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7 Attorneys for Defendant, KING SPORTS, INC., a Georgia Corporation

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10
11 CALLAWAY GOLF COMPANY, a Delaware) **Case No. 07-CV 2003 L (POR)**
12 Corporation,)
13 Plaintiff,) **DEFENDANT KING SPORTS, INC.'S,**
14 vs.) **ANSWER TO COMPLAINT**
15) **(JURY DEMANDED)**
16 KING SPORTS, INC., a Georgia) **Complaint Filed: 10/16/07**
17 Corporation; At Golf, an unknown)
18 business entity d/b/a At Golf)
19 Inc.; KEVIN, an individual; M & M)
20 Golf, Inc., an Alabama)
21 Corporation, and DOES 1 to 50,)
22 inclusive.)
23 Defendants.)

24 COMES NOW, DEFENDANT, KING SPORTS, INC., a Georgia Corporation,
25 and answers the Complaint on file herein for itself alone and no
26 others as follows:

27 **I.**

28 ANSWERING PARAGRAPHS 1, 4, 7, 20, 21, 22, 23, 24, 25, 26, 27,
29 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 45, 46, 50,
30 51, 52, 53, 55, 56, 57, 58, 60, 61, 62, 65, 66, 67, 68, AND 69, this
31 answering Defendant denies each and every allegation contained
32 therein and the whole thereof.

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II.

ANSWERING PARAGRAPHS 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 48, 49, AND 64, this answering Defendant lacks sufficient information or belief to enable it to respond to the allegations contained in those paragraphs, and upon that bases, denies each and every allegation contained therein and the whole thereof.

III.

ANSWERING PARAGRAPHS 38, 43, 47, 54, 59 AND 63, This answering Defendant incorporates its responses to all of the paragraphs which were incorporated in the herein numbered paragraphs as it fully set forth.

AS AND FOR A SEPARATE AND DISTINCT FIRST AFFIRMATIVE DEFENSE TO THE COMPLAINT, this answering Defendant alleges that the plaintiff's complaint fails to state facts sufficient to constitute a cause of action.

AS AND FOR A SEPARATE AND SECOND AFFIRMATIVE DEFENSE, this answering Defendant alleges that there is no market confusion of any products offered by this answering Defendant as compared to any products offered by plaintiff.

AS AND FOR A SEPARATE AND THIRD AFFIRMATIVE DEFENSE, this answering Defendant alleges its products are not substantially similar to any products offered by plaintiff.

AS AND FOR A SEPARATE AND FOURTH AFFIRMATIVE DEFENSE, this answering Defendant alleges that any similarity between any products offered by this Defendant and the plaintiff is mere coincidence and is incapable of creating any confusion in the market place.

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1 AS AND FOR A SEPARATE AND FIFTH AFFIRMATIVE DEFENSE, this
2 answering Defendant alleges that its actions constitute nothing more
3 than good faith competition and the plaintiff herein cannot stifle
4 such competition.

5 AS AND FOR A SEPARATE AND SIXTH AFFIRMATIVE DEFENSE, this
6 answering Defendant alleges the allegations contained within the
7 complaint are barred by the doctrine of laches.

8 AS AND FOR A SEPARATE AND SEVENTH AFFIRMATIVE DEFENSE, this
9 answering Defendant alleges the allegations in the complaint are
10 barred by the doctrine of unclean hands.

11 AS AND FOR A SEPARATE AND EIGHTH AFFIRMATIVE DEFENSE, this
12 answering Defendant alleges that the technology and material use in
13 the products marketed by this answering Defendant are within the
14 public domain, are not sufficiently unique as to be subject to
15 protection by patent or trademark.

16 AS AND FOR A SEPARATE AND NINTH AFFIRMATIVE DEFENSE, this
17 answering Defendant alleges that any infringement or delusion was
18 inadvertent and innocent.

19 Wherefore, this answering Defendant prays judgment as follows:

- 20 1. That plaintiff take nothing by its action;
- 21 2. That Defendant be awarded reasonable cost of suit
22 incurred herein;
- 23 3. That Defendant be awarded attorney's fees to defend this
24 action and;

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4. For such other and further relief as this court may deem
just and proper.

Dated: December 5, 2007 SHIFFLET, KANE & KONOSKE, LLP

By: s/Gregory Konoske
Gregory P. Konoske, Esq.
Attorney for Defendant, KING SPORTS,
INC., a Georgia Corporation
gkonoske@shiffletlaw.com

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DEMAND FOR JURY

Pursuant to FRCT 38(b) this answering Defendant demands Trial by Jury on those issues to which there is a legal right to Trial by Jury.

Dated: December 5, 2007 SHIFFLET, KANE & KONOSKE, LLP

By: s/Gregory P. Konoske
Gregory P. Konoske, Esq.
Attorney for Defendant, KING SPORTS,
INC., a Georgia Corporation
gkonoske@shiffletlaw.com

1 CALLAWAY GOLF COMPANY vs. KING SPORTS, INC. et al.

UNITED STATES DISTRICT COURT

2 Case No.: 07 CV 2003 L(POR)

3 **PROOF OF SERVICE**

4 I, CRYSTAL C. TURNER declare as follows:

5 I am over the age of eighteen years and not a party to the within
6 entitled action. I am employed in the County of San Diego, State
7 of California, within which county and state the subject mailing
8 occurred. My business address is 16880 West Bernardo Drive, Suite
9 250, San Diego, California 92127.

10 On **December 5, 2007**, I electronically filed the document(s)
11 described as: **DEFENDANT KING SPORTS, INC.'S, ANSWER TO COMPLAINT and
12 (JURY DEMANDED)** with the Clerk of the United States District Court
13 for the Southern District of California, using the CM/ECF System.
14 The Court's CM/ECF System will send an email notification of the
15 foregoing filing to the following parties and counsel of record who
16 are registered with the Court's CM/ECF System:

17 Kenneth G. Parker, Esq.
18 Robert G. Loewy, Esq.
19 **TEUTON, LOEWY & PARKER, LLP**
20 3121 Michelson Drive, suite 250
21 Irvine, CA 92612

Attorney for Plaintiffs:
CALLAWAY GOLF COMPANY
Tel: (949) 442-7100
Fax: (949) 442-7105

22 [] **BY MAIL.** I am readily familiar with the business practices at
23 my place of business for collection and processing of
24 correspondence for mailing with the United States Postal
25 Service and the correspondence shall be deposited with the
26 United State Postal Service this same day in the ordinary
27 course of business pursuant Code of Civil Procedure §1013(a).

28 [] **BY FACSIMILE TRANSMISSION.** The counsel or interested party
authorized to accept service, by whose name an **asterisk (*)** is
placed, was also forwarded a copy of said document(s) by
facsimile transmission at the telefax number corresponding
with his name and address on the attached service list.

[X] **BY ELECTRONIC SERVICE VIA CM/ECF SYSTEM.** In accordance with
the electronic filing procedures of this Court, service has
been effected on the aforesaid party(ies) above, whose counsel
of record is a registered participant of CM/ECF, via
electronic service through the CM/ECF System.

I declare under penalty of perjury under the laws of the State of
California that the foregoing is true and correct.

Executed on: December 5, 2007

s/ Crystal Turner
CRYSTAL C. TURNER