

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COSTCO WHOLESALE CORPORATION,)
a Washington corporation)

Plaintiff,)

v.)

ACUSHNET HOLDINGS CORP., a)
Delaware corporation,)

Defendant.)

Case No. 2:17-cv-00423-RAJ
**ACUSHNET HOLDINGS
CORPORATION’S ANSWER AND
DEFENSES**

Defendant Acushnet Holdings Corp. (“Acushnet Holdings”), by and through undersigned counsel, hereby answers the Complaint (“Complaint”) filed by Plaintiff Costco Wholesale Corporation (“Costco”). Acushnet Holdings hereby responds in numbered paragraphs corresponding to numbered paragraphs of the Complaint and, in doing so, denies the allegations of the Complaint except as specifically stated:

I. NATURE OF THE CASE

1. Costco Wholesale Corporation (“Costco”) seeks a declaratory judgment that it is not infringing any valid patent rights owned by defendant Acushnet Holdings Corp. (“Acushnet” or “defendant”) by its sale of its Kirkland Signature golf balls (“KS golf balls”) and that it has not engaged in false advertising regarding the KS golf balls. The need for such relief exists

1 because Acushnet has wrongfully accused Costco of patent infringement and false advertising.

2 **ANSWER TO PARAGRAPH 1:** Acushnet Holdings denies that it has “wrongfully accused
3 Costco of patent infringement and false advertising.” To the extent the remaining allegations in
4 this Paragraph warrant a response, Acushnet Holdings denies the remaining allegations in this
5 Paragraph.

6 **II. THE PARTIES**

7 2. Costco Wholesale Corporation (“Costco”) is a Washington corporation with its
8 principal place of business at 999 Lake Drive, Issaquah, Washington 98027.

9 **ANSWER TO PARAGRAPH 2:** Acushnet Holdings is without sufficient knowledge or
10 information to form a belief as to the truth of the allegations in this Paragraph and, on that basis,
11 denies each and every such allegation.

12 3. Defendant Acushnet Holdings Corp. (“Acushnet”) is, on information and belief,
13 a Delaware corporation with its principal place of business at 215 Duchaine Blvd., New Bedford,
14 Massachusetts 02745.

15 **ANSWER TO PARAGRAPH 3:** Acushnet Holdings denies each and every allegation in this
16 Paragraph.

17 **III. JURISDICTION AND VENUE**

18 4. The Court has original jurisdiction over the claims because they arise under 28
19 U.S.C. §§ 2201 (declaratory judgment), 1331 (federal question) and 1338 (patent and Lanham
20 Act).

21 **ANSWER TO PARAGRAPH 4:** Acushnet Holdings denies each and every allegation in this
22 Paragraph.

23 5. Venue is proper under 28 U.S.C. § 1391(b)(1) because Acushnet does business in
24 and is subject to personal jurisdiction in this district for the claims asserted herein in and §
25 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred
26 in this district.
27

1 **ANSWER TO PARAGRAPH 5:** Acushnet Holdings denies each and every allegation in this
2 Paragraph.

3 **IV. BACKGROUND FACTS**

4 6. Costco is a membership-based retailer that is committed to bringing quality
5 products to its members at low prices. In addition to selling name brand merchandise, Costco
6 owns registered trademark rights to KIRKLAND SIGNATURE (“KS”), and sells a variety of
7 items under that brand. In 2016, Costco introduced its KS golf ball, a golf ball that Costco sold
8 at approximately \$15 per dozen. The KS golf ball sold out quickly, and was praised by golfers
9 and experts as a golf ball of tremendous quality and value. Many reviewers compared the KS
10 golf ball to higher-priced “tour quality” golf balls sold by national brands, such as Titleist,
11 Callaway, and TaylorMade. Even though the Costco KS golf ball has sold out, Costco plans to
12 continue to sell the KS golf ball.

13 **ANSWER TO PARAGRAPH 6:** Acushnet Holdings is without sufficient knowledge or
14 information to form a belief as to the truth of the allegations in this Paragraph and, on that basis,
15 denies each and every such allegation.

16 7. In response to the popularity of the KS golf ball, Acushnet sent Costco a
17 threatening letter, wrongfully accusing Costco of infringing 11 Acushnet patents based on its sale
18 of the KS golf ball and engaging in false advertising based on its Kirkland Signature guarantee
19 that all Kirkland Signature products “meet or exceed the quality standards of leading national
20 brands.”

21 **ANSWER TO PARAGRAPH 7:** Acushnet Holdings denies each and every allegation in this
22 Paragraph.

23 8. A justiciable controversy exists as to whether Costco is infringing any valid patent
24 rights owned by Acushnet as a result of Costco’s sale of the KS golf ball or has engaged in any
25 false advertising in connection with such golf ball.

26 **ANSWER TO PARAGRAPH 8:** Acushnet Holdings denies each and every allegation in this
27 Paragraph.

1 9. Costco's sales of the KS golf ball do not infringe any valid patent rights owned by
2 Acushnet, including any valid patent claims identified by Acushnet in its correspondence.
3 Accordingly, Costco respectfully requests that the Court issue a declaratory judgment confirming
4 that Costco is not infringing any Acushnet patent rights as a result of its sale of the KS golf ball,
5 including any valid patent claims identified by Acushnet. The specific patents identified by
6 Acushnet are listed below.

7 **ANSWER TO PARAGRAPH 9:** Acushnet Holdings denies each and every allegation in this
8 Paragraph.

9 **V. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**
10 **U.S. PATENT NO. 6,994,638**

11 10. Costco re-alleges paragraphs 1 through 9 above as if fully set forth herein.

12 **ANSWER TO PARAGRAPH 10:** Acushnet Holdings incorporates herein and re-alleges its
13 answers to Paragraphs 1 through 9.

14 11. Costco is not infringing any valid claims of U.S. Patent No. 6,994,638 ("the '638
15 patent"). Acushnet has accused Costco of infringing claim 1 of the '638 patent. Costco's sales
16 of the KS golf ball do not constitute infringement of claim 1 of the '638 patent, however, because,
17 among other things, the Shore D hardness of the center core of the KS ball is not "at least about
18 10 points" less than the Shore D hardness of the outer core.

19 **ANSWER TO PARAGRAPH 11:** Acushnet Holdings denies each and every allegation in this
20 Paragraph.

21 12. The '638 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims
22 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Patent No. 6,468,169
23 and other prior art publications and activities.

24 **ANSWER TO PARAGRAPH 12:** Acushnet Holdings denies each and every allegation in this
25 Paragraph.

26 13. Costco is entitled to a declaratory judgment that it has not infringed any claims of
27 the '638 patent and that the patent is invalid.

1 **ANSWER TO PARAGRAPH 13:** Acushnet Holdings denies each and every allegation in this
2 Paragraph.

3 **VI. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**
4 **U.S. PATENT NO. 8,123,632**

5 14. Costco re-alleges paragraphs 1 through 13 above as if fully set forth herein.

6 **ANSWER TO PARAGRAPH 14:** Acushnet Holdings incorporates herein and re-alleges its
7 answers to Paragraphs 1 through 13.

8 15. Costco is not infringing any valid claims of U.S. Patent No. 8,123,632 ("the '632
9 patent"). Acushnet has accused Costco of infringing claim 17 of the '632 patent. Costco's sales
10 of the KS ball do not constitute infringement of claim 17, however, because, at the least, the
11 surface hardness of the outer core of the KS ball is not 75 Shore C or greater.

12 **ANSWER TO PARAGRAPH 15:** Acushnet Holdings denies each and every allegation in this
13 Paragraph.

14 16. The '632 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims
15 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Publication No.
16 2007/0281802 and other prior art publications and activities.

17 **ANSWER TO PARAGRAPH 16:** Acushnet Holdings denies each and every allegation in this
18 Paragraph.

19 17. Costco is entitled to a declaratory judgment that it has not infringed any claims of
20 the '632 patent and that the patent is invalid.

21 **ANSWER TO PARAGRAPH 17:** Acushnet Holdings denies each and every allegation in this
22 Paragraph.

23 **VII. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**
24 **U.S. PATENT NO. 8,444,507**

25 18. Costco re-alleges paragraphs 1 through 17 above as if fully set forth herein.

26 **ANSWER TO PARAGRAPH 18:** Acushnet Holdings incorporates herein and re-alleges its
27 answers to Paragraphs 1 through 17.

1 19. Costco is not infringing any valid claims of U.S. Patent No. 8,444,507 (“the ‘507
2 patent”). Acushnet has accused Costco of infringing claim 17 of the ‘507 patent. Costco sales
3 of the KS golf ball do not constitute infringement of claim 17 of the ‘507 patent because, at the
4 least, the KS ball does not have an outer core with a surface hardness of about 75 Shore C or
5 greater.

6 **ANSWER TO PARAGRAPH 19:** Acushnet Holdings denies each and every allegation in this
7 Paragraph.

8 20. The ‘507 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims
9 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Publication No.
10 2007/0281802 and other prior art publications and activities.

11 **ANSWER TO PARAGRAPH 20:** Acushnet Holdings denies each and every allegation in this
12 Paragraph.

13 21. Costco is entitled to a declaratory judgment that it has not infringed any claims of
14 the ‘507 patent and that the patent is invalid.

15 **ANSWER TO PARAGRAPH 21:** Acushnet Holdings denies each and every allegation in this
16 Paragraph.

17 **VIII. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**
18 **U.S. PATENT NO. 9,320,944**

19 22. Costco re-alleges paragraphs 1 through 21 above as if fully set forth herein.

20 **ANSWER TO PARAGRAPH 22:** Acushnet Holdings incorporates herein and re-alleges its
21 answers to Paragraphs 1 through 21.

22 23. Costco is not infringing any valid claims of U.S. Patent No. 9,320,944 (“the ‘944
23 patent”). Acushnet has accused Costco of infringing claim 1 of the ‘944 patent. Costco’s sales
24 of the KS golf ball do not constitute infringement of claim 1 of the ‘944 patent, however, because,
25 at the least, the KS ball does not have an outer core with a surface hardness of “at least about
26 85 Shore C.”

1 **ANSWER TO PARAGRAPH 23:** Acushnet Holdings denies each and every allegation in this
2 Paragraph.

3 24. The '944 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims
4 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of WO98/43709 Publication,
5 U.S. Publication No. 2002/0144466, and other prior art publications and activities.

6 **ANSWER TO PARAGRAPH 24:** Acushnet Holdings denies each and every allegation in this
7 Paragraph.

8 25. Costco is entitled to a declaratory judgment that it has not infringed any claims of
9 the '944 patent and that the patent is invalid.

10 **ANSWER TO PARAGRAPH 25:** Acushnet Holdings denies each and every allegation in this
11 Paragraph.

12 **IX. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**
13 **U.S. PATENT NO. 8,025,593**

14 26. Costco re-alleges paragraphs 1 through 25 above as if fully set forth herein.

15 **ANSWER TO PARAGRAPH 26:** Acushnet Holdings incorporates herein and re-alleges its
16 answers to Paragraphs 1 through 25.

17 27. Costco is not infringing any valid claims of U.S. Patent No. 8,025,593 ("the '593
18 patent"). Acushnet has accused Costco of infringing claim 1 of the '593 patent. Costco's sales
19 of the KS golf ball do not constitute infringement of claim 1 of the '593 patent, however, because
20 at the least, the surface hardness of the inner core of the KS golf ball is not less than either of the
21 outer surface hardness or inner surface hardness of the outer core by 5 Shore C or greater.

22 **ANSWER TO PARAGRAPH 27:** Acushnet Holdings denies each and every allegation in this
23 Paragraph.

24 28. The '593 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims
25 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Patent No. 6,468,169
26 and other prior art publications and activities.

1 **ANSWER TO PARAGRAPH 28:** Acushnet Holdings denies each and every allegation in this
2 Paragraph.

3 29. Costco is entitled to a declaratory judgment that it has not infringed any claims of
4 the '593 patent and that the patent is invalid.

5 **ANSWER TO PARAGRAPH 29:** Acushnet Holdings denies each and every allegation in this
6 Paragraph.

7 **X. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**
8 **U.S. PATENT NO. 8,257,201**

9 30. Costco re-alleges paragraphs 1 through 29 above as if fully set forth herein.

10 **ANSWER TO PARAGRAPH 30:** Acushnet Holdings incorporates herein and re-alleges its
11 answers to Paragraphs 1 through 29.

12 31. Costco is not infringing any valid claims of U.S. Patent No. 8,257,201 ("the '201
13 patent"). Acushnet has accused Costco of infringing claim 1 of the '201 patent. Costco's sales
14 of the KS golf ball do not constitute infringement of claim 1 of the '201 patent, however, because,
15 at the least, the surface hardness of the inner core is not less than either of the outer surface
16 hardness or inner surface hardness of the outer core by 3 Shore D or greater.

17 **ANSWER TO PARAGRAPH 31:** Acushnet Holdings denies each and every allegation in this
18 Paragraph.

19 32. The '201 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims
20 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Patent No. 6,468,169
21 and other prior art publications and activities.

22 **ANSWER TO PARAGRAPH 32:** Acushnet Holdings denies each and every allegation in this
23 Paragraph.

24 33. Costco is entitled to a declaratory judgment that it has not infringed any claims of
25 the '201 patent and that the patent is invalid.

26 **ANSWER TO PARAGRAPH 33:** Acushnet Holdings denies each and every allegation in this
27 Paragraph.

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**XI. REQUEST FOR DECLARATORY JUDGMENT CONCERNING
U.S. PATENT NO. 7,331,878**

34. Costco re-alleges paragraphs 1 through 33 above as if fully set forth herein.

ANSWER TO PARAGRAPH 34: Acushnet Holdings incorporates herein and re-alleges its answers to Paragraphs 1 through 33.

35. Costco is not infringing any valid claims of U.S. Patent No. 7,331,878 (“the ‘878 patent”). Acushnet has accused Costco of infringing the ‘878 patent but has not identified any specific claims. Costco’s sales of the KS golf ball do not constitute infringement of any of the claims of the ‘878 patent, however, because, at the least, the Coefficient of Restitution (COR) for the first three layers of the KS ball is not .003 less than the COR for the finished ball.

ANSWER TO PARAGRAPH 35: Acushnet Holdings denies each and every allegation in this Paragraph.

36. The ‘878 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of WO00/57963 and other prior art publications and activities.

ANSWER TO PARAGRAPH 36: Acushnet Holdings denies each and every allegation in this Paragraph.

37. Costco is entitled to a declaratory judgment that it has not infringed any claims of the ‘878 patent and that the patent is invalid.

ANSWER TO PARAGRAPH 37: Acushnet Holdings denies each and every allegation in this Paragraph.

**XII. REQUEST FOR DECLARATORY JUDGMENT CONCERNING
U.S. PATENT NO. 6,358,161**

38. Costco re-alleges paragraphs 1 through 37 above as if fully set forth herein.

ANSWER TO PARAGRAPH 38: Acushnet Holdings incorporates herein and re-alleges its answers to Paragraphs 1 through 37.

1 39. Costco is not infringing any valid claims of U.S. Patent No. 6,358,161 (“the ‘161
2 patent”). Acushnet has accused Costco of infringing claim 7 of the ‘161 patent. Costco’s sales
3 of the KS golf ball do not constitute infringement of claim 7 of the ‘161 patent, however, because,
4 at the least, dimples on the KS golf ball do not cover more than 80% of the outer surface.

5 **ANSWER TO PARAGRAPH 39:** Acushnet Holdings denies each and every allegation in this
6 Paragraph.

7 40. The ‘161 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims
8 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Patent No. 5,292,132
9 and other prior art publications and activities.

10 **ANSWER TO PARAGRAPH 40:** Acushnet Holdings denies each and every allegation in this
11 Paragraph.

12 41. Costco is entitled to a declaratory judgment that it has not infringed any claims of
13 the ‘161 patent and that the patent is invalid.

14 **ANSWER TO PARAGRAPH 41:** Acushnet Holdings denies each and every allegation in this
15 Paragraph.

16 **XIII. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**
17 **U.S. PATENT NO. 7,887,439**

18 42. Costco re-alleges paragraphs 1 through 41 above as if fully set forth herein.

19 **ANSWER TO PARAGRAPH 42:** Acushnet Holdings incorporates herein and re-alleges its
20 answers to Paragraphs 1 through 41.

21 43. Costco is not infringing any valid claims of U.S. Patent No. 7,887,439 (“the ‘439
22 patent”). Acushnet has accused Costco of infringing claim 1 of the ‘439 patent. Costco’s sales
23 of the KS golf ball do not constitute infringement of claim 1 of the ‘439 patent, however, because,
24 at the least, no “portion of the plurality of recessed dimples [on the KS ball] have a profile defined
25 by the revolution of a catenary curve....”

26 **ANSWER TO PARAGRAPH 43:** Acushnet Holdings denies each and every allegation in this
27 Paragraph.

1 44. The '439 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims
2 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Patent No. 6,796,912,
3 U.S. Patent No. 5,253,872 and other prior art publications and activities.

4 **ANSWER TO PARAGRAPH 44:** Acushnet Holdings denies each and every allegation in this
5 Paragraph.

6 45. Costco is entitled to a declaratory judgment that it has not infringed any claims of
7 the '439 patent and that the patent is invalid.

8 **ANSWER TO PARAGRAPH 45:** Acushnet Holdings denies each and every allegation in this
9 Paragraph.

10 **XIV. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**
11 **U.S. PATENT NO. 7,641,572**

12 46. Costco re-alleges paragraphs 1 through 45 above as if fully set forth herein.

13 **ANSWER TO PARAGRAPH 46:** Acushnet Holdings incorporates herein and re-alleges its
14 answers to Paragraphs 1 through 45.

15 47. Costco is not infringing any valid claims of U.S. Patent No. 7,641,572 ("the '572
16 patent"). Acushnet has accused Costco of infringing claim 1 of the '572 patent. Costco's sales
17 of the KS ball do not constitute infringement of the '572 patent, however, because, at the least,
18 no "portion of the plurality of recessed dimples [on the KS ball] have a profile defined by the
19 revolution of a catenary curve...."

20 **ANSWER TO PARAGRAPH 47:** Acushnet Holdings denies each and every allegation in this
21 Paragraph.

22 48. The '572 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims
23 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Patent No. 6,796,912,
24 U.S. Patent No. 5,575,477, U.S. Patent No. 5,562,552 and other prior art publications and
25 activities.

26 **ANSWER TO PARAGRAPH 48:** Acushnet Holdings denies each and every allegation in this
27 Paragraph.

ACUSHNET HOLDINGS CORPORATION'S ANSWER
AND DEFENSES - 11
Case No. 2:17-cv-00423-RAJ

130947.0001/7038734.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4200
P.O. BOX 91302
SEATTLE, WA 98111-9402
206.223.7000 FAX: 206.223.7107

1 49. Costco is entitled to a declaratory judgment that it has not infringed any claims of
2 the '572 patent and that the patent is invalid.

3 **ANSWER TO PARAGRAPH 49:** Acushnet Holdings denies each and every allegation in this
4 Paragraph.

5 **XV. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**
6 **U.S. PATENT NO. 7,163,472**

7 50. Costco re-alleges paragraphs 1 through 49 above as if fully set forth herein.

8 **ANSWER TO PARAGRAPH 50:** Acushnet Holdings incorporates herein and re-alleges its
9 answers to Paragraphs 1 through 49.

10 51. Costco is not infringing any valid claims of U.S. Patent No. 7,163,472 ("the '472
11 patent"). Acushnet has accused Costco of infringing claim 5 of the '472 patent. Costco's sales
12 of the KS ball do not constitute infringement of the '472 patent, however, because, at the least,
13 the dimples on the KS ball are not "defined by the revolution of a Catenary Curve."

14 **ANSWER TO PARAGRAPH 51:** Acushnet Holdings denies each and every allegation in this
15 Paragraph.

16 52. The '472 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims
17 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of prior art golf balls,
18 including at least five prior art Titleist balls sold by Acushnet, and other prior art publications
19 and activities.

20 **ANSWER TO PARAGRAPH 52:** Acushnet Holdings denies each and every allegation in this
21 Paragraph.

22 53. Costco is entitled to a declaratory judgment that it has not infringed any claims of
23 the '472 patent and that the patent is invalid.

24 **ANSWER TO PARAGRAPH 53:** Acushnet Holdings denies each and every allegation in this
25 Paragraph.

1 **XVI. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**
2 **CLAIM OF FALSE ADVERTISING**

3 54. Costco re-alleges paragraphs 1 through 53 above as if fully set forth herein.

4 **ANSWER TO PARAGRAPH 54:** Acushnet Holdings incorporates herein and re-alleges its
5 answers to Paragraphs 1 through 53.

6 55. Acushnet has accused Costco of false advertising based on its Kirkland Signature
7 guarantee, which is not specific to the KS golf ball, and which states that Kirkland Signature
8 products “meet or exceed the quality standards of leading national brands.”

9 **ANSWER TO PARAGRAPH 55:** Acushnet Holdings denies each and every allegation in this
10 Paragraph.

11 56. Acushnet asserts that the statement is intended to indicate to a reasonable
12 consumer that the KS golf ball is the same or of greater quality as Acushnet’s Pro V1 golf ball.

13 **ANSWER TO PARAGRAPH 56:** Acushnet Holdings denies each and every allegation in this
14 Paragraph.

15 57. Costco has never publicly compared the KS ball with any Acushnet ball, including
16 Acushnet’s Pro V1 golf balls.

17 **ANSWER TO PARAGRAPH 57:** Acushnet Holdings denies each and every allegation in this
18 Paragraph.

19 58. A reasonable consumer would not interpret the Kirkland Signature guarantee as
20 intended to convey a statement of fact about any specific comparisons of quality between the KS
21 ball and any specific manufacturer or ball, including Acushnet and its Pro V1 ball.

22 **ANSWER TO PARAGRAPH 58:** Acushnet Holdings denies each and every allegation in this
23 Paragraph.

24 59. In addition, to the extent a consumer would interpret the Kirkland Signature
25 guarantee in that manner, the statement is true. Many individual golfers and golf ball testers and
26 experts have used and/or tested the KS ball and concluded that it is at least comparable to balls
27 sold by other leading national brands, including Acushnet.

1 **ANSWER TO PARAGRAPH 59:** Acushnet Holdings denies each and every allegation in this
2 Paragraph.

3 60. Costco is entitled to a declaratory judgment that it has not engaged in any false
4 advertising in connection with the KS golf ball.

5 **ANSWER TO PARAGRAPH 60:** Acushnet Holdings denies each and every allegation in this
6 Paragraph.

7 **PRAYER FOR JUDGMENT AND RELIEF**

8 61. Acushnet Holdings denies that Costco is entitled to either the requested relief or
9 any other relief.

10 **DEFENSES**

11 Acushnet Holdings hereby asserts the following defenses without undertaking or
12 otherwise shifting any applicable burdens of proof. Acushnet Holdings reserves the right to
13 assert additional defenses, as warranted by facts revealed through investigation and discovery.

14 **FIRST DEFENSE – LACK OF SUBJECT MATTER JURISDICTION**

15 62. Costco’s Complaint lacks subject matter jurisdiction because no case or
16 controversy exists between Costco and Acushnet Holdings.

17 **SECOND DEFENSE – LACK OF PERSONAL JURISDICTION**

18 63. This Court lacks personal jurisdiction over Acushnet Holdings.

19 **THIRD DEFENSE – FAILURE TO STATE A CLAIM**

20 64. Costco’s Complaint fails to state a claim on which relief can be granted.

21 **FOURTH DEFENSE – UNCLEAN HANDS**

22 65. Costco is not entitled to any relief in this action because it has come to this Court
23 with unclean hands.

24 **FIFTH DEFENSE – NO ATTORNEYS’ FEES**

25 66. Costco cannot prove that this is an exceptional case justifying an award of
26 attorneys’ fees against Acushnet Holdings under 35 U.S.C. § 285 or otherwise.

PRAYER FOR RELIEF

WHEREFORE, Acushnet Holdings prays for judgment and relief as follows:

A. That Costco's Complaint be dismissed with prejudice and that Costco take nothing by way of its Complaint;

B. That this Court award Acushnet Holdings its costs, expenses and attorneys' fees incurred in its defense of this action; and

C. That this Court grant Acushnet Holdings such other relief as it deems just and proper.

JURY DEMAND

Acushnet Holdings demands a trial by jury on all issues so triable.

Dated: August 10, 2017

Respectfully submitted,

LANE POWEL, P.C.

By: /s/ Brian G. Bodine

Brian G. Bodine WSBA #22414

bodineb@lanepowell.com

Adriane M. Scola WSBA #44478

scolaa@lanepowell.com

GIBSON, DUNN & CRUTCHER

Brian A. Rosenthal, *Pro Hac Vice*

barosenthal@gibsondunn.com

Howard S. Hogan, *Pro Hac Vice*

hhogan@gibsondunn.com

Brian K. Andrea, *Pro Hac Vice*

bandrea@gibsondunn.com

Nathan Fonda, *Pro Hac Vice*

nfonda@gibsondunn.com

Attorneys for Plaintiff Acushnet Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10th day of August 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Ramsey M. Al-Salam Nicholas H. Hesterberg Terrance J. Wikberg Attorneys for Plaintiff	ralsalam@perkinscoie.com nhesterberg@perkinscoie.com TWikberg@perkinscoie.com

There are no non-CM/ECF participants.

Executed this 10th day of August 2017, at Seattle, WA.

/s Mary Tappero
Mary Tappero, legal assistant