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8 Attorneys for Xcentric Ventures, L.L.C.

9 **UNITED STATES DISTRICT COURT**
 10 **DISTRICT OF ARIZONA**

11 ECOMMERCE INNOVATIONS, L.L.C.,
 12 a Nevada limited liability company,

Case No.: 2:08-MC-00093

13 Plaintiff,

**DECLARATION OF
 DAVID S. GINGRAS IN SUPPORT OF
 NON-PARTY XCENTRIC VENTURES,
 L.L.C.'s SUR-REPLY TO PLAINTIFF'S
 MOTION TO COMPEL**

14 v.

15 DOES 1 through 10,

16 Defendants.

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 ATTORNEYS AT LAW
 3200 NORTH CENTRAL AVENUE
 SUITE 2000
 PHOENIX, ARIZONA 85012

17 I, DAVID GINGRAS hereby depose and say:

18 1. I am a resident of the State of Arizona, am over the age of 18 years, and if
 19 called to testify in court in this matter I could and would truthfully testify to the following.

20 2. I am an attorney licensed to practice law in the states of Arizona and
 21 California. I am admitted to practice before, and am in good standing with, all state courts
 22 in Arizona and California, and the U.S. District Court for the District of Arizona, the U.S.
 23 District Court for the Central District of California, and the U.S. District Court for the
 24 Eastern District of California.

25 3. I am currently employed as a litigation associate attorney with the law firm
 26 of Jaburg & Wilk, P.C., in Phoenix, Arizona and I represent non-party XCENTRIC
 27 VENTURES, L.L.C. with respect to the matter pending before this Court relating to a
 28 Motion to Compel filed by Plaintiff ECOMMERCE INNOVATIONS, L.L.C.
 ("Ecommerce").

1 4. Based on my discussions with counsel for Ecommerce and a review of the
2 pleadings in this case, I am aware that Ecommerce is in the business of selling jewelry
3 from a store in California and from its website located at www.InspiredSilver.com.

4 5. I am aware that Ecommerce alleges that it has been defamed by certain
5 statements anonymously posted on my client’s website www.RipoffReport.com. I am
6 aware that among other things, Ecommerce alleges that it has been falsely accused of
7 “knocking off” designs of other jewelry manufacturers and “ripping off” designers.

8 6. I have reviewed a document filed in this matter (Doc. #5; 10/13/2008)
9 which purports to be a declaration signed by David Strager, the manager of Ecommerce.

10 7. In Paragraph 2(a) of his declaration, Mr. Strager stated, among other things,
11 that, “Inspired Silver [Ecommerce] does not engage in, and has never been sued for,
12 trademark, copyright or patent infringement and does not ‘knock-off’ proprietary designs
13 of other manufacturers or wholesalers.”

14 8. After reviewing Mr. Strager’s declaration, on October 14, 2008 I visited
15 Ecommerce’s website located at www.InspiredSilver.com in order to review the products
16 offered for sale there.

17 9. Immediately upon entering the site, I noticed several items of jewelry
18 advertised for sale that appeared to be identical to jewelry manufactured by Tiffany & Co.
19 (“Tiffany”). These Tiffany products were notable to me because on several occasions in
20 the past year, I have given items of authentic Tiffany jewelry as gifts and I have spent a
21 significant amount of time reviewing Tiffany’s official website located at
22 www.Tiffany.com while shopping for these gifts.

23 10. As shown in the screenshots attached hereto as Exhibits A–G and Exhibits
24 A1–G1, I reviewed numerous items listed for sale on Inspired Silver’s website and
25 compared them with genuine items listed for sale on Tiffany’s website. Based on a short
26 review, I located what appeared to be dozens and dozens of counterfeit Tiffany items
27 offered for sale on Ecommerce’s website. In many cases, the items offered by
28 Ecommerce appeared to be exact copies of genuine Tiffany items.

1 11. In some cases, the names of the items were also copied *verbatim*. For
2 example, **Exhibit B** shows a genuine Tiffany “Bubbles” ring with a retail price of \$9,550.
3 **Exhibit B-1** reflects a ring called “The Bubbles Ring” which appears to be an exact copy
4 of the genuine Tiffany “Bubbles” ring. Inspired Silver offers this counterfeit ring for sale
5 at a retail price of \$29.95.

6 12. In some cases, Inspired Silver appears to actively promote the fact that its
7 products are fake copies of genuine articles from other famous manufacturers. For
8 example, **Exhibit A** depicts a genuine Tiffany “Atlas” ring which contains a band of
9 Roman numerals with three diamonds for \$1,650.

10 13. As reflected in **Exhibit A-1**, Inspired Silver offers what appears to be an
11 exact copy of the Tiffany “Atlas” ring at a retail price of \$25.95. The description listed on
12 Inspired Silver’s website states, in part: “This new style will be the rage this season.
13 Enjoy this comfortable fitting ring that looks like the real thing!”
14

15 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
16 and correct.

17
18 Executed on: October 15, 2008



DAVID GINGRAS

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CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2008 I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing, and for transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Donnelly A. Dybus, Esq.
BUCHALTER NEMER
16435 North Scottsdale Road, Suite 440
Scottsdale, AZ 85254-1754

Attorneys for Plaintiffs

With a COPY of the foregoing delivered to:

Honorable David G. Campbell
United States District Court
District of Arizona

s/Debra Gower

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EXHIBIT A Genuine Tiffany "Atlas" Ring

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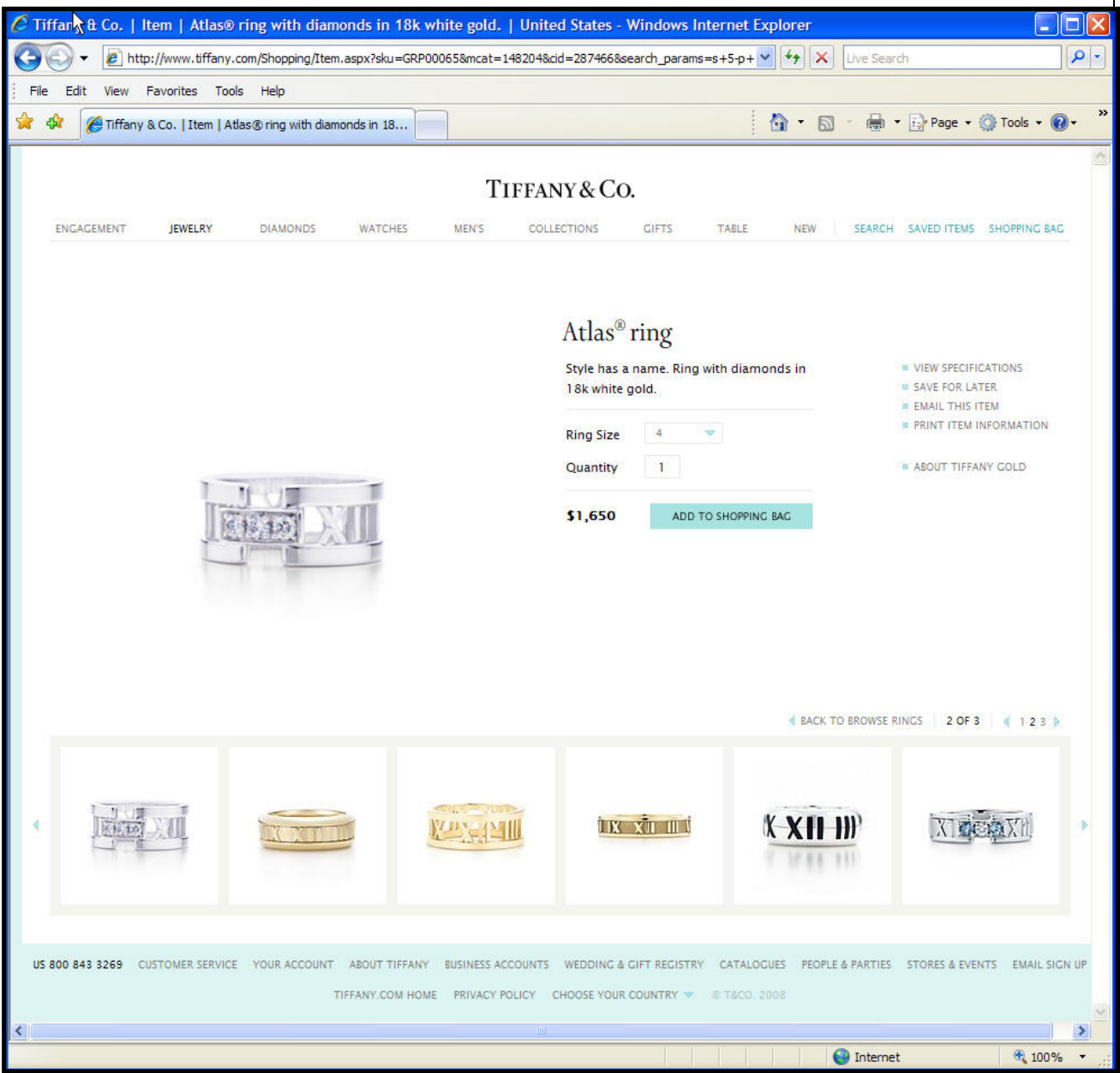


EXHIBIT A-1
Counterfeit Tiffany “Atlas” Ring by Inspired Silver

The screenshot shows the Inspired Silver website in a Windows Internet Explorer browser. The page title is "Inspired Silver Modern Roman Numeral Ring". The URL is "http://www.inspiredsilver.com/index.cfm?fa=site.showproduct&product_id=1630&product_category_id=83&vi".

The website header includes the "INSPIRED SILVER" logo, a search bar, and a "McAfee SECURE" badge. The navigation menu lists categories: WHAT'S NEW, RINGS, EARRINGS, BRACELETS, NECKLACES, WEDDING SETS, ON SALE, and CLEARANCE. The phone number is 1-866-547-4583.

The main product section is titled "Modern Roman Numeral Ring" with a 4.2 out of 5 star rating. It features a large image of the ring, a "zoom in" button, and a "FREE GIFT BOX WITH THIS ITEM" offer. The pricing is as follows:

- Retail Value: \$65.95
- Inspired Silver Price: ~~\$39.95~~
- Today's Sale Price: **\$25.95**
- YOU SAVE 61% (\$40.00)

The availability is "In Stock". The size is set to 5 and the quantity is 1. There is an "ADD TO YOUR SHOPPING CART" button.

On the left side, there are sections for "SHOP BY CATEGORY", "SHOP BY VIDEO", and "SHOP BY COLLECTION". A red arrow points to the following text:

This new style will be the rage this season. Enjoy this comfortable fitting ring that looks like the real thing! Karat of Cz's set in Sterling silver will be sure to turn heads.

The "Product Details" section lists:

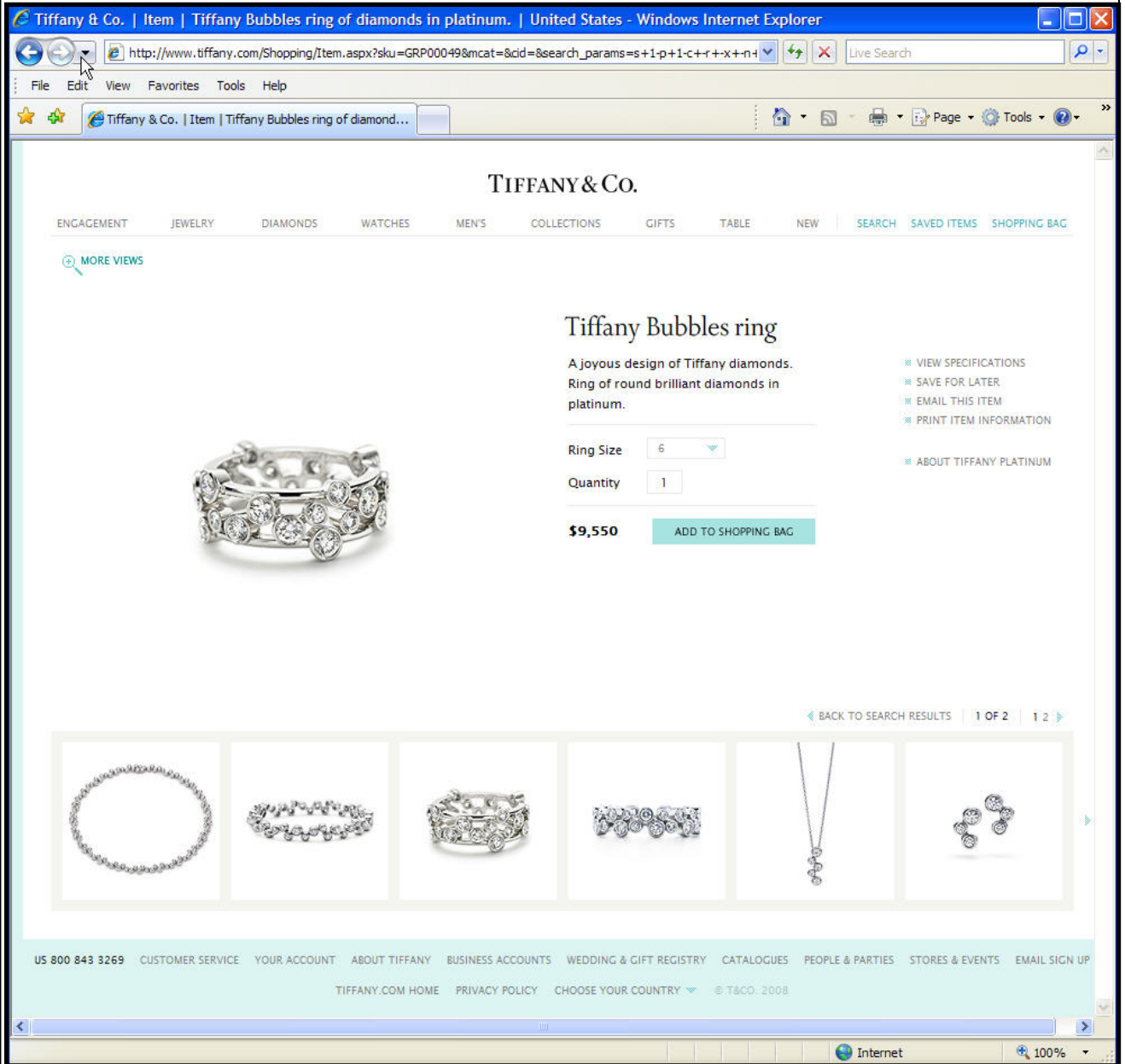
- Item ID: 1630
- Metal: .925 Sterling Silver
- Approx Weight (g): 5
- Gem Type: Cubic Zirconia
- Item Type: Ring

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EXHIBIT B

Genuine Tiffany "Bubbles" Ring



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EXHIBIT B-1
Counterfeit Tiffany “Bubbles” Ring by Inspired Silver

The screenshot shows a Windows Internet Explorer browser window displaying the Inspired Silver website. The page features a navigation menu with categories like 'WHAT'S NEW', 'RINGS', 'EARRINGS', 'BRACELETS', 'NECKLACES', 'WEDDING SETS', 'ON SALE', and 'CLEARANCE'. The main content area is titled 'The Bubbles Ring' and includes a star rating of 4.4 out of 5, a 'PHOTOS' and 'VIDEO' gallery, and a large image of the ring. A 'zoom in' button is visible below the main image. To the right, there is a 'McAfee SECURE' badge, an 'Overall Customer Rating' section, and a price comparison showing a 70% discount from a retail value of \$99.95 to a sale price of \$29.95. Below the price, there is an 'ADD TO YOUR SHOPPING CART' button. A 'Buy with Confidence!' section lists benefits like 'No Risk 30 Day Money Back', 'Free Shipping', and '100% Secure Shopping'. A 'Product Details' table at the bottom right lists item ID 513, weight of 3 cts. total, and metal as .925 Sterling silver w/Rhodium finish. A 'FREE GIFT BOX WITH THIS ITEM' banner is also present. The left sidebar contains a 'SHOP BY CATEGORY' list and a 'SHOP BY VIDEO' section.

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EXHIBIT C

Genuine Tiffany Gold Mesh Ring

The screenshot displays the Tiffany & Co. website interface in a Windows Internet Explorer browser. The address bar shows the URL: http://www.tiffany.com/Shopping/Item.aspx?sku=GRP019328&cat=148204&cid=287466&search_params=s+5-p+. The page title is "Tiffany Somerset™ ring in 18k gold, wide." The navigation menu includes: ENGAGEMENT, JEWELRY, DIAMONDS, WATCHES, MEN'S, COLLECTIONS, GIFTS, TABLE, NEW, SEARCH, SAVED ITEMS, and SHOPPING BAG. The main product is the "Tiffany Somerset™ ring", described as "Casual and refined, modern and elegant. Ring in 18k gold. Size wide." The price is listed as \$900. The page includes options for "Ring Size" (set to 4) and "Quantity" (set to 1). A teal "ADD TO SHOPPING BAG" button is present. To the right of the product are links for "SAVE FOR LATER", "EMAIL THIS ITEM", and "PRINT ITEM INFORMATION". Below the main product image is a carousel of other jewelry items, with "2 OF 16" items shown. The footer contains contact information: "US 800 843 3269" and "CUSTOMER SERVICE", and a copyright notice: "© T&CO. 2008".

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EXHIBIT C-1
Counterfeit Tiffany Gold Mesh Ring by Inspired Silver

The screenshot shows the Inspired Silver website interface. At the top, there's a navigation bar with categories like 'WHAT'S NEW', 'RINGS', 'EARRINGS', etc. The main product page features a large image of a gold mesh ring. To the right of the image, the price is prominently displayed as \$21.48, marked down from a retail value of \$109.95. Below the price, there's a 'Buy with Confidence' section listing several guarantees. The page also includes a sidebar with 'SHOP BY CATEGORY' and 'SHOP BY COLLECTION' options.

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EXHIBIT D

Genuine Tiffany Floating Heart Pendant

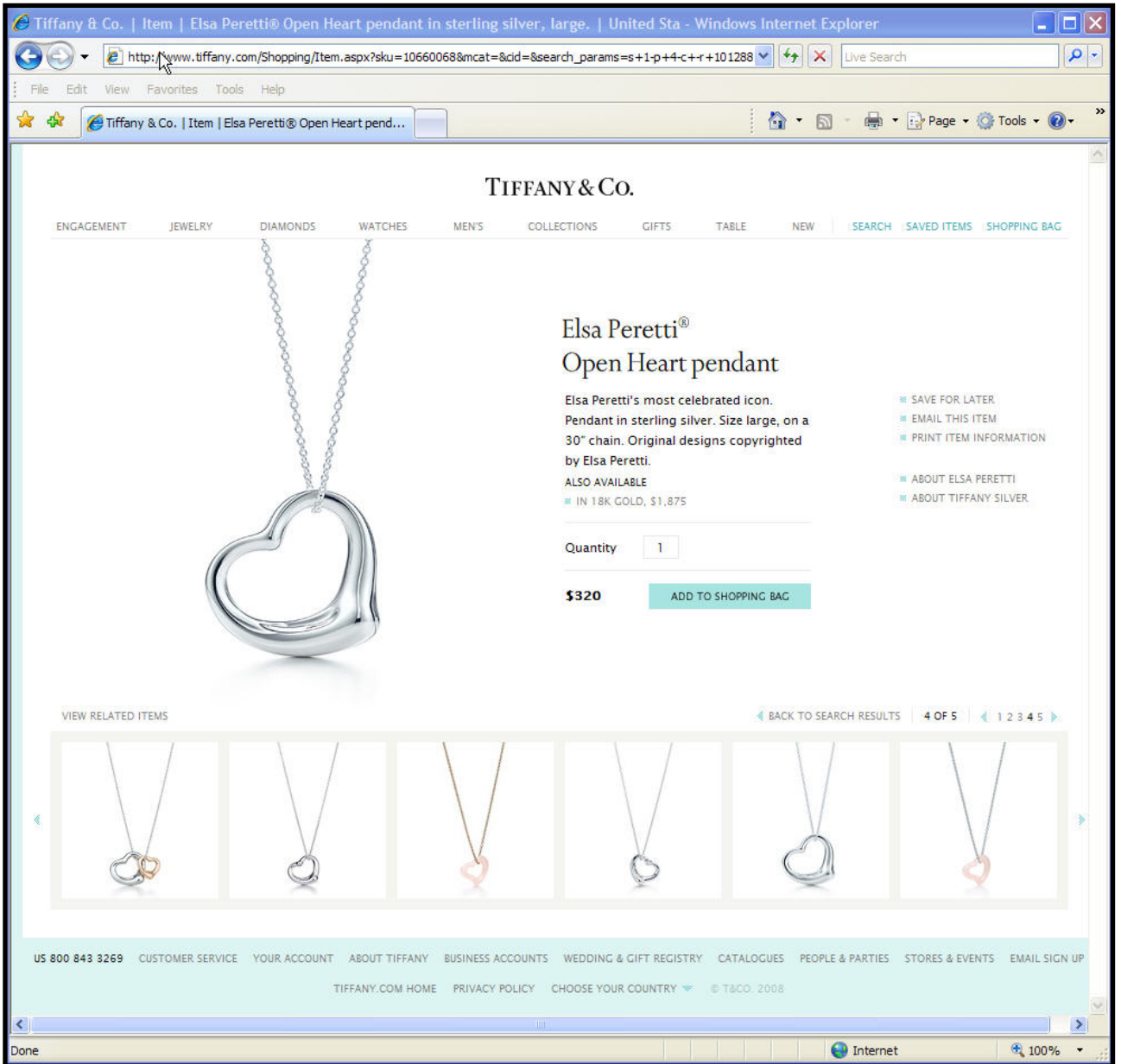


EXHIBIT D-1

Counterfeit Tiffany Floating Heart Pendant by Inspired Silver

The screenshot shows a Windows Internet Explorer browser window displaying the Inspired Silver website. The address bar shows the URL: http://www.inspiredsilver.com/index.cfm?fa=site.showproduct&product_id=35&product_category_id=4&viewall=1&page. The page title is "Inspired Silver Silver Floating Heart Necklace".

The website header features the "INSPIRED SILVER" logo with a pink ribbon, a search bar, and a "McAfee SECURE" badge. The navigation menu includes: WHAT'S NEW, RINGS, EARRINGS, BRACELETS, NECKLACES, WEDDING SETS, ON SALE, and CLEARANCE. The page also displays "Shop By Phone 1-866-547-4583" and links for Home, Shopping Cart (Items: 0), Order Status, Contact Us, Returns & Exchanges, and FAQ.

The main product section is titled "Silver Floating Heart Necklace" with a 4.6 out of 5 star rating. It features a large image of the necklace and a "zoom in" button. Below the main image are smaller images for alternate views. The product description states: "Perfect for any occasion. This necklace is crafted in .925 Sterling Silver and floats on a 16" chain. Heart pendant measures approximately 1 inch by 1 inch."

The pricing information is as follows:
Retail Value: \$76.96
Inspired Silver Price: \$35.95
Today's Sale Price: \$19.95
YOU SAVE 74% (\$56.00)

The availability is "In Stock" and the quantity is set to 1. There are two "ADD TO YOUR SHOPPING CART" buttons.

The "Buy with Confidence!" section lists:
✓ No Risk 30 Day Money Back
✓ Free Shipping (Orders over \$50 ship free, Orders over \$150 Ship FEDEX FREE!)

The "Product Details" table is as follows:

Product Details	
Item ID	35
Metal	Polished .925 Sterling Silver
Length	16 inch silver chain
Clasp	Lobster Claw
Approx Weight (g)	5
Item Type	Pendant
Material	Sterling Silver
Metal Finish	Rhodium

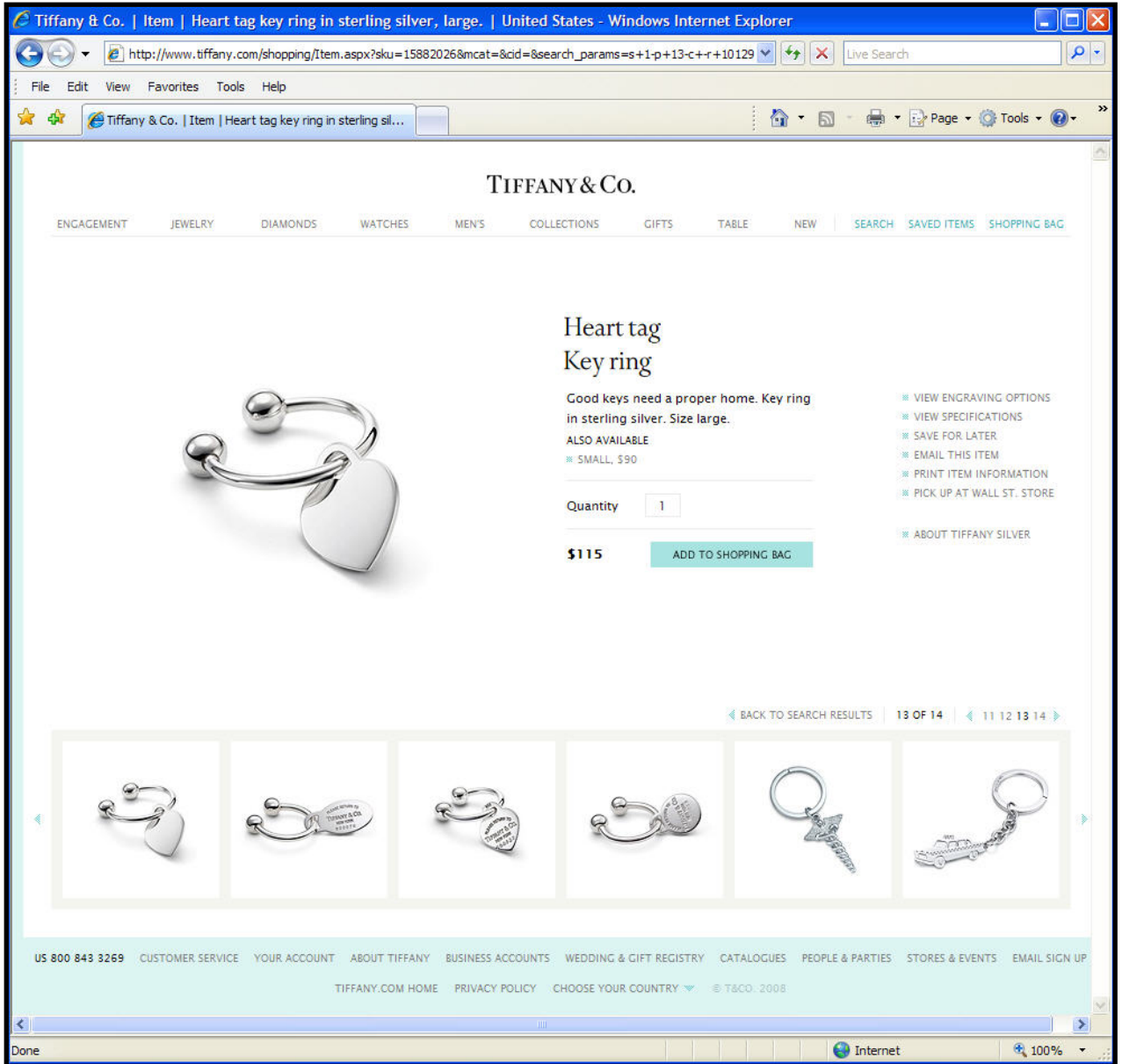
On the left side, there are sections for "NEED HELP? CHAT LIVE WITH OUR STAFF", "request your free catalog", "view current catalog", "SHOP BY CATEGORY", "SHOP BY VIDEO", and "SHOP BY COLLECTION".

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EXHIBIT F

Genuine Tiffany Heart Tag Keychain



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EXHIBIT F-1

Counterfeit Tiffany Heart Tag Keychain by Inspired Silver

The screenshot shows the Inspired Silver website in a Windows Internet Explorer browser. The page title is "Inspired Silver Heart Tag Keychain". The URL is "http://www.inspiredsilver.com/index.cfm?fa=site.showproduct&product_id=1852&product_category_id=83&vi". The page features a navigation menu with categories like "WHAT'S NEW", "RINGS", "EARRINGS", "BRACELETS", "NECKLACES", "WEDDING SETS", "ON SALE", and "CLEARANCE". The main product is a "Heart Tag Keychain", which is a .925 Sterling Silver keychain with a heart-shaped tag and a horseshoe-shaped ring. The product is currently on sale for \$45.95, down from a retail value of \$125.95. The page also includes a "FREE GIFT BOX WITH THIS ITEM" offer and a "Buy with Confidence" section with guarantees like "No Risk 30 Day Money Back" and "Free Shipping".

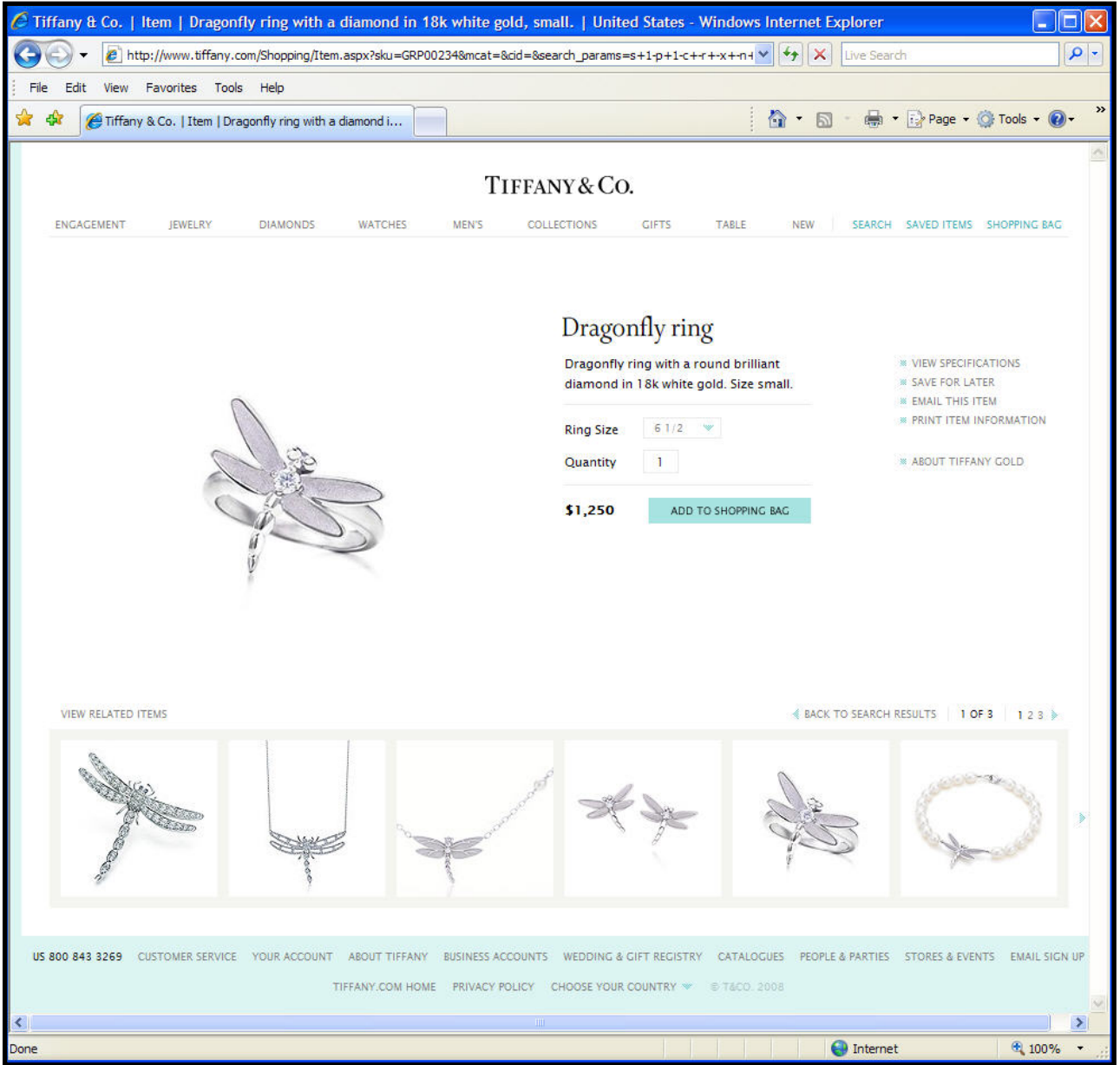
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EXHIBIT G

Genuine Tiffany Dragonfly Ring



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EXHIBIT G-1

Counterfeit Tiffany Dragonfly Ring by Inspired Silver

Inspired Silver Gossamer Wings Dragonfly Ring - Windows Internet Explorer

http://www.inspiredsilver.com/index.cfm?fa=site.showproduct&product_id=1250

INSPIRED SILVER

Search item # or keywords: Go!

WHAT'S NEW • RINGS • EARRINGS • BRACELETS • NECKLACES • WEDDING SETS • ON SALE • CLEARANCE

Shop By Phone 1-866-547-4583 Home | Shopping Cart (Items: 0) | Order Status | Contact Us | Returns & Exchanges | FAQ

NEED HELP? CHAT LIVE WITH OUR STAFF

request your free catalog

view current catalog

SHOP BY CATEGORY

- What's New
- Silver Rings
- Silver Earrings
- Stud Earrings
- Silver Bracelets
- Pearl Collection
- Silver Necklaces
- Silver Watches
- Silver Anklets
- Silver Charm Bracelets
- Silver Charms
- Matching Sets
- Mens Silver Jewelry
- Accessories

SHOP BY VIDEO

All Products With Video

SHOP BY COLLECTION

- Wedding Ring Sets
- Shop For The Cure
- Designer Inspired Jewelry
- The Mesh Collection
- The Skull Collection
- Studio Line Collection
- The Tungsten Collection
- Wild Things Collection
- Hearts Collection
- The Be Inspired Collection
- Celebrity Inspired Jewelry
- On Sale
- Clearance
- Gifts

Gossamer Wings Dragonfly Ring

★★★★★

Overall Customer Rating: ★★★★★ 4.7 out of 5 (9 reviews)

Read Reviews(9) | Write a Review

ON SALE TODAY!

Retail Value: \$72.95
 Inspired Silver Price: ~~\$29.95~~
Today's Sale Price: \$21.95
 YOU SAVE 70% (\$51.00)

Availability: In Stock

Size: 5 [Don't know your size?](#)

Quantity: 1

ADD TO YOUR SHOPPING CART

Buy with Confidence!

- ✓ No Risk 30 Day Money Back
- ✓ Free Shipping Orders over \$50 ship free, Orders over \$150 Ship FEDEX FREE!
- ✓ 100% Secure Shopping

Product Details

Item ID	1250
Weight	1/8 ct. stone
Size	Band is 2mm
Metal	.925 Sterling silver w/Rhodium finish
Length	2/3 inch wide and 2/3 inch long

FREE GIFT BOX WITH THIS ITEM

Dragonflies have long been considered by many cultures to be symbols of joy. This beautiful .925 sterling silver dragonfly, which measures just over 2/3" across and just under 2/3" long features brushed silver wings and a polished silver body with a single 1/8 carat cubic zirconia accent. Also see the matching necklace, bracelet, earrings, anklet and toe ring!

Size: 5 [Don't know your size?](#)