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10 Attorneys for Plaintiff  
11 CLEARPATH ROBOTICS, INC.

12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14  
15 CLEARPATH ROBOTICS, INC.,

16 Plaintiff,

17 v.

18 OTTOMOTTO LLC,

19 Defendant.  
20

Case No. 3:16-cv-04891

**COMPLAINT FOR TRADEMARK  
INFRINGEMENT UNDER LANHAM ACT**

**DEMAND FOR JURY TRIAL**

1 For its complaint against Defendant Ottomotto LLC, (“Ottomotto”), Plaintiff Clearpath  
2 Robotics, Inc. (hereinafter “Clearpath”) alleges as follows:

3 **NATURE OF ACTION**

4 1. This is an action for infringement of Plaintiff’s trademark, “OTTO,” and unfair  
5 competition under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and unfair competition  
6 and false advertising under the laws of the State of California (Cal. Bus. & Prof. Code §§ 17200  
7 and 17500), all arising from Defendant’s unauthorized use of the mark “OTTO” and  
8 “OTTOMOTTO” in connection with the marketing, advertising, promotion, offering for sale  
9 and/or sale of Defendant’s self-driving vehicles.

10 **PARTIES**

11 2. Plaintiff Clearpath Robotics, Inc., is organized under the laws of Canada, with a  
12 principal place of business at 1425 Strasburg Rd. Suite 2A Kitchener, ON N2R 1H2.

13 3. Upon information and belief, Defendant Ottomotto LLC (hereinafter “Defendant”)  
14 is organized under the laws of Delaware, with its principal place of business at 737 Harrison St.,  
15 San Francisco, California 94107.

16 4. Upon information and belief, Defendant does business as “Otto” in the field of self-  
17 driving vehicles. Upon information and belief, non-party Uber Technologies, Inc. announced on  
18 August 18, 2016, that it would acquire Ottomotto, describing it as “Otto, a 90-plus person  
19 technology startup whose mission is to rethink transportation, starting with self-driving trucks.”<sup>1</sup>

20 **JURISDICTION AND VENUE**

21 5. This Court has jurisdiction over the subject matter of this action pursuant to  
22 15 U.S.C. § 1125 and 28 U.S.C. §§ 1331, 1338, and 1367.

23 6. Personal jurisdiction over Defendant in this district is proper because, upon  
24 information and belief, Defendant is headquartered in this judicial district.

25 7. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b) and (c).

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28 <sup>1</sup> See Travis Kalanick, *Rethinking Transportation*, UBER NEWSROOM,  
<https://newsroom.uber.com/rethinking-transportation/> (last updated August 18, 2016).

1                   **BACKGROUND AND ALLEGATIONS COMMON TO ALL COUNTS**

2           8.       Plaintiff Clearpath Robotics is one of North America’s leading robotics companies,  
3 with a global customer base of installed robots. One of Plaintiff’s most significant initiatives is its  
4 OTTO Motors division. Announced at the RoboBusiness 2015 conference in San Jose,  
5 California,<sup>2</sup> OTTO is the first self-driving warehouse robot. OTTO is designed for intelligent  
6 heavy-load transport in industrial environments.

7           9.       Since the introduction of the OTTO mark in September of 2015, Plaintiff, both  
8 directly and through its division, OTTO Motors, has used the OTTO trademark continuously in  
9 commerce. Plaintiff has also made a considerable investment in establishing, developing, and  
10 promoting its trademark through various media and marketing materials. *See, e.g.*,  
11 <https://www.ottomotors.com>.

12           10.     Plaintiff is also expanding the use of OTTO, and in March of this year introduced  
13 OTTO 100, designed for autonomous light-load material transport in factories and warehouses.  
14 This is a complement to OTTO 1500, which is designed for heavy-load material transport. Taken  
15 together, it is clear that Plaintiff has developed substantial and expanding goodwill in the OTTO  
16 brand.

17           11.     Plaintiff has also filed a federal trademark application for OTTO. This application  
18 was filed on February 19, 2016, and claims priority from Plaintiff’s Canadian trademark  
19 application, which was filed on September 18, 2015. Plaintiff’s OTTO trademark application  
20 claims goods and services including, but not limited to, “autonomous mobile robots and fleets  
21 thereof used for land, ... warehousing, logistics and manufacturing fields; ... providing in-house  
22 and on-site integration of the autonomy platform and fleets and components thereof...” and so on.

23           12.     Upon information and belief, on March 6, 2016, Defendant attempted to register  
24 OTTO as a trademark for, among other things, goods and services in the field of vehicle  
25 robotics/self-driving vehicles, which directly compete with and are complementary to those  
26 offered under Plaintiff’s OTTO mark.

27 \_\_\_\_\_  
28 <sup>2</sup> RoboBusiness is an international business-focused robotics conference that has been running for  
12 years. *See* <http://www.robobusiness.com/about/>.

1           13. As can be seen from the photos below, the marks as used in commerce by  
2 Defendant are highly similar, if not identical, to Plaintiff's mark.



17  
18           14. Due to the highly similar nature of the marks, Plaintiff has already received  
19 misdirected inquiries from (1) the press, including a contact requesting that someone from  
20 Clearpath participate on Sirius XM's trucking channel to discuss "Otto self-driving trucks," as a  
21 result of a "recent article"; (2) potential customers have communicated interest in outfitting a  
22 tractor trailer with "OTTO," and (3) Plaintiff's current customers, referencing the May 2016  
23 Wired story on Defendant's Otto, inquired if the trucking system is related to products offered by  
24 Plaintiff. Since the announcement of the impending acquisition of Defendant by non-party Uber,  
25 Plaintiff has also received numerous additional inquiries evidencing actual confusion.

26           15. Plaintiff has placed Defendant on notice of Plaintiff's claim of rights to the OTTO  
27 trademark.  
28

**COUNT I:**

**FEDERAL TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION**

16. Plaintiff incorporates and re-alleges each of the allegations set forth above as though fully set forth herein.

17. Defendant's unauthorized use of the OTTO and OTTOMOTTO marks as alleged herein constitute misleading description and representation of fact.

18. Upon information and belief, from at least January 15, 2016, Defendant's conduct as alleged herein is willful and is intended to and is likely to cause confusion, mistake or deception as to the affiliation, connection or association of Defendant with Plaintiff.

19. Defendant's conduct as alleged herein constitutes trademark infringement and unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

20. Plaintiff is entitled to, among other relief, an award of actual damages, Defendant's profits, enhanced damages and profits, reasonable attorneys' fees and costs of the action under Sections 34 and 35 of the Lanham Act, 15 U.S.C. §§ 1116 and 1117, together with prejudgment and post-judgment interest.

**COUNT II:**

**UNFAIR COMPETITION AND FALSE ADVERTISING UNDER CALIFORNIA LAW**

21. Plaintiff incorporates and re-alleges each of the allegations set forth above as though fully set forth herein.

22. Defendant has committed and continues to commit an unlawful, unfair or fraudulent business act or practice in violation of Cal. Bus. & Prof. Code § 17200.

23. Defendant engaged and continues to engage in unfair, deceptive, untrue or misleading advertising within the meaning of Cal. Bus. & Prof. Code §§ 17200 and 17500.

24. Plaintiff is entitled to, among other relief, an award of actual damages according to the laws of California.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully prays that:

1           1.       The Court finds that Plaintiff owns a valid and subsisting trademark.

2           2.       Defendant be held liable for each count as set forth in this Complaint.

3           3.       The Court preliminarily during the pendency of this matter, and thereafter  
4 permanently, enjoin Defendant, its parents, subsidiaries and affiliated companies, and successors  
5 in interest, their respective agents, officers, servants, employees, dealers, licensees, and attorneys,  
6 and all those in active concert or participation with them from using the OTTO mark, or any  
7 colorable variant thereof including without limit OTTOMOTTO, or any mark confusingly similar  
8 thereof, and from using, affixing, offering for sale, advertising, or promoting self-driving vehicles  
9 or related technology under the OTTO or OTTOMOTTO marks, or any other mark confusingly  
10 similar to or dilutive of Plaintiff's OTTO mark.

11           4.       The Court preliminarily during the pendency of this matter, and thereafter  
12 permanently, enjoin Defendant, its parents, subsidiaries and affiliated companies, and successors  
13 in interest, their respective agents, officers, servants, employees, dealers, licensees, and attorneys,  
14 and all those in active concert or participation with them from engaging in any false descriptions  
15 or representations, or any false designation of origin, or from otherwise committing any acts of  
16 unfair competition in connection with Plaintiff's OTTO mark.

17           5.       The Court enter judgment that Defendant has infringed Plaintiff's OTTO mark in  
18 violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)).

19           6.       The Court enter judgment that Defendant has violated Cal. Bus. & Prof. Code §§  
20 17200 and 17500.

21           7.       The Court issue an order directing Defendant to formally abandon with prejudice  
22 any and all of its applications to register the OTTO mark or any mark consisting of, incorporating  
23 or containing Plaintiff's OTTO mark or any counterfeit, copy, confusingly similar variation or  
24 colorable imitation thereof on any state or federal trademark registry.

25           8.       The Court award Plaintiff an amount up to three times the amount of its actual  
26 damages, in accordance with Section 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

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1           9.       The Court direct that Defendant account to and pay over to Plaintiff all profits  
2 realized by its wrongful acts in accordance with Section 35(a) of the Lanham Act (15 U.S.C. §  
3 1117(a)), enhanced as appropriate to compensate Plaintiff for the damages caused thereby.

4           10.       The Court award Plaintiff damages in an amount sufficient to compensate it for the  
5 damage caused by Defendant's unfair competition and false advertising in violation of Cal. Bus. &  
6 Prof. Code §§ 17200 and 17500.

7           11.       The Court award Plaintiff punitive and exemplary damages as the Court finds  
8 appropriate to deter any future willful infringement.

9           12.       The Court declare that this is an exceptional case pursuant to Section 35(a) of the  
10 Lanham Act and awarding Plaintiff its costs and reasonable attorneys' fees thereunder (15 U.S.C.  
11 § 1117(a)).

12           13.       The Court award Plaintiff interest, including prejudgment and post-judgment  
13 interest, on the foregoing sums.

14           14.       The Court award such other and further relief as the Court deems just and proper.

15 Dated: August 24, 2016

Respectfully submitted,

16  
17 By: /s/ Forrest A. Hainline III

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**CLEARPATH ROBOTICS, INC.**

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues properly triable by jury.

Dated: August 24, 2016

Respectfully submitted,

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