

16 **(Common Law Trademark Infringement)**  
17 **(By all Plaintiffs)**

18 52. Plaintiffs reallege and incorporate herein by reference paragraphs 1-51  
19 of this Complaint.

20  
21 53. Defendant's acts constitute common law trademark infringement under  
22 California law.

23  
24 54. Plaintiffs have been damaged and will continue to be damaged by  
25 defendant's infringing activities.







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1           4.     engaging in any unfair business practices or any acts of unfair  
2 competition in any manner with respect to plaintiffs' products or the  
3 CLEVELAND® mark; and

4           5.     using any of the marks "CLEVELAND," "ROGER  
5 CLEVELAND," or "DESIGNED BY ROGER CLEVELAND" on any golf  
6 products.

7           B.     Ordering defendant to file with the Court and to serve on counsel for  
8 plaintiffs, within thirty (30) days from entry of an injunction, a report fully stating  
9 the manner and form in which defendant has complied with the injunction.

10          C.     For an order that, by the acts complained of herein, defendant has  
11 infringed plaintiff Dunlop Sports' trademark rights, in violation of 15 USC § 1114.

12          D.     For an order that, by the acts complained of herein, defendant has  
13 infringed plaintiffs' rights, and engaged in acts of false designation of origin, in  
14 violation of 15 USC § 1125(a).

15          E.     For an order that, by the acts complained of herein, defendant has  
16 diluted the distinctive quality of plaintiffs' CLEVELAND® mark, in violation of  
17 Cal. Bus. and Prof. Code § 14330.

18          F.     For an order that, by the acts complained of herein, defendant has  
19 engaged in unfair business practices against plaintiffs, in violation of Cal. Bus. and  
20 Prof. Code § 17200.

21          G.     For an order that, by the acts complained of herein, defendant has  
22 infringed plaintiffs' common law trademark rights and/or engaged in acts of  
23 common law unfair competition against plaintiffs.

24          H.     For an order awarding plaintiffs general and/or specific damages, in an  
25 amount to be fixed by the Court in accordance with proof, including enhanced  
26 and/or exemplary damages as appropriate, as well as all of defendant's profits or  
27 gains of any kind from defendant's acts of trademark infringement, false designation  
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1 of origin, unfair business practices and dilution; and further for an order that such  
2 acts were willful and wanton, thereby justifying an award, where appropriate, of  
3 treble or enhanced damages.

4 I. For an order awarding plaintiffs restitution of all amounts obtained by  
5 defendant by means of its wrongful acts described herein;

6 J. For an order awarding plaintiffs their costs and attorneys' fees incurred  
7 in prosecuting this action.

8 K. For an order awarding plaintiffs pre-judgment interest.

9 L. For an order awarding such other relief as the Court deems just and  
10 proper.

11  
12 **DEMAND FOR JURY TRIAL**

13 Plaintiffs hereby request trial by jury on all claims so triable.

14 Dated: October 18, 2013

Respectfully submitted,

15 **CANNON & NELMS, A PC**  
16 **STEPTOE & JOHNSON LLP**

17  
18 By: /s/ Julia A. Mouser

19 Anthony L. Cannon

20 Julia A. Mouser

21 Roger W. Parkhurst

22 Michael J. Allan

Attorneys for Plaintiffs,

23 **ROGER CLEVELAND GOLF**  
24 **COMPANY, INC. and DUNLOP**  
25 **SPORTS CO. LTD**