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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

EXXON MOBIL CORPORATION,)	
)	Civil Action No. _____
Plaintiff,)	
)	COMPLAINT FOR TRADEMARK
v.)	INFRINGEMENT, UNFAIR
)	COMPETITION, DILUTION, AND
X ON WIRELESS CORPORATION,)	UNJUST ENRICHMENT
)	
Defendant.)	Filed by Plaintiff

For its Complaint, Plaintiff Exxon Mobil Corporation (“Exxon”), appearing through the undersigned counsel, alleges as follows based on present knowledge, information, and belief:

PARTIES

1. Exxon is a New Jersey corporation having a business address of 5959 Las Colinas Boulevard, Irving, Texas 75039.

2. Defendant X On Wireless Corporation (“X On”) is a Washington corporation having a business address of 3500 SE 175th Avenue, Vancouver, Washington 98683.

NATURE OF THIS ACTION; JURISDICTION OF THE COURT

3. This is an action for trademark infringement, dilution, unfair competition, and unjust enrichment under the Trademark Act of 1946, as amended, 15 U.S.C. § 1051 *et seq.* (“Lanham Act”), and the laws of the State of Washington.

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1 4. This Court has jurisdiction over the subject matter of this action under 15 U.S.C.
2 § 1121 and 28 U.S.C. §§ 1331, 1338(a) and 1338(b), and has supplemental jurisdiction under
3 28 U.S.C. § 1367(a) over Exxon's claims under Washington law.

4 5. The matter in controversy in this action exceeds the sum or value of \$75,000,
5 exclusive of interest and costs, and is between citizens of different states. Accordingly, this
6 Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332.

7 **FACTS**

8 **A. Exxon and Its EXXON Marks**

9 6. Exxon is one of the largest and most well-known companies in the world. Since at
10 least as early as 1967, Exxon has continuously used the mark EXXON and various other marks
11 incorporating the mark EXXON in connection with the sale and promotion of gasoline, motor
12 oils, other petroleum products, chemical products, and various other products and services.
13 Exxon has also used "Exxon" as part of its company name since November 1, 1972.

14 7. In 1999 Exxon, then named Exxon Corporation, changed its corporate name to
15 Exxon Mobil Corporation and adopted the trade name and mark EXXONMOBIL, each of which
16 incorporates the name and mark EXXON. Exxon continues to use the mark EXXON extensively
17 and also offers some of its products and services under the mark EXXONMOBIL. Exxon's
18 marks EXXON and EXXONMOBIL, including design forms of those marks, are hereinafter
19 referred to collectively as its "EXXON Marks.

20 8. Exxon owns numerous valid and subsisting United States Trademark Registrations
21 covering its EXXON Marks, including Reg. Nos. 902044, 968512, 2791743, and many others.
22 Copies of these listed registrations are attached as Exhibit A.

23 9. Exxon has invested millions of dollars over the past four decades in advertising and
24 promoting its EXXON Marks and the goods and services sold under those marks, with the result
25 that the purchasing public has come to know, rely on, and recognize the goods and services of
26 Exxon by those marks. Exxon has established valuable goodwill in the EXXON Marks,
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1 individually and collectively. As a result, the EXXON Marks have become extremely well-
2 known, recognized marks and corporate identifiers of Exxon among the general public.

3 10. Through Exxon's extensive use and promotion of its EXXON Marks, consumers
4 have come to recognize the EXXON Marks as famous marks and to associate those marks
5 uniquely with Exxon and its goods and services.

6 11. For more than 25 years, Exxon's stock ticker symbol on the New York Stock
7 Exchange was XON. Since late 1999, when Exxon's name changed from Exxon Corporation to
8 ExxonMobil Corporation, Exxon's stock ticker symbol has been XOM. Investors and many
9 other members of the public identify these stock ticker symbols with Exxon.

10 **B. Defendant and Its Infringing Activities**

11 12. On information and belief, X On provides a variety of goods and services relating to
12 the electrical, security, and communications fields under the mark "X ON." X On also has
13 registered and is using the domain names xonwireless.com, xonco.com, and xoncorporation.com
14 in connection with the offer of these goods and services. Selected print-outs from X On's
15 website at www.xoncorporation .com are attached as Exhibit B.

16 13. X On has registered and applied to register the mark X ON and formatives, as
17 follows:

18 (a) Registration No. 3,395,882, issued March 11, 2008 for the mark X ON for a long
19 list of goods and services in Classes 9 and 35 broadly relating to the electrical and
20 business consultation fields, and for various services in Class 42 relating to electrical,
21 mechanical, and energy technologies and including "development of technologies and the
22 fabrication of circuits for . . . automotive products, agricultural equipment, power tools,
23 energy conversion systems that work on renewable and non-renewable energy sources;
24 and all other electronic and electrical products."

25 (b) Application Serial No. 78/542,894 for the mark X ON WIRELESS, filed January 6,
26 2005 as an intent-to-use application, and covering a long list of goods and services in
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1 Classes 9, 38, and 42, broadly relating to the electrical, security, and communications
2 fields.

3 (c) Application Serial No. 78/613,719 for the mark X ON CORPORATION, filed on
4 April 21, 2005 as an intent-to-use application, and covering various services in Class 42
5 relating to electrical, mechanical, and energy technologies and including “development of
6 technologies for . . . automotive products, agricultural equipment, power tools, energy
7 conversion systems that work on renewable and non-renewable energy sources, and all
8 other electronic and electrical products.”

9 Collectively, these three marks are referred to herein as the “X ON Marks.” Copies of print-outs
10 from the U.S. Patent and Trademark Office (“PTO”) website relating to the X ON Marks are
11 attached as Exhibit C.

12 14. A representative of X On has stated under oath that X On is using the mark X On in
13 commerce for all of the goods and services listed in Registration No. 3,395,882. X On claims a
14 first use date of June 17, 2006 for the services recited in Classes 35 and 42, and a first use date of
15 September 22, 2007 for the goods recited in Class 9.

16 15. Exxon used and registered its EXXON Marks, and those marks became famous, long
17 before X On first used any of the X ON Marks or filed its applications to register those marks.

18 16. The X ON Marks are both visually and phonetically similar to Exxon’s EXXON
19 Marks and to Exxon’s stock ticker symbols. In particular, the “X ON” portion of the X ON
20 Marks is phonetically identical to the famous mark EXXON.

21 17. Exxon is not connected in any way with X On or the use by X On of the X ON
22 Marks.

23 18. Exxon has not given X On permission or approval to use or register the X ON
24 Marks.

25 **C. Effect of Defendant’s Activities**

26 19. Exxon’s fanciful and famous EXXON Marks individually and collectively have a
27 reputation among consumers such that when X On uses the X ON Marks for the goods and
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1 services identified in its applications and registration, consumers will presume a connection with
2 Exxon.

3 20. X On's unauthorized use of the X ON Marks in the manner described above is likely
4 to cause confusion, to cause mistake, and/or to deceive the public as to some affiliation,
5 connection, or association of X On with Exxon or as to the origin, sponsorship, or approval of X
6 On's goods and services by Exxon.

7 21. X On's unauthorized use of the X ON Marks in the manner described above is likely
8 to harm consumers by confusing and deceiving them into mistakenly believing that goods or
9 services advertised or provided by X On come from, or are associated with or approved by
10 Exxon.

11 22. X On's unauthorized use of the X ON Marks in the manner described above enables
12 X On to trade on and receive the benefit of goodwill built up by Exxon at great labor and
13 expense over many years, and to gain acceptance for its business not solely on its own merits,
14 but on the reputation and goodwill associated with Exxon's marks, products, and services.

15 23. X On's unauthorized use of the X ON Marks in the manner described above
16 tarnishes, blurs, and dilutes the distinctive quality of each of the EXXON Marks.

17 24. X On's unauthorized use of the X ON Marks in the manner described above unjustly
18 enriches X On at Exxon's expense.

19 25. X On's unauthorized use of the X ON Marks in the manner described above removes
20 from Exxon the ability to control the nature and quality of products and services provided under
21 its marks, and places the valuable reputation and goodwill of Exxon in the hands of X On, over
22 which Exxon has no control.

23 26. X On's unauthorized use of the mark X ON Marks in the manner described above
24 began long after Exxon had developed rights in its EXXON Marks and long after these marks
25 became famous.

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1 27. X On's unauthorized use of the X ON Marks in the manner described above
2 constitute unfair methods of competition and unfair and deceptive acts in the conduct of trade
3 and commerce by X On.

4 28. Unless restrained by this Court, these acts of X On will continue, and they will
5 continue to cause irreparable injury to Exxon and to the public for which there is no adequate
6 remedy at law.

7 **COUNT I: FEDERAL TRADEMARK INFRINGEMENT**

8 29. Exxon repeats the allegations above as if fully set forth herein.

9 30. The acts of X On complained of herein constitute trademark infringement in
10 violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

11 31. X On's acts complained of herein have been malicious, fraudulent, deliberate,
12 willful, intentional, and in bad faith, with full knowledge and conscious disregard of Exxon's
13 rights in its EXXON Marks, and with an intent to trade on the goodwill associated with those
14 marks. In view of the egregious nature of X On's infringement, this is an exceptional case
15 within the meaning of 15 U.S.C. § 1117(a).

16 **COUNT II: FEDERAL UNFAIR COMPETITION**

17 32. Exxon repeats the allegations above as if fully set forth herein

18 33. The acts of X On complained of herein constitute unfair competition in violation of
19 Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

20 **COUNT III: DILUTION UNDER FEDERAL LAW**

21 34. Exxon repeats the allegations above as if fully set forth herein.

22 35. The acts of X On complained of herein constitute trademark dilution by blurring and
23 tarnishment in violation of the Trademark Dilution Revision Act, 15 U.S.C. § 1125(c).

24 36. X On willfully intended to trade on Exxon's reputation and to cause such dilution.

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COUNT IV: TRADEMARK INFRINGEMENT

UNDER THE COMMON LAW OF WASHINGTON

37. Exxon repeats the allegations above as if fully set forth herein.

38. The acts of X On complained of herein constitute trademark infringement in violation of the common law of Washington. Such infringement has been willful and malicious.

COUNT V: UNFAIR COMPETITION UNDER WASHINGTON LAW

39. Exxon repeats the allegations above as if fully set forth herein.

40. The acts of X On complained of herein constitute unfair competition in violation of WASH. REV. CODE § 19.86.020.

COUNT VI: DILUTION UNDER WASHINGTON LAW

41. Exxon repeats the allegations above as if fully set forth herein.

42. The acts of X On complained of herein constitute dilution of the distinctive quality of the EXXON Marks in violation of WASH. REV. CODE § 19.77.160.

43. X On willfully intended to trade on Exxon’s reputation and to cause such dilution.

COUNT VII: UNJUST ENRICHMENT

44. Exxon repeats the allegations above as if fully set forth herein.

45. The acts of X On complained of herein constitute unjust enrichment of X On at the expense of Exxon in violation of the common law of Washington.

PRAYER

WHEREFORE, Exxon prays that:

- (a) X On be ordered to change the name of its business X On Wireless Corporation to another name that does not incorporate “X On” or any other term confusingly similar to any of the EXXON Marks;

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- 1 (b) X On, X On's agents, servants, employees, attorneys, and all those persons in
- 2 active concert or participation with them, be permanently enjoined from using the
- 3 term "X ON" and any other term confusingly similar to any of the EXXON Marks
- 4 as all or any part of any name or mark (including any domain name) and from
- 5 using any name or mark (including any domain name) which, when used on or in
- 6 connection with X On's goods or services, is likely to cause confusion or mistake
- 7 about the source, sponsorship or affiliation of X On's goods and services in
- 8 relation to Exxon's goods and services;
- 9 (c) X On be ordered to transfer to Exxon the domain names xoncorporation.com and
- 10 xonwireless.com;
- 11 (d) X On be ordered to file with this Court and to serve upon Exxon, within 30 days
- 12 after the entry and service on X On of an injunction, a report in writing and under
- 13 oath setting forth in detail the manner and form in which X On has complied with
- 14 the injunction;
- 15 (e) Exxon recover all damages it has sustained as a result of X On's activities and
- 16 that said damages be trebled;
- 17 (f) An accounting be directed to determine X On's profits resulting from its activities
- 18 and that such profits be paid over to Exxon, increased as the Court finds to be just
- 19 under the circumstances of this case;
- 20 (g) Exxon recover its reasonable attorney fees;
- 21 (h) Exxon recover the costs of this action, and pre- and post-judgment interest; and

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(i) Exxon recover such other relief as the Court may deem appropriate.

Dated: October 27, 2008

Respectfully submitted,

/s/ Owen W. Dukelow

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