

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

HEAD USA, INC., and)
PENN RACQUET SPORTS, INC.)

Plaintiffs,)

v.)

DUNLOP INTERNATIONAL LIMITED,)
DUNLOP SPORTS GROUP AMERICAS, INC.)

Defendants.)

Civil Action No.

COMPLAINT

Plaintiffs Head USA, Inc., and Penn Racquet Sports, Inc. (individually and collectively “Head,” along with their predecessors in interest, related companies, and licensees), allege as follows, upon actual knowledge with respect to themselves and their own acts, and upon information and belief as to all other matters:

NATURE OF THE ACTION

1. This is a civil action for false advertising under the Lanham Act, the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §§ 42-110a, et seq., and/or Connecticut common law. Head brings this action against Dunlop International Limited and Dunlop Sports Group Americas, Inc. (individually and collectively “Defendant”), seeking relief from Defendant’s false and misleading use of the advertising claims “World’s No. 1 Ball” and “World’s #1 Ball” (individually and collectively, “World’s No. 1 Ball Claim” or “Claim”), as well as its claim to hold a “70 percent” share of the global tennis ball market (“70 Percent Claim”), in advertising and promoting its tennis balls.

2. Upon information and belief, Defendant's World's No. 1 Ball Claim is false and misleading because Defendant does not have the largest global market share of tennis ball sales. An injunction against Defendant's false and misleading World's No. 1 Ball Claim and 70 Percent Claim is necessary to protect the public from deception and to protect Head from the unfair business advantages conferred thereby.

THE PARTIES

3. Plaintiff Head USA, Inc. is a Delaware corporation with its principal place of business at Shore Pointe, 1 Selleck Street, Norwalk, CT 06855. Head USA, Inc. is wholly-owned subsidiary of HTM USA Holdings, Inc.

4. Plaintiff Penn Racquet Sports, Inc. ("Head Penn") is a Delaware corporation with its principal place of business at 306 South 45th Avenue, Phoenix, AZ 85043. Head Penn is a wholly-owned subsidiary of HTM USA Holdings, Inc.

5. Defendant Dunlop Sports Group Americas, Inc. is a Delaware corporation with its principal place of business at 100 Dunlop Drive, Westminster, SC 29693-2149.

6. Defendant Dunlop International Limited is a corporation of Great Britain with its principal place of business at Unit A, Brook Park East, Shirebrook NG20 8RY, United Kingdom.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b). Because the parties are citizens of different states, and the matter in controversy exceeds \$75,000 exclusive of interest and costs, this Court also has jurisdiction under 28 U.S.C. § 1332. Jurisdiction over the state-law claims is also appropriate under 28 U.S.C. § 1367(a) and principles of pendent jurisdiction because those claims are substantially related to the federal claims.

8. This Court has personal jurisdiction over Defendant and venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) because Head is located in this District and is being harmed here. Further, Defendant conducts business in this District and the activity about which Head complains has taken place and is continuing to take place in this District.

HEAD AND ITS TENNIS BALL MARKET SHARE

9. Head has been engaged in the manufacture, advertising, and sale of a wide variety of sports equipment, bags, clothing, footwear, headwear, and related products, since at least as early as 1948. Head's products include a line of tennis racquets, tennis bags, tennis footwear, and tennis accessories.

10. Head Penn has been a leading innovator in the tennis-ball industry for over one-hundred (100) years. Among other things, Head Penn was the first company to use pressurized containers to hermetically seal tennis balls and was the first to manufacture fluorescent yellow tennis balls.

11. Head Penn has enjoyed over fifty (50) percent market share for the tennis-ball market in the United States for the past 15 years and currently enjoys a sixty (60) percent share of the U.S. tennis-ball market, according to data compiled by the Tennis Industry Association (TIA)—a recognized tennis-industry organization.

12. To reflect its U.S. market share, Head Penn currently advertises and promotes its tennis balls using the wording "America's No. 1 Selling Ball" and "America's #1 Selling Ball," including on its website at <http://www.pennracquet.com/> and on packaging for its tennis balls, both of which are shown below:



DEFENDANTS' FALSE ADVERTISING CAMPAIGN

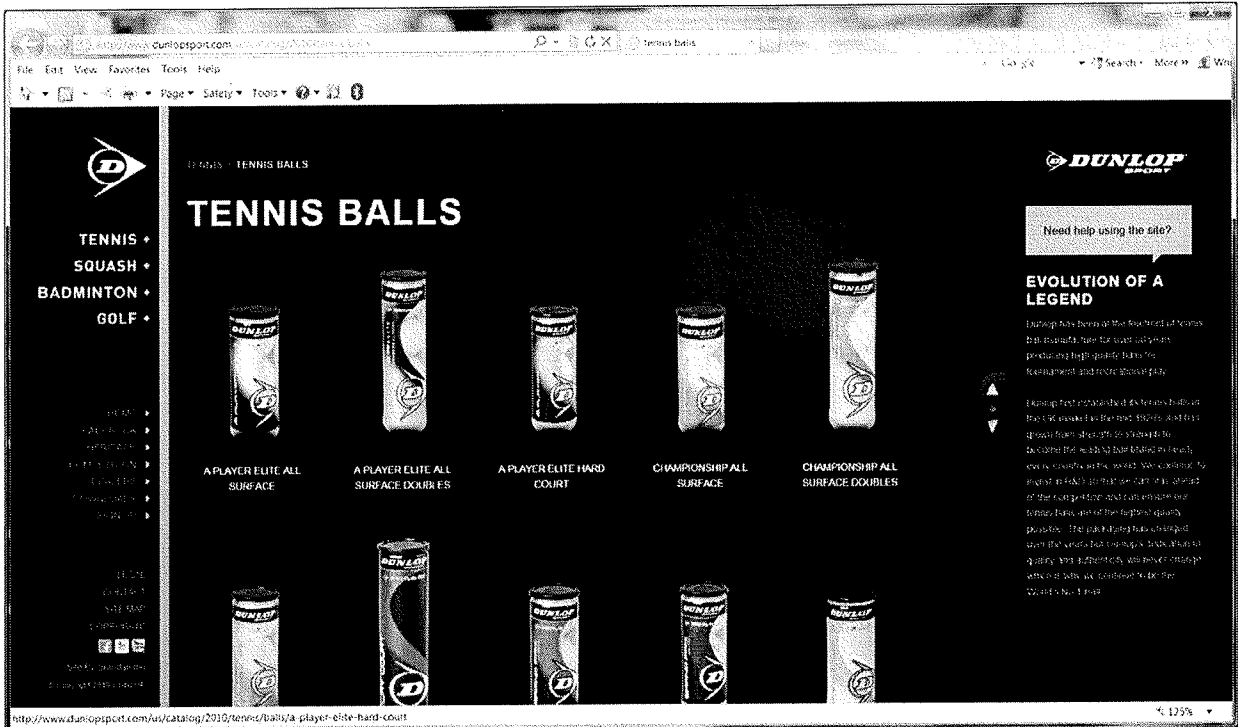
13. Defendant manufactures tennis balls, which it sells in the U.S. under the name DUNLOP.

14. Defendant has used and is using the World's No. 1 Ball Claim to advertise and promote its tennis balls, which directly compete with Head Penn's tennis balls. The World's No. 1 Ball Claim on its face is literally false because Defendant does not have the largest market

share of tennis balls worldwide. Defendant frequently uses its World's No. 1 Ball Claim in connection with a globe graphic that reinforces the world-wide nature of that Claim.

15. For example, Defendant's websites, as shown below from <http://dunlopbuzz.com/view/page/p/33804> and <http://dunlopsport.com/us/catalog/2010/tennis/balls>, prominently display the World's No. 1 Ball Claim in connection with Defendant's tennis balls:





DUNLOP SPORT

Need help using the site?

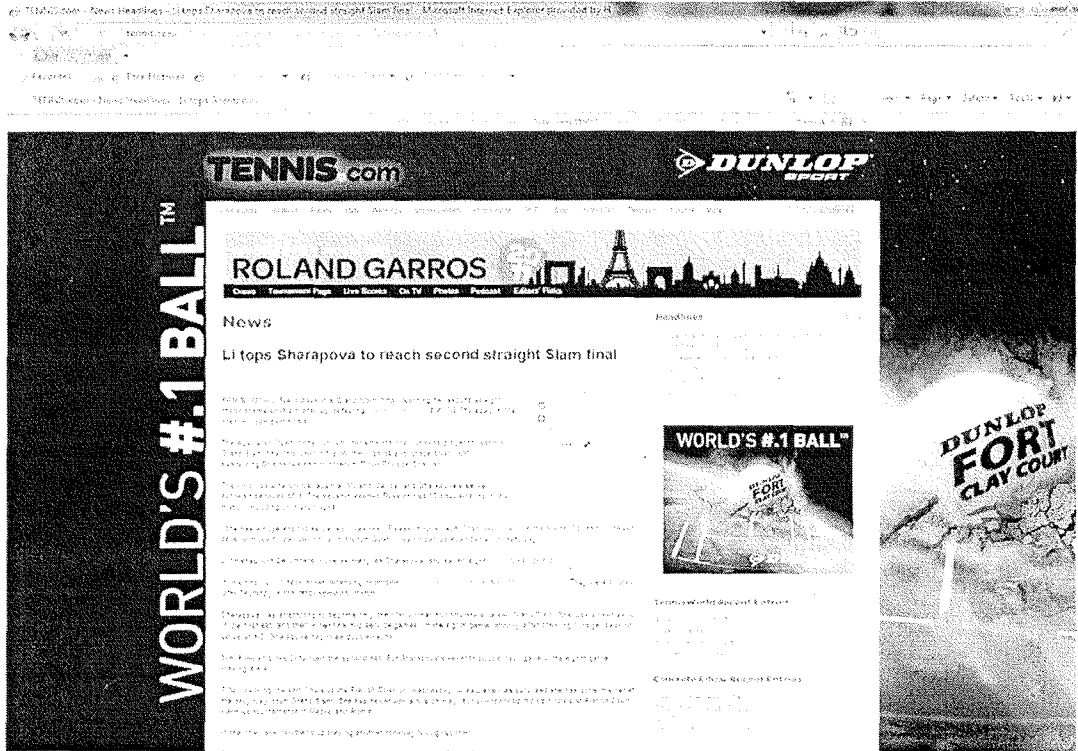
EVOLUTION OF A LEGEND

Dunlop has been at the forefront of tennis ball manufacture for over 80 years, producing high quality balls for tournament and recreational play.

Dunlop first established its tennis balls in the UK market in the mid 1920's and has grown from strength to strength to become the leading ball brand in nearly every country in the world. We continue to invest in R&D so that we can stay ahead of the competition and can ensure our tennis balls are of the highest quality possible. The packaging has changed over the years but Dunlop's dedication to quality and authenticity will never change, which is why we continue to be the World's No.1 Ball.

possible. The packaging has changed over the years but Dunlop's dedication to quality and authenticity will never change, which is why we continue to be the World's No.1 Ball.

16. Defendant has also used its World's No. 1 Ball Claim in advertisements for its tennis balls, including, for example, the advertisement on www.tennis.com shown below:

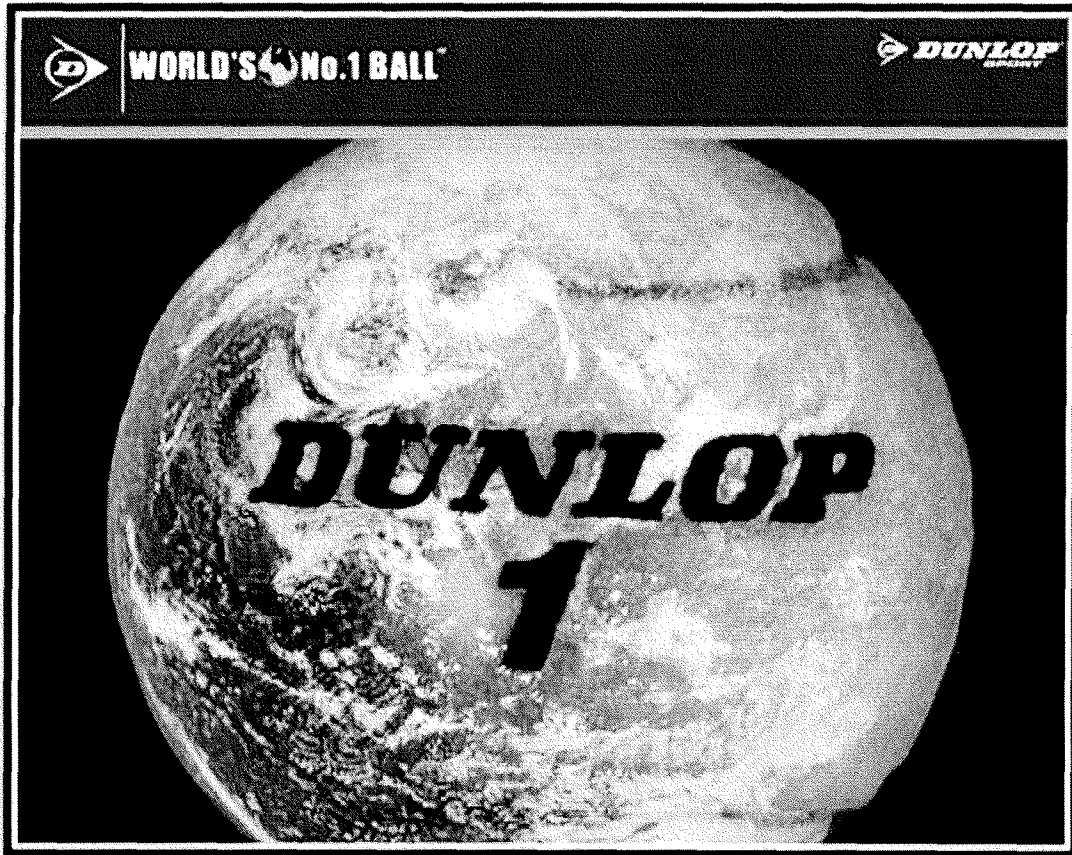


17. Defendant has also advertised and promoted its tennis balls using its World's No. 1 Ball Claim through email, as shown below. Defendant's claim to have the world's best-selling tennis ball is not limited to its World's No. 1 Ball Claim. For example, in the email below, Defendant's World's No. 1 Ball Claim is reinforced by the phrase "Total World Domination," the depiction of one of Defendant's tennis balls as a globe bearing the numeral "1", and the statement "we're proud to say we have already achieved our goal of being the world's number one tennis ball."

Sent: Sunday, December 18, 2011 8:20 AM

Subject: Total World Domination: Day 6 of the 12 Days of Dunlop

Having trouble viewing this email? [Click here](#)



12 Days of Dunlop

December 18, 2011

Day 6: World's # 1 Ball

It's no secret Dunlop's ultimate aim is to take over the world. The tennis industry part is only incidental.

Based on the latest satellite images, we're about 70% of the way to our goal of taking over Earth. HOWEVER, we're proud to say we have already achieved our goal of being the world's number one tennis ball.

So join us this holiday season in saluting the Grand Prix, the A-Player, and Championship balls, among others. It's a thankless job being removed from your vacuum packed can only to be hit repeatedly and then thrown into a trash can or be slobbered on and chewed by a dog.

So this holiday season, do a tennis ball a favor and turn it into an ornament of some sort!

Happy Holidays!

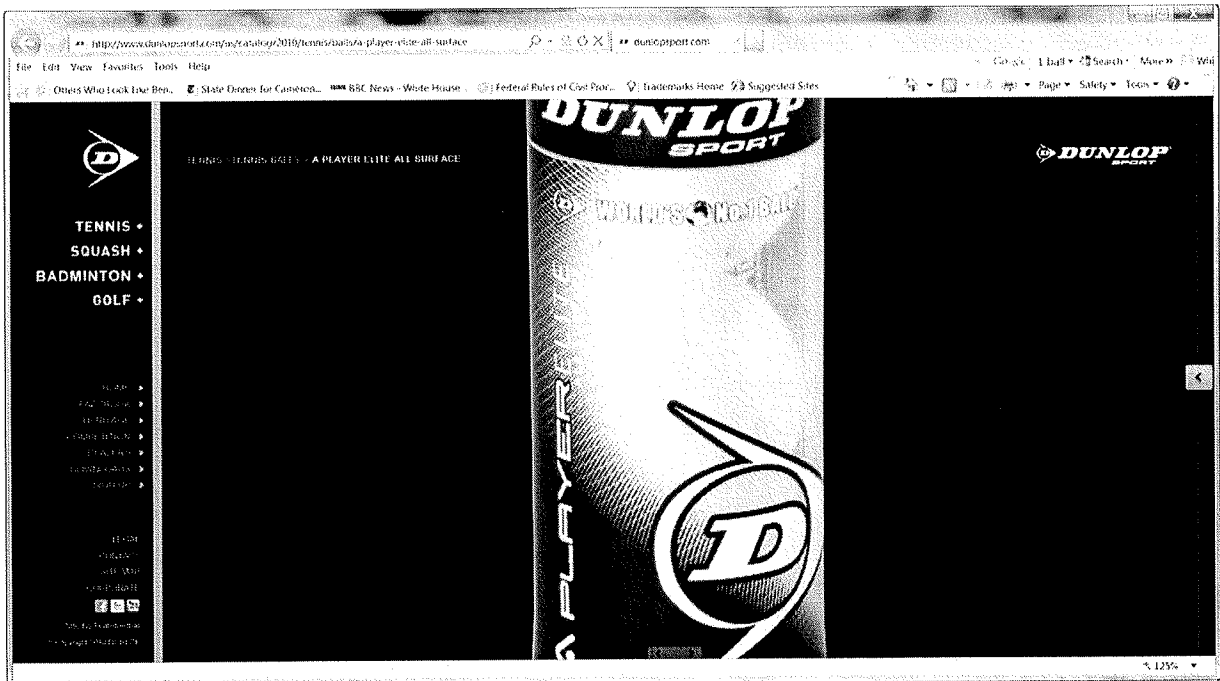
Call Now To Order: 1-888-215-1530

Quick Links
DunlopBuzz
Dunlop Website
Dunlop Catalog
Dunlop Dealer Locator

JOIN OUR MAILING LIST

18. Moreover, Defendant's email promotion contains its 70 Percent Claim, through the phrase "we're about 70 percent of the way to our goal of taking over Earth." Defendant's 70 Percent Claim is literally false because Defendant does not have a 70 percent market share of tennis-ball sales worldwide.

19. The packaging for Defendant's tennis balls also prominently displays the World's No. 1 Ball Claim as shown below on Defendant's website at <http://www.dunlopsport.com/us/catalog/2010/tennis/balls/a-player-elite-all-surface>.



20. Defendant does not publicly advertise, disclose, or otherwise make known on its website, advertising, packaging, or products, the actual global or worldwide market share for its tennis balls.

21. In May 2011, Head Penn contacted Defendant and requested that Defendant stop using its World's No. 1 Ball Claim because it was false and misleading. Head Penn further requested that Defendant produce evidence to substantiate its World's No. 1 Ball Claim.

22. On May 31, 2011, an executive of Defendant responded to Head Penn, but did not provide any substantiation for Defendant's World's No. 1 Ball Claim as requested. Instead, he simply stated: "Dunlop is the World's #1 Ball, that is our claim and if you should have any data to suggest otherwise I am sure that our international team and legal team would be interested in seeing it."

23. On June 24, 2011, Head Penn wrote to Defendant and restated its objection to Defendant's use of the World's No. 1 Ball Claim and again demanded that Defendant stop making the false and misleading World's No. 1 Ball Claim, take corrective action, and produce evidence to substantiate its Claim.

24. On July 15, 2011, Defendant's counsel responded to Head Penn's June 24, 2011 letter and reiterated its position that Head Penn bore the burden of producing data to establish that Defendant does not have the largest global market share of tennis ball sales. Defendant also refused to stop using the World's No. 1 Ball Claim. Defendant further stated that it had attempted to remove its World's No. 1 Ball Claim from its advertisement on www.tennis.com.

25. On August 8, 2011, Head Penn responded to Defendant's July 15, 2011 letter, reiterating its demands that Defendant cease all uses of the World's No. 1 Ball Claim and provide substantiation for its Claim.

26. After Head Penn's multiple attempts to follow-up with Defendant's counsel, Head Penn's counsel and Defendant's counsel held a telephone conference on October 14, 2011. During that call, Defendant's counsel represented to counsel for Head Penn that (1) Defendant had already ceased all advertising containing the World's No. 1 Ball Claim, (2) Dunlop would no longer use the World's No. 1 Ball Claim on tennis-ball cans or other packaging going forward, subject to a phase-out period, and (3) Defendant would let Head Penn know how long it would take for Defendant to phase out its current inventory of cans/packaging bearing the Claim. Head Penn confirmed the parties' agreement to these terms in an October 25, 2011 email to Defendant's counsel. Defendant did not respond to Head Penn's October 25 email or otherwise object to or challenge Head Penn's confirmation of the terms of the parties' agreement.

27. Despite Defendant's representation that it ceased all advertising containing the World's No. 1 Ball Claim, Defendant in fact continued to use the World's No. 1 Ball Claim to promote and advertise its tennis balls, including in its email "blast" as shown in Paragraph 19 above, on its website as shown in Paragraph 17, and as the packaging for its tennis balls as shown in Paragraph 21. Defendant further failed to provide the promised phase-out date for use of the World's No. 1 Ball Claim on product packaging.

28. On January 31, 2012, Head Penn sent another letter to Defendant's counsel, noting that contrary to Defendant's representations, the World's No. 1 Ball Claim continued to appear on Defendant's various websites, and that Defendant failed to provide the promised phase-out date for packaging bearing the World's No. 1 Ball Claim.

29. Defendant did not respond to Head Penn's January 31, 2012 letter.

INJURY TO THE PUBLIC AND HEAD

30. Defendant's World's No. 1 Ball Claim and 70 Percent Claim are false and misleading because Defendant neither has the largest global market share, nor a 70 percent global market share, of tennis-ball sales.

31. Defendant's advertising claims discussed above are designed to mislead the public into believing that Defendant has the largest global market share of tennis ball sales, when in fact it does not.

32. Defendant's false and misleading statements, individually and collectively, are material to customers' purchasing decisions.

33. Defendant's false and misleading statements have damaged and irreparably injured and, if permitted to continue, will further damage and irreparably injure Head and the public, who has an interest in being free from deception.

34. Defendant has benefitted, and continues to benefit unfairly from its false and misleading claims.

35. Defendant knew or should have known that its claims were (and are) false and misleading and thus has acted knowingly, willfully, maliciously, wantonly, fraudulently, in reckless regard of the truth, and in bad faith.

FIRST CLAIM FOR RELIEF

**False Advertising in Violation of Federal Law Section 43(a)(1)(B) of the
Lanham Act, 15 U.S.C. § 1125(a)(1)(B)**

36. Head repeats and realleges paragraphs 1 through 35 of this Complaint.

37. Defendant's actions, as described above, constitute false and misleading descriptions and misrepresentations of fact in commerce which, in commercial advertising and

promotion, misrepresent the nature, characteristics, and qualities of Defendant's and Head's products in violation of Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

SECOND CLAIM FOR RELIEF
Unfair Competition and Trade Practices
Under Conn. Gen. Stat. §§ 42-110b-q

38. Head repeats and realleges each and every allegation set forth in paragraphs 1 through 37 of this Complaint.

39. By engaging in the acts alleged above, Defendant has engaged in conduct that (a) is unfair, deceptive and offensive to public policy, governing statutes, common-law principles, and/or established concepts of fairness; and/or (b) has caused substantial injury to consumers.

40. Defendant has committed such acts, and continues to commit such acts, in the conduct of trade or commerce.

41. Head has suffered, and if the Defendant is not enjoined, will continue to suffer, an ascertainable loss of money or property.

42. By virtue of the above conduct, Defendant has engaged in unfair competition and unfair or deceptive acts or trade practices in the conduct of trade or commerce in violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a, et seq.

THIRD CLAIM FOR RELIEF
Common-Law Unfair Competition

43. Head repeats and realleges each and every allegation set forth in paragraphs 1 through 42 of this Complaint.

44. Defendant's actions described above constitute unfair competition under the common law of Connecticut and other states.

45. Head has been harmed by Defendants' actions.

PRAYER FOR RELIEF

Head requests that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to, the following:

A. An Order declaring that Defendant's World's No. 1 Ball Claim and 70 percent market-share claim constitute false advertising under federal and state law, as described above;

B. A permanent injunction enjoining Defendant and its employees, agents, partners, officers, directors, owners, shareholders, principals, subsidiaries, related companies, affiliates, distributors, dealers, and all persons in active concert or participation with any of them from stating that they offer the "World's No. 1 Ball," have 70 percent global market share, and/or making similar claims;

C. An Order directing Defendant to, within thirty (30) days after the entry of the injunction, file with this Court and serve on Head's attorneys a report in writing and under oath setting forth in detail the manner and form in which Defendant has complied with the injunction;

D. An Order directing Defendant to destroy all products, signage, advertisements, promotional materials, stationery, forms, and/or any other materials and things that contain or bear the false and misleading statements described above;

E. An Order requiring Defendant to pay Head the cost for corrective advertising and/or engage in corrective advertising in a manner directed by the Court;

F. An Order requiring Defendant to account for and pay to Head any and all profits arising from the foregoing acts, and increasing such profits for payment to Head, in accordance with 15 U.S.C. § 1117 and other applicable laws.

G. An Order requiring Defendant to pay Head damages in an amount as yet undetermined caused by the foregoing acts and trebling such damages for payment to Head in

accordance with 15 U.S.C. § 1117 and other applicable laws;

H. An Order requiring Defendant to pay Head damages in an amount as yet undetermined caused by the foregoing acts under Conn. Gen. Stat. § 42-110b-q;

I. An Order requiring Defendant to pay Head punitive damages in an amount as yet undetermined caused by the foregoing acts under Conn. Gen. Stat. § 42-110g and other applicable laws;

J. An Order requiring Defendant to pay Head's costs and attorneys' fees in this action pursuant to 15 U.S.C. § 1117 and other applicable laws, including Conn. Gen. Stat. §§ 42-110b-q; and

K. Other relief as the Court may deem appropriate.

Dated: April 30, 2012

By /s/ Craig A. Raabe

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