

1 KILPATRICK TOWNSEND & STOCKTON LLP  
 2 GREGORY S. GILCHRIST (State Bar No. 111536)  
 3 RYAN T. BRICKER (State Bar No. 269100)  
 4 SOPHY MANES (State Bar No. 287583)  
 5 HANNAH T. YANG (State Bar No. 311814)  
 6 Two Embarcadero Center, Suite 1900  
 7 San Francisco, California 94111  
 Telephone: (415) 576-0200  
 Facsimile: (415) 576-0300  
 Email: gilchrist@kilpatricktownsend.com  
 rbricker@kilpatricktownsend.com  
 smanes@kilpatricktownsend.com  
 hyang@kilpatricktownsend.com

8 Attorneys for Plaintiffs  
 9 PATAGONIA, INC. and  
 PATAGONIA PROVISIONS, INC.

10  
 11 **UNITED STATES DISTRICT COURT**  
 12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
 13 **WESTERN DIVISION – LOS ANGELES**

14 PATAGONIA, INC. and  
 15 PATAGONIA PROVISIONS, INC.,

16 Plaintiffs,

17 v.

18 ANHEUSER-BUSCH, LLC dba  
 PATAGONIA BREWING CO.,

19 Defendant.

Case No. 2:19-cv-02702-VAP (JEMx)

**SECOND AMENDED COMPLAINT  
 FOR TRADEMARK  
 INFRINGEMENT, UNFAIR  
 COMPETITION, DILUTION,  
 FRAUD, AND JUDICIAL  
 DECLARATION THAT  
 TRADEMARK REGISTRATION  
 IS VOID (INJUNCTIVE RELIEF  
 SOUGHT)**

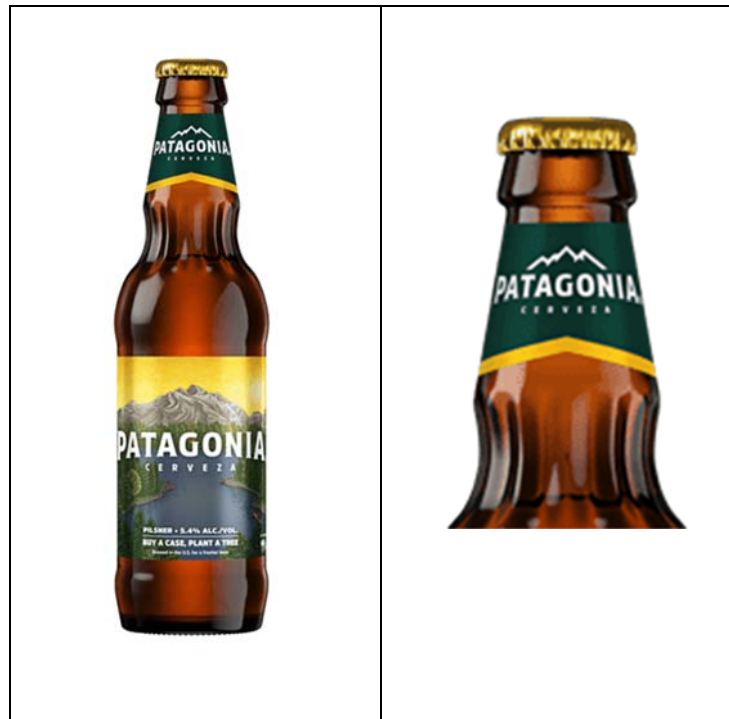
**JURY TRIAL DEMAND**

20  
 21  
 22 **INTRODUCTION**

23 1. In 2012, Anheuser-Busch LLC (“AB”) submitted false evidence to  
 24 the Trademark Office to unlawfully obtain a trademark for PATAGONIA on beer.  
 25 After letting its fraudulently obtained trademark registration lie unused for six years,  
 26 AB recently adopted the fictitious business name “Patagonia Brewing Co.” and  
 27 launched an intensive marketing campaign to “introduce” its PATAGONIA beer  
 28 to American consumers.



1           2.     AB’s new beer bottle employs a logo including PATAGONIA beneath  
2 a mountain silhouette, shown below (“AB’s PATAGONIA logo”).



15 AB recently launched its new beer at ski resorts in Colorado, where its sales people  
16 dressed in black down jackets with AB’s PATAGONIA logo on the chest and gave  
17 out beanies, scarves, and t-shirts all bearing the same PATAGONIA logo. At the  
18 ski resorts, AB set up what looks like a pop-up store, including a booth made of  
19 what AB called out to be reclaimed wood, featuring a large PATAGONIA logo  
20 sign and a placard describing “Patagonia’s ‘tree positive’ mission.” Customers  
21 were told AB will plant one tree for every case of beer purchased.

22           3.     In launching its PATAGONIA beer and adopting the “Patagonia  
23 Brewing Co.” name, AB deliberately has misappropriated the tremendous goodwill  
24 that Patagonia, Inc. and Patagonia Provisions, Inc. (together, “Patagonia” or  
25 “Plaintiffs”) have cultivated in their brand, and co-opted the hard-earned reputation  
26 that Patagonia, Inc. has built over the last forty years as a company dedicated to  
27 environmental conservation. AB has gone as far as creating a logo that is strikingly  
28 similar to Patagonia’s famous mountain silhouette logo that has appeared



1 continuously for decades on millions of PATAGONIA branded products. AB has  
2 tried to connect its beer with environmental conservation by claiming to plant a  
3 tree for each case of beer sold, an initiative that Patagonia would welcome but for  
4 the fact that AB is clearly attempting to copy Patagonia’s famous brand identity  
5 to confuse consumers. AB has launched its copycat brand at ski resorts where  
6 Patagonia, Inc.’s ski apparel is widely used and universally recognized in further  
7 attempts to draft off Patagonia’s goodwill. And AB has dressed its sales people  
8 in down jackets and given out beanies, t-shirts, and scarves bearing AB’s  
9 PATAGONIA logo—all products that Patagonia sells, including in its stores in  
10 the very towns where AB has launched its beer. In short, AB has done everything  
11 possible to make it appear as though this PATAGONIA beer is sold by Patagonia.



12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22 // /  
23 // /  
24 // /  
25 // /  
26 // /  
27 // /  
28 // /



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



4. AB’s effort to look and feel like Patagonia is all the more confusing because Patagonia started a food business in 2012 called Patagonia Provisions, Inc. (“Provisions”), which was formed to challenge a broken food industry increasingly dependent on pesticides, chemicals, and emitting massive amounts of greenhouse gases. Provisions released its first beer in collaboration with New Belgium Brewing Co. in 2013, and has been selling its own Long Root beer since 2016 using a perennial grain called Kernza<sup>®</sup> instead of traditional barley. Kernza has long roots that store carbon in the ground and using it in beer has served as an effective vehicle for Patagonia to introduce customers to carbon sequestration as a means of removing greenhouse gases from our atmosphere.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



5. Patagonia is filing this lawsuit to stop AB from maintaining its unlawful trademark registration, from selling PATAGONIA beer, and to prevent AB from going to such great lengths to pass itself off as Patagonia, all of which infringes, dilutes, and usurps the goodwill in Patagonia’s famous PATAGONIA trademarks, as well as the reputation it has built over the last four decades.

**PARTIES, JURISDICTION, AND VENUE**

6. Patagonia, Inc. is a California corporation headquartered at 259 West Santa Clara Street, Ventura, California 93001. For more than forty years, Patagonia, Inc. has been designing, developing, marketing, and retailing outdoor apparel, sportswear, and related products. For many years, Patagonia, Inc. and the PATAGONIA® brand have been famous in the United States, including throughout the State of California, and around the world for innovative apparel designs, quality products, and environmental and corporate responsibility.

7. Patagonia, Inc. was founded in the late 1960s to design and sell climbing clothes and other active sportswear. The company adopted the brand



1 “PATAGONIA” to differentiate another business that designed and manufactured  
2 climbing gear and tools. PATAGONIA was chosen as the trademark to call to mind  
3 romantic visions of glaciers tumbling into fjords, jagged windswept peaks, gauchos,  
4 and condors. Since at least 1973, the PATAGONIA brand has appeared on a multi-  
5 colored label inspired by a silhouette of the jagged peaks of the Mt. Fitz Roy skyline  
6 (the “P-6 logo”).

7 8. In the more than forty years since Patagonia, Inc.’s business started,  
8 the PATAGONIA brand and its P-6 logo have become among the most identifiable  
9 brands in the world. Patagonia, Inc.’s products now include a wide range of apparel  
10 products and equipment, including technical products designed for climbing, skiing  
11 and snowboarding, surfing, fly fishing, and trail running, as well as sportswear,  
12 which are sold around the world.

13 9. Over the years, Patagonia, Inc. has been recognized and honored for  
14 its business initiatives, including receiving the Sustainable Business Counsel’s first  
15 “Lifetime Achievement Award.” In 1996, with an increased awareness of the  
16 dangers of pesticide use and synthetic fertilizers used in conventional cotton  
17 growing, Patagonia, Inc. began the exclusive use of organically grown cotton and  
18 has continued that use for more than twenty years. It was a founding member of  
19 the Fair Labor Association<sup>®</sup>, which is an independent multi-stakeholder verification  
20 and training organization that audits apparel factories. Additionally, since 1985  
21 Patagonia, Inc. has pledged 1% of sales to environmental groups to preserve and  
22 restore our natural environment, donating more than \$100 million to date. In 2002,  
23 Patagonia, Inc.’s founder, Yvon Chouinard, along with others, created a non-profit  
24 called 1% For the Planet<sup>®</sup> to encourage other businesses to do the same. Today,  
25 more than 1200 member companies have donated more than \$150 million to more  
26 than 3,300 nonprofits through 1% For the Planet. In 2012, Patagonia, Inc. became  
27 one of California’s first registered Benefit Corporations, ensuring Patagonia, Inc.  
28 could codify into its corporate charter consideration of its workers, community,



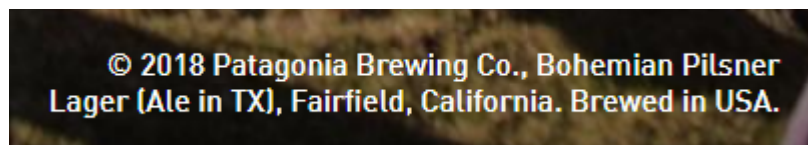
1 and the environment. In 2016, Patagonia, Inc. pledged to donate all revenue from  
2 sales on Black Friday, donating \$10 million to environmental grantees in response  
3 to customers' purchases on that day. In 2018, Patagonia, Inc. pledged an additional  
4 \$10 million in grants to environmental groups in response to recent tax cuts given  
5 to businesses.

6 10. Patagonia Provisions, Inc. is a California corporation headquartered  
7 at 259 West Santa Clara Street, Ventura, California 93001. For several years,  
8 Provisions has developed, marketed, and sold socially and environmentally  
9 responsible food items under the PATAGONIA PROVISIONS® Mark, including  
10 beer, buffalo jerky, salmon, fruit and almond bars, and soup mixes. Patagonia and  
11 Provisions are related companies.

12 11. Anheuser-Busch, LLC ("AB") is a limited liability company that,  
13 in its corporate filings, alleges its principal place of business is One Busch Place,  
14 St. Louis, Missouri 63118. AB is a global producer of beer and other products and  
15 services under a multitude of brands. Patagonia is informed and believes that AB  
16 maintains a sophisticated department of trademark attorneys and an array of outside  
17 counsel to procure, maintain, and enforce these brands and trademarks. Although  
18 the primary products sold by AB are beers, AB and, on information and belief, its  
19 parent corporation, Anheuser-Busch Inbev S.A., use and maintain trademarks for  
20 additional products categories, including for apparel under the STELLA ARTOIS,  
21 HOEGAARDEN, and LEFFE marks, among others, and for educational and  
22 charitable services under the OCTOBER, LA SAVOIR, and THE SIMPLE  
23 COMPLEXITIES OF BEER brands. Among its brands is AB's PATAGONIA beer,  
24 newly launched in the United States. Though AB has not made any effort to obtain  
25 a PATAGONIA registration for apparel products or educational or charitable  
26 services—presumably because it knows such applications would be futile in light  
27 of Patagonia's broad rights—AB is also producing and distributing such products  
28 and services.



1           12. Patagonia Brewing Co. is, on information and belief, a  
2 fictitious business name registered by AB in July 2018, shortly before its launch  
3 of PATAGONIA beer in the United States. Patagonia is informed and believes  
4 that AB registered the name so that, in addition to using PATAGONIA as a mark,  
5 it could identify itself to consumers as an entity named Patagonia (see, for example,  
6 the copyright ownership claim for AB’s packaging below), enhancing the likelihood  
7 that consumers will associate AB’s beer with Plaintiffs, and not with a multinational  
8 conglomerate.



12           13. Patagonia’s trademark claims arise under the Trademark Act of 1946  
13 (the Lanham Act), as amended by the Trademark Dilution Revision Act of 2006.  
14 This Court has jurisdiction over such claims pursuant to 28 U.S.C. §§ 1338(a) and  
15 1338(b) (trademark and unfair competition), 28 U.S.C. § 1331 (federal question),  
16 and 15 U.S.C. § 1121 (Lanham Act). This Court has jurisdiction over the state law  
17 claims under 28 U.S.C. § 1367 (supplemental jurisdiction) and, because the claims  
18 involve more than \$75,000 exclusive of interest and costs, 28 U.S.C. § 1332  
19 (diversity).

20           14. This Court has personal jurisdiction over AB because AB’s contacts  
21 with this forum are so pervasive and substantial that it is fair for AB to respond to  
22 a lawsuit here. In addition, AB is offering and promoting its relevant products and  
23 services to residents of this district through its website, where to buy locator, and  
24 through distributors and retailers who are selling or promoting the products and  
25 services to consumers in this district. Patagonia is informed and believes that  
26 AB knows Patagonia is located in this judicial district, and that Patagonia will  
27 suffer the harm from damage to its reputation and trademarks in this district.

28       / / /





1 15. Venue is proper in this Court under 28 U.S.C. § 1391(b) because AB  
2 transacts business in this district and a substantial part of the events giving rise to  
3 the claims asserted arose in this district.

4 **AB Unlawfully Obtained the PATAGONIA Registration for Beer**

5 16. AB purports to own U.S. Trademark Registration No. 4,226,102. That  
6 registration issued from an intent to use application originally filed by Warsteiner  
7 Importers Agency, Inc. (“Warsteiner”), a German brewer and, on information and  
8 belief, competitor of AB. Patagonia is informed and believes that the registration  
9 was procured unlawfully and through fraudulent misrepresentations to the  
10 Trademark Office.

11 17. Plaintiffs’ investigation, to date, of AB’s unlawful acquisition of  
12 Warsteiner’s intent to use application reveals as follows:

13 18. On June 8, 2006, Warsteiner filed an “intent to use” application for  
14 PATAGONIA in International Class 32 for beer, declaring its bona fide intention  
15 to use the mark in interstate commerce.

16 19. On July 12, 2006, Warsteiner petitioned to cancel a then-existing  
17 United States registration for PATAGONIA for beer belonging to Cerveceria Y  
18 Malteria Quilmes S.A.I.C.A.G. (“Quilmes”). The U.S. Patent and Trademark Office  
19 (“Trademark Office”) cancelled the Quilmes registration on November 17, 2006.

20 20. On January 1, 2007, AB acquired a Luxembourg-based holding  
21 company that controlled 93% of Quilmes International, which owned the Argentine  
22 Quilmes entity that previously owned the United States trademark registration for  
23 PATAGONIA that Warsteiner had cancelled one month earlier for non-use.

24 21. On July 21, 2009, after opposition proceedings from a third party, the  
25 Notice of Allowance for Warsteiner’s intent to use application was issued, inviting  
26 Warsteiner to secure its registration by showing commercial use of the mark.

27 22. On January 18, 2010, Warsteiner requested an extension of time to file  
28 its statement of use. For the next two years there was no activity on Warsteiner’s



1 intent to use application, except that it filed similar extensions every six months to  
2 keep the application alive. On January 5, 2012, Warsteiner filed its fifth and final  
3 permissible extension to show use, which was set to expire July 21, 2012.

4 23. On May 14, 2012, two trademark attorneys employed by AB  
5 substituted in as the correspondents and attorneys of record, representing Warsteiner  
6 in the proceeding involving its intent to use application.

7 24. At the same time that AB’s lawyer took over Warsteiner’s trademark  
8 application, AB submitted labels to the Alcohol and Tobacco Tax and Trade Bureau  
9 (TTB) for Certification of Label Approval (COLA), a prerequisite to selling beer in  
10 the United States. On July 17, 2012, four days before Warsteiner’s intent to use  
11 application was set to fall abandoned for failure to use the mark, AB’s attorney filed  
12 a statement of use *on behalf of Warsteiner*, showing a single bottle as a specimen  
13 that used the same “Patagonia” label that AB had recently submitted to the TTB for  
14 approval. The label used for both AB’s COLA Application and Warsteiner’s  
15 statement of use are shown below.

16 / / /

17 / / /

18 / / /

19 / / /

20 / / /

21 / / /

22 / / /

23 / / /

24 / / /

25 / / /

26 / / /

27 / / /

28 / / /



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

AB's COLA Filing	Warsteiner's Evidence of Use
	

25. In the statement of use submitted to the Trademark Office, Warsteiner swore—through AB’s attorney—that this bottle of beer showed *Warsteiner’s* use of PATAGONIA in interstate commerce, and that it had first sold beer in the United States under the mark one day earlier, on July 16, 2012. But the statement was untrue because Warsteiner never used the PATAGONIA trademark on beer, and the statement of use filed by Warsteiner in the Trademark Office (prepared by AB) was false. AB knew the statement was false. In fact, it does not even appear that AB—the purported assignee of the application—used the mark. The COLA for the label that was used on the beer shown in the statement of use states that the beer was produced by Quilmes and imported by “Import Brands Alliance.” The specimen did not show this Quilmes beer in a commercial context, such as a store shelf. Instead, the specimen showed two photos of a single bottle of PATAGONIA-labeled beer on a table in a white-walled room.

///



1 26. On October 16, 2012, Warsteiner’s purported trademark registration  
2 for PATAGONIA was issued by the Trademark Office in reliance on Warsteiner’s  
3 statement that it had used the Mark in interstate commerce in the U.S.

4 27. On February 8, 2013, AB’s lawyer recorded that Warsteiner  
5 had assigned the registration to AB. A “corrected” assignment was filed on  
6 February 22, 2013. The document verifying the assignment states it “assigns ...  
7 all right, title, in and to the PATAGONIA *Application* and Mark, together with the  
8 goodwill of the business symbolized by the PATAGONIA mark *and any resulting*  
9 *registration*,” revealing that the assignment was drafted and effective *before any*  
10 registration had issued:

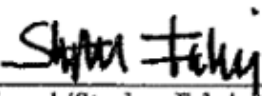
**Appendix III**

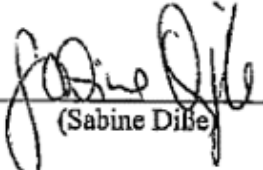
**MODEL FORM OF ASSIGNMENT OF U.S. TRADEMARK**

Whereas WARSTEINER IMPORTERS AGENCY, INC. (“WIA”) with a principal place of business at 9359 Allen Road, West Chester, Ohio 45609 has filed an application for registration with the U.S. Trademark Office (Serial No. 78/903,572) (the “PATAGONIA Application”) for the mark PATAGONIA (the „Mark”) ; and

Whereas ANHEUSER-BUSCH, LLC , with a principal place of business at One Busch Place, St. Louis, Missouri 63118 („Buyer“) wishes to acquire the PATAGONIA Application and Mark and any resulting registration.

Now, therefore, for good and valuable consideration, WIA hereby assigns to ANHEUSER-BUSCH, LLC all right, title, and interest in and to the PATAGONIA Application and Mark, together with the goodwill of the business symbolized by the PATAGONIA mark and any resulting registration.

  
 \_\_\_\_\_  
 Signed (Stephan Fahrigh)  
  
 \_\_\_\_\_  
 Director  
 Title

  
 \_\_\_\_\_  
 (Sabine Dibe)  
  
 \_\_\_\_\_  
 Director

**WARSTEINER IMPORTERS AGENCY, INC.**

Dated: 20.12.2012



1 28. The date shown on the assignment document is months after  
2 registration of the mark and yet the assignment does not refer to the registration  
3 or the registration number. The date thus appears to have been falsely stated to  
4 disguise the true date of the assignment which preceded the statement of use.

5 29. Intent to use trademark applications cannot be assigned unless the  
6 assignor also transfers the existing business unit which owns the application and  
7 goodwill associated with the mark (which only can be created through use).  
8 Warsteiner never became part of AB as part of this transaction; indeed, Warsteiner  
9 continues to exist as an independent entity to this day. Knowing that Warsteiner  
10 could not lawfully assign the intent to use trademark application to AB, and  
11 knowing that Warsteiner could not show the use needed to obtain the trademark  
12 registration, AB and Warsteiner colluded through their knowingly false representa-  
13 tions to deceive the Trademark Office—seeking to show that Warsteiner was  
14 responsible for commercial use of the PATAGONIA beer shown in the statement  
15 of use. While the ostensible reason for this collusion is not reflected in the public  
16 record, the only purpose for AB’s attorney to have appeared before the Trademark  
17 Office on behalf of its competitor, Warsteiner, was to afford AB with control over  
18 the nature of the deceptive statements made to the Trademark Office. The only  
19 purpose for filing a false statement of use on Warsteiner’s behalf—based on  
20 purported sales of Quilmes-produced beer to Import Brands Alliance—was to create  
21 the illusion within the Trademark Office that Warsteiner was entitled to perfect its  
22 registration, while Warsteiner’s assignment of the application remained undisclosed  
23 and disguised. Absent this subterfuge, the Trademark Office would have deemed  
24 Warsteiner’s application abandoned.

25 **AB’s False Section 8 & 15 Filing**

26 30. After obtaining the PATAGONIA registration, Patagonia is informed  
27 and believes that AB made no bona fide commercial use of the mark in the United  
28 States until its recent campaign. Indeed, the use complained of in this Amended



1 Complaint is AB's *first* bona fide use of the PATAGONIA mark in the United  
2 States, more than six years after the registration issued.

3 31. Despite this, on October 5, 2018, AB made the following sworn  
4 statement to the Trademark Office, to renew and preserve its registration: "The  
5 mark has been in continuous use in commerce for five consecutive years after the  
6 date of registration ... and is still in use in commerce on or in connection with all  
7 goods/services." The filing itself warned AB that any willfully false statement  
8 would jeopardize the validity of the trademark registration.

9 32. AB's current press releases and promotional statements—together with  
10 its disclosures in its public filings—indicate that AB made no bona fide commercial  
11 use of its unlawful PATAGONIA trademark in the five years following issuance  
12 of the registration, and contradict AB's sworn statement to the Trademark Office.  
13 AB's annual reports up to and including the 2017 report identify PATAGONIA as  
14 a "local craft brand" in the "Latin America South" category. The brand is only  
15 mentioned once in the company's 2016 report, together with dozens of other beers  
16 under a lengthy list of "Local Brands" in the report's trademark notice. Similarly,  
17 in 2015, the brand is described as only available in the Latin America South market,  
18 and even within that market, distinguished from "global brands" such as Corona and  
19 Stella Artois, and "international brands" Hoegaarden and Leffe.

20 33. The February 28, 2019, press release announcing AB's 2018 financial  
21 results stated that AB is "identifying opportunities to *introduce* existing brands into  
22 *new* markets. Examples of this practice include Argentina's Patagonia in certain  
23 regions of the U.S. ..." (emphasis added).


24 34. AB's recent promotional statements follow suit. A Beer Business  
25 Daily trade journal article in which Harry Lewis, AB's Vice President of New  
26 Brands, is heavily quoted, explains that AB "quietly began testing" the  
27 PATAGONIA beer "stateside" in 2018, and more recently launched a "pilot  
28 program" in Colorado.



35. The net effect of Warsteiner’s intent to use application, the mis-reported assignment to AB, and AB’s covert maintenance of the registration while it waited for the additional protections provided by the five-year renewal filing follow: AB effectively reserved the PATAGONIA trademark for more than a decade before the mark appears genuinely to have been used in conjunction with AB’s recent launch of its PATAGONIA-branded beer. During this interval, Provisions’ own application to register the mark PATAGONIA PROVISIONS for wine was refused, partly on the strength of Warsteiner’s trademark, then owned by AB. The registration continues to harm Plaintiffs, including because AB has cautioned Patagonia against using Plaintiffs’ PATAGONIA trademark in connection with beer on the strength of AB’s supposed rights in its registration.

**The PATAGONIA Trademarks**

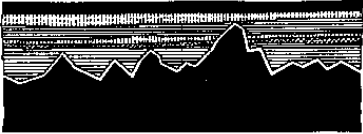

36. Plaintiffs own numerous registrations for and including the PATAGONIA trademark and P-6 logo, both together and alone, and the PATAGONIA PROVISIONS trademark, for a wide-ranging assortment of products and services. Among these are the following U.S. trademark registrations:

<b>Trademark</b>	<b>Reg. No. / Reg. Date</b>	<b>Goods</b>	<b>Date of First Use</b>
<b>PATAGONIA</b>	1189402 / Feb. 9, 1982	Men’s and Women’s Clothing – Namely, Sweaters, Rugby Shirts, Walking Shorts, Trousers, Jackets, Mittens, Hoods, and Rainwear.	08/1974
	1294523 / Sept. 11, 1984	Men’s, Women’s, and Children’s Clothing – Namely, Jackets, Pants, Vests, Gloves, Pullovers, Cardigans, Socks, Sweaters, Underwear, Shirts, Shorts, Skirts, and Belts.	08/1974-1981

///



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Trademark	Reg. No. / Reg. Date	Goods	Date of First Use
	1547469 / July 11, 1989	Men's, Women's, and Children's Clothing – Namely, Jackets, Pants, Shirts, Sweaters, Vests, Skirts, Underwear Tops and Bottoms, Socks, Gloves, Mittens, Hats, Face Masks, Balaclava, Gaiters, and Belts.	08/1974
	1775623 / June 8, 1993	Luggage, Back Packs, and All-Purpose Sports Bags.	08/1988
<p><b>PATAGONIA</b></p>	1811334 / Dec. 14, 1993	Luggage, Back Packs, Fanny Packs, and All-Purpose Sport Bags, Footwear, Ski Bags, and Ski Gloves.	08/1990
<p><b>PATAGONIA</b></p>	2260188 / July 13, 1999	Computerized on-line ordering activities in the field of clothing and accessories; providing information in the field of technical clothing and accessories for use in recreational, sporting, and leisure activities; providing information in the field of existing and evolving environmental issues.	10/1995
<p><b>PATAGONIA.COM</b></p>	2392685 / Oct. 10, 2000	On-line retail store and mail order services featuring technical clothing, footwear, and accessories; computer services in the nature of on-line information related to the environment and clothing.	10/1995

///  
///





Trademark	Reg. No. / Reg. Date	Goods	Date of First Use
<b>PATAGONIA</b>	2662619 / Dec. 17, 2002	Retail store services featuring clothing, footwear, luggage, and a wide variety of sporting goods and accessories.	06/1986
<b>PATAGONIA PROVISIONS</b> <i>(owned by Provisions)</i>	4894914 / Feb. 2, 2012	Salmon, not live.	08/2013
<b>PATAGONIA PROVISIONS</b> <i>(owned by Provisions)</i>	4168329 / July 3, 2012	Salmon jerky.	04/2012
<b>PATAGONIA PROVISIONS</b> <i>(owned by Provisions)</i>	4,786,172 / Aug. 4, 2015	Mugs all for use in camping and outdoor events; mugs used to keep food and drink cold, drink bottles sold empty; camping gear dinnerware and cookware, namely, pots.	09/2014
<b>PATAGONIA PROVISIONS</b> <i>(owned by Provisions)</i>	4,795,759 / Aug. 18, 2015	Tsampa (Tibetan porridge) and mixes for making tsampa comprising processed roasted grains.	09/2014
<b>PATAGONIA PROVISIONS</b> <i>(owned by Provisions)</i>	4,809,079 / Sept. 8, 2015	Snack bars containing primarily dried fruit and nuts; mixes for making soup comprising roasted grains, flour, olive oil, and spices; soup mixes.	09/2014
<b>PATAGONIA PROVISIONS</b> <i>(owned by Provisions)</i>	4822430/ Sept. 29, 2015	Bison jerky, buffalo jerky.	08/2015
<b>PATAGONIA PROVISIONS</b> <i>(owned by Provisions)</i>	4917049 / Mar. 15, 2016	Online retail store services featuring food, namely, bison jerky, buffalo jerky, salmon jerky, snack bars containing primarily dried fruit and nuts, mixes for making soup comprising roasted grains, flour, olive oil and spices; providing	11/2013



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28


Trademark	Reg. No. / Reg. Date	Goods	Date of First Use
		current events news related to topics of general interest; providing on-line publications in the nature of periodical columns and blogs in the field of food, recipes, lifestyle, the environment, and topics of general interest; providing information, news and commentary related to recipes; providing information, news, and commentary regarding food, namely, information, news, and commentary related to cooking food (among others).	
<b>PATAGONIA WORKS</b>	4791042 / Aug. 11, 2015	capital investment services for research and development projects; providing grants and seed money to environmentally and socially conscious companies and projects	05/2013

37. These registrations are in full force and effect. Many have become incontestable under 15 U.S.C. § 1065.

38. In addition to the U.S. trademark registrations, Patagonia, Inc. owns the following California trademark registrations:

Trademark	Reg. No. / Reg. Date	Goods	Date of First Use
<b>PATAGONIA</b>	61338 / Apr. 8, 1980	Mens and womens clothing, namely sweaters, rugby shirts, walking shorts, trousers, jackets, mittens, hoods and rainwear	08/1974



Trademark	Reg. No. / Reg. Date	Goods	Date of First Use
	69639 / May 23, 1983	Mens, womens and childrens clothing	08/1974

39. Consistent with its trademarks, Patagonia, Inc. has used the trade name Patagonia, Inc. since at least as early as 1984.

40. Plaintiffs also have common law rights in their trademarks covering other apparel and food products, and charitable and educational services in a broad array of environmental issues, including agricultural issues related to the food and grain supply chain.

41. For example, the Provisions website explains the process and benefits related to brewing beer with a perennial grain called Kernza<sup>®</sup>. Kernza is a grain with long roots and perennial growth that allow it to thrive without tilling or pesticides; it uses less water than conventional wheat, prevents erosion, and removes more carbon from the atmosphere than annual grains. Provisions, since 2013, has, in collaboration with others, produced beer and educated consumers about the importance to the environment of the agricultural choices made in producing beer. For example, Provisions reports regarding its LONG ROOT ALE products:

We believe the future of farming—and our planet—lies in something called organic regenerative agriculture. Organic regenerative agriculture restores soil biodiversity, sequesters carbon, and efficiently grows crops without chemical fertilizers or pesticides. Researchers at the Rodale Institute have found that a switch to organic regenerative



1 techniques could actually store enough carbon in the soil  
2 to reverse global climate change.

3 42. Collectively, when referring to marks owned by Patagonia or  
4 Provisions, these marks, including Plaintiffs’ registered trademarks and their  
5 common law marks, are referred to as the “PATAGONIA” brand or trademarks.  
6 The PATAGONIA trademarks are distinctive, arbitrary, and fanciful, entitled to  
7 the broadest scope of protection, and certain of the PATAGONIA trademarks are  
8 registered in ninety countries.

9 43. For many years prior to the events giving rise to this Amended  
10 Complaint and continuing to the present, Plaintiffs annually have spent enormous  
11 amounts of time, money, and effort advertising and promoting the products and  
12 services on which their PATAGONIA trademarks are used. PATAGONIA brand  
13 products are advertised in print and on the Internet. In addition to advertising by  
14 Plaintiffs, the PATAGONIA trademarks are also advertised and promoted and  
15 presented at point of sale by numerous retailers. Consumers, accordingly, are  
16 exposed to the PATAGONIA trademarks in a variety of shopping and post-sale  
17 contexts.

18 44. Plaintiffs have sold their PATAGONIA brand products all over  
19 the world, including throughout the United States and California. Through their  
20 promotion and investment in the PATAGONIA brand—combined with extensive  
21 sales, publicity, awards, and leadership in sustainable sourcing practices—Plaintiffs  
22 have acquired enormous goodwill in their PATAGONIA trademarks.

23 45. When used as a brand, source identifier, trade name, or as the name  
24 of an institution or product, the term PATAGONIA uniquely and unmistakably  
25 identifies Patagonia, Inc. in the minds of United States consumers, and has operated  
26 in this fashion since well before (a) the PTO issued U.S. Trademark Registration  
27 No. 4,226,102, or (b) AB began marketing and selling a PATAGONIA beer.  
28 Patagonia, Inc. is identified by the public as “Patagonia,” and consumers assume



1 and understand that products, including beer, marketed under the name refer directly  
2 to Patagonia, Inc.

3 46. The PATAGONIA mark is famous within the meaning of the  
4 Trademark Dilution Revision Act and the California Model State Trademark Law,  
5 and has been since long before AB began selling PATAGONIA beer in California  
6 or the United States. The mark enjoys strong consumer recognition, is used as a  
7 household term to refer to Patagonia or its products, and is recognized around the  
8 world and throughout the United States, including California, by consumers as  
9 signifying high quality products and services from a responsible company.

10 **AB's Infringement and Dilution of Patagonia's Trademark Rights**

11 47. Consistent with the comments from AB's Vice President of New  
12 Brands, quoted above, AB recently has launched its PATAGONIA branded beer  
13 in various U.S. markets, including California. AB has surrounded its promotion of  
14 the beer products with PATAGONIA branded apparel and a plant-a-tree initiative in  
15 an attempt to draw upon the same associations that consumers have with Patagonia's  
16 PATAGONIA brand.

17 48. As described above, AB made token use, if any, of the PATAGONIA  
18 beer prior to the U.S. launch of the brand in late 2018. AB has not accumulated any  
19 trademark rights by way of this token use, and will not, unless consumers come to  
20 secondarily associate PATAGONIA beer exclusively with AB.

21 49. When it launched PATAGONIA beer, AB modified the neck label  
22 to create a new "housemark" for its products consisting of a mountain silhouette  
23 above the PATAGONIA name (defined above as "AB's PATAGONIA logo"). This  
24 mimics Patagonia's P-6 logo and reinforces consumers' associations between AB's  
25 PATAGONIA beer and Patagonia. The new label is being used on billboards, signs,  
26 apparel, packaging, and advertisements. On the billboard below, this new label is  
27 used in an advertisement "introducing" the product and pairing this introduction  
28 with the slogan "you buy a case, we plant a tree":



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



50. Southern Eagle Distributing now has AB’s PATAGONIA Cerveza on its website, introducing the U.S. launch of this beer with no indication it has been used continuously for the last six years: “Originally from the Patagonia region in South America, they’ve decided to start their next adventure in the U.S.”

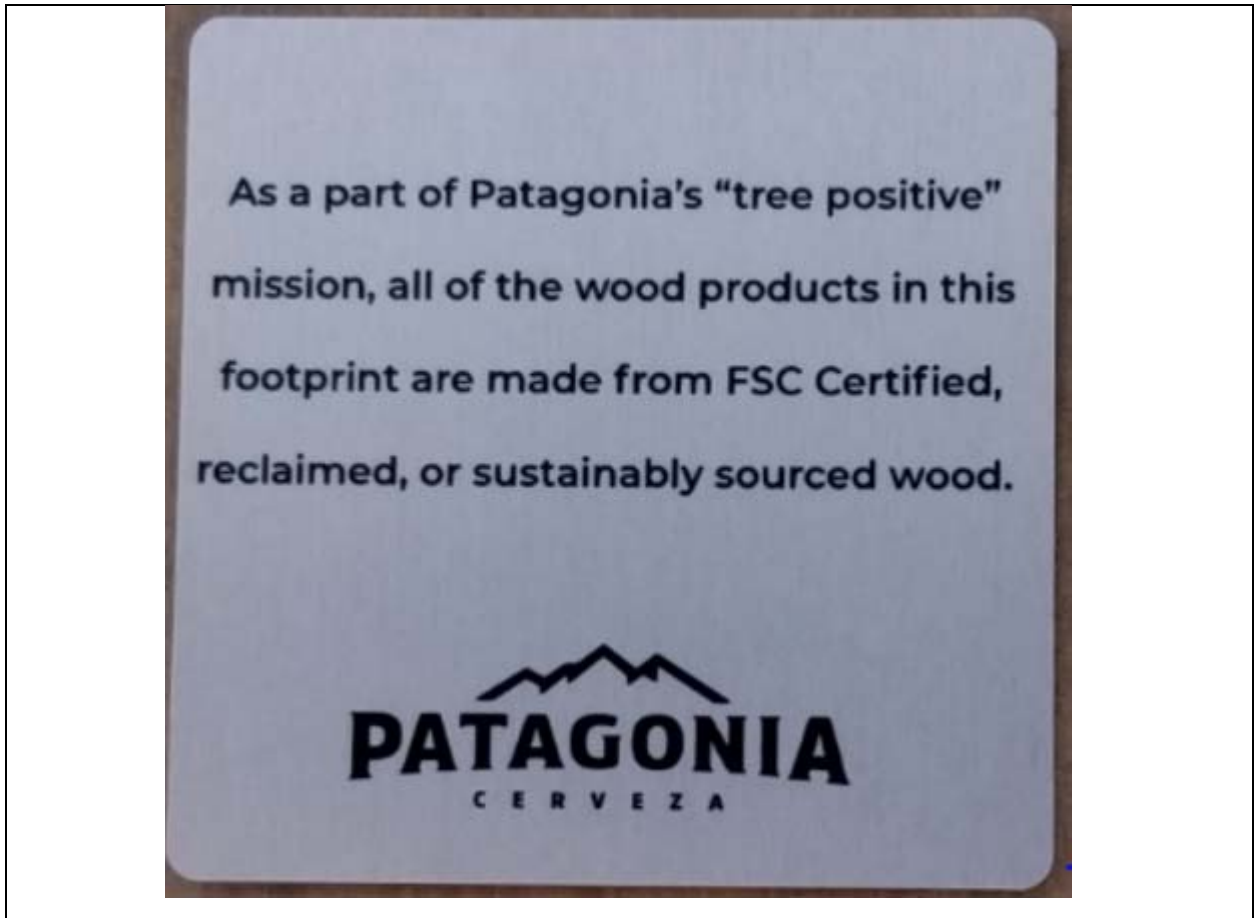
51. In a January 2019 interview, AB’s Chief U.S. Sales Officer, Brendan Whitworth, stated “AB InBev owns a brand in Argentina called Patagonia which research indicated could have potential in the Colorado market,” again indicating AB had not previously sold the beer in the U.S.

52. In signage and packaging and in fictitious promotional names, AB has identified how its purported trademark registration for beer can be used to confuse consumers and falsely suggest to consumers that they are referring with the mark directly to Patagonia, Inc. For example, AB announces “Patagonia’s ‘tree positive’ mission,” referring to its new beer brand and to a “Patagonia” entity, all at once usurping Patagonia’s famous mark and its corporate identity, and again using AB’s PATAGONIA logo as a “housemark.”

///  
///  
///



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



53. Similarly, AB has decided to call the fictitious producer of Patagonia beer, even though it is now brewed at AB’s Fairfield California brewery, “Patagonia Brewing Co.” These references further illustrate how the trademark can be and has been used by AB to signal to consumers that they are dealing with Patagonia, the entity that produces other PATAGONIA branded products and services.

54. The same “housemark” was used on a variety of apparel products that AB representatives were wearing and distributing to consumers in a recent promotion. Side by side comparisons of the parties’ respective marks in use follow.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



55. There is no question that AB at all times was well aware of Patagonia’s prior rights, or that it is now using this array of promotional tools to try and capture Patagonia’s hard-earned goodwill and corporate identity for itself. AB has surrounded its launch of PATAGONIA beer and Patagonia Brewing Co. with the goods and services, including apparel and sustainability, that are most responsible for making Patagonia’s brand and corporate identity famous. If there were any question remaining that AB intends to draft on Patagonia’s reputation and consumer associations with its brand, an AB representative recently contacted Provisions seeking an “interview” about the Kernza grain use in Provisions’ Long Root Ale.

56. Consumers’ longstanding association of the PATAGONIA brand with Patagonia will likely be substantially diminished and eroded if AB continues to use Patagonia’s brand and corporate identity to identify, promote and market AB’s products. Further, consumers will doubtless acquire negative associations with the PATAGONIA brand and Patagonia itself from discovering the truth behind AB’s pretense that PATAGONIA beer is made in California by Patagonia Brewing Co., rather than by one of the largest beer producers in the world. Even if





1 consumers come away from AB's products with a positive experience, Patagonia's  
2 famous brand and right to control and promote its identity will be eroded and  
3 diminished by AB's use of the PATAGONIA trademark.

4 **Harm to Patagonia**

5 57. AB's activities have caused consumer confusion in the marketplace.  
6 Consumers have, for example, attributed AB's PATAGONIA beer to Plaintiffs,  
7 causing a range of damages including depriving Plaintiffs of their right to control  
8 their corporate identify and the reputation associated with their brands and marks.  
9 On information and belief, AB intended this outcome when it tailored its launch  
10 of the PATAGONIA beer to target Patagonia's consumers.

11 58. AB's actions have caused and will cause irreparable harm to Plaintiffs  
12 for which money damages and other remedies are inadequate. Unless AB is  
13 restrained by this Court, it will continue to cause irreparable damage and injury  
14 to Plaintiffs by, among other things:

15 a. Depriving Plaintiffs of their statutory rights to obtain  
16 registrations for, use, and control use of their trademarks;

17 b. Creating a likelihood of confusion, mistake, and deception  
18 among consumers and the trade as to the source of the infringing  
19 products and services, including beer, apparel, sustainability education,  
20 and charitable environmental programs;

21 c. Creating a likelihood of confusion among potential  
22 partners with whom Plaintiffs have produced or may produce beer  
23 products, about a Patagonia or Patagonia Provisions partnership with  
24 AB, such that Plaintiffs' ability to secure the services of or collaborate  
25 with high quality craft brewers is diminished or eliminated;

26 d. Causing the public falsely to associate Plaintiffs with AB  
27 and/or its products, or vice versa;

28 / / /



1 e. Causing the public to associate AB’s PATAGONIA  
2 branded beer with Patagonia, compromising Patagonia’s right to  
3 control its own image and right of promotion;

4 f. Causing incalculable and irreparable damage to Plaintiffs’  
5 goodwill and diluting the capacity of the famous PATAGONIA trade-  
6 mark to differentiate its products from those of its competitors;

7 g. Causing incalculable and irreparable damage to  
8 Patagonia’s famous PATAGONIA trademark by creating negative  
9 associations with AB’s PATAGONIA beer products, apparel products,  
10 and sustainability and philanthropic programs;

11 h. Causing Plaintiffs to lose sales of their genuine  
12 PATAGONIA brand products and services; and

13 i. Causing AB to capture profits, premiums and goodwill  
14 that are only available due to its exploitation of the PATAGONIA  
15 brand, all to the detriment of deceived consumers and Patagonia.

16 Accordingly, in addition to damages and recovery of AB’s profits, Plaintiffs are  
17 entitled to injunctive relief against AB and all persons acting in concert with it.

18 **FIRST CLAIM**

19 **FEDERAL TRADEMARK INFRINGEMENT**

20 **(15 U.S.C. §§ 1114-1117)**

21 59. Plaintiffs reallege and incorporate by reference each of the allegations  
22 contained in paragraphs 1 through 58 of this Amended Complaint as if fully set forth  
23 here.

24 60. AB has used—in connection with the sale, offering for sale, distribu-  
25 tion, or advertising of its apparel products—words and symbols that infringe upon  
26 Plaintiffs’ registered trademarks, including the PATAGONIA trademark and the  
27 P-6 logo.

28 / / /





1 products and services to the detriment of Plaintiffs and the PATAGONIA  
2 trademarks, and in violation of 15 U.S.C. § 1125(a).

3 67. As a direct and proximate result of AB's conduct, Plaintiffs are entitled  
4 to recover up to treble the amount of AB's unlawful profits and Plaintiffs' damages,  
5 and an award of attorneys' fees under 15 U.S.C. § 1117(a).

6 68. Plaintiffs and the public will suffer irreparable harm if AB's infringe-  
7 ments continue. Therefore, Plaintiffs are entitled to an injunction pursuant to  
8 15 U.S.C. § 1116(a) that requires AB to stop use of PATAGONIA on any good or  
9 service and to stop using any other mark or design that creates likely confusion that  
10 AB is authorized or sponsored by Plaintiffs or authorized to use the PATAGONIA  
11 brand.

12 **THIRD CLAIM**

13 **FEDERAL DILUTION OF FAMOUS MARK**

14 **(Trademark Dilution Revision Act of 2006, 15 U.S.C. § 1125(c))**

15 69. Patagonia realleges and incorporates by reference each of the  
16 allegations contained in paragraphs 1 through 68 of this Amended Complaint.

17 70. Patagonia's PATAGONIA word mark is distinctive and famous within  
18 the meaning of the Trademark Dilution Revision Act of 2006, 15 U.S.C. § 1125(c),  
19 in that it is a household brand in the United States, and was famous prior to AB's  
20 adoption of the trademarks.

21 71. AB's conduct is likely to cause dilution of Patagonia's PATAGONIA  
22 word mark by diminishing its distinctiveness and by disparaging Patagonia and the  
23 PATAGONIA word mark in violation of the Trademark Dilution Revision Act of  
24 2006, 15 U.S.C. § 1125(c).

25 72. AB's conduct was deliberate, systematic, and willful, including in  
26 taking improper steps to acquire Warsteiner's intent to use trademark application  
27 for PATAGONIA and then to co-opt Patagonia's identity when it launched the  
28 brand.





1           79. To enhance the commercial value of its offerings, AB has used the  
2 PATAGONIA trademarks on its beer, apparel, educational, and charitable and  
3 philanthropic goods and services. AB’s conduct is likely to cause confusion,  
4 mistake, or deception by or in the public as to the affiliation, connection, associa-  
5 tion, origin, sponsorship, or approval of the infringing products and services to  
6 the detriment of Plaintiffs and the PATAGONIA trademarks, and in violation of  
7 California Business & Professions Code §§14245 *et seq.*

8           80. Additionally, decades after Patagonia, Inc. amended its corporate name  
9 in its articles of incorporation, AB adopted the trade name “Patagonia Brewing Co.”  
10 and other similar variations. AB’s use of confusingly similar trade names violates  
11 Patagonia, Inc.’s exclusive ownership rights in its corporate and trade name and thus  
12 must be restrained under California Business & Professions Code § 14402.

13           81. AB’s conduct also constitutes an “unlawful, unfair or fraudulent  
14 business act[s] or practice[s] and unfair, deceptive, untrue or misleading advertis-  
15 ing” within the meaning of California Business & Professions Code §§ 17200 *et seq.*

16           82. In addition to infringing Patagonia’s PATAGONIA marks, AB’s  
17 conduct is likely to cause dilution of Patagonia’s PATAGONIA word mark by  
18 diminishing the distinctiveness and by disparaging Patagonia and the PATAGONIA  
19 word mark in violation of California Business & Professions Code § 14247.

20           83. AB willfully intended to infringe Patagonia’s PATAGONIA  
21 trademarks and cause dilution of Patagonia’s PATAGONIA word mark, including  
22 by taking improper steps to acquire Warsteiner’s intent-to-use trademark application  
23 for PATAGONIA and then to co-opt Patagonia’s identity when it launched the  
24 brand.

25           84. As a direct and proximate result of AB’s willful conduct, Patagonia is  
26 entitled to recover up to treble the amount of AB’s unlawful profits and Patagonia’s  
27 damages under California Business & Professions Code § 14250.

28       / / /



1           85. Patagonia will suffer irreparable harm if AB’s infringement of  
2 Patagonia’s PATAGONIA marks and dilution of the famous PATAGONIA word  
3 mark continues. Accordingly, Patagonia is entitled to an injunction pursuant to  
4 California Business & Professions Code §§ 14247, 14250 that requires AB to stop  
5 use of Patagonia’s PATAGONIA trademarks, including the famous PATAGONIA  
6 word mark, throughout California and any other mark or design that is likely to  
7 cause confusion about the origin of products or services bearing the PATAGONIA  
8 trademarks or about whether Plaintiffs have sponsored or authorized AB in its use  
9 of the PATAGONIA mark, and any other mark, trade name, or design that  
10 diminishes or disparages the PATAGONIA word mark or diminishes the association  
11 consumers have between Patagonia and the PATAGONIA word mark.

**FIFTH CLAIM**

**CANCELLATION OF TRADEMARK REGISTRATION**

**(15 U.S.C. §1119)**

15           86. Plaintiffs reallege and incorporate by reference each of the allegations  
16 contained in paragraphs 1 through 85 of this Amended Complaint.

17           87. Section 10(a) of the Lanham Act, 15 U.S.C. § 1060(a), provides in  
18 relevant part as follows:

19                   [N]o application to register a mark under section 1051(b)  
20 of this title shall be assignable prior to the filing of an  
21 amendment under section 1051(c) of this title to bring the  
22 application into conformity with section 1051(a) of this title  
23 or the filing of the verified statement of use under section  
24 1051(d) of this title, except for an assignment to a successor  
25 to the business of the applicant, or portion thereof, to which  
26 the mark pertains ....

27           / / /

28           / / /







1 92. The PATAGONIA mark and brand uniquely and unmistakably  
2 identifies Patagonia, Inc. in the minds of consumers, and, when used as a brand,  
3 source identifier, trade name, or as the name of an institution or product, has held  
4 such immediate significance for many years. Accordingly, the term PATAGONIA  
5 when applied to goods, including beer, refers to and identifies Patagonia, Inc.

6 93. Warsteiner applied to register—and AB now purports to own—  
7 Registration No. 4,226,102 for PATAGONIA, a mark that is identical to Patagonia,  
8 Inc.’s name and identity.

9 94. Plaintiffs have no connection with the products marketed and sold  
10 under Registration No. 4,226,102.

11 95. As a result of the fame and reputation of Patagonia, Inc.’s identity and  
12 name—including at the time that Registration No. 4,226,102 issued—consumers are  
13 and were likely immediately to associate AB’s use of PATAGONIA on beer with  
14 Patagonia, Inc.

15 96. The PATAGONIA mark covered by Registration No. 4,226,102 falsely  
16 suggests a connection with Patagonia, Inc., and suggested such a false connection at  
17 the time the registration issued. Because no mark that falsely suggests such a  
18 connection may be registered, pursuant to 15 U.S.C. §§ 1052(a) the Court should  
19 order Registration No. 4,226,102 to be cancelled and, pursuant to regulations,  
20 should address its certified order to the USPTO, Office of the Solicitor, Mail Stop 8,  
21 Director of the United States Patent and Trademark Office, P.O. Box 1450,  
22 Alexandria, Virginia 22313-1450.

23 **SEVENTH CLAIM**

24 **CANCELLATION OF TRADEMARK REGISTRATION**

25 **(15 U.S.C. § 1119)**

26 97. Plaintiffs reallege and incorporate by reference each of the allegations  
27 contained in paragraphs 1 through 96 of this Amended Complaint.

28 / / /



1           98. AB, when it assumed control over Warsteiner's intent-to-use applica-  
2 tion, knew that Warsteiner never had used the PATAGONIA mark for beer, but  
3 nonetheless swore to the Trademark Office that Warsteiner had, in fact, made  
4 sufficient use in U.S. commerce to support a statement of use under 15 U.S.C.  
5 § 1051(d). AB also knowingly misrepresented to the Trademark Office the date  
6 when AB acquired Warsteiner's purported rights. Had AB not made these false  
7 filings on Warsteiner's behalf, intending to deceive, the Trademark Office would  
8 not have issued the registration.

9           99. AB already had engaged in a transaction with Warsteiner in which  
10 Warsteiner's interest in the PATAGONIA trademark application had been sold  
11 or transferred to AB as of May 2012, when its attorneys substituted for the  
12 correspondent Warsteiner attorney. AB made further false statements to the  
13 Trademark Office when it continued to prosecute the application on Warsteiner's  
14 ostensible behalf and stated later to the Trademark Office that the assignment to AB  
15 did not occur until after the registration was issued when, in fact, the improper  
16 assignment of the intent to use application already had occurred.

17           100. AB knew that its and Warsteiner's statements to the Trademark Office  
18 were false, but made them with the intention to deceive the Trademark Office so  
19 that it would, unaware of the improper assignment and non-use by Warsteiner, issue  
20 the registration for PATAGONIA on beer. The Trademark Office acted in reliance  
21 on these fraudulent statements when it issued Registration No. 4,226,102 to  
22 Warsteiner.

23           101. Because AB and Warsteiner procured the registration by fraud, the  
24 registration must be cancelled. Accordingly, the Court should order Registration  
25 No. 4,226,102 to be cancelled and, pursuant to regulations, should address its  
26 certified order to the USPTO, Office of the Solicitor, Mail Stop 8, Director of the  
27 United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia  
28 22313-1450. Both plaintiffs are entitled to damages and punitive damages arising



1 from AB’s fraudulent procurement of the registration, including under 15 U.S.C. §  
2 1120 and Cal. Civ. Code § 3294.

3 **EIGHTH CLAIM**

4 **RECTIFICATION OF TRADEMARK REGISTRATION**

5 **(15 U.S.C. § 1119)**

6 102. Plaintiffs reallege and incorporate by reference each of the allegations  
7 contained in paragraphs 1 through 101 of this Amended Complaint.

8 103. Plaintiffs are informed and believe that AB has not made genuine,  
9 continuous use of the PATAGONIA trademark for beer in interstate commerce  
10 over the past five years which is a prerequisite for incontestable status. Although  
11 AB knows it has not made bona fide use, AB filed statements of renewal and  
12 incontestability with the Trademark Office on October 5, 2018 which falsely  
13 reported that such use had been continuous since the date of registration.

14 104. Plaintiffs base these allegations on multiple published reports from AB  
15 to the effect that the PATAGONIA product line was being introduced or launched  
16 as of 2018, and by AB distributors who have stated that they expect to be receiving  
17 access to PATAGONIA beer soon.

18 105. An unlawfully acquired registration is not incontestable in the hands of  
19 the unlawful assignee. In addition, incontestability only operates in favor of  
20 “registrants” and AB is not, by virtue of its disguised and unlawful acquisition of the  
21 registration, a “registrant” within the meaning of the Lanham Act.

22 106. For all of these reasons, the Court should order rectification of  
23 Registration No. 4,226,102 by striking the affidavit of incontestability from the  
24 register. The Court, pursuant to regulations, should address its certified order to the  
25 USPTO, Office of the Solicitor, Mail Stop 8, Director of the United States Patent  
26 and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313-1450.

27 / / /

28 / / /



**PRAYER FOR JUDGMENT**

WHEREFORE, Plaintiffs pray that this Court grant it the following relief:

1. Adjudge that the PATAGONIA trademarks have been infringed by AB in violation of Plaintiffs’ rights under 15 U.S.C. § 1114;
2. Adjudge that the PATAGONIA trademarks have been infringed by AB in violation of California statutory law;
3. Adjudge that Plaintiffs’ common law rights in the PATAGONIA trademarks have been infringed;
4. Adjudge that AB has falsely described the source of its products and services in violation of Plaintiffs’ rights under 15 U.S.C. § 1125(a);
5. Adjudge that AB has competed unfairly with Plaintiffs in violation of California statutory law;
6. Adjudge that AB’s activities are likely to dilute Patagonia’s famous PATAGONIA trademark in violation of Patagonia’s rights under 15 U.S.C. § 1125(c);
7. Adjudge that AB’s activities are likely to dilute Patagonia’s famous PATAGONIA word mark in violation of Patagonia’s rights under California statutory law;
8. Adjudge that AB and its agents, employees, attorneys, successors, assigns, affiliates, and joint venturers, and any person(s) in active concert or participation with it, and/or any person(s) acting for, with, by, through, or under it, be enjoined and restrained at first during the pendency of this action and thereafter permanently from:
  - a. Manufacturing, producing, sourcing, importing, selling, offering for sale, distributing, advertising, or promoting any goods or services that copy or display any words or symbols that so resemble Plaintiffs’ PATAGONIA trademarks as to be likely to cause confusion, mistake, or deception, on or in connection with any product or service



1 that is not authorized by or for Plaintiffs, including, without limitation,  
2 any product or service that (i) bears the PATAGONIA trademarks,  
3 (ii) bears AB's mountain silhouette logo, or (iii) otherwise  
4 approximates Plaintiffs' trademarks;

5 b. Using any word, term, name, symbol, device, or  
6 combination that (i) causes or is likely to cause confusion, mistake, or  
7 deception as to the affiliation or association of AB or its products or  
8 services with Plaintiffs, or as to the origin of AB's products or services,  
9 (ii) contains any false designation of origin, false or misleading  
10 description or representation of fact, (iii) contains any false or  
11 misleading advertising, or (iv) causes likely dilution of the  
12 distinctiveness of the PATAGONIA trademark or degrades it;

13 c. Further infringing the rights of Plaintiffs in and to their  
14 PATAGONIA trademark, or otherwise damaging Plaintiffs' goodwill  
15 or business reputation;

16 d. Further diluting the famous PATAGONIA trademark;

17 e. Otherwise competing unfairly with Plaintiffs in any  
18 manner; or

19 f. Continuing to perform in any manner whatsoever any of  
20 the other acts complained of in this Amended Complaint;

21 9. Order that Registration No. 4,226,102 shall be cancelled and address  
22 its certified order to the USPTO, Office of the Solicitor, Mail Stop 8, Director of the  
23 United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia  
24 22313-1450;

25 10. Order that Registration No. 4,226,102 shall be rectified to strike AB's  
26 statement of incontestability under section 15 of the Lanham Act, and address its  
27 certified order to the USPTO, Office of the Solicitor, Mail Stop 8, Director of the

28 / / /



1 United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia  
2 22313-1450;

3 11. Adjudge that AB, within thirty (30) days after service of the Court's  
4 judgment, be required to file with this Court and serve upon Patagonia's counsel a  
5 written report under oath setting forth in detail the manner in which it has complied  
6 with the judgment;

7 12. Adjudge that Plaintiffs recover from AB their damages and lost profits,  
8 and AB's profits, in an amount to be proven at trial;

9 13. Adjudge that Plaintiffs recover from AB their damages sustained as a  
10 result of AB's fraudulent procurement of Registration No. 4,226,102 under 15  
11 U.S.C. § 1120;

12 14. Adjudge that AB be required to account for any profits that are  
13 attributable to its illegal acts, and that Plaintiffs be awarded (1) AB's profits and  
14 (2) all damages sustained by Plaintiffs, under 15 U.S.C. § 1117, plus prejudgment  
15 interest;

16 15. Adjudge that AB be required to account for any profits that are  
17 attributable to its illegal acts, and that Plaintiffs be awarded (1) AB's profits and  
18 (2) all damages sustained by Plaintiffs, under Cal. Bus. & Prof. Code § 14250, plus  
19 prejudgment interest;

20 16. Adjudge that the amounts awarded to Plaintiffs pursuant to 15 U.S.C.  
21 § 1117 shall be trebled;

22 17. Adjudge that the amounts awarded to Plaintiffs pursuant to Cal. Bus. &  
23 Prof. Code § 14250 shall be trebled;

24 18. Adjudge that AB be obligated to pay punitive damages to Plaintiffs,  
25 including under Cal. Civ. Code § 3294;

26 19. Adjudge that this is an exceptional case and that Plaintiffs be awarded  
27 their costs and disbursements incurred in connection with this action, including  
28 Plaintiffs' reasonable attorneys' fees and investigative expenses; and



1           20. Adjudge that all such other relief be awarded to Plaintiffs as this Court  
2 deems just and proper.

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: September 20, 2019

Respectfully submitted,  
KILPATRICK TOWNSEND & STOCKTON LLP

By: /s/ Gregory S. Gilchrist  
GREGORY S. GILCHRIST  
RYAN T. BRICKER  
SOPHY MANES  
HANNAH T. YANG

Attorneys for Plaintiffs  
PATAGONIA, INC. and  
PATAGONIA PROVISIONS, INC.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiffs Patagonia, Inc. and Patagonia Provisions, Inc. demand that this action be tried to a jury.

Dated: September 20, 2019

Respectfully submitted,  
KILPATRICK TOWNSEND & STOCKTON LLP

By: /s/ Gregory S. Gilchrist  
GREGORY S. GILCHRIST  
RYAN T. BRICKER  
SOPHY MANES  
HANNAH T. YANG

Attorneys for Plaintiffs  
PATAGONIA, INC. and  
PATAGONIA PROVISIONS, INC.

72333925V.1

