

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

\_\_\_\_\_  
ROGER CLEVELAND GOLF )  
COMPANY, INC., )  
Plaintiff, )

v. )

Civil Action No.: 09-10906

JOSEPH S. CINICOLO, and )  
DANIEL CINICOLO, )  
Defendants. )  
\_\_\_\_\_)

**COMPLAINT AND JURY TRIAL DEMAND**

Plaintiff Roger Cleveland Golf Company, Inc., ("Cleveland Golf"), by its undersigned attorneys, states for its Complaint against Joseph S. Cinicolo and Daniel Cinicolo (collectively, the "Cinicolos"), upon knowledge with respect to its own acts and upon information and belief with respect to all other matters, as follows:

**NATURE OF ACTION**

1. This is an action for infringement and dilution under the trademark laws of the United States, 15 U.S.C. §§ 1051 *et seq.*, (the "Lanham Act"); for tortious interference with advantageous economic relations, conspiracy, fraud, and trademark infringement under Massachusetts common law; and for unfair and deceptive trade practices under Massachusetts General Laws Chapter 93A.
2. These claims are brought as the result of the Cinicolos' knowing and intentional misrepresentations to purchasers of authentic golf clubs manufactured by Cleveland Golf. The Cinicolos have falsely asserted that (1) they received their golf clubs directly from Cleveland Golf, and (2) that they are authorized distributors of Cleveland Golf's

products. These misrepresentations to purchasers are in violation of both Federal and state laws.

### JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of the Lanham Act claims under 15 U.S.C. § 1121, 28 U.S.C. §§ 1331, 1338(a) and (b). The Court has jurisdiction over the remaining claims under 28 U.S.C. §§ 1338(b) and 1367, because these remaining claims are joined with substantial and related claims under the Trademark Laws of the United States, 15 U.S.C. § 1051 et. seq., and because the claims are so related to the federal claims that they form part of the same case and controversy.
4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because Plaintiff's claims arise out of conduct that took place in Massachusetts and because Defendants have transacted business and engaged in wrongful conduct within the Commonwealth of Massachusetts and have therefore had sufficient contacts with Massachusetts to establish personal jurisdiction in that venue. Venue is therefore proper before this Court.

### PARTIES

5. Plaintiff, Cleveland Golf, is a California corporation with its principal place of business located at 5601 Skylab Road, Huntington Beach, California, 92647. Cleveland Golf is a forerunner in golf club innovation and is widely recognized as the golf industry's leading manufacturer of wedges, earning the distinction of being the "number one" wedge in golf.
6. On information and belief, Defendant Joseph S. Cinicolo ("Joseph") is an individual with an address of 26 Beechwood Drive in Congers, New York. Joseph registered and uses the eBay ID *tallman4500* to sell Cleveland Golf's clubs online on [www.ebay.com](http://www.ebay.com)

("eBay"). Joseph has conducted business in the Commonwealth of Massachusetts by selling at least one Cleveland Golf product to a customer within the Commonwealth of Massachusetts. On information and belief, Joseph has also sold Cleveland Golf products to other customers in the Commonwealth of Massachusetts.

7. On information and belief, Defendant Daniel Cinicolo ("Daniel") is an individual with an address of 6 Alden Place, Apartment 1D, in Bronxville, New York. Daniel registered and uses the eBay ID *miscountdiscountgolf* to sell Cleveland Golf's clubs on eBay. Daniel has conducted business in the Commonwealth of Massachusetts by selling at least one Cleveland Golf product to a customer within the Commonwealth of Massachusetts. On information and belief, Daniel has also sold Cleveland Golf products to other customers in the Commonwealth of Massachusetts.



**THE CLEVELAND GOLF TRADEMARKS AND  
CLEVELAND GOLF AUTHORIZED DEALER NETWORK**

*Cleveland Golf Trademarks*

8. Cleveland Golf manufactures high-quality golf clubs, equipment, a clothing line, and is world-renowned for its production of high quality golf clubs.
9. Cleveland Golf products are sold in Massachusetts, the United States, and throughout the world through a network of authorized dealers.
10. Since at least as early as 1979, long prior to the Cinicolos' acts alleged herein, Cleveland Golf and/or its predecessors in interest have been continuously engaged in the business of manufacturing and selling products (either directly or indirectly), throughout the United States and the world, under the trademark "Cleveland Golf" and variations thereof.

11. Cleveland Golf is the owner of the following trademark registrations relevant to this action and registered on the Principal Register of the United States Patent and Trademark Office (hereinafter, the "Cleveland Golf trademarks"):

Mark	Registration No.	Registration Date	Class/Goods
CLEVELAND GOLF	3,286,218	August 28, 2007	18. Carry all bags, duffel bags, backpacks, shoe bags for travel, and umbrellas. 24. Towels. 25. Caps, hats, visors, shirts, wind shirts, wind vests, rain jackets, rain vests and rain pants. 28. Golf gloves; golf clubs, golf balls, golf club heads, golf club shafts, golf club grips, golf bags, golf bag covers, golf ball shag bags used to store golf balls, golf club head covers, and golf ball bags.
CLEVELAND	2,070,054	June 10, 1997	18. Carry all bags and umbrellas. 25. Golf apparel, namely, shirts, caps, visors, sweatshirts and sweater vests. 28. Golf clubs, golf club heads, golf club shafts, golf club grips, golf bags, golf bag covers, and golf club head covers.
CLEVELAND (stylized) <i>Cleveland</i>	2,070,051	June 10, 1997	18. Carry all bags and umbrellas. 25. Golf apparel, namely, shirts, caps,

Mark	Registration No.	Registration Date	Class/Goods
			visors, sweatshirts and sweater vests. 28. Golf clubs, golf club heads, golf club shafts, golf club grips, golf bags, golf bag covers, and golf club head covers.
HIBORE	3,262,726	July 10, 2007	28. Golf clubs and golf club heads.
TOUR ACTION	3,036,153	December 27, 2005	28. Golf balls.
GUNMETAL	2,793,222	December 9, 2003	28. Golf clubs.
CG (stylized) 	2,302,251	December 21, 1999	28. Golf clubs, and golf club heads, namely, woods, irons and putters.
HIGH BORE	2,269,074	August 10, 1999	28. Golf clubs, namely, metal wood-type golf clubs.
THE LAUNCHER	1,511,907	November 8, 1988	28. Golf clubs.
TOUR ACTION	1,496,882	July 19, 1988	28. Golf clubs.
C (stylized) 	1,306,203	November 20, 1984	28. Golf clubs.
CG12	3,501,697	September 16, 2008	28. Golf clubs.
CG14	3,575,685	February 17, 2009	28. Golf clubs.
Zip Grooves	3,463,468	July 8, 2008	28. Golf clubs.

12. Cleveland Golf's federal trademark registrations were duly and legally issued, are valid and subsisting, incontestable, famous and constitute *prima facie* evidence of Cleveland Golf's exclusive ownership of the Cleveland Golf trademarks.
13. Upon information and belief, the use of the Cleveland Golf trademarks by the Cinicolos commenced long after Cleveland Golf's adoption and use of its Cleveland Golf trademarks on products.
14. Cleveland Golf has taken substantial steps to ensure that all products bearing the Cleveland Golf trademarks are of the highest quality. As a result, the Cleveland Golf trademarks have become widely known and are recognized throughout the United States and the world as a symbol of high quality products.
15. As a result of extensive sales, widespread availability, and continuous advertising of Cleveland Golf brand products, the Cleveland Golf trademarks have become well recognized by the public.
16. Many members of the Professional Golf Association ("PGA") and the Ladies Professional Golf Association ("LPGA") use and endorse Cleveland Golf products.
17. Cleveland Golf has spent vast sums of money on designing, manufacturing, and marketing its products under the Cleveland Golf name, both nationally and internationally.
18. Customers throughout the United States and throughout the world recognize the Cleveland Golf name and logo, upon which they rely for high quality products and attentive customer service.

19. Cleveland Golf is vigilant in its protection of the Cleveland Golf trademarks, and spends substantial amounts of money each year to protect and promote those trademarks.

#### *Cleveland Golf Authorized Dealer Network*

20. To market its various products lines, Cleveland Golf has developed a nationwide network of authorized dealers ("Authorized Dealers"). Authorized Dealers are prohibited from transferring Cleveland Golf's products to anyone other than end-users.
21. A primary purpose of this restriction is curtailing "free-riding." Free-riding occurs when a customer goes to an Authorized Dealer to take advantage of its pre-sale presentation, expertise, and advice in order to determine what product to purchase, but then goes to a non-authorized dealer, similar to the Cinicolos, to purchase the item.
22. Cleveland Golf has in the past and continues to designate significant resources to develop and maintain its products' national and international image. Through its network of Authorized Dealers, Cleveland Golf has fostered a recognized image of quality and customer support.

#### THE CINICOLOS' WRONGFUL ACTS

23. Upon information and belief, the Cinicolos operate a successful online eBay business using the eBay user IDs *tallman4500* and *miscountdiscountgolf*. Using these eBay IDs, the Cinicolos sell, amongst other items, large quantities of golf clubs.
24. Since 2008, the Cinicolos have sold over ten-thousand (10,000) Cleveland golf clubs, totaling \$1.7 million in sales, on eBay to customers around the world.
25. A private investigator retained by Cleveland Golf purchased Cleveland Golf's clubs from the Cinicolos on eBay. In consummating the sale, the Cinicolos stated that they

received their clubs directly from Cleveland Golf and that they were a Cleveland Golf Authorized Dealer.

26. Cleveland Golf has received emails from customers who claim that the Cinicolos have given them similar assurances, and that the Cinicolos have held themselves out as Authorized Dealers of Cleveland Golf who purchase their clubs directly from Cleveland Golf.
27. The Cinicolos are not, and never have been, Authorized Dealers of Cleveland Golf.
28. The Cinicolos do not receive their clubs directly from Cleveland Golf. Upon information and belief, the Cinicolos obtain their clubs from Authorized Dealers who are transshipping the clubs to the Cinicolos in breach of their distribution agreements with Cleveland Golf.
29. In order to bring credibility to a faceless internet transaction, the Cinicolos intentionally associated themselves with the goodwill of the Cleveland Golf name and the credibility of the Cleveland Golf Authorized Dealer network.

**COUNT I**  
**Federal Unfair Competition and**  
**False Designation of Origin under 15 U.S.C. § 1125(a)**

30. Plaintiff hereby realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.
31. The Cinicolos' clubs bearing the Cleveland Golf mark(s) have been advertised and distributed in the United States.
32. The Cinicolos are falsely advertising these clubs as being sold by an Authorized Dealer. Furthermore, they are falsely stating to customers that they receive these clubs directly



from Cleveland Golf. As such, the Cinicolos' conduct is likely to cause confusion in the trade and among the general public as to the origin or sponsorship of the golf clubs.

33. As a direct and proximate result of Defendants' actions, Plaintiff has suffered damages.
34. Defendants' use of the Cleveland Golf trademarks constitutes the use of false or misleading designations of origin and false descriptions and representations, including words or other symbols which tend to falsely describe or represent such goods and have caused such goods to enter into commerce with the Cinicolos' full knowledge of the falsity of such designations of origin (in violation of 15 U.S.C. § 1125(a) (§ 43(a) of the Lanham Act).
35. Such conduct on Defendants' part has caused and will continue to cause irreparable injury and damages to Plaintiff.

## **COUNT II**

### **Trademark Dilution under 15 U.S.C. § 1125(c)**

36. Plaintiff hereby realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.
37. Use by the Cinicolos of the Cleveland Golf trademarks in connection with the misrepresentations to customers has lessened, and will continue to lessen, the capacity of Cleveland Golf's famous and distinctive trademarks to distinguish Cleveland Golf's products and services from those of others, and has diluted the distinctive quality of Cleveland Golf's famous and distinctive marks.
38. The Cinicolos' acts constitute dilution in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

39. The Cincolos' acts have caused and will continue to cause Cleveland Golf to suffer irreparable harm.

**COUNT III**  
**Tortious Interference with Advantageous  
Economic Relations Under Massachusetts Common Law**

40. Plaintiff hereby realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.
41. The Cincolos' activities as described above constitute tortious interference with advantageous economic relations.
42. The Cincolos' actions described above have, at all times relevant to this action, been willful and/or knowing.
43. The Cincolos' actions described above have, at all times relevant to this action, been with full knowledge that Cleveland Golf Authorized Dealers were authorized to sell Cleveland golf clubs only to end-users. Despite this knowledge, the Cincolos continued to interfere with Cleveland Golf's relationship with its dealers by inducing Cleveland Golf Authorized Dealers to transship golf clubs to them.
44. As a direct and proximate result of Cincolos' actions alleged above, Cleveland Golf has been damaged and will continue to be damaged.

**COUNT IV**  
**Civil Conspiracy Under Massachusetts Common Law**

45. Plaintiff hereby realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.
46. The Cincolos acted in concert and participated in a common plan to achieve the unlawful acts as described above.

47. The Cinicolos' actions as described above caused harm to Cleveland Golf that could not have been caused by either one acting alone.
48. The Cinicolos' actions as described above have at all times relevant to this action been willful and/or knowing.
49. The Cinicolos' actions as described above constitute a civil conspiracy, which employed unlawful conduct to cause damage to Plaintiff.
50. As a direct and proximate result of the Cinicolos' actions and civil conspiracy as described above, Cleveland Golf has been damaged and will continue to be damaged.

#### COUNT V

#### **Unfair And Deceptive Trade Practices Under M.G.L. c. 93A**

51. Plaintiff hereby realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.
52. On or about August 26, 2008, Plaintiff, through its counsel, sent Defendant Joseph S. Cinicolo a written demand for relief, identifying and reasonably describing his unfair or deceptive acts and/or practices.
53. As of this date, Defendant Joseph S. Cinicolo has failed or refused to respond to Plaintiff's August 26, 2008 letter.
54. On or about February 18, 2009, Plaintiff, through its counsel, sent Defendant Daniel Cinicolo a written demand for relief, identifying and reasonably describing his unfair or deceptive acts and/or practices.
55. As of this date, Defendant Daniel Cinicolo has failed or refused to respond to Plaintiff's February 18, 2009 letter.

56. The Cinicolos' unlawful and willful misrepresentations regarding their dealer status and source of their golf clubs in connection with the sale of their Cleveland Golf clubs constitutes unfair methods of competition and unfair and deceptive acts and practices in violation of Massachusetts law.
57. Such conduct on the Cinicolos' part has caused and will continue to cause damages to Cleveland Golf.

**COUNT VI**  
**Common Law Trademark Infringement**

58. Plaintiff hereby realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.
59. The Cinicolos' activities have created and continue to create confusion by the public regarding Cleveland Golf's trademarks and constitute common law trademark infringement.
60. Such conduct on the Cinicolos' part has caused and will continue to cause irreparable injury to Cleveland Golf, for which Cleveland Golf has no adequate remedy at law.
61. Such conduct on the Cinicolos' part has caused and will continue to cause damages to Cleveland Golf.

WHEREFORE, Plaintiff Cleveland Golf requests that this Honorable Court:

1. Enter judgment in Plaintiff Cleveland Golf's favor against Defendant Joseph S. Cinicolo and Defendant Daniel Cinicolo on all Counts in an amount to be proved at trial;
2. Award Plaintiff Cleveland Golf its reasonable attorneys' fees and costs as mandated by M.G.L. c. 93A;

3. Award multiple damages under the Lanham Act, under Massachusetts common law, and under M.G.L. c. 93A;
4. Award interest; and
5. Award such other relief as the Court deems meet and just.

**JURY TRIAL CLAIM**

Plaintiff Cleveland Golf claims a trial by jury on all issues so triable.

Respectfully submitted,  
Plaintiff,  
ROGER CLEVELAND GOLF COMPANY,  
INC.,  
by its attorneys,

*/s/ Christopher S. Finnerty*

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