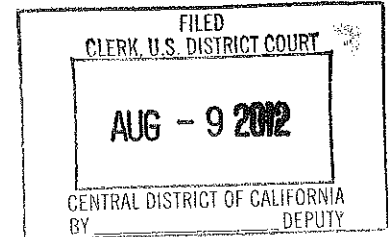


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13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
 15

16 RIMOWA GmbH, a German
 17 corporation,

18 Plaintiff,

19 v.

20 MARVEL ENTERTAINMENT LLC, a
 Delaware limited liability company;
 21 BUENA VISTA HOME ENTERTAIN-
 MENT, INC., a California corporation;
 22 and HOT TOYS LIMITED, a Hong
 Kong company,

23 Defendants.
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CASE No. CV12-6651 MWF (FMOx)

AMENDED COMPLAINT FOR:

1. **TRADEMARK INFRINGEMENT [15 U.S.C. §1114(1)];**
2. **FALSE DESIGNATION OF ORIGIN [15 U.S.C. §1125(a)];**
3. **TRADEMARK DILUTION [15 U.S.C. §1125(c)]**
4. **COMMON LAW TRADEMARK INFRINGEMENT;**
5. **CALIFORNIA COMMON LAW UNFAIR COMPETITION;**
6. **ACCOUNTING;**
7. **CONSTRUCTIVE TRUST**

**DEMAND FOR JURY TRIAL
 [F.R.Civ.P. 38]**

1 Plaintiff RIMOWA, GmbH ("Rimowa" or "Plaintiff") complains against
2 Defendants MARVEL ENTERTAINMENT LLC ("Marvel"), BUENA VISTA
3 HOME ENTERTAINMENT, INC. ("Buena Vista"), and HOT TOYS LIMITED
4 ("Hot Toys") (collectively "Defendants") as follows:

5 **NATURE OF THE ACTION**

6 1. This is an action for trademark infringement, trademark dilution, and
7 unfair competition. Plaintiff is a high-end manufacturer of luxury travel cases and
8 briefcases which are renowned for their superior quality and workmanship. All of
9 Plaintiff's cases have a singular design feature: parallel, evenly-spaced horizontal
10 bands that run across and around each of the cases. This design element is highly
11 distinctive, and has been granted trademark registration by the United States Patent
12 and Trademark Office.

13 2. Plaintiff's products have acquired a well-deserved reputation for being
14 impervious to the elements and being virtually indestructible. Because they are also
15 instantly recognizable by reason of their singular ribbed design, Plaintiff's products
16 have become some of the preferred carrying cases for a wide array of motion picture
17 heroes and villains, and have been featured in such movies as *Girl With The Dragon*
18 *Tattoo*, *Transformers*, *Ocean's 11*, and *Mission Impossible 3 and 4*.

19 3. One of Rimowa's briefcases – the *Topas* attaché case – was also the
20 carrying case of choice for the character "Nick Fury," portrayed by Samuel L.
21 Jackson in Marvel's recent blockbuster motion picture *The Avengers*. Marvel
22 obtained genuine Rimowa *Topas* cases for use in *The Avengers* motion picture;
23 however, Marvel did not obtain any license or authorization from Rimowa to make
24 replica copies of the cases for any purpose.

25 4. Marvel is currently marketing and advertising a product called the
26 *Marvel Cinematic Universe: Phase One – Avengers Assembled Box Set* for shipment
27 starting September 25, 2012. According to Marvel's marketing materials, the
28 product consists of Blu-Ray versions of *The Avengers* and several other Marvel

1 super-hero motion pictures; bonus discs containing various additional materials; and
2 art, prop reproductions and artifacts from the motion picture, all packaged in "an
3 exclusive replica of Nick Fury's iconic briefcase." Images of the replica briefcase
4 on Marvel's advertising materials, and fan video from Marvel's product display at
5 this year's Comic-Con convention, show the plastic "replica case" to be a close copy
6 of Rimowa's *Topas* attaché case in every respect but quality – from the proportions
7 and coloring, to the style of the handle and latches, and, of course, in the use of the
8 trademarked parallel ridges around the body of the case.

9 5. Marvel is also currently marketing and advertising, without
10 authorization, a Nick Fury "collectible" figurine, consisting of a 1/6th scale hyper-
11 realistic replica of the character, as portrayed by Samuel L. Jackson, with various
12 accessories, including a scale replica of the *Topas* attaché case, which has recently
13 been, or will shortly be, released for sale to the public.

14 6. Defendants' actions in manufacturing, marketing, and distributing
15 unauthorized copies of Plaintiff's distinctive attaché case, including the trademarked
16 ridged design, constitute trademark infringement, trademark dilution, and unfair
17 competition. Accordingly, Plaintiff brings this action to enjoin Defendants from
18 further infringement of Plaintiff's Mark, to enjoin them from further unfair
19 competition, and to obtain damages and other redress for Defendants' wrongful acts.
20 Plaintiff demands a trial by jury.

21 JURISDICTION AND VENUE

22 7. This Court has subject matter jurisdiction over the federal claims in this
23 action pursuant to Section 39 of the Lanham Act, 15 U.S.C. § 1121, and 28 U.S.C.
24 §§ 1331 and 1338(a). This Court has ancillary subject matter jurisdiction over
25 Plaintiff's state law claims under the principles of pendent jurisdiction and pursuant
26 to 28 U.S.C. Section 1367(a). These state-law claims form part of the same case or
27 controversy, and derive from a common nucleus of operative facts.

1 8. Venue is proper in this Court pursuant to 28 U.S.C. Section 1391(b)
2 and 1391(c), as this is a judicial district in which a substantial part of the events
3 giving rise to the claims asserted herein arose, and in which a substantial part of the
4 injury to Plaintiff took place and continues to take place.

5 **THE PARTIES**

6 9. Plaintiff is a German corporation with its principal place of business in
7 Cologne, Germany. At all relevant times, Rimowa has been in the business of
8 manufacturing and distributing luggage, camera cases, traveling cases, suitcases,
9 trucks and briefcases. Rimowa advertises, promotes, sells and distributes its
10 products in interstate and international commerce, including in the State of
11 California.

12 10. Plaintiff is informed and believes, and on that basis alleges, that Marvel
13 is a limited liability company formed under the laws of the State of Delaware, with
14 its principal place of business in New York, New York. Plaintiff is informed and
15 believes, and on that basis alleges, that at all relevant times Marvel has been in the
16 business of, among other things, producing and distributing motion pictures and
17 other filmed entertainment, and in creating, manufacturing, and distributing items of
18 merchandise related to its film and entertainment properties. Plaintiff is informed
19 and believes, and on that basis alleges, that Marvel advertises, promotes, sells and
20 distributes its products in interstate and international commerce, including in the
21 State of California.

22 11. Plaintiff is informed and believes, and on that basis alleges, that Buena
23 Vista is a corporation formed under the laws of the State of California, with its
24 principal place of business in Los Angeles County, California. Plaintiff is informed
25 and believes, and on that basis alleges, that at all relevant times Buena Vista has
26 been in the business of, among other things, distributing home entertainment
27 versions of motion pictures, including Marvel's motion pictures, and is and will be
28 the distributor of the *Marvel Cinematic Universe: Phase One – Avengers Assembled*

1 *Box Set* at issue in this action. Plaintiff is informed and believes, and on that basis
2 alleges, that Buena Vista advertises, promotes, sells and distributes its products in
3 interstate and international commerce, including in the State of California.

4 12. Plaintiff is informed and believes, and on that basis alleges, that Hot
5 Toys is a company formed under the laws of Hong Kong, with its principal place of
6 business in Kowloon, Hong Kong. Plaintiff is informed and believes, and on that
7 basis alleges, that at all relevant times Hot Toys has been in the business of, among
8 other things, designing, developing and manufacturing detailed collectible figurines
9 of motion picture and other entertainment characters, including characters featured
10 in *The Avengers* motion picture. Plaintiff is informed and believes, and on that basis
11 alleges, that Hot Toys, pursuant to a purported license from Marvel, has designed,
12 developed, and manufactured a collectible figurine based on the "Nick Fury"
13 character in *The Avengers*, which figurine is being advertised with a scale replica of
14 the Rimowa *Topas* attaché case. Plaintiff is informed and believes, and on that basis
15 alleges, that the Nick Fury figurine, with the replica Rimowa case, has recently
16 been, or will shortly be, offered for sale to the public. Plaintiff is informed and
17 believes, and on that basis alleges, that Hot Toys advertises, promotes, sells and
18 distributes its products in interstate and international commerce, including in the
19 State of California.

20 **FACTS AND ALLEGATIONS COMMON TO ALL CLAIMS**

21 **Plaintiff's Mark**

22 13. Rimowa is a leading luggage manufacturer; it has been in business
23 since 1898, and has been distributing and selling its products in the United States
24 since at least 1985. Rimowa manufactures high-end luggage, briefcases, and camera
25 cases that are sold in its company showrooms and through independent luxury
26 retailers throughout the world. These cases are manufactured in limited quantities,
27 and are renowned for their superior materials and quality craftsmanship.

1 14. Rimowa products have a signature design element, which is easily
2 recognizable and distinguishes them from all other luggage products, consisting of
3 mutually parallel, uniformly distributed, and closely-spaced ribs extending from an
4 outer surface of a suitcase in a three-dimensional manner. This design feature –
5 which has been present on Rimowa cases since at least as early as 1950 – is highly
6 distinctive, and has been granted registration by the United States Patent and
7 Trademark Office (Reg. Nos. 2,583,912 and 3,949,886) (the "Mark"). The Mark
8 was registered on June 18, 2002 on the Supplemental Register (Reg. No. 2,583,912),
9 and on April 26, 2011 on the Principal Register (Reg. No. 3,949,886), in
10 International Classes 9 and 18. True and correct copies of the registration
11 certificates for the Mark are attached hereto collectively as Exhibit A.

12 15. The Mark is inherently distinctive, protectable, and non-functional.
13 Since at least 1985 in the United States, Rimowa has used the Mark to identify its
14 various products, and to distinguish them from those sold by others. The Mark has
15 appeared prominently on Rimowa's products and in trade literature and advertising
16 materials. Rimowa has expended significant time, money and effort to establish
17 public recognition of the Mark, which it has used in promoting the sale of its
18 products throughout the United States and the world, so that the public associates
19 the Mark with Rimowa and its reputation for workmanship, quality and durability.
20 Rimowa has also diligently and consistently policed its rights in the Mark. As a
21 result of these efforts, Rimowa has established substantial consumer recognition of
22 the Mark, and the Mark has acquired a secondary meaning. Rimowa has built up
23 and now has valuable goodwill connected with the Mark, and considers the Mark
24 among its most important and valuable assets.

25 **Use of Plaintiff's Product in the Motion Picture**

26 16. Rimowa is represented by the marketing and product placement
27 company PRO.P.AG.AND.A G.E.M ("Propaganda") for purposes of showcasing its
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1 products in motion pictures, television programs, music videos and gaming.

2 Propaganda has offices in, among other places, Culver City, California.

3 17. Plaintiff is informed and believes, and on that basis alleges, that Marvel
4 Easter Productions, LLC ("MEP") is an affiliate of Marvel and Buena Vista, and
5 was the entity set up by Marvel for the purpose of producing *The Avengers*.

6 Plaintiff is informed and believes, and on that basis alleges, that MEP's principal
7 place of business is in Manhattan Beach, California.

8 18. In or about February, 2011, MEP contacted Propaganda's offices in
9 Culver City, California, seeking Rimowa cases for use in the production of *The*
10 *Avengers*. At that time, MEP advised Propaganda that it already had, and was
11 intending to use, a Rimowa *Topas* attaché case in that motion picture, but needed
12 additional Rimowa cases for backup and other purposes in the production.

13 19. Accordingly, on or about February 18, 2011, Propaganda provided
14 MEP with four Rimowa cases, including two *Topas* attaché cases, to use in the
15 production of *The Avengers*. The terms and conditions pursuant to which the
16 Rimowa cases were provided to MEP were set forth in a written Delivery Form, a
17 true and correct copy of which is attached hereto as Exhibit B. Those terms and
18 conditions required MEP to keep the cases in good condition during the time they
19 remained in MEP's possession, and to return them to Propaganda upon the
20 completion of the motion picture; they did not provide MEP, Marvel, Buena Vista,
21 Hot Toys, or any other party with a license or other authorization to make replica
22 copies of the Rimowa cases for any purpose. MEP returned the Rimowa cases to
23 Propaganda on or about September 15, 2011, as indicated on the Delivery Form.

24 20. Plaintiff is informed and believes, and on that basis alleges, that MEP
25 and/or Marvel did, in fact, use Rimowa cases – and at least the Rimowa *Topas*
26 attaché case – in *The Avengers* motion picture, and that the character "Nick Fury,"
27 portrayed by Samuel L. Jackson, uses an actual Rimowa *Topas* attaché case in
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1 various scenes in the picture. Plaintiff has no complaint about the use or depiction
2 of the Rimowa cases in the motion picture.

3 **Defendants' Unauthorized Use of Plaintiff's Mark**

4 21. Plaintiff is informed and believes, and on that basis alleges, that
5 notwithstanding the fact that neither Marvel nor Buena Vista obtained a license or
6 other authorization from Rimowa to copy Rimowa's distinctive cases, Marvel and
7 Buena Vista are nonetheless currently marketing and advertising a product – the
8 *Marvel Cinematic Universe: Phase One – Avengers Assembled Box Set* – which
9 contains various Marvel super-hero related materials packaged in a plastic replica of
10 Rimowa's *Topas* attaché case.

11 22. Images of the replica briefcase on Marvel's advertising materials, and
12 fan video from Marvel's product display at this year's Comic-Con convention, show
13 the plastic "replica case" to be a close copy of Rimowa's *Topas* attaché case. And
14 there is no question that the product packaging is meant to be a copy of the Rimowa
15 case: According to the product description on Amazon.com, the case is "an
16 exclusive replica of Nick Fury's iconic briefcase."

17 23. Plaintiff is further informed and believes, and on that basis alleges, that
18 notwithstanding the fact that neither Marvel nor Hot Toys obtained a license or
19 other authorization from Rimowa to copy Rimowa's distinctive cases, Marvel and
20 Hot Toys are nonetheless currently marketing and advertising a product – the Nick
21 Fury 1/6th scale collectible figurine – which includes a 1/6th scale replica of
22 Rimowa's *Topas* attaché case, complete with its distinctive and trademarked design
23 element.

24 24. Defendants' actions in manufacturing, marketing, and distributing,
25 without a license, unauthorized copies of Plaintiff's distinctive *Topas* attaché case,
26 including the trademarked ridged design, constitute trademark infringement,
27 trademark dilution, and unfair competition. Accordingly, Plaintiff brings this action
28 to enjoin Defendants from further infringement of Plaintiff's Mark, to enjoin them

1 from further unfair competition, and to obtain damages and other redress for
2 Defendants' wrongful acts.

3 **CLAIM I**
4 **TRADEMARK INFRINGEMENT**

5 **[15 U.S.C. § 1114(1)]**

6 **(Against all Defendants)**

7 25. Plaintiff re-alleges and incorporates herein by this reference each
8 allegation set forth in Paragraphs 1 through 24, above.

9 26. Plaintiff has used the Mark since at least as early as 1950 – and since at
10 least as early as 1985 in the United States – and has used it in interstate commerce
11 continuously since that time in connection with the promotion, distribution and sale
12 of high quality luxury suitcases, camera cases, briefcases and travelling cases.

13 27. The Mark was granted registration by the United States Patent and
14 Trademark Office on June 18, 2002 on the Supplemental Register and on April 26,
15 2011 on the Principal Register, in International Classes 9 and 18.

16 28. The Mark is used on a variety of commercial products purchased and
17 promotional materials disseminated throughout the country.

18 29. Defendants have copied or colorably imitated the Mark, and have used
19 it on products and advertisements intended to be used in commerce in connection
20 with the sale, offering for sale, distribution, or advertising of Defendants' goods,
21 which is likely to cause to confusion, cause mistake, or deceive, in violation of 15
22 U.S.C. §1114(1). Plaintiff is informed and believes, and thereon alleges, that
23 Defendants have committed these acts with knowledge that they would cause
24 confusion, cause mistake, or deceive, and with the intent to do so.

25 30. Plaintiff is informed and believes, and thereon alleges, that as a
26 proximate result of Defendants' wrongful conduct as herein alleged, Defendants
27 have made substantial profits and Plaintiff has sustained substantial damage, each in
28 amounts to be proven at trial. Plaintiff is entitled to recover all of Defendants'

1 profits, plus an amount equal to three times its actual damages, plus the costs of this
2 action (including reasonable attorneys' fees), pursuant to 15 U.S.C. §1117(a).

3 31. Plaintiff has no adequate remedy at law and, unless Defendants are
4 permanently enjoined from unlawfully using the Mark, Plaintiff will continue to
5 suffer irreparable harm as a result of Defendants' conduct as herein alleged.

6 **CLAIM II**

7 **FALSE DESIGNATION OF ORIGIN**

8 **[15 U.S.C. §1125(a)]**

9 **(Against all Defendants)**

10 32. Plaintiff re-alleges and incorporates herein by this reference each
11 allegation set forth in Paragraphs 1 through 31, above.

12 33. Defendants' use of the Mark is likely to cause confusion, cause mistake,
13 or deceive as to the origin, sponsorship, or approval of Defendants' products by
14 Plaintiff, in violation of 15 U.S.C. §1125(a)(1)(A).

15 34. Plaintiff is informed and believes, and on that basis alleges, that, as a
16 proximate result of Defendants' wrongful conduct as herein alleged, Defendants
17 have and will make substantial profits and Plaintiff has and will sustain substantial
18 damage, each in amounts to be proven at trial. Plaintiff is entitled to recover all of
19 Defendants' profits, plus an amount equal to three times its actual damages, plus the
20 costs of this action (including reasonable attorneys' fees), pursuant to 15 U.S.C.
21 §1117(a).

22 35. Defendants' unauthorized and infringing use of the Mark has been and
23 is likely to cause confusion and mistake in the minds of the relevant public and to
24 deceive them as to the origin, authorization, or sponsorship of Defendants' goods,
25 and to cause consumers to erroneously believe that Plaintiff has produced,
26 participated in, approved and/or endorsed Defendants' goods and/or the use of the
27 Mark in or on the goods.

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1 36. Defendants' unlawful use of the Mark will irreparably harm Plaintiff, in
2 that Defendants are offering inferior quality goods under a mark which is identical
3 or confusingly similar to Plaintiff's Mark, thus leaving customers and consumers to
4 believe, erroneously, that Defendants' inferior goods are in fact manufactured, sold,
5 sponsored or endorsed by Plaintiff.

6 37. Plaintiff has no adequate remedy at law, and, unless Defendants are
7 enjoined from unlawfully using the Mark, Plaintiff will continue to suffer
8 irreparable harm as a result of Defendants' conduct as herein alleged.

9 **CLAIM III**

10 **DILUTION OF TRADEMARK**

11 **[15 U.S.C. § 1125(c)]**

12 **(Against all Defendants)**

13 38. Plaintiff alleges and incorporates by reference each allegation set forth
14 in Paragraphs 1 through 37, above.

15 39. Plaintiff's Mark is distinctive and famous within the meaning of 15
16 U.S.C. §1125(c). Through Defendants' unauthorized use of the Mark as alleged
17 herein, Defendants have caused, and are likely to continue to cause, dilution of the
18 distinctive quality of the Mark in violation of 15 U.S.C. §1125(c).

19 40. Defendants' conduct is intended to trade upon Plaintiff's reputation, and
20 is likely to tarnish or injure Plaintiff's business reputation.

21 41. Defendants' use of the Mark has caused and will continue to cause
22 irreparable and continuing harm to Plaintiff in the diminution of its value and
23 goodwill, and in its impairment to serve as a designation of source. Plaintiff has no
24 adequate remedy at law and, unless Defendants are enjoined from unlawfully using
25 the Mark, Plaintiff will continue to suffer irreparable harm as a result of Defendants'
26 conduct as herein alleged.

27 42. Plaintiff is informed and believes, and on that basis alleges, that
28 Defendants willfully intended to trade on Plaintiff's reputation. Accordingly,

1 Plaintiff is entitled to recover all of Defendants' profits, plus an amount equal to
2 three times its actual damages, plus the costs of this action (including reasonable
3 attorneys' fees), pursuant to 15 U.S.C. §1117(a).

4 **CLAIM IV**

5 **COMMON LAW TRADEMARK INFRINGEMENT**

6 (Against all Defendants)

7 43. Plaintiff re-alleges and incorporates herein by this reference each
8 allegation set forth in Paragraphs 1 through 42, above.

9 44. Plaintiff has acquired common law trademark rights in the Mark in
10 connection with, among other things, the production, promotion, sale and
11 distribution of camera cases, suitcases, travelling cases and briefcases.

12 45. The actions of Defendants as alleged herein are likely to create
13 confusion, mistake and deception of consumers into believing that Defendants'
14 infringing and unauthorized use of the Mark is authorized, licensed, or sponsored
15 by, or otherwise associated with Plaintiff's common law trademark rights in the
16 Mark.

17 46. Plaintiff is informed and believes, and thereon alleges, that in doing the
18 acts herein alleged, Defendants acted maliciously, fraudulently, oppressively, and in
19 bad faith, with an intent to injure Plaintiff.

20 47. The foregoing actions of Defendants constitute infringement of
21 Plaintiff's trademarks in violation of federal common law and the common law of
22 the State of California.

23 48. Plaintiff is informed and believes, and thereon alleges, that as a
24 proximate result of Defendants' wrongful conduct as herein alleged, Plaintiff has
25 sustained substantial damage in an amount to be proven at trial.

26 49. Plaintiff is informed and believes, and thereon alleges, that Defendants
27 have engaged in the malicious, fraudulent and oppressive conduct herein alleged
28 with a willful and conscious disregard for the rights of Plaintiff. Plaintiff is

1 informed and believes, and thereon alleges, that the unlawful conduct herein alleged
2 on the part of each Defendant was authorized, ratified, or carried on by one or more
3 of its respective officers, directors, or managing agents. As a result of such
4 malicious, fraudulent, or oppressive conduct on the part of Defendants, Plaintiff is
5 entitled to recover punitive or exemplary damages from them pursuant to Section
6 3294 of the California Civil Code in an amount to be proven at trial.

7 50. Plaintiff has no adequate remedy at law, and, unless Defendants are
8 enjoined from unlawfully using the Mark, Plaintiff will continue to suffer
9 irreparable harm as a result of Defendants' conduct as herein alleged.

10 **CLAIM V**

11 **CALIFORNIA COMMON LAW UNFAIR COMPETITION**

12 (Against all Defendants)

13 51. Plaintiff re-alleges and incorporates herein by this reference each
14 allegation set forth in Paragraphs 1 through 50, above.

15 52. Defendants' conduct as herein alleged constitutes unfair competition in
16 violation of the common law of the State of California.

17 53. Plaintiff is informed and believes, and thereon alleges, that as a
18 proximate result of Defendants' wrongful conduct as herein alleged, Defendants
19 have or will make substantial profits and Plaintiff has or will sustain substantial
20 damage, each in amounts to be proven at trial.

21 54. Plaintiff has no adequate remedy at law and, unless Defendants are
22 enjoined from unlawfully using the Mark, Plaintiff will continue to suffer
23 irreparable harm as a result of Defendants' conduct as herein alleged.

24 55. Plaintiff is informed and believes, and thereon alleges, that in doing the
25 acts herein alleged, Defendants acted maliciously, fraudulently, oppressively, and in
26 bad faith, with an intent to injure Plaintiff. Plaintiff is informed and believes, and
27 thereon alleges, that the unlawful conduct herein alleged on the part of each of the
28 Defendants was authorized, ratified, or carried on by one or more of its respective

1 officers, directors, or managing agents. Plaintiff is informed and believes, and
2 thereon alleges, that Defendants have engaged in the malicious, fraudulent and
3 oppressive conduct herein alleged with a willful and conscious disregard for the
4 rights of Plaintiff. As a result of such malicious, fraudulent, or oppressive conduct
5 on the part of Defendants, Plaintiff is entitled to recover punitive or exemplary
6 damages pursuant to Section 3294 of the California Civil Code in an amount to be
7 proven at trial.

8 **CLAIM VI**

9 **ACCOUNTING**

10 (Against all Defendants)

11 56. Plaintiff re-alleges and incorporates herein by this reference each
12 allegation set forth in Paragraphs 1 through 55, above.

13 57. An accounting is required to determine the amount of profits derived by
14 Defendants from their unlawful conduct.

15 **CLAIM VII**

16 **CONSTRUCTIVE TRUST**

17 (Against all Defendants)

18 58. Plaintiff re-alleges and incorporates herein by this reference each
19 allegation set forth in Paragraphs 1 through 57, above.

20 59. Plaintiff has no adequate remedy at law and has sustained irreparable
21 harm as a result of Defendants' unlawful conduct as herein alleged. Defendants hold
22 all ill-gotten gains from such unlawful conduct, in an amount to be proven at trial, in
23 constructive trust for the benefit of Plaintiff.

24 **DEMAND FOR JURY TRIAL**

25 60. Plaintiff hereby demands a trial by jury on the claims asserted herein.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of
28 them, as follows:

1 **On Claim I (Trademark Infringement):**

2 1. That Defendants be required to account for and pay over to Plaintiff all
3 profits derived from their unlawful conduct in an amount to be proven at trial;

4 2. For an award of three times Plaintiff's actual damages in an amount to be
5 proven at trial;

6 3. For an award, at Plaintiff's election, to recover statutory damages in lieu of
7 actual damages and profits pursuant to 15 U.S.C. §1117(c); and

8 4. For a preliminary and permanent injunction prohibiting Defendants, and
9 their officers, directors, agents, employees, representatives, parents, subsidiaries,
10 affiliates, successors, and assigns, from using the Mark in any manner in connection
11 with their promotion and/or sale of their goods and/or services.

12 **On Claim II (False Designation of Origin):**

13 1. That Defendants be required to account for and pay over to Plaintiff all
14 profits derived by them from their unlawful conduct in an amount to be proven at trial;

15 2. For an award of three times Plaintiff's actual damages in an amount to be
16 proven at trial; and

17 3. For a preliminary and permanent injunction prohibiting Defendants, and
18 their officers, directors, agents, employees, representatives, parents, subsidiaries,
19 affiliates, successors, and assigns, from using the Mark in any manner in connection
20 with their promotion and/or sale of their goods and/or services.

21 **On Claim III (Trademark Dilution):**

22 1. That Defendants be required to account for and pay over to Plaintiff all
23 profits derived by them from their unlawful conduct in an amount to be proven at trial;

24 2. For an award of three times Plaintiff's actual damages in an amount to be
25 proven at trial; and

26 3. For a preliminary and permanent injunction prohibiting Defendants, and
27 their officers, directors, agents, employees, representatives, parents, subsidiaries,
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1 affiliates, successors, and assigns, from using the Mark in any manner in connection
2 with their promotion and/or sale of their goods and/or services.

3 **On Claim IV (Common Law Trademark Infringement):**

- 4 1. For compensatory damages in an amount to be proven at trial;
- 5 2. For punitive or exemplary damages in an amount to be proven at trial; and
- 6 3. For a preliminary and permanent injunction prohibiting Defendants, and
7 their officers, directors, agents, employees, representatives, parents, subsidiaries,
8 affiliates, successors, and assigns, from using the Mark in any manner in connection
9 with their promotion and/or sale of their goods and/or services.

10 **On Claim V (Common Law Unfair Competition):**

- 11 1. For compensatory damages in an amount to be proven at trial;
- 12 2. For punitive or exemplary damages in an amount to be proven at trial; and
- 13 3. For a preliminary and permanent injunction prohibiting Defendants, and
14 their officers, directors, agents, employees, representatives, parents, subsidiaries,
15 affiliates, successors, and assigns, from using the Mark in any manner in connection
16 with their promotion and/or sale of their goods and/or services.

17 **On Claim VI (Accounting):**

- 18 1. That Defendants be required to account for all profits derived by them
19 from their unlawful conduct.

20 **On Claim VII (Constructive Trust):**

- 21 1. That Defendants are holding, as constructive trustees for the benefit of
22 Plaintiff, all profits derived by Defendants from their unlawful conduct in an amount to
23 be proven at trial.

24 **On All Claims:**

- 25 1. For prejudgment interest in the maximum amount provided by law;
- 26 2. For costs of suit, including reasonable attorneys' fees where permitted by
27 statute; and

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3. For such other or further relief as the Court deems just and proper.

DATED: August 8, 2012

WEINTRAUB TOBIN CHEDIAK
COLEMAN GRODIN

By: 
Anjani Mandavia
Attorneys for Plaintiff RIMOWA GmbH

EXHIBIT A

Int. Cls.: 9 and 18

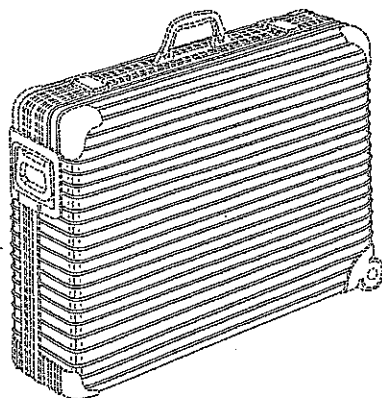
Prior U.S. Cls.: 1, 2, 3, 21, 22, 23, 26, 36, 38, and 41

United States Patent and Trademark Office

Reg. No. 2,583,912

Registered June 18, 2002

TRADEMARK
SUPPLEMENTAL REGISTER



RIMOWA KOFFERFABRIK GMBH (FED REP
GERMANY CORPORATION)
MATHIAS-BRUGGEN-STR. 118
D-50829 KOLN, FED REP GERMANY

FOR: CARRYING CASES FOR PHOTOGRAPHIC
EQUIPMENT, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36
AND 38).

FIRST USE 0-0-1950; IN COMMERCE 0-0-1985.

FOR: LUGGAGE, TRAVELLING CASES AND
SUITCASES, TRUNKS AND BRIEFCASES, IN
CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FIRST USE 0-0-1950; IN COMMERCE 0-0-1985.

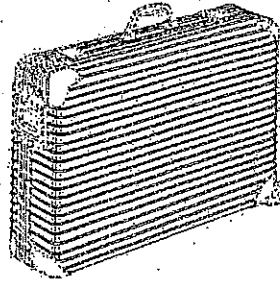
THE MARK CONSISTS OF A PIECE OF LUG-
GAGE HAVING PARALLEL SPACED RIBS. THE
MATTER SHOWN IN BROKEN LINES IS NOT PART
OF THE MARK AND SERVES TO SHOW THE
POSITION OF THE MARK ON THE GOODS.

SER. NO. 75-696,992, FILED P.R. 5-3-1999; AM. S.R.
5-31-2001.

DOUGLAS LEE, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office



Reg. No. 3,949,886
Registered Apr. 26, 2011
Int. Cls.: 9 and 18

TRADEMARK
PRINCIPAL REGISTER

RIMOWA GMBH (FED REP GERMANY GESELLSCHAFT MIT BESCHRÄNKTER HAFTUNG
(GMBH))
MATHIAS BRUGGEN STR. 118
KÖLN, FED REP GERMANY 50829

FOR: CARRYING CASES FOR PHOTOGRAPHIC EQUIPMENT, IN CLASS 9 (U.S. CLS. 21,
23, 26, 36 AND 38).

FIRST USE 0-0-1950; IN COMMERCE 0-0-1985.

FOR: LUGGAGE, TRAVELING CASES AND SUITCASES, TRUNKS AND BRIEFCASES, IN
CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FIRST USE 0-0-1950; IN COMMERCE 0-0-1985.

OWNER OF FED REP GERMANY REG. NO. 39616159, DATED 12-16-1996, EXPIRES 12-16-
2016.

OWNER OF U.S. REG. NO. 2,583,912.

THE MARK CONSISTS OF THE HORIZONTAL BANDS THAT RUN ACROSS AND AROUND
THE OWNER'S LUGGAGE PRODUCTS, THE OWNER CLAIMS ONLY THESE HORIZONTAL
BANDS AS THE MARK.

SEC. 2(F).

SER. NO. 77-944,738, FILED 2-25-2010.

ALEXANDER L. POWERS, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT B

THE AVENGERS

Project Title

Marvel Eastern Productions, LLC

Production Company

1600 Poseidons Ave

Mantoloking Beach, GA 90266

Address

Delivery Date

Estimated Return Date

Contact

Title

Tel #

Fax #

Mobile #

Email

Rick Chavez

Asst Prop Master

818.212.3346

CLIENT RIMOWA

QUANTITY	MODEL / DESCRIPTION	SERIAL #, ARTICLE	REPLACEMENT VALUES	RETURNED
1	928.54 Topas Boardcase	01100000 ✓	800	✓
1	928.54 Topas Boardcase	01100001 ✓	800	✓
1	928.50 Pilot Trolley	01X00198 ✓	950	✓
1	924.38 Bearty Case	20010480 ✓	410	✓
TOTAL US \$:			2960	

Handwritten notes and signatures in the returned column.

I have read and agree to all the terms and conditions on the back of this form, and I am authorized to bind the Production Company to those terms and conditions

RECEIVED BY : HANNAH HIRKEL

SIGNATURE : Hannah Hirkel

TITLE : PRODUCTION COORDINATOR APPROVED BY :

27 Rue Voltaire
1201 Geneva - Switzerland
Tel: (41.22) 339 90 80
Fax: (41.22) 339 90 89

DELIVERY FORM

CONTACT @ PROPAGANDA : Kelly Sorensen
ORDER INSPECTED BY :

Handwritten signature and date: Kelly Sorensen 2/18/11

11264 Playa Court
Culver City, CA 90230- USA
Tel: (310) 397-2300
Fax: (310) 397-2310

PRODUCTION COMPANY AGREES TO THE FOLLOWING WITH RESPECT TO THE PROMOTIONAL PRODUCTS (THE "PRODUCT(S)") DESCRIBED ON THE OPPOSITE SIDE OF THIS FORM.

1. While the product(s) is in the Production Company's possession, the Production Company will, at the Production Company's expense, keep the Product(s) in good working order, condition and repair. Repairs, parts and servicing as are necessary must be obtained at an authorized dealership that sells and services the type of product covered by this Agreement. The Production Company will return each article to Propaganda (or to PROPAGANDA's Client, if Propaganda so directs the Production Company in writing) in as good order and condition as when delivered to the Production Company. Any existing damage on returned goods not so noted will be deemed the responsibility of the Production Company.
2. If any Product(s) delivered to the Production Company is lost, damaged, or destroyed prior to return to PROPAGANDA, or to PROPAGANDA's Client. The Production Company will promptly pay to PROPAGANDA the full replacement value. The Production Company shall keep a record of all damage and repairs to the Product(s). The record of damage and repairs shall be provided to PROPAGANDA when the Product(s) is returned to PROPAGANDA or to PROPAGANDA's Client.
3. The Production Company shall agree to indemnify, hold harmless and defend PROPAGANDA with counsel acceptable to PROPAGANDA from any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including reasonable attorney fees arising out of, connected with or resulting from the lease of any Product(s) provided by PROPAGANDA, however. Production Company shall have no obligation to indemnify and hold harmless PROPAGANDA of PROPAGANDA's sole negligence.
4. The Production Company shall, at its own cost and expense, secure and maintain:
 - a) All Risk Property Insurance providing Replacement Cost cover on Product(s) delivered to Production Company by PROPAGANDA, and PROPAGANDA shall be added as Loss Payee relative to such Product(s);
 - b) Commercial General Liability Insurance in an amount of no less than \$1,000,000.00 limit for each occurrence for bodily injury and/or Property Damage and Personal Injury. PROPAGANDA shall be added as an additional insured as respects Production Company's use of any Product(s) delivered to Production Company's use of any of the Product(s) delivered to Production Company by PROPAGANDA.
5. Each of the above insurance policies shall be endorsed to provide for a thirty (30) days prior written notice to PROPAGANDA of a cancellation or material change. Each policy must further stipulate that the coverage's provided are primary and non-contributory with any insurance maintained by PROPAGANDA. It is agreed that Production Company's insurance shall commence at the time the Product(s) leave PROPAGANDA premises and shall remain in full force and effect until the equipment is returned to PROPAGANDA's premises, unless it is stipulated that the Product(s) is to be returned to a specific location other than PROPAGANDA's premises, in which case, the insurance shall cease upon return of the Product(s) leaving PROPAGANDA's premises, unless prior consent to the contrary has been granted in writing.
6. The Product Company agrees to use, refer to and depict the "Product(s)" in a manner consistent with the product's designated and intended use as defined and advertised by PROPAGANDA's Client. The Production Company will not materially alter the Product(s) or depict the Product(s) in any scene, sequence or situation, which is not deemed acceptable to PROPAGANDA's Client. If the Production Company does alter the appearance or trademark of the Product(s), PROPAGANDA reserves the right to bill the Production Company at prevailing rental rates. All Product(s) is to be returned to PROPAGANDA (or at PROPAGANDA's Client) upon completion of production.
7. The Production Company shall pay fines, taxes assessments, shipping charges, brokerage fees, customs fees, storage and any governmental fees and charges payable on the Product(s) loaned or on the uses, possession, delivery or operation thereof, and shall indemnify and hold PROPAGANDA and PROPAGANDA's Client harmless from and against any and all such fines, taxes, assessments, fees and charges, and all expenses, penalties and forfeitures incurred in connection therewith.
8. The Production Company agrees that the Production Company will not use and Product(s) loaned above, or cause or permit the same to be used in any manner whatsoever in violation of any Municipal, County, State or Federal law, ordinance or regulation.
9. The Production Company agrees that in the event of any accident involving any Product(s) loaned above, the Production Company will within twelve (12) hours following such accident, furnish to PROPAGANDA a full and complete report describing said accident.