

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

LULULEMON ATHLETICA CANADA  
INC., LULULEMON USA INC.,

Plaintiffs

v.

UNDER ARMOUR, INC.,

Defendant.

C.A. No.

Jury Trial Demanded

**COMPLAINT**

Plaintiffs lululemon athletica canada inc. and lululemon usa inc. (collectively “lululemon” or “Plaintiff”) for its Complaint against Defendant Under Armour, Inc. (“Under Armour” or “Defendant”), allege as follows:

**INTRODUCTION**

1. This is an action for patent infringement arising under the laws of the United States, 35 U.S. C. § 101 et seq. and trade dress infringement arising under the Federal Trademark Act of 1946, known as the Lanham Act, 15 U.S.C. § 1051, et seq. lululemon is the owner of all right, title, and interest in U.S. Patent Nos. D709,668 and D759,942 (the “Patents-in-Suit”), and the distinctive trade dress associated with the design of lululemon’s innovative Energy Bra (the “Trade Dress”).

2. Under Armour has used and continues to use the claimed designs of Patents-in-Suit, without lululemon’s permission, on the Armour® Eclipse Low Impact, Armour® Shape Low Impact, UA On the Move, and UA Printed Strappy Bra sports bras (“Infringing Products”) that Under Armour makes, uses, offers for sale, sells, and/or imports into the United States.

3. Under Armour has incorporated and continues to incorporate the Trade Dress, without lululemon's permission, into the Infringing Products that Under Armour makes, uses, offers for sale, sells, and/or imports into the United States.

4. lululemon seeks, among other things, injunctive relief to stop Under Armour from further infringing the Patents-in-Suit and Trade Dress; damages and/or disgorgement of Under Armour's profits from its infringing activities; prejudgment interest; costs and attorneys' fees; and all other relief the Court deems just and proper.

### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

6. This Court has personal jurisdiction over Under Armour at least because Under Armour (i) regularly transacts and solicits business within the State of Delaware, including with respect to the Infringing Products; and (ii) is committing and has committed acts of patent infringement by selling and offering for sale the Infringing Products within the State of Delaware, including via the interactive ecommerce website at [www.underarmour.com](http://www.underarmour.com) and in brick-and-mortar Under Armour stores located in Delaware.

7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391, 1400(b) at least because Under Armour (i) has committed acts of infringement by selling and offering for sale the Infringing Products within this district and (ii) has a regular and established place of business in this district at 36698 Bayside Outlet Dr., Rehoboth Beach, DE 19971.

## **THE PARTIES**

8. lululemon athletica canada inc. is a corporation organized under the laws of the Province of British Columbia, with its principal place of business located at 1818 Cornwall Ave., Vancouver, BC, Canada V6J 1C7.

9. lululemon usa inc. is a corporation organized under the laws of Nevada with its principal place of business located at 1818 Cornwall Ave., Vancouver, BC, Canada V6J 1C7.

10. Upon information and belief, Under Armour is a corporation organized under the laws of Maryland with its principal place of business located at 1020 Hull Street, Baltimore, Maryland 21230.

## **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

11. lululemon is a leading technical athletic apparel company for yoga, running, training, and other athletic endeavors.

12. The design of lululemon's innovative Energy Bra is protected by the Patents-in-Suit.

13. U.S. Patent No. D709,668 ("the '668 patent") is titled "Bra" and issued on July 29, 2014. A copy of the '668 patent is attached to this Complaint as Exhibit A.

14. U.S. Patent No. D759,942 ("the '942 patent") is titled "Bra" and issued on June 28, 2016. A copy of the '942 patent is attached to this Complaint as Exhibit B.

15. The Trade Dress consists of the design of the Energy Bra as depicted in Exhibit C to this Complaint, namely, four interwoven segments of fabric, two of which extend from each shoulder; the fabric segments extending from the left shoulder are attached to the right side of the fabric constituting the back of the bra; the fabric segments extending from the right shoulder are attached to the left side of the fabric constituting the back of the bra; the fabric constituting the back of the bra is bisected by a horizontal line. The dotted lines showing the outline of the

garment do not form part of the Trade Dress. The Trade Dress has acquired secondary meaning through the widespread use, sale, and promotion of the Energy Bra by lululemon through numerous channels of trade. The Trade Dress identifies the origin and source of the Energy Bra by virtue of lululemon's exclusive and continuous use of the Trade Dress.

16. lululemon athletica canada inc. is the owner of all right, title, and interest in and to Patents-in-Suit.

17. lululemon usa inc. is the exclusive licensee of the Patents-in-Suit with the right to sell the Energy Bra in the United States.

#### **DEFENDANT'S INFRINGING ACTIVITIES**

18. On information and belief, Defendant has manufactured, advertised, offered for sale, sold, distributed, or imported into the United States the Infringing Products that infringe the Patents-in-Suit and the Trade Dress.

19. On information and belief, an ordinary observer will perceive the overall appearance of the designs of the Infringing Products to be substantially the same as the overall appearance of the designs of the Patents-in-Suit.

20. On information and belief, the Infringing Products are so similar in design to the Trade Dress that they are likely to cause confusion, mistake, and deception as to the source or origin of the Infringing Goods among consumers.

21. Table 1 below compares exemplary figures of the '688 patent with exemplary images of the Armour® Eclipse Low Impact bra.

**Table 1: Comparison of '688 Patent and Armour® Eclipse Low Impact bra**

Figure 1

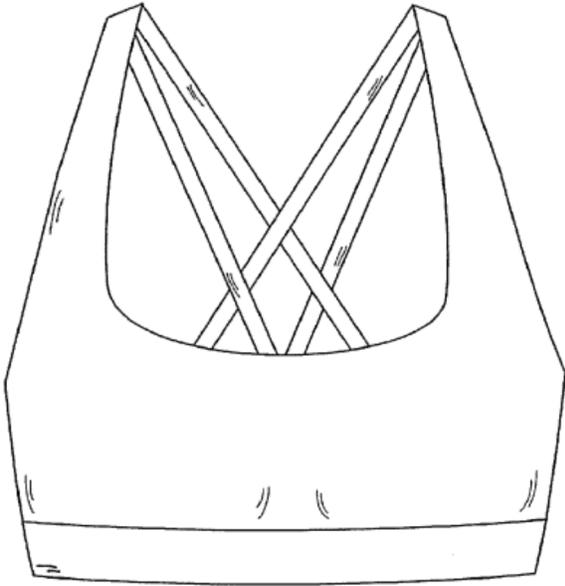
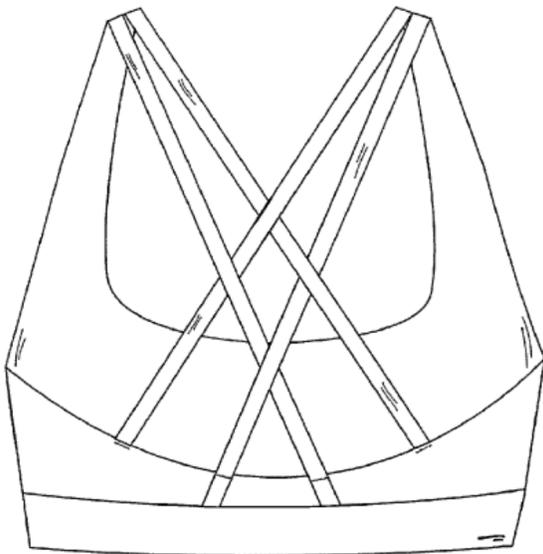
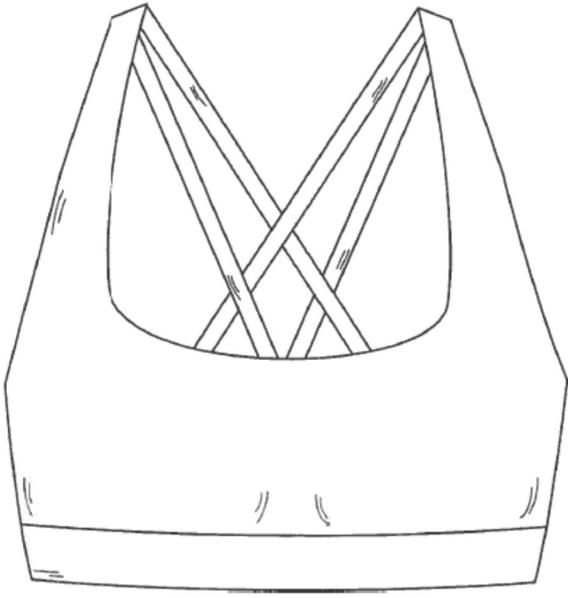
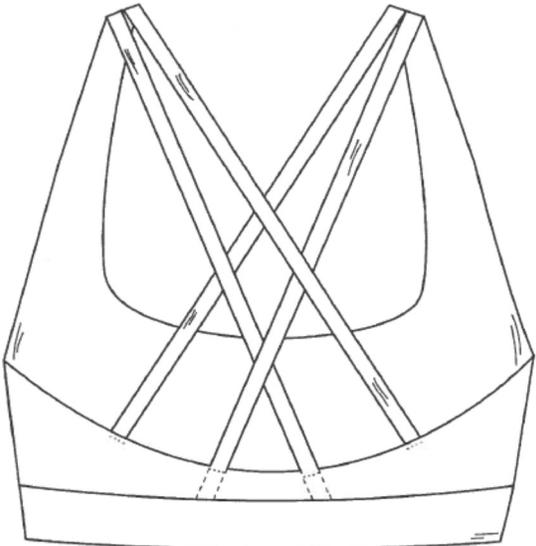


Figure 2



22. Table 2 below compares exemplary figures of the '942 patent with exemplary images of the Armour® Eclipse Low Impact bra.

**Table 2: Comparison of '942 Patent and Armour® Eclipse Low Impact bra**

<p>Figure 1</p>  <p>A line drawing of a bra showing a crisscross strap design. The straps cross in the center of the chest and extend upwards to the shoulders. The bra has a wide, flat band at the bottom.</p>	 <p>A photograph of a black bra with a crisscross strap design, similar to the one in Figure 1. The bra is shown from a front-facing perspective against a light background.</p>
<p>Figure 2</p>  <p>A line drawing of a bra showing a crisscross strap design, similar to Figure 1 but from a slightly different perspective. The straps cross in the center of the chest and extend upwards to the shoulders. The bra has a wide, flat band at the bottom.</p>	 <p>A photograph of a black bra with a crisscross strap design, similar to the one in Figure 2. The bra is shown from a side-front perspective against a light background. The Under Armour logo is visible on the band.</p>

23. Table 3 below compares exemplary figures of the '688 patent with exemplary images of the UA On the Move bra.

**Table 3: Comparison of '688 Patent and UA On the Move bra**

Figure 1

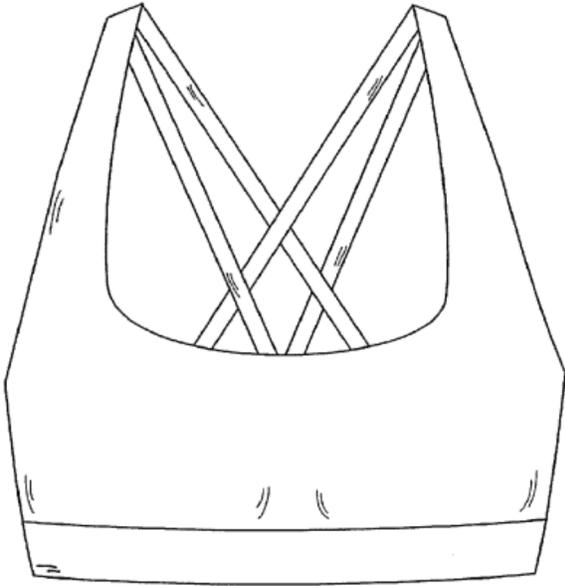
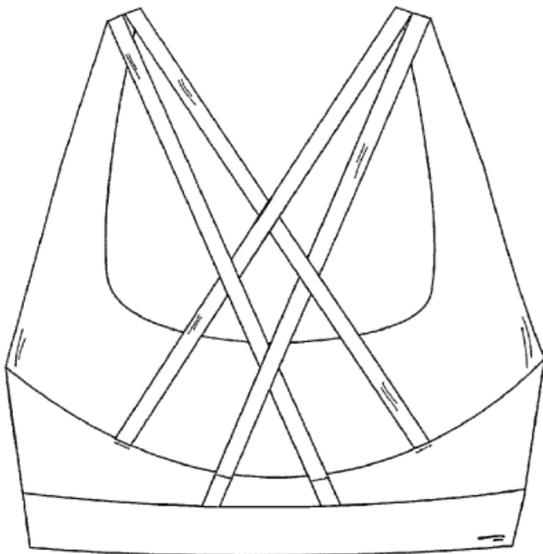


Figure 2



24. Table 4 below compares exemplary figures of the '942 patent with exemplary images of the UA On the Move bra.

**Table 4: Comparison of '942 Patent and UA On the Move bra**

Figure 1

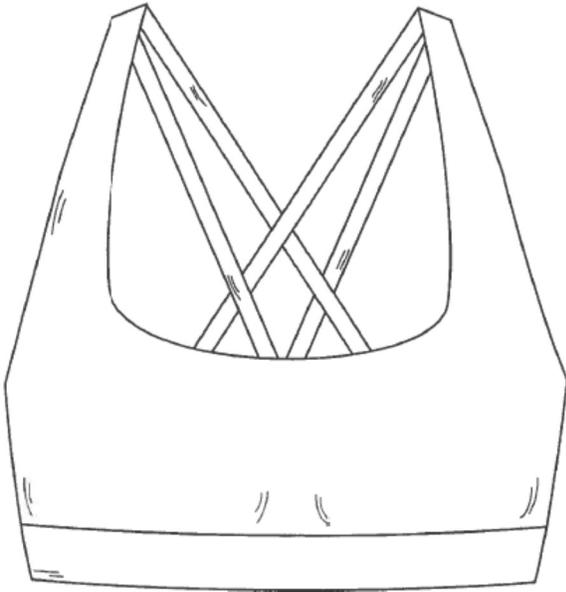
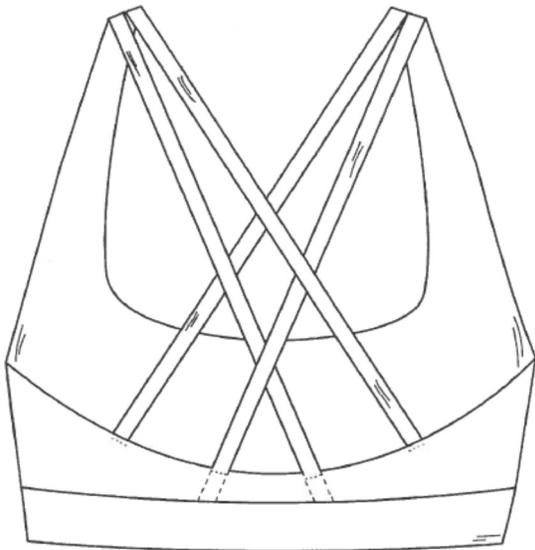


Figure 2



25. Table 5 below compares exemplary figures of the '688 patent with exemplary images of the UA Printed Strappy Bra.

**Table 5: Comparison of '688 Patent and UA Printed Strappy Bra**

Figure 1

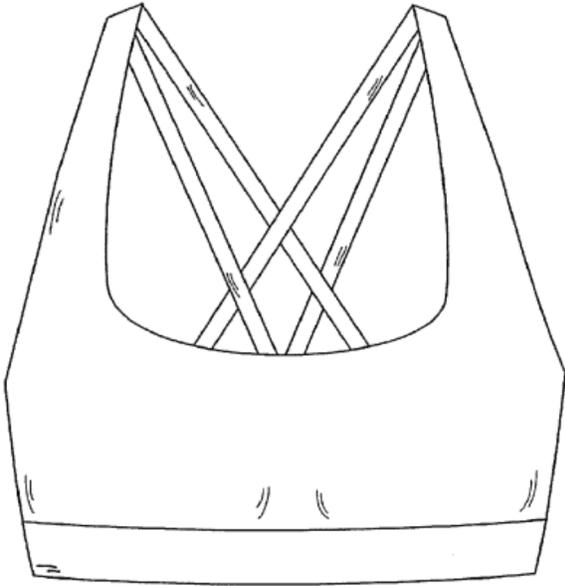
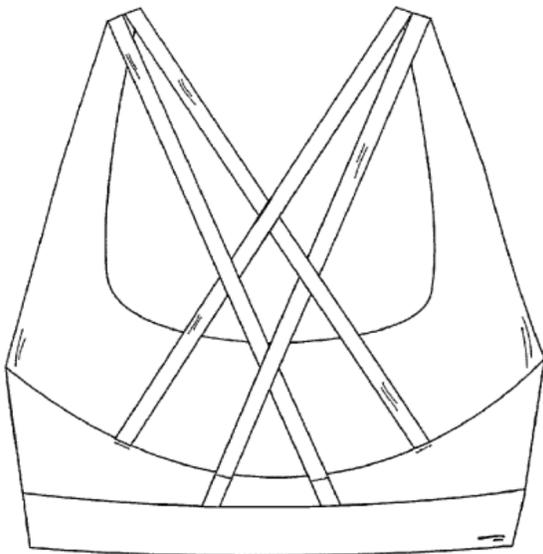


Figure 2



26. Table 6 below compares exemplary figures of the '942 patent with exemplary images of the UA Printed Strappy Bra.

**Table 6: Comparison of '942 Patent and UA Printed Strappy Bra**

Figure 1

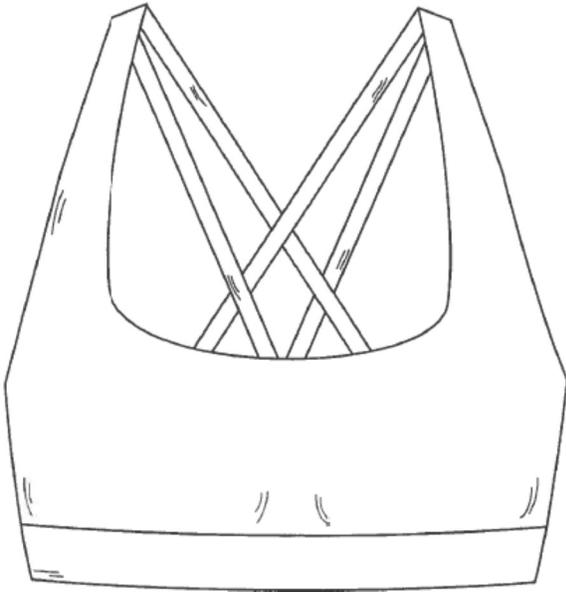
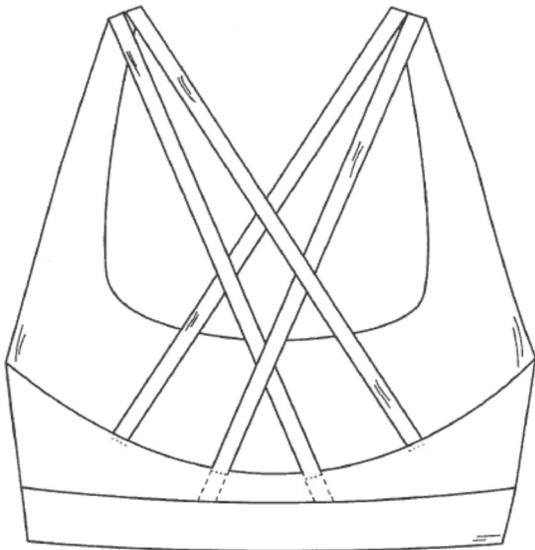


Figure 2



27. Upon information and belief, Defendant markets and sells its Infringing Products to national, regional, independent, and specialty retailers.

28. Upon information and belief, Under Armour markets and sells its Infringing Products direct to consumers through its brand and factory house stores and websites, including www.underarmour.com.

29. Upon information and belief, Under Armour engaged and continues to engage in the above activities willfully and without the authorization of lululemon, with the knowledge that the design of each Infringing Product is substantially the same as the designs of the Patents-in-Suit and confusingly similar to the Trade Dress.

30. Under Armour has had actual notice of the Patents-in-Suit since at least as early as April 10, 2017, when counsel for lululemon sent Under Armour a letter notifying Under Armour of its infringement of the Patents-in-Suit.

31. Under Armour's unauthorized acts as described herein have caused and will continue to cause irreparable damage to lululemon and its business unless restrained by this Court.

**FIRST CLAIM FOR RELIEF:**

**(Infringement Under 35 U.S.C. §271 of the '668 Patent)**

32. lululemon repeats and incorporates by reference the foregoing allegations contained in paragraphs 1 through 27 as if fully set forth herein.

33. Under Armour, without authorization from lululemon, has made, used, offered for sale, sold, and/or imported into or in the United States, and continues to make, use, offer for sale, sell, and/or import into or in the United States, the Infringing Products having designs that infringe the '668 patent.

34. By the foregoing acts, Under Armour has directly infringed, infringed under the doctrine of equivalents, contributorily infringed, and/or induced infringement of, and continues to so infringe the '668 patent.

35. Upon information and belief, Under Armour's aforesaid conduct has been undertaken knowingly, willfully, and in bad faith, and with knowledge of lululemon's rights.

36. Under Armour's conduct violates 35 U.S.C. § 271 and has caused, and unless enjoined by this Court, will continue to cause, lululemon to sustain irreparable damage, loss, and injury, for which lululemon has no adequate remedy at law.

**SECOND CLAIM FOR RELIEF:**

**(Infringement Under 35 U.S.C. § 271 of the '942 Patent)**

37. lululemon repeats and incorporates by reference the foregoing allegations contained in paragraphs 1 through 32 as if fully set forth herein.

38. Under Armour, without authorization from lululemon, has made, used, offered for sale, sold, and/or imported into or in the United States, and continues to make, use, offer for sale, sell, and/or import into or in the United States, the Infringing Products having designs that infringe the '942 patent.

39. By the foregoing acts, Under Armour has directly infringed, infringed under the doctrine of equivalents, contributorily infringed, and/or induced infringement of, and continues to so infringe the '942 patent.

40. Upon information and belief, Under Armour's aforesaid conduct has been undertaken knowingly, willfully, and in bad faith, and with knowledge of lululemon's rights.

41. Under Armour's conduct violates 35 U.S.C. § 271 and has caused, and unless enjoined by this Court, will continue to cause, lululemon to sustain irreparable damage, loss, and injury, for which lululemon has no adequate remedy at law.

**THIRD CLAIM FOR RELIEF:**

**(Trade Dress Infringement – 15 U.S.C. § 1125(a))**

42. lululemon repeats and incorporates by reference the foregoing allegations contained in paragraphs 1 through 37 above, as if fully set forth herein.

43. Since March 30, 2011, lululemon has utilized and marketed the Energy Bra, which embodies the Trade Dress. The Trade Dress is unique, arbitrary, and non-functional, and has acquired secondary meaning in the minds of consumers and resulted in a belief that goods embodying the Trade Dress emanate from a single source.

44. The Energy Bra which embodies the Trade Dress is extremely popular among the relevant consumers and has been widely promoted by lululemon through numerous channels of trade. Upon information and belief, Defendant has marketed, offered for sale, and sold the Infringing Products to the identical group of consumers as lululemon via the same channels of trade as lululemon.

45. The design of Defendant's Infringing Products so resembles the Trade Dress in appearance and overall commercial impression that the Infringing Products are likely to cause confusion, mistake, and deception as to the source or origin of Defendant's Infringing Products. Such confusion will injure and damage lululemon and the goodwill and reputation symbolized by the Trade Dress in the marketplace.

46. Upon information and belief, Defendant was aware of the Trade Dress at the time the Infringing Products were designed, manufactured, offered for sale, and sold.

47. Upon information and belief, from the outset, Defendant has engaged in acts of trade dress infringement, with knowledge of the exclusive rights of lululemon to the Trade Dress in connection with identical goods, and Defendant continue in such acts of trade dress

infringement, thus entitling lululemon to an award of its actual damages, Defendant's profits, plus attorneys' fees and costs in bringing and maintaining this action, pursuant to Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

### **DEMAND FOR JURY TRIAL**

48. lululemon demands a trial by jury of any and all issues triable of right before a jury.

### **PRAYER FOR RELIEF**

WHEREFORE, lululemon prays for judgment against Under Armour as follows:

1. A judgment that Under Armour infringed each of the Patents-in-Suit;
2. A judgment that Under Armour infringed the Trade Dress;
3. A judgment that Under Armour willfully infringed the Trade Dress;
4. A permanent injunction enjoining Under Armour, and all person acting in concert with Under Armour, from infringing each of the Patents-in-Suit and the Trade Dress;
5. A judgment and order awarding lululemon all damages sustained as a result of Under Armour's infringement of the Patents-in-Suit described above, together with appropriate interest thereon and that such sums be trebled pursuant to 35 U.S.C. § 284;
6. A judgment and order awarding lululemon the total profits realized by Under Armour from its infringement of the Patents-in-Suit described above pursuant to 35 U.S.C. § 289.
7. A determination that this is an exceptional case under 35 U.S.C. § 285;
8. A determination that this is an exceptional case under 15 U.S.C. § 1117;

9. A judgment and order awarding lululemon all damages sustained as a result of Under Armour's willful infringement of the Trade Dress described above, and the total profits realized by Under Armour from such willful infringement, together with appropriate interest thereon, pursuant to 15 U.S.C. § 1117;
10. A judgment and order awarding of lululemon's reasonable attorneys' fees;
11. A judgment and order awarding lululemon enhanced damages up to three times any amount ordered under 35 U.S.C. § 284 and 15 U.S.C. § 1117(a).
12. A judgment and order awarding lululemon both pre-judgment and post-judgment interest on each and every monetary award.
13. Granting lululemon such other and further relief as the Court may consider equitable, just, and proper.

Dated: July 7, 2017

**DLA PIPER LLP (US)**

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