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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LAND ROVER, a foreign company,

Plaintiff,

v.

BRITISH NORTHWEST ROVER, LTD.,
f/k/a British Northwest Land-Rover Co.,
and CHARLES KELLOGG,

Defendants.

No.

COMPLAINT FOR TRADEMARK
INFRINGEMENT, DILUTION, AND
RELATED CLAIMS

Plaintiff Land Rover, by and through its undersigned attorneys, for its Complaint against Defendants British Northwest Rover, Ltd. f/k/a British Northwest Land-Rover Co. (“British”) and Charles Kellogg (“Kellogg”), alleges as follows:

PARTIES

1. Plaintiff Land Rover is an unlimited company organized under the laws of England and Wales, and has a place of business at Banbury Road, Gaydon, Warwick Warwickshire CV35 0RR United Kingdom.
2. Defendant British is a Washington for-profit company with its principal place of business located at 1043 Kaiser Road SW, Olympia, Washington 98512, Ex A

1 (excerpts from Defendants' current website) and a registered office address of 1800 Cooper
2 Pt Rd SW, Bldg 3, Olympia, Washington 98502. **Ex B** (WA Sec. of State Records).

3 3. Defendant Kellogg is a Washington resident residing at 7240 Cooper Point
4 Rd. NW, Bldg 3, Olympia, Washington, and the President, Vice President, Secretary, and
5 Treasurer of British. **Ex B**.

6 **JURISDICTION AND VENUE**

7 4. This Court has subject matter jurisdiction under 15 U.S.C. § 1121(a),
8 28 U.S.C. § 1331, and 28 U.S.C. § 1338 in that this case arises under the Trademark Law of
9 the United States, 15 U.S.C. §§ 1051, *et. seq.* Jurisdiction over the related state-law claims
10 exists under 28 U.S.C. § 1367.

11 5. Venue and personal jurisdiction are appropriate in this Court under
12 28 U.S.C. § 1391(b) because one or more defendants are located in this District, and
13 because a substantial part of the events and omissions giving rise to Plaintiff's claims
14 occurred in this District.

15 **FACTUAL BACKGROUND**

16 **Land Rover and its Asserted Trademarks**




17 9. Land Rover has manufactured LAND ROVER brand vehicles for over 60
18 years. During that time, Land Rover has been recognized as a premier automotive brand in
19 the United States, and its vehicles are known for their luxury standards and rugged
20 capability.

21 10. The Land Rover model family currently includes the RANGE ROVER,
22 RANGE ROVER SPORT, RANGE ROVER EVOQUE, DISCOVERY, DEFENDER, LR2,
23 LR3, and LR4 vehicles.

24 11. In addition to vehicles, Land Rover provides repair and maintenance services
25 under license by its nationwide dealer network. Land Rover also licenses its trademarks for
26 a wide variety of automotive parts and accessories, and general merchandise, from apparel

1 to pens to coffee. Land Rover sells and licenses for sale a wide range of replacement parts
 2 and accessories for vehicles under the Land Rover trademarks, including automotive parts,
 3 engines, running boards, and, most relevant to this case, bumpers, rock sliders, suspension
 4 kits, and lift kits. Some of these products are manufactured by Land Rover directly, and
 5 others are manufactured by third-parties upon request of Land Rover. Some parts and
 6 accessories are sold directly by Land Rover, and others are sold through authorized dealers
 7 or licensees.

8 12. In addition to its widespread use, Land Rover owns a number of registrations
 9 for the LAND ROVER mark and the Land Rover Logo across numerous categories of
 10 goods and services. Land Rover also owns registrations for the marks ROVER and
 11 RANGE ROVER for vehicles, parts, and repair and maintenance services for motor
 12 vehicles. Land Rover's registrations include the following representative registrations that
 13 are attached as **Ex C**:

Mark	U.S. Reg. No.	Goods / Services
	1,201,939	Automobiles and structural parts therefor (Class 012)
	3,485,024	Sports utility vehicles (Class 012)
	3,524,906	Automobile repair and maintenance. (Class 037)

Mark	U.S. Reg. No.	Goods / Services
LAND ROVER	0,541,722	Motor cars, commercial motor road vehicles, namely, trucks, truck trailer combinations, estate wagons, and structural parts thereof (class 012)
LAND ROVER	1,876,223	<p>Paints for use in the manufacture and repair of automobiles (Class 002)</p> <p>Synthetic and mineral based oils, greases and lubricants for automobiles (Class 004)</p> <p>Metal hardware, namely nuts, bolts, washers, pop-rivets, wire tow ropes and metal badges (Class 006)</p> <p>[C]arburetors and engine fuel injectors; turbochargers; electric ignitions; engine speed governors; . . . electric generators; and parts for the aforesaid goods (Class 007)</p> <p>Automotive vehicle air conditioners; automotive vehicle lights, namely headlights, tail lights, interior lights, indicator lights, spot lights, foglights, reversing lights and high intensity rear fog lights (Class 011)</p> <p>Oil filters for automobiles (Class 012)</p> <p>Automobile floor mats (Class 027)</p> <p>Repair and maintenance services for motor vehicles and for parts, fittings and accessories of motor vehicles. (Class 037)</p>
LAND ROVER	2,767,628	Motor vehicles, namely, automobiles, sport-utility vehicles, trucks and vans, and structural parts and engines therefor; bicycles. (Class 012)
ROVER	3,566,367	Automobiles and their structural parts and engines; fitted and semi-fitted vehicle covers, rooftop carriers, insignia badges, sunshades, steering wheel covers, grilles, bug deflectors, wheel covers, wheels, mud flaps, all for automobiles (Class 012)
ROVER	3,474,334	Automobiles and structural parts therefor (Class 012)
RANGE ROVER	1,876,307	Repair and maintenance services for motor vehicles and for parts, fittings, and accessories of motor vehicles (class 037)

Mark	U.S. Reg. No.	Goods / Services
RANGE ROVER	0,929,034	Road and cross-country motor car of the station-wagon type and structural parts thereof (class 012)

13. The above registrations are owned by Land Rover, were duly issued in compliance with law, and they are valid and subsisting. Further, many of these registrations have become incontestable.

14. The LAND ROVER brand and vehicles are often referred to by customers as “ROVER” vehicles or “ROVERS,” and this name is readily associated with Land Rover. Collectively, the LAND ROVER mark, the above-listed Land Rover logos, the RANGE ROVER mark, the ROVER mark, and Land Rover’s common law marks (including the designations of its various vehicle models) are referred to herein as the “Land Rover Marks.”

15. Over the past 60 years, Land Rover has spent millions of dollars establishing the LAND ROVER brand and the Land Rover Marks in the minds of its customers and the public, and has established itself as a source of high quality vehicles, parts and accessories.

16. As a result of Land Rover’s continuous use, extensive sales, advertising and promotion of the Land Rover Marks, these marks enjoy worldwide recognition and a world-famous reputation, and are recognized by the public as emanating from Land Rover. The Land Rover Marks were famous prior to any use of these marks by Defendants.

17. The Land Rover Marks symbolize the business goodwill of Land Rover, and are an intangible asset of substantial commercial value.

**Defendants Are Using Marks Confusingly Similar to the Land Rover Marks
With the Same Types of Goods and Services That Land Rover Offers**

18. Land Rover first became aware of British and its infringing activities in September 2011. In October 2011, through counsel, Land Rover made written demand on

1 British to cease and desist infringing the Land Rover Marks. Consistently since that time
2 until now, Land Rover’s counsel has attempted to dialogue and negotiate a resolution with
3 counsel for British. *See, e.g., Ex D* (April 2012 letter). British has been evasive and largely
4 non-cooperative, making this lawsuit a necessary last resort.

5 19. When Land Rover first discovered British, British was operating under the
6 name “British Northwest Land-Rover Co.” and had its website at <www.land-roverco.co>.
7 **Ex E** (WHOIS records); **Ex F** (screenshots of land-roverco.com website from 2004-2007).
8 On information and belief, that is the name that British operated under from its founding
9 until approximately December 2011, when—in response to multiple contacts from Land
10 Rover’s counsel—British unilaterally elected to change its name to “British Northwest
11 Rover, Ltd.” *See Ex B*. In or about February 2012, British relocated its website to
12 <www.britishnwrover.com>. **Ex G** (WHOIS records); *compare Ex F* (screenshots of prior
13 website) *with Ex A* (excerpt of current website).

14 20. British advertises and performs a variety of maintenance and restoration
15 services on LAND ROVER vehicles, as well as related parts and information (the “British
16 Goods and Services”). *Id.* Its advertisements for the British Goods and Services make
17 prominent use of the Land Rover Marks, especially LAND ROVER and ROVER, as well
18 as images of LAND ROVER vehicles in a manner that suggests endorsement, approval, or
19 affiliation with Land Rover. *Id.*

20 21. British advertises and sells (or did until recently) the British Goods and
21 Services through the websites located at the domain names <www.land-roverco.com> and
22 <www.britishnwrover.com> (the “Infringing Domain Names”). Land Rover will refer to
23 the trademarks, service marks, trade names, and domain names used in commerce by
24 British as the “Infringing Marks.” The Infringing Domain Names contain certain of the
25 Land Rover Marks and are likely to cause confusion in the marketplace as to whether Land
26 Rover approves, endorses, or is affiliated with British.

1 22. Indeed, the confusing similarity between the Infringing Marks and the Land
2 Rover Marks has already been made clear by multiple instances of actual confusion. For
3 example, in September 2011, Land Rover’s Customer Relationship Center received
4 complaints from a consumer who mistakenly believed that British was affiliated with Land
5 Rover. And in October 2011, Land Rover received misdirected freight bills that were
6 intended for British.

7 23. Moreover, being linked with British in the public’s perception can only
8 cause injury to Land Rover’s goodwill, in light of the reputation for poor customer service
9 and dishonest practices that Defendants have developed in the marketplace. *See, e.g., Ex H*
10 (collection of complaints about Defendants in online message boards).

11 **Defendants’ Continued Infringement of the Land Rover Marks**
12 **Is Inflicting Irreparable Harm on Land Rover**

13 24. Defendants are not authorized Land Rover dealers or parts/accessories
14 licensees or resellers, nor are Defendants otherwise authorized to use the Land Rover Marks
15 (or confusingly similar variations thereof) in connection with their business or in any
16 manner that is likely to express or imply to the purchasing public that Defendants have been
17 authorized by or are affiliated with or sponsored by Land Rover.

18 25. Defendants’ use, both individually and collectively, of the Infringing Marks
19 and the “Infringing Domain Names” in connection with the British Goods and Services is
20 likely to cause confusion, mistake, or deception of purchasers regarding the source of origin
21 of the British Goods and Services.

22 26. Defendants’ use, both individually and collectively, of the Infringing Marks
23 and Infringing Domain Names in connection with the British Goods and Services is likely
24 to dilute the distinctive nature of the Land Rover Marks and the exclusive rights Land
25 Rover enjoys.

26 27. Defendants’ infringement has been willful and deliberate, designed
specifically to trade on the goodwill associated with the Land Rover Marks. As stated

1 above, Defendants have declined to cease the complained-of activities despite Land Rover's
2 numerous requests. And despite Land Rover's initial letter to Defendants advising them of
3 Land Rover's ownership of the ROVER mark, Defendants recently adopted a new name
4 featuring that mark with full knowledge of Land Rover's rights.

5 **COUNT I**

6 **FEDERAL TRADEMARK INFRINGEMENT UNDER 15 U.S.C. §§ 1114 and 1125**

7
8 28. The allegations of the foregoing paragraphs are incorporated herein by
9 reference.

10 29. Despite Land Rover's well-known prior rights, Defendants have used and
11 continue to use in commerce without the consent of Land Rover, one or more Land Rover
12 Marks, or counterfeits, copies, reproductions or colorable imitations thereof in connection
13 with the sale, offering for sale, distribution, and/or advertising of the British Goods and
14 Services. Such use is likely to cause confusion, mistake, or deception among consumers.

15 30. Defendants' actions constitute willful infringement of Land Rover's
16 exclusive rights in one or more Land Rover Marks in violation of 15 U.S.C. §§ 1114 and
17 1125.

18 31. Defendants' use of the Land Rover Marks and counterfeits, copies,
19 reproductions, or colorable imitations thereof has been and continues to be done with the
20 intent to cause confusion, mistake, and to deceive customers concerning the source and/or
21 sponsorship of the British Goods and Services.

22 32. Because Defendants knowingly and intentionally used counterfeits, copies,
23 reproductions, or colorable imitations of the Land Rover Marks in connection with their
24 products and services, this is an exceptional case within the meaning of 15 U.S.C.
25 § 1117(a).

26 33. As a direct and proximate result of Defendants' conduct, Land Rover has
suffered irreparable harm to the valuable Land Rover Marks and its reputation in the

1 industry, and other damages in an amount to be proved at trial. Unless Defendants are
2 restrained from further infringement of the Land Rover Marks, Land Rover will continue to
3 be irreparably harmed.

4 34. Land Rover has no adequate remedy at law that will compensate for the
5 continued and irreparable harm it will suffer if Defendants' acts are allowed to continue.

6 **COUNT II**

7 **UNFAIR COMPETITION, FALSE DESIGNATION OF ORIGIN,**
8 **AND FALSE ADVERTISING UNDER 15 U.S.C. § 1125**

9 35. The allegations of the foregoing Paragraphs are incorporated herein by
10 reference.

11 36. Defendants have knowingly used and continue to use in commerce one or
12 more Land Rover Marks or counterfeits, reproductions, copies, or colorable imitations
13 thereof, in connection with the goods and services that the Defendants manufacture,
14 advertise, promote, and sell.

15 37. Defendants' use of the marks as alleged above is likely to confuse, mislead,
16 or deceive customers, purchasers, and members of the general public as to the origin,
17 source, sponsorship, or affiliation of Defendants and Land Rover and/or the British Goods
18 and Services and Land Rover's products and services, and is likely to cause such people to
19 believe in error that the British Goods and Services have been authorized, sponsored,
20 approved, endorsed, or licensed by Land Rover or that the Defendants are in some way
21 affiliated with Land Rover.

22 38. Defendants' actions were knowing and intentional and thus render this case
23 exceptional within the meaning of 15 U.S.C. § 1117(a).

24 39. Defendants' acts constitute false and misleading descriptions of fact, false
25 advertising, and false designations of the origin and/or sponsorship of the British Goods and
26 Services, and constitute trademark infringement in violation of 15 U.S.C. § 1125(a).

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40. By reason of Defendants’ actions, Land Rover has suffered irreparable harm to its valuable Land Rover Marks. Unless Defendants are restrained from their actions, Land Rover will continue to be irreparably harmed.

41. Land Rover has no remedy at law that will compensate it for the continued and irreparable harm that will be caused if Defendants’ acts are allowed to continue.

42. As a direct and proximate result of Defendants’ conduct, Land Rover has suffered damages to the valuable Land Rover Marks, and other damages in an amount to be proved at trial.

COUNT III

CYBERSQUATTING UNDER 15 U.S.C. § 1125(d)(1)(A)

43. The allegations of the foregoing Paragraphs are incorporated herein by reference.

44. The Land Rover Marks are distinctive and were distinctive at the time that Defendants registered the Infringing Domain Names. Despite knowledge of that distinctiveness, Defendants registered and used the Infringing Domain Names in connection with the British Goods and Services. The Infringing Domain Names are likely to cause confusion with and dilution of the famous Land Rover Marks.

45. Defendants’ use and registration of the Infringing Domain Names was and is in bad faith, as that term is defined by 15 U.S.C. § 1125(d)(1)(B)(i).

46. Land Rover has been irreparably harmed by Defendants’ use of the Infringing Domain Names, and will continue to suffer irreparable harm if Defendants’ acts are allowed to continue. Land Rover has no adequate remedy at law.

COUNT IV

TRADEMARK DILUTION UNDER 15 U.S.C. § 1125(c)
AND COMMON LAW TRADEMARK DILUTION

47. The allegations of the foregoing Paragraphs are incorporated herein by reference.

48. One or more of the Land Rover Marks have become famous and distinctive in the United States and worldwide through the extensive, continuous and exclusive use of them in connection with Land Rover’s products. These marks were famous prior to any use of these marks or similar marks by Defendants.

49. Despite knowledge of Land Rover’s famous trademarks, Defendants used and continue to use in commerce spurious and colorable imitations thereof in connection with the advertisement, promotion, and sale of the British Goods and Services.

50. Defendants’ actions as described herein have caused and continue to cause irreparable injury to, and a likelihood of dilution of, the distinctive quality of the famous Land Rover Marks in violation of Land Rover’s rights under 15 U.S.C. § 1125(c) and common law. Defendants’ wrongful use of Land Rover’s famous trademarks is likely to dilute the distinctive nature of those marks and to tarnish their reputation.

51. Defendants have used and continue to use in commerce the Land Rover Marks and/or closely similar marks willfully and with the intent to dilute the marks, and with the intent to trade on the reputation and good will of Land Rover and the Land Rover Marks. Accordingly, this is an exceptional case within the meaning of 15 U.S.C. § 1117(a).

52. As a direct and proximate result of Defendants’ conduct, Land Rover has suffered irreparable harm to the valuable Land Rover Marks, and other damages in an amount to be proved at trial. Unless Defendants are enjoined, the valuable Land Rover Marks will continue to be irreparably harmed and likely to be diluted.

1 53. Land Rover has no adequate remedy at law that will compensate for the
2 continued and irreparable harm it will suffer if Defendants' actions are allowed to continue.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Land Rover respectfully requests entry of a judgment granting relief
5 against the Defendants as follows:

6 A. A determination that Defendants willfully and deliberately violated 15
7 U.S.C. § 1114, that Land Rover has been damaged by such violation, and that the
8 Defendants are liable to Land Rover for such violation;

9 B. A determination that Defendants violated 15 U.S.C. §§ 1125(a), (c), and
10 (d)(1)(A)-(B), that Land Rover has been damaged by such violations, and that Defendants
11 are liable to Land Rover for such violations;

12 C. A determination that the Defendants committed common law trademark
13 infringement, that Land Rover has been damaged by such infringement, and that
14 Defendants are liable to Land Rover for common law trademark infringement;

15 D. A determination that this case is "exceptional" in the sense of 15 U.S.C. §
16 1117(a);

17 E. Under all claims for relief, that an injunction be temporarily, preliminarily,
18 and permanently issued enjoining Defendants and their officers, employees, agents,
19 successors and assigns, and all those in active concert and participation with them, and each
20 of them who receives notice directly or otherwise of such injunctions, from:

21 (1) imitating, copying, or making any unauthorized use of the Land
22 Rover Marks, or marks likely to cause confusion with them, including but not
23 limited to the Infringing Marks, the Infringing Domain Names, and the Land
Rover Marks;

24 (2) importing, manufacturing, producing, distributing, circulating,
25 selling, offering for sale, advertising, promoting or displaying any service or
product using any simulation, reproduction, counterfeit, copy, or colorable
imitation of the Land Rover Marks;

26 (3) using any simulation, reproduction, counterfeit, copy or colorable
imitation of the Land Rover Marks in connection with the promotion,

1 advertisement, display, sale, offer for sale, manufacture, production, circulation
2 or distribution of any product or service, including but not limited to the
Infringing Marks and the Infringing Domain Names;

3 (4) using any false designation of origin or false description (including,
4 without limitation, any letters, symbols, or designs constituting the Land Rover
5 Marks) or performing any act, which can, or is likely to, lead members of the
6 trade or public to believe that any service or product manufactured, distributed
or sold by Defendants is in any manner associated or connected with Land
Rover or the Land Rover Marks, or is sold, manufactured, licensed, sponsored,
approved or authorized by Land Rover;

7 (5) filing an application with the USPTO or any state or local
8 government to register any of the Infringing Marks, or any other mark likely to
cause confusion with the Land Rover Marks;

9 (6) all of the above with the exception of nominative fair use of the Land
10 Rover Marks.

11 F. An Order directing that Defendants deliver for destruction all products,
12 promotional and advertising materials, labels, tags, signs, prints, packages, videos or other
13 materials in their possession or under their control, bearing or using unauthorized versions
14 of the Land Rover Marks or any simulation, reproduction, counterfeit, copy or colorable
15 imitation thereof (including but not limited to the Infringing Marks and the Infringing
16 Domain Names), and all plates, molds, matrices and other means of making the same,
pursuant to 15 U.S.C. § 1118;

17 G. An Order directing the transfer of the Infringing Domain Names to Land
18 Rover or its designee;

19 H. An Order directing such other relief as the Court may deem appropriate to
20 prevent the trade and public from deriving the erroneous impression that any service or
21 product manufactured, sold or otherwise circulated or promoted by Defendants is
22 authorized by Land Rover or related in any way to Land Rover’s products and services;

23 I. An Order directing the Defendants and their agents, employees, servants,
24 attorneys, successors, and assigns, and all others in privity or acting in concert therewith, to
25 file with this Court, and serve upon Land Rover’s counsel within thirty (30) days after entry
26

1 of such judgment, a written report under oath, setting forth in detail the manner and form in
2 which they have complied with such judgment;

3 J. An Order permitting Land Rover, and/or auditors of Land Rover, to audit
4 and inspect the books, records, and premises of the Defendants and related entities for a
5 period of six (6) months after entry of final relief in this matter, to determine the scope of
6 the Defendants' past use of Land Rover's intellectual property, including all manufacturing,
7 distribution, and sales of products and services bearing Land Rover's trademarks, as well as
8 the Defendants' compliance with the orders of this Court;

9 K. An award of Land Rover's costs and disbursements incurred in this action,
10 including Land Rover's reasonable attorney's fees;

11 L. An award of Land Rover's damages trebled or, alternatively, an award of
12 Defendants' wrongful profits trebled, whichever is greater, plus Land Rover's costs and
13 attorney's fees, pursuant to 15 U.S.C. § 1117;

14 M. An award to Land Rover of its costs incurred in this action, including an
15 award of reasonable attorney fees under 17 U.S.C. § 1114;

16 N. As award to Land Rover of statutory damages under 15 U.S.C. § 1125(d);

17 O. An award of Land Rover's damages arising out of Defendants' acts;

18 P. An Order requiring Defendants to file with the Court and provide to Land
19 Rover an accounting of all sales and profits realized by Defendants through the use of the
20 Land Rover Marks and any confusingly similar marks or counterfeits, copies, reproductions
21 or colorable imitations thereof (including but not limited to the Infringing Marks and the
22 Infringing Domain Names);

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- Q. An award of interest, including pre-judgment interest on the foregoing sums;
- R. Such other and further relief as the Court may deem just and appropriate.

DATED: August 1, 2012.

YARMUTH WILSDON PLLC

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Index of Exhibits

Exhibit	Page Nos.	Description
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