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13	UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON		
14	AT SEATTLE		
15	AT SEATTLE		
16	HELLY HANSEN (U.S.) Inc.,	No. 2:10-cv-632	
17	Plaintiff,	COMPLAINT FOR DECLARATORY	
18	V.	RELIEF	
19 20	ECOLAB USA, Inc., a Delaware Corporation; ECOLAB, Inc., a Delaware Corporation,	JURY DEMAND	
21	Defendants.		
22			
23	INTRODUCTION		
24			
25 26	This is an action for declaratory relief sought by Helly Hansen (U.S.) Inc., ("Helly Hansen") against Defendants, Ecolab, Inc. and Ecolab USA, Inc. (collectively referred to herein as "Ecolab").		
26	against Defendants, Ecolab, Inc. and Ecolab USA	, find. (contectively referred to herein as Ecolab).	
	COMPLAINT FOR DECLARATORY RELIEF -1- Case No. 2:10-cv-632 K:\2019025\00031\17096_RAW\17096P26J4	K&L GATES LLP 618 WEST RIVERSIDE AVENUE, #.300 SPOKANE, WA 99201-0602 TELEPHONE: (509) 624-2100 FACSIMILE: (509) 456-0146	

As set forth herein, Ecolab, Inc. claims Helly Hansen is infringing and diluting Ecolab's registered trademark "Ecolab," which Ecolab, Inc. claims to own for goods and services related to the sanitation industry. Helly Hansen denies all allegations and contends there is no actionable trademark infringement or trademark dilution caused by Helly Hansen's use of its "Ekolab" trademark on its high-quality outdoor sporting apparel and related products. Ecolab has not indicated that it intends to file suit against Helly Hansen regarding its alleged infringement. Ecolab has, however, declared it has superior rights to those of Helly Hansen and has requested that Helly Hansen stop using the Ekolab mark on its clothing line. Accordingly, the parties have adverse legal interests and there is a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment in favor of Helly Hansen.

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I. PARTIES, JURISDICTION & VENUE

1.1 Plaintiff Helly Hansen (U.S.) Inc. is a corporation organized and existing under the laws of the State of Washington, with its principal place of business located in Auburn, Washington. Helly Hansen is a globally-known manufacturer of high-quality outdoor sports apparel, including a line of apparel products marketed and sold under both the names "HellyHansen" (or "HH") and "Ekolab." Its products, including the Ekolab product line at issue, are sold throughout this judicial district, the country, and the world. Helly Hansen is a well-known brand name and the company has tremendous goodwill as evidenced by numerous industry awards and consumer recognition of, and appreciation for, Helly Hansen's goods.

12 Defendant Ecolab, Inc. is organized and existing under the laws of the State of Delaware, with its principal place of business in St. Paul, Minnesota. On information and belief, Ecolab, Inc. is registered with the Washington Secretary of State to do business in this state, maintains offices in this judicial district, as well as a sales force, and provides extensive goods and COMPLAINT FOR DECLARATORY RELIEF -2-K&L GATES LLP Case No. 2:10-cv-632 618 WEST RIVERSIDE AVENUE, #.300 SPOKANE, WA 99201-0602 K:\2019025\00031\17096_RAW\17096P26J4 TELEPHONE: (509) 624-2100 FACSIMILE: (509) 456-0146

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services to the consuming public in this judicial district under the "Ecolab" name. As set forth herein, attorneys for Ecolab, Inc., have asserted that it owns U.S. Trademark Registration Nos. 1,497,423, 1,525,025, 1,525,025, 1,527,356, 1,538,458, 1,538,718, 1,538,857, and 1,539,982 (collectively referred to herein as the "Ecolab Registrations").

1.3 On information and belief, Defendant Ecolab USA, Inc. is organized and existing under the laws of the State of Delaware, with its principal place of business in St. Paul, Minnesota. According to the records on file with the United States Patent and Trademark Office ("USPTO") Ecolab USA, Inc. is the recent assignee of "the entire interest" in all of the Ecolab Registrations. On information and belief, Ecolab Inc.'s systematic and continuous business operations in this judicial district, including the use of the Ecolab registered marks is encouraged by, authorized by, and done for the benefit of Ecolab USA, Inc. As such, Ecolab USA, Inc. has purposefully availed itself of the laws of the State of Washington and is subject to jurisdiction in this judicial district.

1.4 This is a civil action for declaratory judgment pursuant to 28 U.S.C. § 2201. Jurisdiction is vested in this Court under 28 U.S.C. § 1338, as this is a dispute concerning the rights of the parties under the federal Lanham Act. On information and belief, jurisdiction is also vested in this Court under 28 U.S.C. § 1332, as there is diversity of citizenship between the parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs. As set forth above, on information and belief, defendants have continuous and systematic contacts with this judicial district such that this Court has personal jurisdiction over them.

Venue in this judicial district is proper under 28 U.S.C. § 1391(b) because Defendants provide goods and services under the Ecolab mark in this judicial district, Defendant Ecolab, Inc. sent two demand letters to Helly Hansen in this judicial district, Helly Hansen is located in this judicial district, and is marketing the allegedly-infringing and diluting goods in this judicial district. COMPLAINT FOR DECLARATORY RELIEF -3-K&L GATES LLP Case No. 2:10-cv-632 618 WEST RIVERSIDE AVENUE, #.300 SPOKANE, WA 99201-0602 K:\2019025\00031\17096_RAW\17096P26J4 TELEPHONE: (509) 624-2100 FACSIMILE: (509) 456-0146

As such, a substantial portion of the events giving rise to the present controversy have occurred in this judicial district.

II. FACTUAL ALLEGATIONS

2.1 Helly Hansen is a company based in Norway with its U.S. operations based in Auburn, Washington. Helly Hansen is a global leader in providing high quality apparel and protective technical gear for work, survival and sports enthusiasts. Helly Hansen's products are of the highest quality and durability and sold throughout this district, the country, and the world.

2.2 Helly Hansen has a well-known reputation for practicing environmentally-sound corporate practices when it comes to all facets of its business operations. One such product line that was manufactured with particular attention to environmental concerns is the Helly Hansen "Ekolab" line. The name "Ekolab" was inspired by "økologisk labaoratorium" which directly translated from Norwegian means "ecological laboratory." This name is consistent with the Norwegian heritage of Helly Hansen and reflects its approach to being more environmental friendly and constantly evolving to ensure that it develops more environmentally-friendly products and ways of working. Helly Hansen has been manufacturing and selling sports apparel products under the name "Ekolab" since at least July 2008, with extensive pre-sale marketing activity occurring in commerce since approximately November, 2007. Like all Helly Hansen products, the "Ekolab" line of products represents the highest in quality outdoor apparel with unsurpassed attention to detail. Further, the Ekolab line of products is simultaneously sold and marketed under the "Helly Hansen" name and associated trademarks. Examples are set forth in Exhibit A depicting how the Ekolab name is used on Helly Hansen's products and marketing materials as well as the marketing and sales information of third party vendors who are authorized to sell Helly Hansen products.

COMPLAINT FOR DECLARATORY RELIEF Case No. 2:10-cv-632 K:\2019025\00031\17096_RAW\17096P26J4 2.3 On approximately, February 2, 2010, Ecolab, Inc. sent a written notice to Helly Hansen that its Ekolab product line was infringing on the Ecolab trademark and requested that Helly Hansen "stop using the EKOLAB mark to describe Helly Hansen's EKOLAB products." A true and correct copy of the written notice is attached hereto as Exhibit B. The written notice also provided copies of the Ecolab Registrations. Not one of those registrations were for clothing products of any sort, much less products marketed and sold to outdoor sports enthusiasts. Instead, all of the Ecolab Registrations are for goods and services related to the industrial sanitation industry. For example, Ecolab uses its mark for "insect, rodent and pest extermination and control services," as well as on "fungicides, bactericides, and germicides."

2.4 Helly Hansen has never manufactured or sold industrial sanitation products—or any other products or services remotely similar or related to those offered in commerce by Ecolab—and has no plans to do so in the future. At no point since Helly Hansen began marketing and selling its Ekolab clothing line has any customer expressed any confusion as to whether the Ekolab products were affiliated with sponsored by or otherwise approved by Ecolab.

III. FIRST CAUSE OF ACTION

(Declaration that Helly Hansen's Ekolab Trademark Does Not Infringe on the Ecolab <u>Trademarks</u>)

3.1 Plaintiff repeats and re-alleges each of the foregoing allegations as though fully set forth herein.

3.2 28 U.S.C. § 2201 permits "any court of the United States, [in a case of actual controversy within its jurisdiction,] upon the filing of an appropriate pleading, [to] declare the rights and other legal relations of any interested party seeking such declaration, whether or not further

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relief is or could be sought." COMPLAINT FOR DECLARATORY RELIEF Case No. 2:10-cv-632 K:\2019025\00031\\17096_RAW\\17096P26J4

1 Helly Hansen and Ecolab have significant and immediate adverse legal interests. 3.3 2 Ecolab has put Helly Hansen on notice of the Ecolab trademark and has accused Helly Hansen of 3 infringing this mark and has requested that Helly Hansen stop using the Ekolab name. Ecolab's 4 claims are causing and are intended to cause substantial and actual present harm to Helly Hansen's 5 business interests because those accusations are intended to place a cloud over Helly Hansen's 6 efforts to market and sell its Ekolab products. Accordingly, there is an actual, substantial, and 7 continuing justicable controversy between Helly Hansen and Ecolab. Helly Hansen is entitled to a 8 9 declaration that its Ekolab product line, including but not limited to the way in which the Ekolab 10 mark is used as set forth in Exhibit A, is not infringing whatever rights Ecolab may have in the 11 Ecolab mark. 12 IV. **SECOND CAUSE OF ACTION** 13 (Declaration that Helly Hansen's Ekolab Trademark Is Not Likely 14 **To Dilute the Ecolab Trademark**) 15 4.1 Plaintiff repeats and re-alleges each of the foregoing allegations as though fully set 16 forth herein. 17 4.2 28 U.S.C. § 2201 permits "any court of the United States, [in a case of actual 18 19 controversy within its jurisdiction,] upon the filing of an appropriate pleading, [to] declare the rights 20 and other legal relations of any interested party seeking such declaration, whether or not further 21 relief is or could be sought." 22 Helly Hansen and Ecolab have significant and immediate adverse legal interests. 4.3 23 Ecolab has put Helly Hansen on notice of the Ecolab trademark and has accused Helly Hansen of 24 diluting this mark and has requested that Helly Hansen stop using the Ekolab name. Ecolab's claims 25 are causing and are intended to cause substantial and actual present harm to Helly Hansen's business 26 COMPLAINT FOR DECLARATORY RELIEF -6-K&L GATES LLP Case No. 2:10-cv-632 618 WEST RIVERSIDE AVENUE, #.300 SPOKANE, WA 99201-0602 K:\2019025\00031\17096_RAW\17096P26J4 TELEPHONE: (509) 624-2100 FACSIMILE: (509) 456-0146

1	interests because those accusations are intended to place a cloud over Helly Hansen's efforts to		
2	market and sell its Ekolab products. Accordingly, there is an actual, substantial, and continuing		
3	justicable controversy between Helly Hansen and Ecolab. Helly Hansen is entitled to a declaration		
4	that its Ekolab product line, including but not limited to the way in which the Ekolab mark is used as		
5	set forth in Exhibit A, is not diluting whatever rights Ecolab may have in the Ecolab mark.		
6	V. JURY DEMAND		
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9	PRAYER FOR RELIEF		
10	WHEREFORE, Helly Hansen prays for relief as follows:		
11	1. For a judgment declaring that Helly Hansen's use of the Ekolab mark is		
12	proper and is not violating any trademark rights, if any, owned by Ecolab in the Ecolab mark;		
13	 For an award of attorney's fees and other costs of suit as provided by statute 		
14			
15	or equity;		
16	3. For such other and further relief as the Court deems just and equitable.		
17	DATED this 14 th day of April, 2010.		
18	K&L GATES LLP		
19	By <u>s/ J. Michael Keyes</u> J. Michael Keyes		
20	<u>mike.keyes@klgates.com</u> K&L Gates LLP		
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	COMPLAINT FOR DECLARATORY		
	RELIEF Case No. 2:10-cv-632-7-K&L GATES LLP 618 WEST RIVERSIDE AVENUE, #.300		
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