UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LINDA LENZI, on behalf of herself and all others similarly situated, Plaintiff, v. L.L. BEAN, INC., Defendant.	Civil Action No.: **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff Linda Lenzi ("Plaintiff"), on behalf of herself and all others similarly situated, hereby alleges against defendant L.L. Bean, Inc. ("L.L. Bean", the "Company," or "Defendant") the following upon her own knowledge, or where she lacks personal knowledge, upon information and belief including the investigation of her counsel.

NATURE OF THE ACTION

1. This is a class action against L.L. Bean for labeling and expressly warranting its "L.L.Bean" brand boots with zipper closures (collectively, the "Products" or "Mislabeled Boots") as being "waterproof," when in fact they are not waterproof. This is because the zipper closures used (and hence the L.L.Bean boots themselves) are not waterproof and the zipper closures are not otherwise backed with a waterproof gusset to make them waterproof.[1]

2. L.L. Bean's marketing, advertising and promotion of such boots on point of purchase displays and in several forms of media, including but not limited to, catalogs, retail websites, and social media, reinforces L.L. Bean's false "waterproof" labeling and express

[1] The Mislabeled Boots include, but are not limited to, the boots listed in Exhibit 1, attached hereto. Upon information and belief, the Mislabeled Boots identified herein were similarly labeled and advertised as being "waterproof" despite not being constructed with a waterproof zipper and/or a full length waterproof zipper gusset.

warranty by repeating this "waterproof" misrepresentation and using misleading claims about the "waterproof" attributes of its Products.

3. Indeed, L.L. Bean has a 110-year history of making, promoting and selling waterproof boots. It started in 1912 when L.L. Bean's founder, Lean Leonwood Bean, made the first waterproof boot with gusseted tongues, which he patented in 1921. Mr. Bean also backed up his waterproof boots with a lifetime guarantee to replace them if they ever leaked. Since then, L.L. Bean boots have come to be regarded in the United States and internationally as the quintessential waterproof boot.

4. Building upon its century old reputation as the seminal waterproof boot maker, L.L. Bean embarked on a uniform nationwide labeling and marketing campaign promising consumers that its Mislabeled Boots are "waterproof," with advanced technology that provides a waterproof barrier to keep feet dry even through the toughest winter storms.

5. Moreover, Plaintiff and each and every proposed class member was necessarily exposed to L.L. Bean's marketing and advertising, as the uniform "waterproof" representation was located (among other places) on the Mislabeled Boots themselves. The "waterproof" representation was also at the point of purchase on shelf tags and webpages that necessarily had to be encountered by consumers in order to purchase the Mislabeled Boots.

6. The Mislabeled Boots, however, are not "waterproof." Rather, the design and construction of key components on the Products, including the lack of waterproof gussets and/or use of non-waterproof zipper closures, allows water to easily penetrate the boots through the zipper rendering the "waterproof" representations false and misleading. As detailed herein, while waterproof zippers do exist and could have been used for L.L. Bean's Mislabeled Boots, they are considerably more expensive and L.L. Bean chose to use substantially less expensive zipper

closures that are not waterproof and then failed to back those zippers with a waterproof gusset that could have made them waterproof (as L.L. Bean well knows because this same gusset technology is what L.L. Bean used to make the waterproof boots it patented in 1921).

7. Moreover, L.L. Bean was on full notice prior to marketing the Products that the zipper closures it used on the Mislabeled Boots were not waterproof because the manufacturer of those zipper closures advises in their product catalog and elsewhere that the zipper closures are not waterproof. These non-waterproof zipper closures (costing .35 cents to $2.30 per foot) were significantly cheaper than waterproof zipper closures (costing $40.00 to $45.00 per foot). Yet, L.L. Bean purchased cheaper non-waterproof zipper closures, put them on its Products without using a waterproof gusset, and then mislabeled, warranted and otherwise advertised the Products to consumers as "waterproof" in a manner that ensured consumers would not miss the claim.

8. Until recently, L.L. Bean's misrepresentations were unequivocal, and did not contain any qualifying language or disclaimers. However, at some point after receiving pre-suit notice from Plaintiff in an April 21, 2022 letter regarding the claims asserted herein ("Pre-Suit Notice"), L.L. Bean modified some of its representations in marketing materials. For example, since Plaintiff's letter, L.L. Bean modified retail webpages for the Products on its consumer website to now acknowledge that the Products' zippers are "not waterproof." This after-the-fact disclaimer is too little, too late for Plaintiff and other purchasers who purchased the Products trusting L.L. Bean to live up to its "waterproof" promises and expecting its Products to meet the high standards associated with the L.L.Bean brand.

9. L.L. Bean's false and misleading "waterproof" statements and warranties, as well as omissions of material fact, concerning the Products have injured Plaintiff and other members of the Class and Subclass defined herein by inducing them to purchase premium priced products that

were not "waterproof" as claimed.

10. Had Plaintiff and Class members known about the false and misleading nature of L.L. Bean's claims and warranties that the Products were "waterproof", they either would not have purchased the Products or would have paid less for them.

11. Plaintiff seeks relief in this action individually, and as a class action on behalf of similarly situated purchasers of the Mislabeled Boots, for violation of the federal Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq*.; breach of express warranty; breach of implied warranty of merchantability; violation of N.Y. Gen. Bus. Law § 349; violation of N.Y. Gen. Bus. Law § 350; and unjust enrichment.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question). This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

13. The Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because there are more than 100 members in the proposed Class, the aggregate amount in controversy exceeds $5,000,000, exclusive of interest and costs, and at least one Class member, including Plaintiff, is a citizen of a state different from the Defendant.

14. This Court has personal jurisdiction over L.L. Bean as it purposefully markets and sells the Products to consumers in New York, including to Plaintiff, who purchased a pair of Mislabeled Boots from within New York.

15. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiff's claims took place within this judicial district, including Plaintiff's purchase of the Mislabeled Boots.

PARTIES

16. Plaintiff Linda Lenzi is a citizen of the state of New York, residing in Monroe County, New York. Within the applicable statute of limitations, Ms. Lenzi purchased the Women's Storm Chaser Boots with a zipper closure from L.L. Bean's Eastview Mall retail store in Victor, New York in or about March, 2020 for approximately $100.00 to $125.00 based on the labeling and advertising representing that the boots were "waterproof." After purchasing the Mislabeled Boots, Ms. Lenzi experienced water leakage into the interior of those boots after wearing them outside on an inclement weather day in or about April 2020, which is when Ms. Lenzi first learned that the "waterproof" representations and warranties that induced her purchase were false and misleading. Had Ms. Lenzi known the truth that the Mislabeled Boots were not "waterproof," despite their labeling to the contrary, she would not have purchased them.

17. L.L. Bean is a Maine corporation with its headquarters located at 15 Casco Street, Freeport, Maine 04033. Founded in 1912, L.L. Bean is an international retail chain that designs, manufactures, markets and sells outdoor apparel and equipment. L.L. Bean markets and sells the Mislabeled Boots and other of its products through its approximately 56 brick-and-mortar stores[2] located throughout the United States, including throughout the State of New York and within this District where Ms. Lenzi purchased her Mislabeled Boots. L.L. Bean also markets and sells its Mislabeled Boots and other of its products through mailed catalogs, and e-commerce websites such as www.llbean.com, one of the "top-rated websites in the industry" and mobile commerce site at m.llbean.com.[3] Since 2020, the Products were also offered through wholesale partnerships,

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[2] https://www.llbean.com/llb/shop/1000001703?&qs=3104667&gclid=EAIaIQobChMI7v_Q9JOY_QIVhrrICh2C9Q6pEAAYASAAEgJGxvD_BwE&gclsrc=aw.ds

[3] https://www.llbean.com/dept_resources/shared/Company_Information.pdf?nav=C2teX-518401

including with Nordstrom, Zappos and SCHEELS.[4] L.L. Bean maintains a strong presence on social media sites, including Facebook, Twitter, YouTube, Instagram and Pinterest[5] and also provides marketing materials to its wholesale partners for display online and in stores.

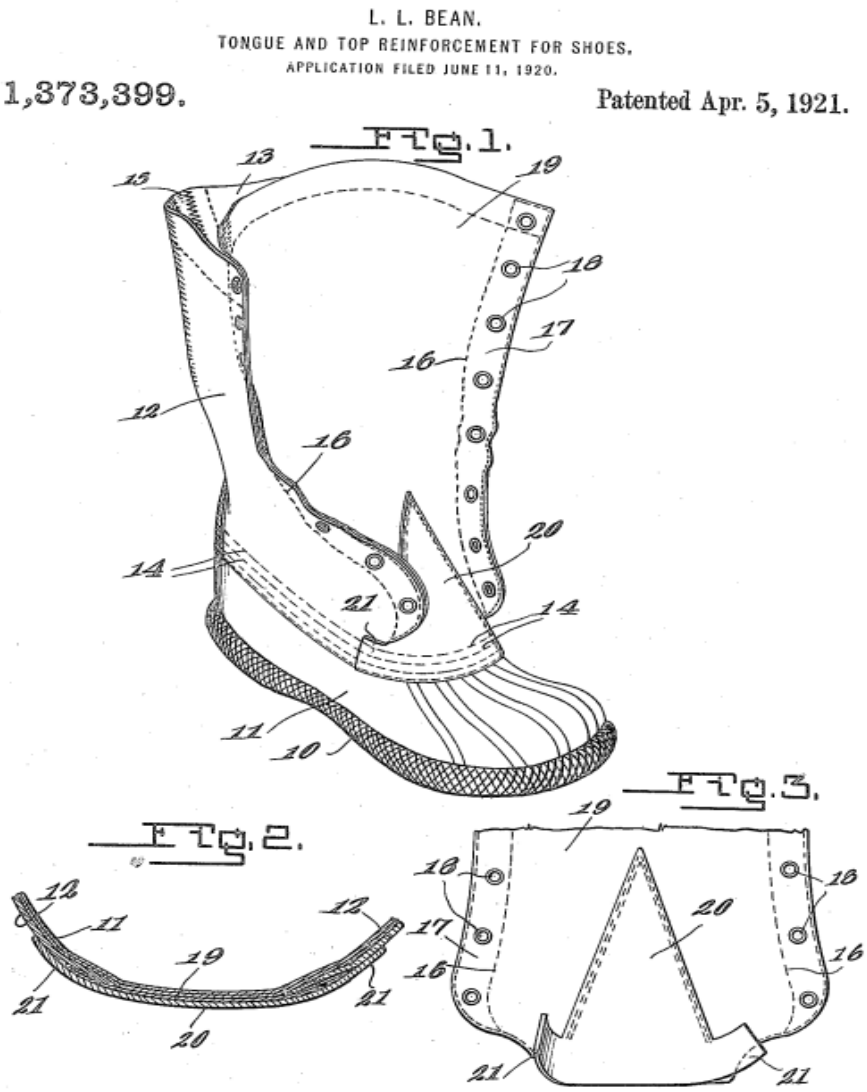
FACTS COMMON TO ALL CAUSES OF ACTION

L.L. Bean's Brand and Its Boots

18. Founded over a century ago, L.L. Bean is one of the country's best-known and most trusted brands for outdoor apparel, including footwear. L.L. Bean built its 110-year old reputation on innovating and making waterproof boots.

19. Indeed, L.L. Bean's waterproof boots are a core part of the Company's business and history. According to the Company, in 1912 when founder Leon Leonwood ("L.L.") Bean returned from a hunting trip with cold, damp feet, he devised a boot that combined leather uppers with rubber bottoms, "creat[ing] an innovative boot that changed footwear forever."[6] By 1921, L.L. Bean patented one of the first boot designs for the purpose of making a boot waterproof by utilizing a gusseted tongue that "is secured to the vamp and between the side pieces of the top." In other words, the gusseted tongue and boot's upper are connected, eliminating any seem normally present in conventional footwear/ tongue design. An image from the patent is provided below:

[4] https://www.businessinsider.com/ll-bean-products-will-be-sold-at-nordstrom-staples-scheels-2020-7
[5] https://www.llbean.com/dept_resources/shared/Company_Information.pdf?nav=C2teX-518401
[6] L.L. Bean, Company History, https://www.llbean.com/llb/shop/516918?page=company-history&nav=C5t516918-516917.


L. L. BEAN.
TONGUE AND TOP REINFORCEMENT FOR SHOES.
APPLICATION FILED JUNE 11, 1920.
1,373,399. Patented Apr. 5, 1921.
Fig. 1.
Fig. 2.
Fig. 3.

20. Stressing its longstanding commitment to high quality and customer satisfaction, the Company notes that when the bottoms and tops of L.L.'s original boots separated so that 90 of the first 100 pairs were returned, L.L. sent refunds to customers and corrected the problem.[7]

21. Today, the Company's "Bean Boots" have become iconic. L.L. Bean even uses a Bean Boot as the design of its "Bootmobile," as shown in the following screenshot from the Company's website.[8]

[7] *Id.*
[8] *Id.*

2012

L.L.Bean celebrates 100 years – and rolls out the Bootmobile.

L.L.Bean made donations totaling $2.5 million, all in the spirit of enjoying the outdoors. It also introduced the Bootmobile – a 20-foot-long replica of the L.L.Bean Boot, which travels the country.

22. Although 2021 was L.L. Bean's strongest fiscal year ever as consumer interest in outdoor activities during the COVID 19 pandemic boosted the Company's sales,[9] prior to that, L.L. Bean's sales had been flat for several years.[10] In one of those so-called flat years in 2018, L.L. Bean sold some 650,000 to 700,000 pairs of Bean Boots.[11] In February 2018, L.L. Bean announced the end of its famous unlimited return policy given the financial strain it had begun to

[9] *See* https://www.wcvb.com/article/ll-bean-pandemic-sales-boost-2021-fiscal-year/39481616#; https://www.llbean.com/llb/shop/518605?page=llbean-announces-2021-year-end-results-and-employee-contributions#:~:text=Iconic%20outdoor%20retailer%20L.L.Bean,of%20the%20Covid%2D19%20pandemic.

[10] *See* https://www.mainepublic.org/business-and-economy/2018-05-10/in-japan-ll-bean-cashes-in-on-growing-yen-for-the-outdoors.

[11] *See* https://www.businessinsider.com/llbean-ceo-shares-bean-boot-success-story-lessons-2019-6

put on the Company.[12]

23. To stay competitive, L.L. Bean has expanded its range of footwear well beyond its classic Bean Boot design. This includes a range of zippered boots, *i.e.*, the Mislabeled Boots, marketed and labeled by L.L. Bean as "waterproof." To meet changing consumer demands and expectations, it also stresses its focus on product innovation, its use of advanced materials, and its development of new technologies to provide warmth, breathability, and protection from the elements.

24. Protection against water infiltration is a key feature for any high quality footwear, but especially for brands with a focus on outdoor apparel and lifestyles. As New York Times product review service Wirecutter has put it, "A pair of fully waterproof shoes can be liberating. They let you move through the world unhindered, without any consideration for the mess around your feet."[13]

25. In fact, with the development of improved materials at more reasonable prices, consumers have come to expect the availability of waterproof styles in all manner of footwear, especially from L.L. Bean who innovated and whose brand has become synonymous with waterproof boots. As noted years ago by Greg Van Gasse, former vice president of marketing with Florsheim, "In the future, waterproofing in footwear is going to be very common…. That's what the consumer wants, for one thing. For another, the process to make waterproofing available to customers is much more affordable these days. It makes sense if you think about it. If you can buy shoes that are waterproof, why would you wear anything else?"[14] Indeed, by 2017, it was

[12] *See id.*
[13] New York Times Wirecutter, The Best Rain Boots for Women and Men (Jan. 4, 2022), https://www.nytimes.com/wirecutter/reviews/best-rain-boots/.
[14] Chicago Tribune, "Waterproof Footwear Is Making A Splash" (Feb. 24, 1997), https://www.chicagotribune.com/news/ct-xpm-1997-02-24-9702240116-story.html.

reported that "waterproof footwear outside of the rain boot category saw double-digit growth over the last two fall retail seasons." "Why Brands Are Moving Towards Waterproof", Goldman, E., *Sourcing Journal*, May 31, 2017.[15]

26. The global waterproof boots market size is expected to be worth US$ 1,520 million ($1.52 billion) in 2022, rising to US$ 2,360 million ($2.36 billion) by 2032. North America is expected to continue to be a significant market, accounting for 28.30% of the global waterproof boots market share.[16]

27. L.L. Bean is well aware of the importance of waterproof footwear for consumers and its reputation for making waterproof footwear and, accordingly, the Company has offered "waterproof" footwear in not only rugged hiking boots, but also in more fashion-focused styles.

28. In its winter boots buying guide L.L. Bean highlights its history of making winter boots for over 100 years and promises to keep customers' feet "Warm and Dry" with its "tested" products, stating, "We know it's hard to enjoy a winter day with cold, wet feet. That's why **we use the most advanced technology available to develop exceptionally toasty and dry winter boots**."[17] Screenshots of the representations and warranties are provided below:

[15] https://sourcingjournal.com/footwear/footwear-trends/waterproof-eg-99231/
[16] https://www.digitaljournal.com/pr/waterproof-boots-market-predicted-to-reach-total-valuation-of-us-2360-million-by-2032#ixzz7tVn7JSP9
[17] *Previously available at* https://www.llbean.com/llb/shop/517436?page=winter-boots-guide (emphasis added).

Innovation That Keeps Your Feet Warm and Dry

We know it's hard to enjoy a winter day with cold, wet feet. That's why we use the most advanced technology available to develop exceptionally toasty and dry winter boots.

29. While a water resistant boot provides limited protection against water, a waterproof boot is understood to provide an impermeable barrier against water so that water cannot penetrate through the boot.

30. Whether a boot is waterproof depends on its materials, design, and methods of construction. For example, leather's many desirable qualities, including its breathability, have made it a preferred material for the shoe-making industry; however, without special treatment, moisture will penetrate leather shoes because of leather's porous nature and due to stitching the leather during shoe construction. To address this issue, leather footwear is typically treated with applications of oil, wax, silicone, latex, or other water repelling substances. While such techniques may close the pores of the leather, they do not completely close the stitching holes resulting from the attachment of the sole and upper portions of the shoe.

31. Accordingly, manufacturers may seal any seams in the upper of a boot with a thick latex material and/or adhesive to further prevent water ingress. Then, typically, the sole is attached in a liquid state so it bonds directly to the shoe's upper creating a watertight seal.

32. Alternatively, a membrane or textile "bootie" can be utilized to keep water out. For example, a membrane such as Gore-Tex material is bonded between a high-performance lining and a stabilizing knit backer. The Gore-Tex lamination package is then sewn into a sock-shaped form called a "bootie", which essentially surrounds the foot completely. The seams of the bootie are subsequently sealed with specially made tape, creating a watertight barrier.

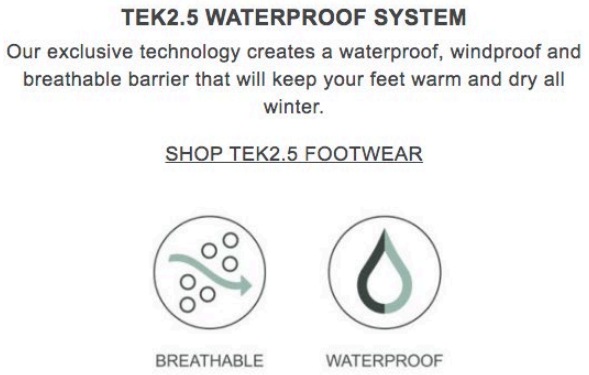
33. If a manufacturer chooses to add a zipper to its boot design, then for the boot to be waterproof, the zipper used must also be sealed, either by using a waterproof zipper, or by backing

the zipper with a waterproof gusset—a piece of waterproof material that connects to the shoe's upper underneath and on the sides of the zipper.

34. L.L. Bean is aware of these techniques as it has utilized gussets to back both zippers and tongues on various models of its boots and other manufacturers in the industry have utilized both gussets and waterproof zippers. Indeed, gusseted tongues were part of the waterproof boot L.L. Bean patented in 1921.

35. For L.L. Bean's purportedly "waterproof" boots, the Company has heavily marketed its proprietary "**TEK2.5 WATERPROOF SYSTEM**" as an "exclusive technology" that the Company claims "creates a **waterproof . . . barrier** that will keep your feet warm and dry all winter."[18]

36. L.L. Bean's marketing creates the impression that it uses advanced materials and construction to create a barrier against water that will effectively keep feet dry, and that its claims are backed by product testing. For example, when describing the TEK2.5 system on its winter boots guide webpage, the Company also included images of a waterproof symbol and of a waterproof barrier being tested:



[18] *Id.*

37. L.L. Bean recognizes its "waterproof" claims are a key selling point for the Mislabeled Boots (as it has for all of its boots in its 110-year history), particularly for outdoor enthusiasts, a demographic the Company targets.[19] Accordingly, and as illustrated below, the Company repeats and emphasizes the "waterproof" claims through multiple channels for each of the Mislabeled Boots.

The False and Misleading Labeling and Advertising of the Mislabeled Boots

38. L.L. Bean has capitalized on consumer demand for waterproof footwear by promoting the Products as "waterproof" at all possible points of purchase.

39. Specifically, L.L. Bean identified the Products as "waterproof" by prominently displaying a "waterproof" mark and representation on the Mislabeled Boots themselves and/or on labels adjacent to the Mislabeled Boots, on in-store displays, on the Company's consumer-facing website at llbean.com, in marketing materials displayed on the webpages of its retail partners, on social media, and in print media, including but not limited to catalogs mailed to consumers. Moreover, these representations were made without any qualification or disclaimer.

40. L.L. Bean sells much of its merchandise directly to consumers through its own brick-and-mortar locations. L.L. Bean operates over 56 such locations in the United States.[20]

41. L.L. Bean has utilized uniform in-store displays and signage to market the Mislabeled Boots as "waterproof." For example, the below point of purchase display bears representations and warranties that the Mislabeled Boots are "**Waterproof** & Breathable," provide

[19] https://www.mytotalretail.com/article/the-story-behind-l-l-beans-brand-revitalization/#:~:text=L.L.Bean%20undertook%20this%20project,L.L.Bean's%20business%20was%20evolving.

[20] https://www.llbean.com/llb/shop/1000001703?&qs=3104667&gclid=EAIaIQobChMI7v_Q9JOY_QIVhrrICh2C9Q6pEAAYASAAEgJGxvD_BwE&gclsrc=aw.ds

a "**waterproof**/breathable **barrier**" that "**keeps feet dry**" through winter storms, and are suitable for "Rugged Winter." Photographs of the display (and a closeup) are provided below:

42. L.L. Bean also uniformly displayed in its retail locations a "WATERPROOF" statement (along with a waterproof symbol) on channel or shelf strips adjacent to each boot it claims to be waterproof.[21]

[21] L.L. Bean similarly highlighted this waterproof attribute for other Company branded footwear not subject to the claims herein.

43. For example, below are close-up images of L.L. Bean's Storm Chaser Boots, prominently marketed and labeled as "WATERPROOF" on shelving displays at the Company's

retail locations, without any disclaimer regarding the Product's non-waterproof, non-gusseted side-zipper:

44. In addition to its display shelves, the Company also labels its Products with a "WATERPROOF" representation and warranty directly on the Products themselves. Below are images of several examples of Mislabeled Boots featuring the "waterproof" representation.

Storm Chaser Boots (insole, stating "WATERPROOF")

Men's Storm Chaser Side Zip Boots - Ballistic Mesh (stating, "TEK2.5 WATERPROOF")

Women's Carrabassett Boots (stating, "TEK2.5 WATERPROOF")

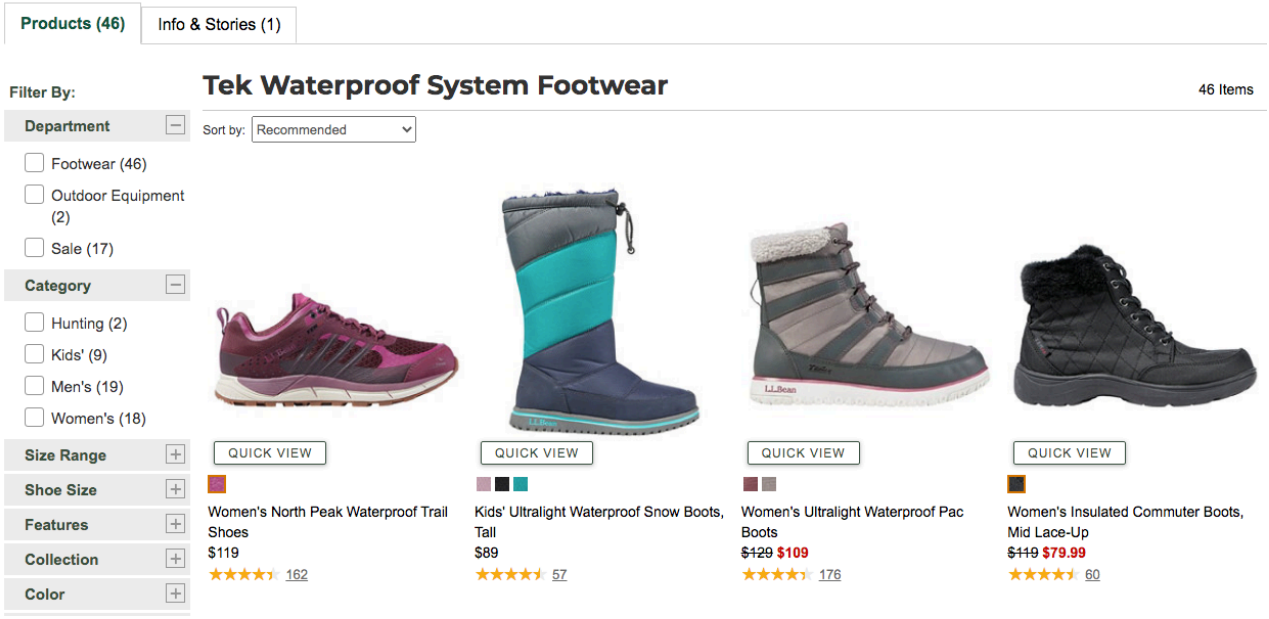
Women's Carrabassett Boot (insole, stating "WATERPROOF")

Women's Snowfield Boots (interior upper stating, "TEK2.5 WATERPROOF")

Women's Snowfield Boot (insole, stating "WATERPROOF")

45. L.L. Bean also utilized the Company's consumer-oriented website (www.llbean.com), "one of the top-rated websites in the industry", to bolster its misleading claims that the Mislabeled Boots are "waterproof." For example, the Company touted its "TEK2.5 waterproof" system as "the most advanced technology available" to keep feet dry, claiming it would provide a waterproof barrier.[22]

46. That webpage included a hyperlink directing consumers to "SHOP TEK2.5 FOOTWEAR," which led to a new window or page displaying dozens of products claiming to offer the "**Tek Waterproof System.**"[23] A screenshot of the hyperlink's landing page is provided below:



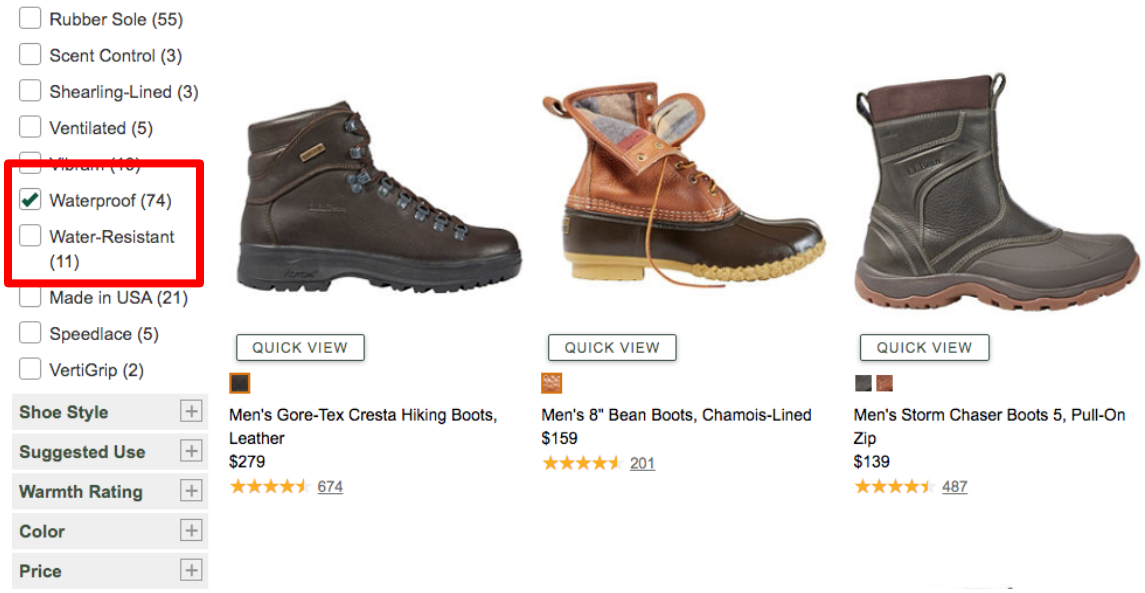
47. Additionally, when consumers shopped for boots on L.L. Bean's website, the Company provided filters enabling customers to restrict their search results to two distinct

[22] *Previously available at* https://www.llbean.com/llb/shop/517436?page=winter-boots-guide (emphasis added).

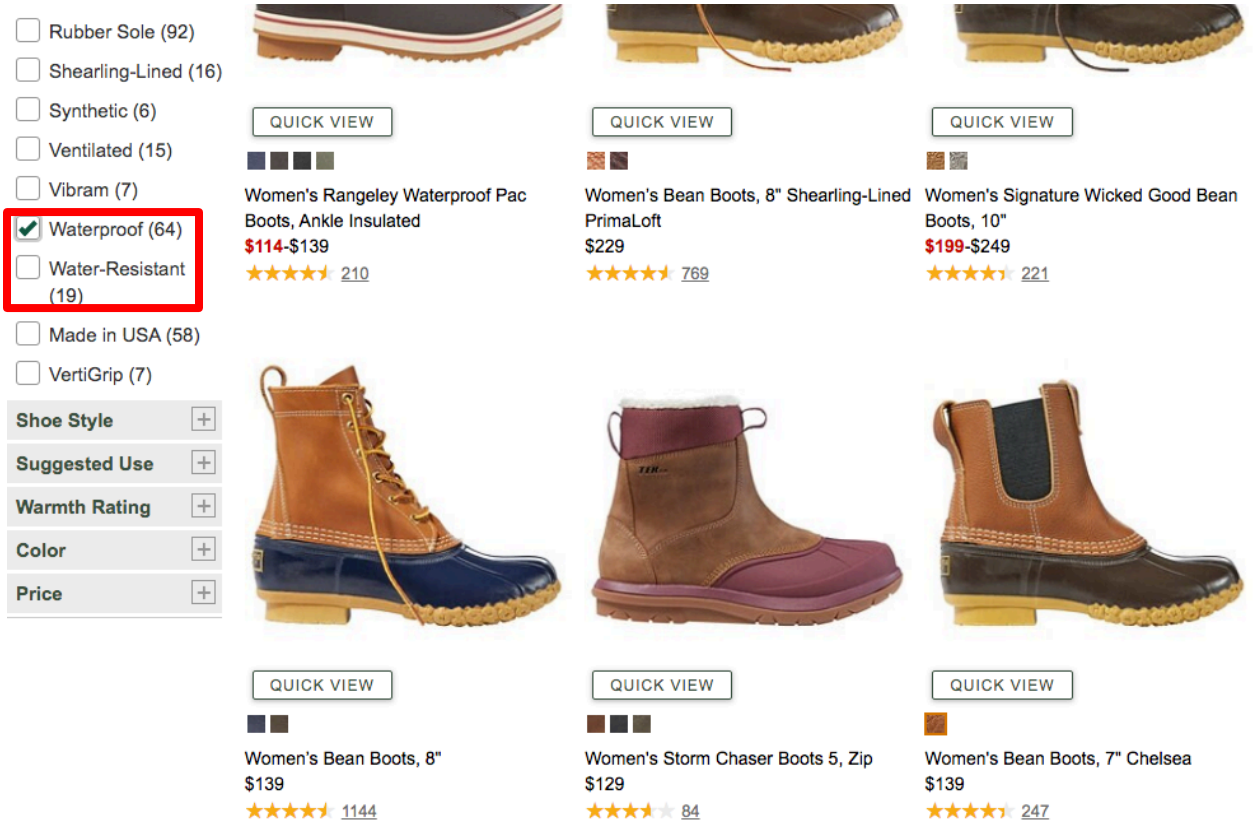
[23] https://www.llbean.com/llb/search/?freeText=Tek%20Waterproof%20System%20Footwear&nav=F8tX-517436

categories of water protection – "Waterproof" and "Water-Resistant," as shown in the two screenshots below:

Men's Boots:



Women's Boots:



48. The L.L.Bean website also highlighted the "waterproof" nature of the Mislabeled Boots on the individual retail pages for each of the Products without any qualifications. For example, the Company's webpage for the Men's Storm Chaser Boots 5, Pull-on Zip was replete with representations and warranties referencing the Products' purported "waterproof" features, including: [24]

- "Redesigned from the top down, with a richer leather that's **waterproof**, stain and salt resistant."
- "[O]ur Men's Storm Chaser Pull-On Boots **perform like high-tech waterproof boots** . . . ."

[24] *Previously available at* https://www.llbean.com/llb/shop/123214?page=mens-storm-chaser-boot-5-pull-on-zip-mens (emphasis added).

- "NEW **Waterproof** Nor'easter full-grain nubuck leather."
- "Lined with **waterproof** 200-gram PrimaLoft® . . . ."
- "Molded toe bumper and **waterproof** heel counter for enhanced protection."
- "**TEK2.5® waterproof, breathable membrane inner lining**."
- "**TEK2.5 WATERPROOF SYSTEM**"
- "**Multiple layers of performance: . . . Waterproof/windproof/breathable barrier**"

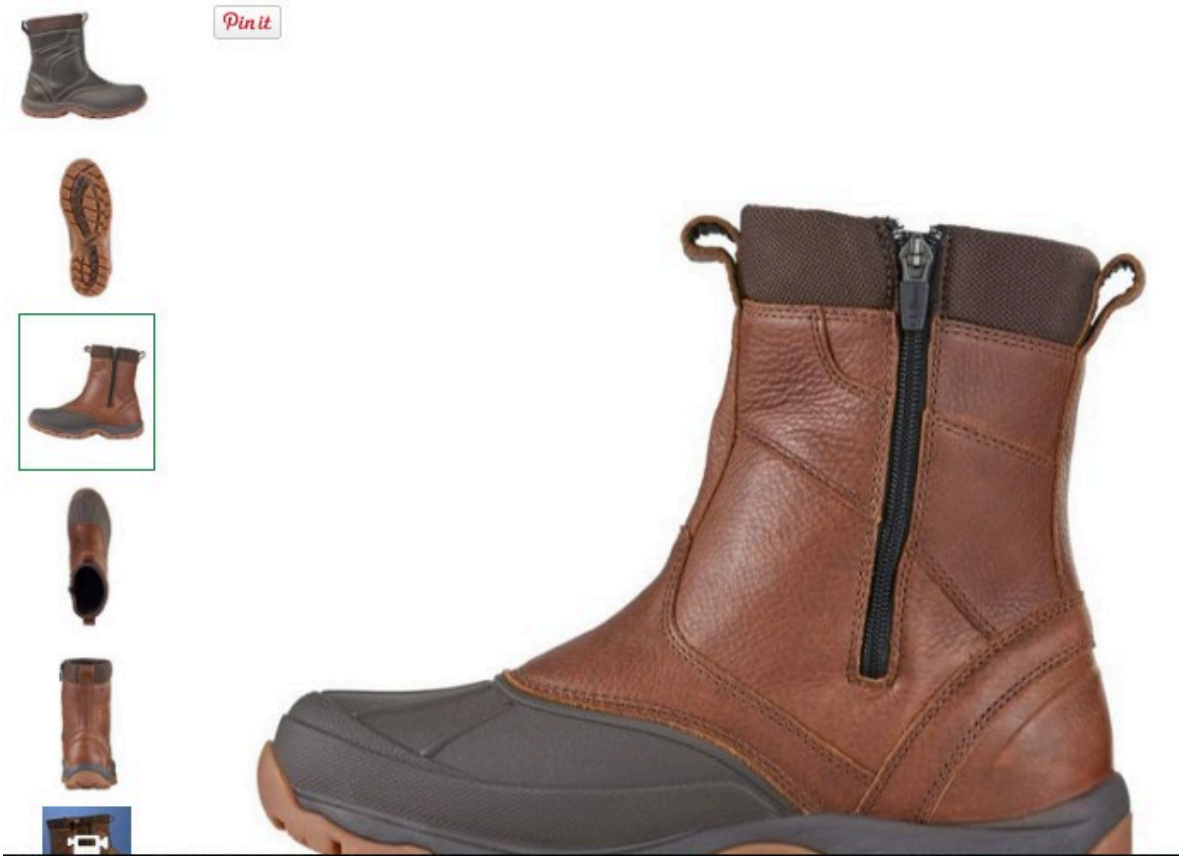
49. Screenshots of the individual product page for the Men's Storm Chaser Boot 5, Pull-on Zip as it previously appeared are provided below:[25]

[25] *Id.*

L.L.Bean > Footwear > Men's > Boots > Waterproof

Men's Storm Chaser Boots 5, Pull-On Zip

489 Reviews | Write a Review



Product Details

Redesigned from the top down, with a richer leather that's waterproof, stain and salt resistant. These winter boots also feature breakthrough SolarCore insulation technology for low weight and maximum insulating power.

Size & Fit

- Order regular shoe size. For half sizes not offered, order up to next whole size.

Specs

- Weight: Approx. 2 lb. 15 oz. per pair.

Why We Love Them

Redesigned to be sleeker and lighter, our Men's Storm Chaser Pull-On Boots perform like high-tech waterproof boots — but with the comfort of sneakers. The rubber half shell and cushioned EVA midsole add flexibility and are built from the same materials used in top-of-the-line walking and running shoes

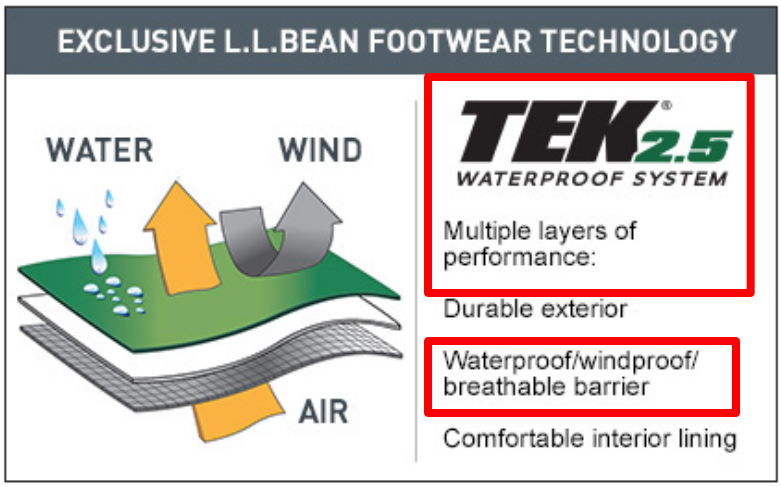
Construction

- NEW Waterproof Nor'easter full-grain nubuck leather.
- Lined with waterproof 200-gram PrimaLoft® for extraordinary warmth in colder weather.
- SolarCore insulation on lasting board for warmth without the weight.
- Mesh padded collar for comfort.
- EVA-molded midsole and footbed provide athletic-shoe comfort.
- Molded toe bumper and waterproof heel counter for enhanced protection.
- Siped rubber outsole features multilugged tread for slick, slippery surfaces.
- TEK2.5® waterproof, breathable membrane inner lining.

Additional Features

- Leather pull-on loop on back and front collar for easy on/off.
- Imported.

Item #: TA507166



50. L.L. Bean's individual webpage for the Women's Storm Chaser Boots 5, Zip made substantially similar representations and warranties regarding the Product's purported "waterproof" qualities, including: [26]

- "Our Storm Chaser . . . **provid[es] the waterproof protection of rubber boots** . . . ."
- "The full-grain-leather **upper is waterproof** . . . ."
- "A **TEK2.5® lining keeps feet dry**."
- "**Waterproofed** full-grain-leather upper and exclusive **TEK2.5® waterproof membrane keep feet dry**."
- "**TEK2.5 WATERPROOF SYSTEM**"
- "**Multiple layers of performance: . . . Waterproof/windproof/breathable barrier**"

51. These representations and warranties are highlighted in the following screenshots of the individual Product page as it previously appeared: [27]

[26] *Previously available at* https://www.llbean.com/llb/shop/123140?page=strom-chaser-boots-zip-5-womens (emphasis added).
[27] *Id.*

L.L.Bean > Footwear > Women's > Waterproof

Women's Storm Chaser Boots 5, Zip

★★★½☆ 84 Reviews | Write a Review

We updated the Women's Storm Chaser winter boots with a new lightweight construction and improved comfort. They also feature breakthrough SolarCore insulation technology for low weight and maximum insulating power.

Size & Fit

Customer Fit Feedback

- Order regular shoe size. Size 10 1/2 wearers, order size 11.
- Suggested sock: Midweight.

Specs

- Weight: Approx. 1 lb. 9 oz. per pair.
- Shaft Height: Approx. 6½".

Why We Love Them

Our Storm Chaser has a great fit, while still providing the waterproof protection of rubber boots and the comfort of sneakers. The full-grain-leather upper is waterproof and stain resistant. SolarCore insulation technology provides maximum insulating power at a low weight. The rubber half shell and cushioned EVA midsole add flexibility and are built from the same materials used in walking and running shoes. A TEK2.5® lining keeps feet dry.

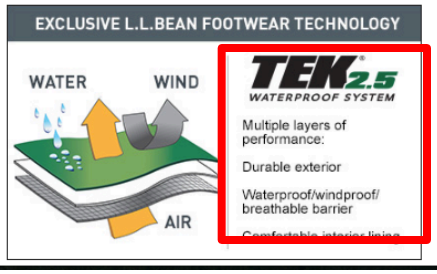
Construction

- Waterproofed full-grain-leather upper and exclusive TEK2.5® waterproof membrane keep feet dry.
- Soft nylon padded collar for comfort.
- Synthetic mesh fabric lining for moisture management and fast drying.
- Soft cozy fleece collar lining for warmth and comfort.
- Molded EVA midsole to cushion and support.
- 200-gram PrimaLoft® polyester insulation.
- Covered polyurethane foam innersole with NXT for odor management.
- Siped rubber outsole constructed with multilugged tread for a strong grip on wet or icy surfaces.
- Imported.

Item #: TA507153

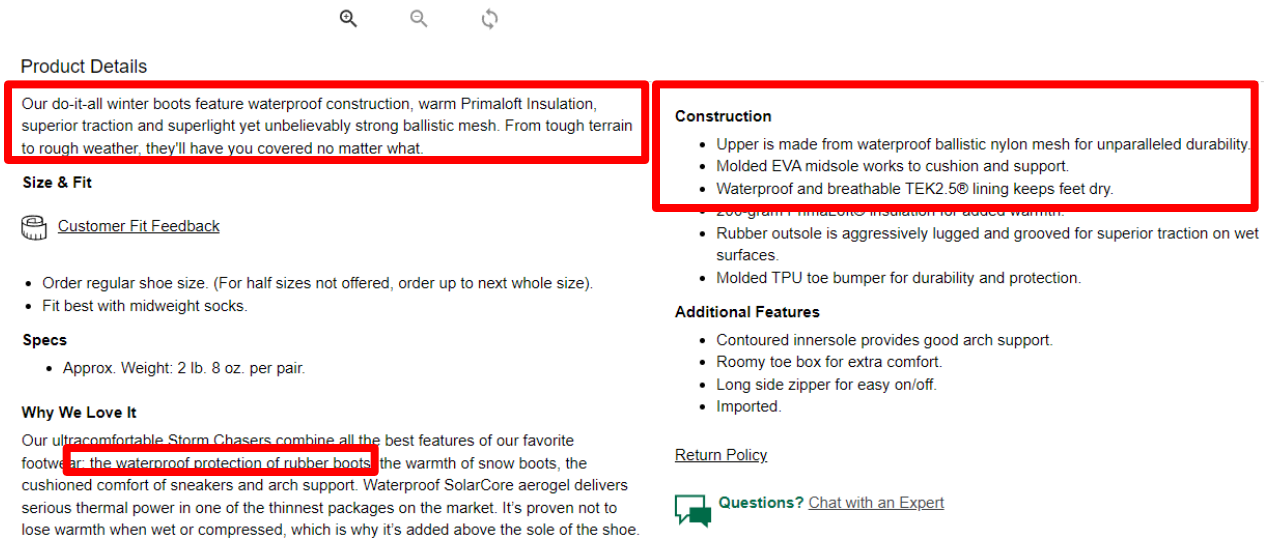
Return Policy

Questions? Chat with an Expert



52. Similarly, the individual product page for the Men's Storm Chaser Side-Zip Ballistic Mesh boot touted the Product's "waterproof construction" and that a "[w]aterproof and breathable TEK2.5® lining keeps feet dry" and provided "the waterproof protection of rubber boots." Screenshots of the webpage as it appeared are provided below: [28]

[28] https://www.llbean.com/llb/shop/121311?page=mens-storm-chaser-side-zip-boot-4-ballistic-mesh-mens



Product Details

Our do-it-all winter boots feature waterproof construction, warm Primaloft Insulation, superior traction and superlight yet unbelievably strong ballistic mesh. From tough terrain to rough weather, they'll have you covered no matter what.

Size & Fit

Customer Fit Feedback

- Order regular shoe size. (For half sizes not offered, order up to next whole size).
- Fit best with midweight socks.

Specs

- Approx. Weight: 2 lb. 8 oz. per pair.

Why We Love It

Our ultracomfortable Storm Chasers combine all the best features of our favorite footwear: the waterproof protection of rubber boots, the warmth of snow boots, the cushioned comfort of sneakers and arch support. Waterproof SolarCore aerogel delivers serious thermal power in one of the thinnest packages on the market. It's proven not to lose warmth when wet or compressed, which is why it's added above the sole of the shoe.

Construction

- Upper is made from waterproof ballistic nylon mesh for unparalleled durability.
- Molded EVA midsole works to cushion and support.
- Waterproof and breathable TEK2.5® lining keeps feet dry.
- Rubber outsole is aggressively lugged and grooved for superior traction on wet surfaces.
- Molded TPU toe bumper for durability and protection.

Additional Features

- Contoured innersole provides good arch support.
- Roomy toe box for extra comfort.
- Long side zipper for easy on/off.
- Imported.

Return Policy

Questions? Chat with an Expert

53. The individual webpage for the Women's Snowfield Waterproof Boots similarly misrepresented its "waterproof" attribute, in additional to including that attribute in the name of the Product itself. Screenshots of the Company's online representations and warranties are below, including claims that the boots featured a "**waterproof membrane**" and "**barrier**" against water that "**keeps feet dry in slush and snow**":[29]

[29] *Previously available at* https://www.llbean.com/llb/shop/124676?page=womens-snowfield-boot-tall-waterproof-insulated-womens (emphasis added).

L.L.Bean > Footwear > **Women's** > **Waterproof**

Women's Snowfield Waterproof Boots, Tall Insulated

64 Reviews | Write a Review

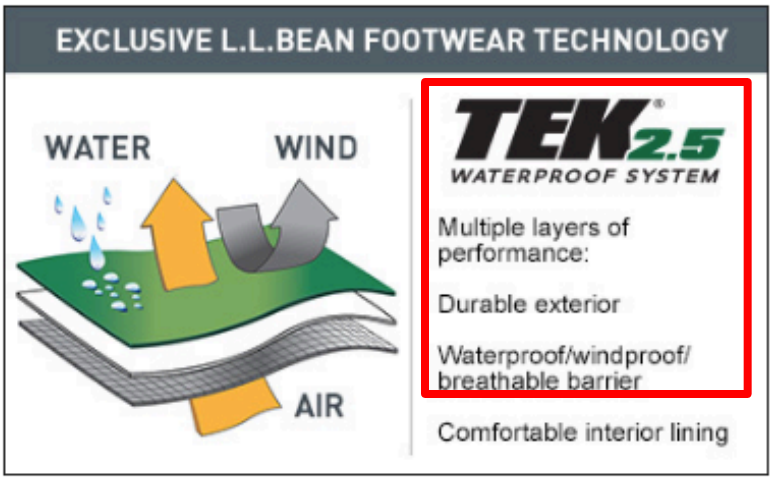
Construction

- Quilted nylon mesh upper with a water-resistant treatment keeps feet dry in snow and slush.
- Synthetic faux-fur collar.
- Moisture-wicking fleece lining is also quick drying.
- Contoured dual-density EVA innersole for comfort and support.
- 200-gram Primaloft insulation provides exceptional warmth.
- TEK2.5® waterproof membrane system and moisture-wicking lining keep feet dry in slush and snow.
- Exclusive Comfort Ride midsole gives great support and rebound.
- VertiGrip rubber-lugged outsole for reliable traction.
- Imported.

Item #: TA510324

Return Policy

Questions? Chat with an Expert



54. L.L. Bean's Women's Carrabassett Waterproof Boots were also marketed with representations and warranties that they are "waterproof," including in the Product's name and website description, despite utilizing a non-waterproof zipper running down the length of the boot. The Company claims "**whether it's rain or snow, your feet will be . . . dry** . . . ." and again touts

the "**TEK2.5 waterproof system**" and "**waterproof . . . barrier**":[30]

[30] *See* https://www.llbean.com/llb/shop/123150?page=carrabassett-boot-12in-zip-waterproof-womens (emphasis added).

Product Details

Fleece-lined boots that will look great in the worst weather; whether it's rain or snow, your feet will be very comfortable, dry and well supported.

Size & Fit

Customer Fit Feedback

- Order regular shoe size. Size 10 1/2 wearer, order 11.
- Suggested sock: Midweight.

Specs

- Weight: Approx. 3 lb. per pair.

Construction

- Waterproof full-grain leather upper.
- 12" lateral zipper for easy on/off.
- Lined with cottony-soft polyester fleece for wicking, fast drying and warmth.
- Inner lining treated with our exclusive TEK2.5® waterproof system.
- Toe cap and removable EVA insole insulated with PrimaLoft Aerogel for lightweight warmth.
- Exclusive VertiGrip rubber outsole with chain-tread pattern for excellent stability.

Additional Features

- Hidden elastic gore for stretch.
- Collar pull tab for easy on/off.
- Imported.

Item #: TK507211

55. L.L. Bean also represented and warranted its Women's Park Ridge Casual Boots, Tall as waterproof, even claiming they have a "Waterproof side zip":[31]

[31] *See* https://www.llbean.com/llb/shop/118143?page=womens-park-ridge-casual-boots-tall&csp=a&feat=83161-item_page.recsmiddle.

56. The Company's webpage for the Women's Park Ridge Casual Boots, Mid Product also represents and warrants that it is "waterproof" and made with "waterproof-full-grain-leather upper" without indicating the zipper portion of the upper is not waterproof:[32]

[32] https://www.llbean.com/llb/shop/118142?page=womens-park-ridge-casual-boots-mid

Women's Park Ridge Casual Boots, Mid

Construction

- Stylish, waterproof full-grain-leather upper with wool-blend back shaft panel.
- Soft fleece lining and cushioned footbed for an amazing feel.
- Removable synthetic-covered EVA insole.
- Moderate arch contour of insole for support.
- Molded EVA midsole cushions in all the right places.
- Nylon shank.
- Molded rubber outsole provides all the traction you need.
- 5" zipper at arch side of shaft.
- Imported.

Return Policy

Questions? Chat with an Expert

57. Similarly, the Company's webpage for the Women's Waterproof Nordic Boots

with Arctic Grip represents and warrants that it is "waterproof" and made with "waterproof suede upper" and a "Waterproof TEK2.5® system [which] keeps feet dry and comfortable":[33]

[33] https://www.llbean.com/llb/shop/123151?page=nordic-boot-waterproof-nubuck-zp-arctic-grip-womens&bc=474&feat=474-GN0&csp=f&gnrefine=1*BRAND*L.L.Bean%5E1*FTRS*Waterproof&pos=79

Product Details

Nordic style meets serious performance in this waterproof winter boot, featuring nubuck leather, PrimaLoft insulation and Vibram Arctic Grip.

Size & Fit

Customer Fit Feedback

- Order regular shoe size. For half sizes not offered, order up to next whole size.
- Suggested sock: Midweight.

Specs

- Weight: Approx. 3 lb. 4 oz. per pair.

Construction

- Waterproof suede upper with faux-fur lining and trim.
- Waterproof TEK2.5® system keeps feet dry and comfortable.
- Extra-warm 100-gram PrimaLoft® insulation.
- EVA foam innersole with faux fur for comfort and warmth.
- Outsole with Vibram Icetrek 2 rubber and Arctic Grip pods for outstanding traction.

Additional Features

- 8" nylon zipper.
- Imported.

Item #: TA507161

58. L.L. Bean also represented its Women's Rugged Cozy Boots, Mid Side-Zip as waterproof without any disclaimers regarding the Products' non-waterproof, non-gusseted zippers.[34]

[34] *See* https://www.llbean.com/llb/shop/125865?page=womens-rugged-cozy-boot-mid-roll-down-womens.

Construction

- Premium waterproof full-grain leather and soft suede uppers.
- Cozy fleece lining for warmth and comfort.
- Medial side zipper for easy on/off.
- Our exclusive True Comfort footbed for rebound, cushion and support.
- Rugged Vibram outsole provides great traction on multiple surfaces.
- Imported.

Item #: TA514263

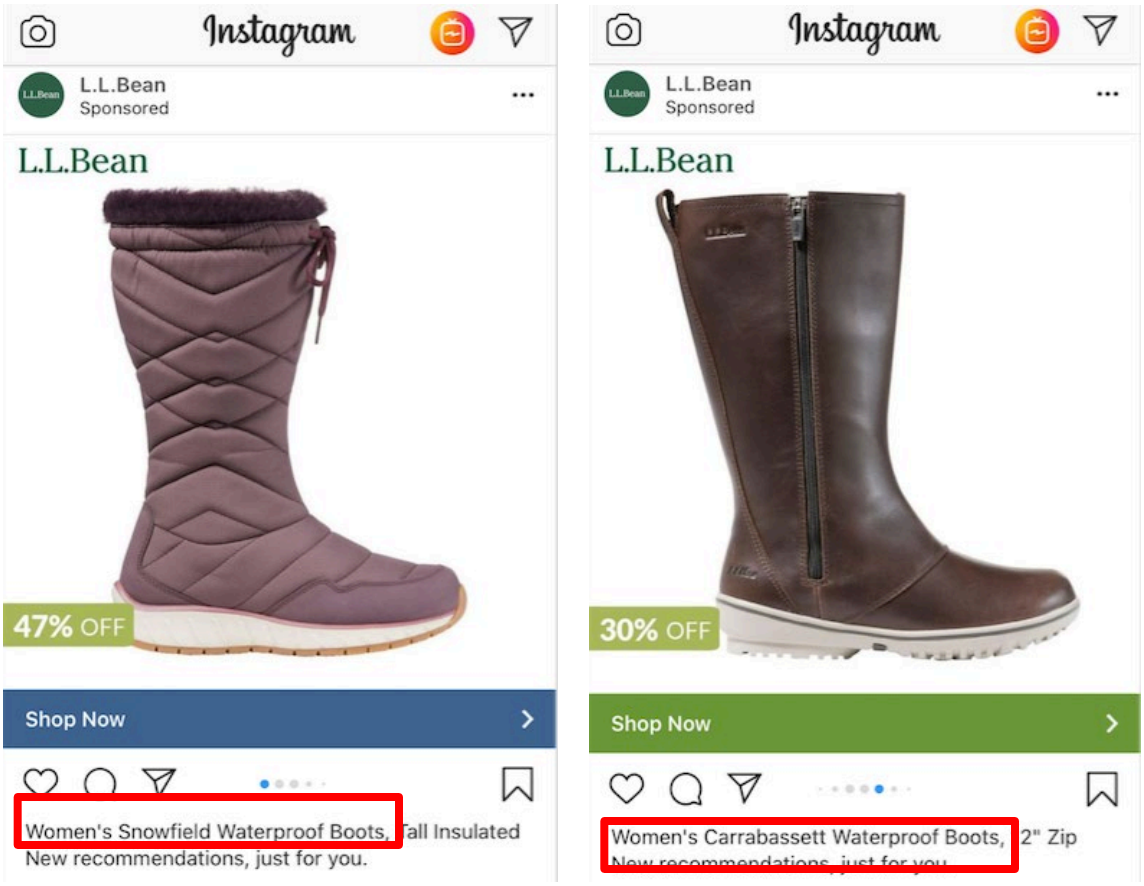
59. The individual product pages also feature short-form videos touting the Products' "waterproof" qualities. For example, the individual page for the Men's Storm Chaser Boots 5, Pull-On Zip maintains a video with an overlay touting the Product's "Waterproof Nor'easter Nubuck Upper" and the "TEK2.5 Waterproof Membrane," without qualification. Screenshots of the video are produced below:[35]

[35] *See* https://www.llbean.com/llb/shop/123214?page=mens-storm-chaser-boot-5-pull-on-zip-mens

60. Similarly, the individual product page for the Men's Storm Chaser Side Zip Boots, Ballistic Mesh, features a video stating the Product utilizes a "Waterproof and Flexible Nylon Upper" and Tek2.5 Waterproof Membrane," without qualification.[36]

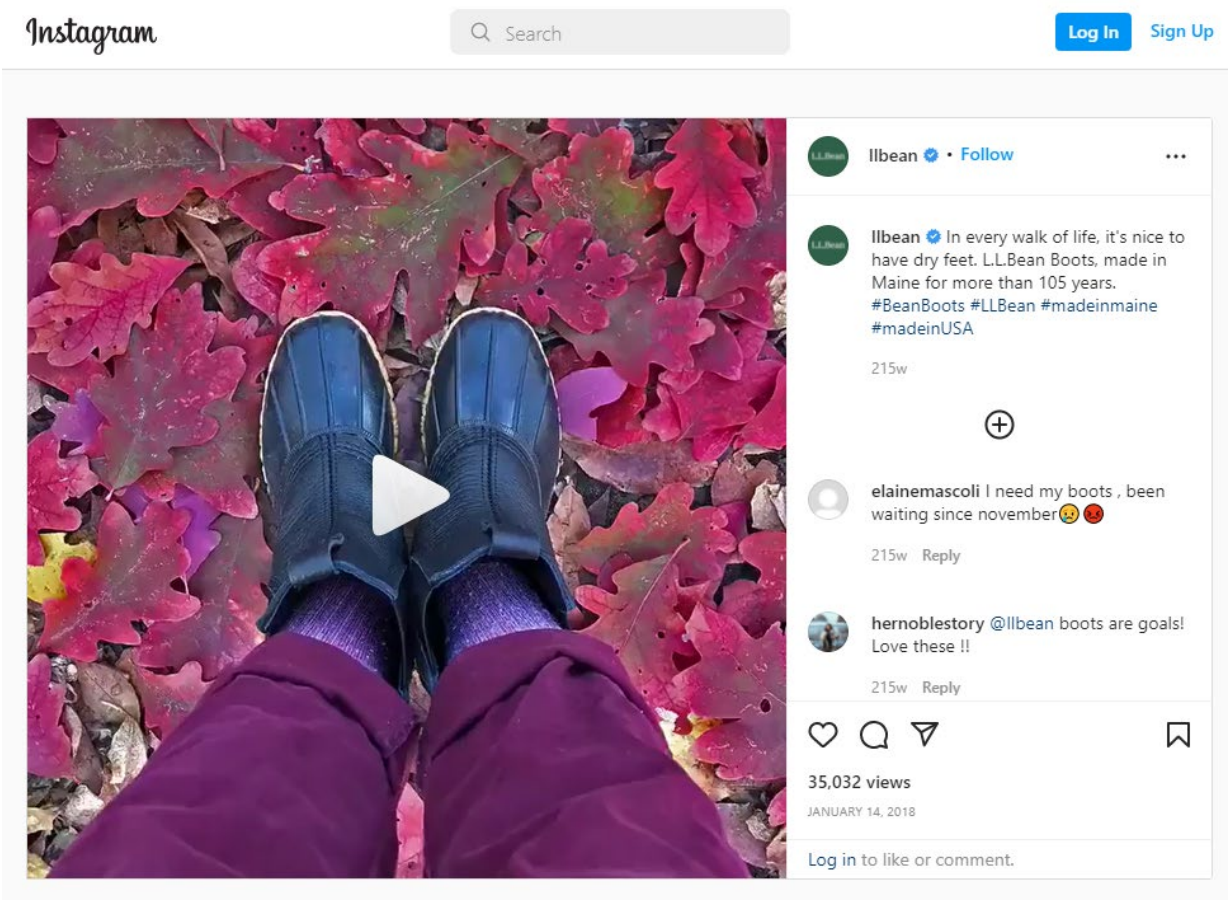
[36] *See* https://www.llbean.com/llb/shop/121311?page=mens-storm-chaser-side-zip-boot-4-ballistic-mesh-mens

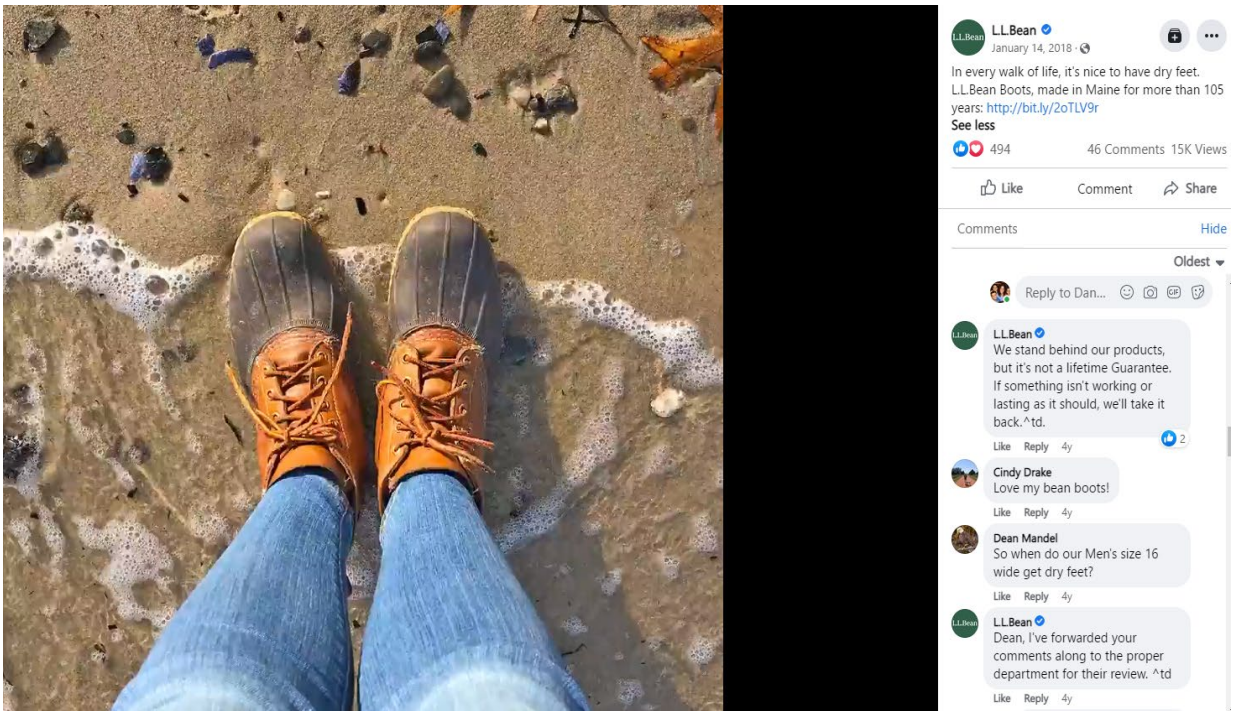
61. In addition to its website, L.L. Bean also utilized a strong social media presence to advertise the Products. For example, the Company regularly used its Instagram and Facebook accounts to market the Mislabeled Boots as "waterproof" as highlighted in the following screen shots:



62. The Company also uses social media to bolster its image as a maker of products suitable for the elements or any environment, making statements such as, "In every walk of life, it's nice to have dry feet."[37] Screenshots of social media posts showing its customers in various outdoor settings and conditions are reproduced below:

[37] *See* https://www.instagram.com/p/Bd8A5TLjDAQ/?hl=en; https://www.facebook.com/llbean/.


Instagram
Search
Log In
Sign Up
llbean • Follow
llbean In every walk of life, it's nice to have dry feet. L.L.Bean Boots, made in Maine for more than 105 years. #BeanBoots #LLBean #madeinmaine #madeinUSA
215w
elainemascoli I need my boots , been waiting since november
215w Reply
hernoblestory @llbean boots are goals! Love these !!
215w Reply
35,032 views
JANUARY 14, 2018
Log in to like or comment.


L.L.Bean
January 14, 2018
In every walk of life, it's nice to have dry feet. L.L.Bean Boots, made in Maine for more than 105 years: http://bit.ly/2oTLV9r
See less
494
46 Comments 15K Views
Like
Comment
Share
Comments
Hide
Oldest
Reply to Dan...
L.L.Bean
We stand behind our products, but it's not a lifetime Guarantee. If something isn't working or lasting as it should, we'll take it back.^td.
Like Reply 4y
2
Cindy Drake
Love my bean boots!
Like Reply 4y
Dean Mandel
So when do our Men's size 16 wide get dry feet?
Like Reply 4y
L.L.Bean
Dean, I've forwarded your comments along to the proper department for their review. ^td
Like Reply 4y

L.L.Bean

November 1, 2021 ·

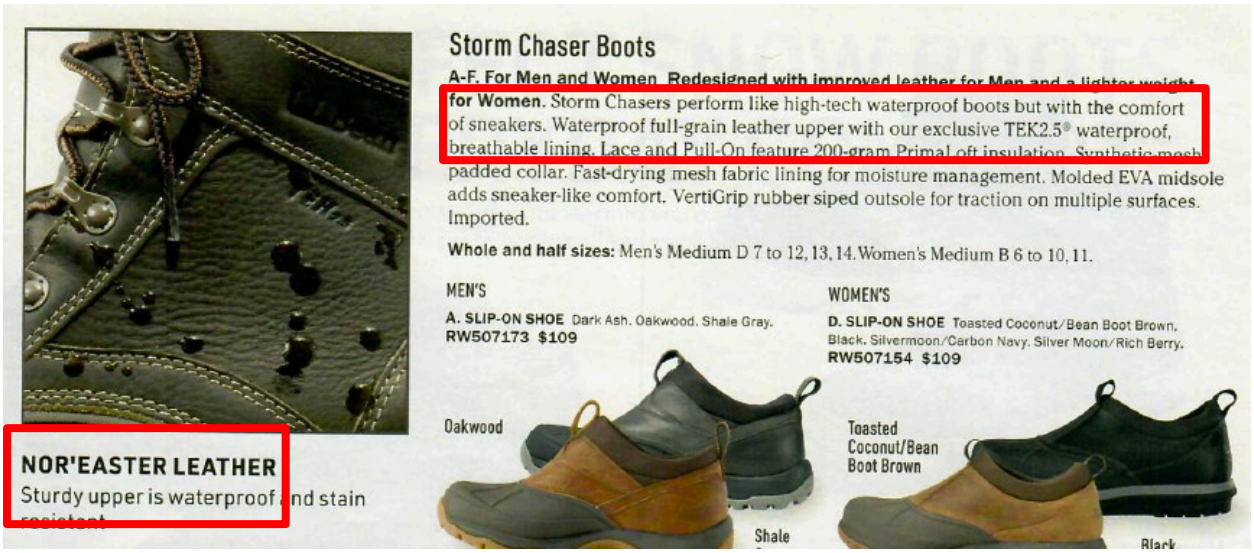
Mix one warm and comfy coat, a handful of foliage and a dash of fresh mountain water, and you've got the recipe for a perfect fall day. #BeanOutsider (📷: Instagram's @theloverspassport)

63. L.L. Bean also utilizes direct marketing in the form of mailed catalogs, a tradition since the Company's founding in 1912. In 2018, the Company mailed catalogs to customers in every state.[38].

64. As an essential element of its sales and marketing campaign, the Company has used its catalog mailings to bolster its misleading waterproof claims and representations that with

[38] https://www.llbean.com/dept_resources/shared/Company_Information.pdf?nav=C2teX-518401

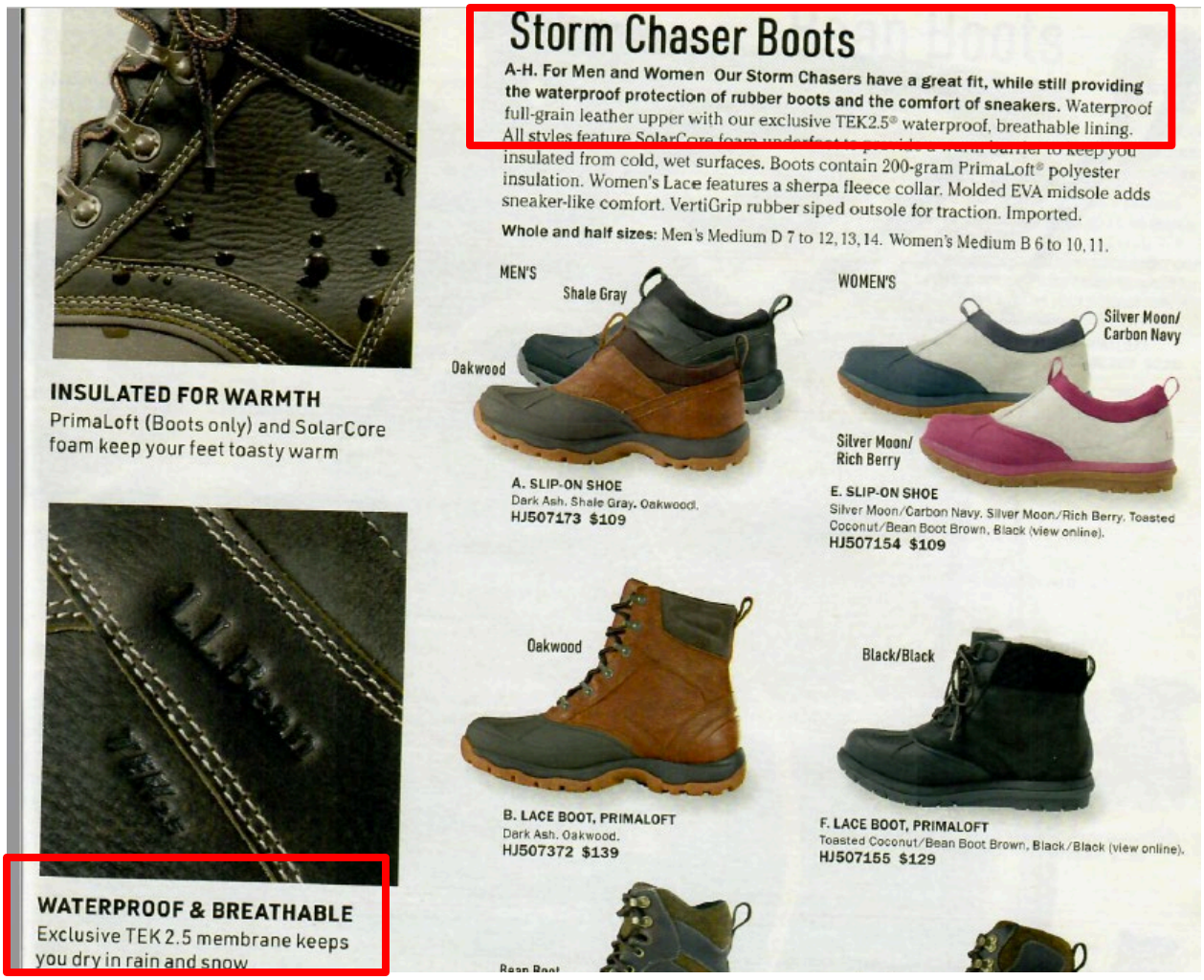
L.L.Bean products, its customers will be prepared for any inclement weather or condition.. For example, the Company's 2020 Outwear catalog highlights L.L.Bean's "ready-for-anything outerwear," in particular the Men's and Women's Storm Chaser "**high-tech waterproof boots**," featuring **"waterproof" "NOR'EASTER LEATHER"** and a "**TEK 2.5 waterproof . . . membrane [that] seals out weather**." Copies of the catalog are provided below:



65. Substantially similar representations and warranties appear in the Company's 2020 Guide to Winter catalog, as shown in the images below. The Company claims its waterproof boots are suitable for "**ALL WEATHER & ALL TERRAIN**," combining comfort with the "**tough waterproof performance**" of "**TEK 2.5" waterproofing**:

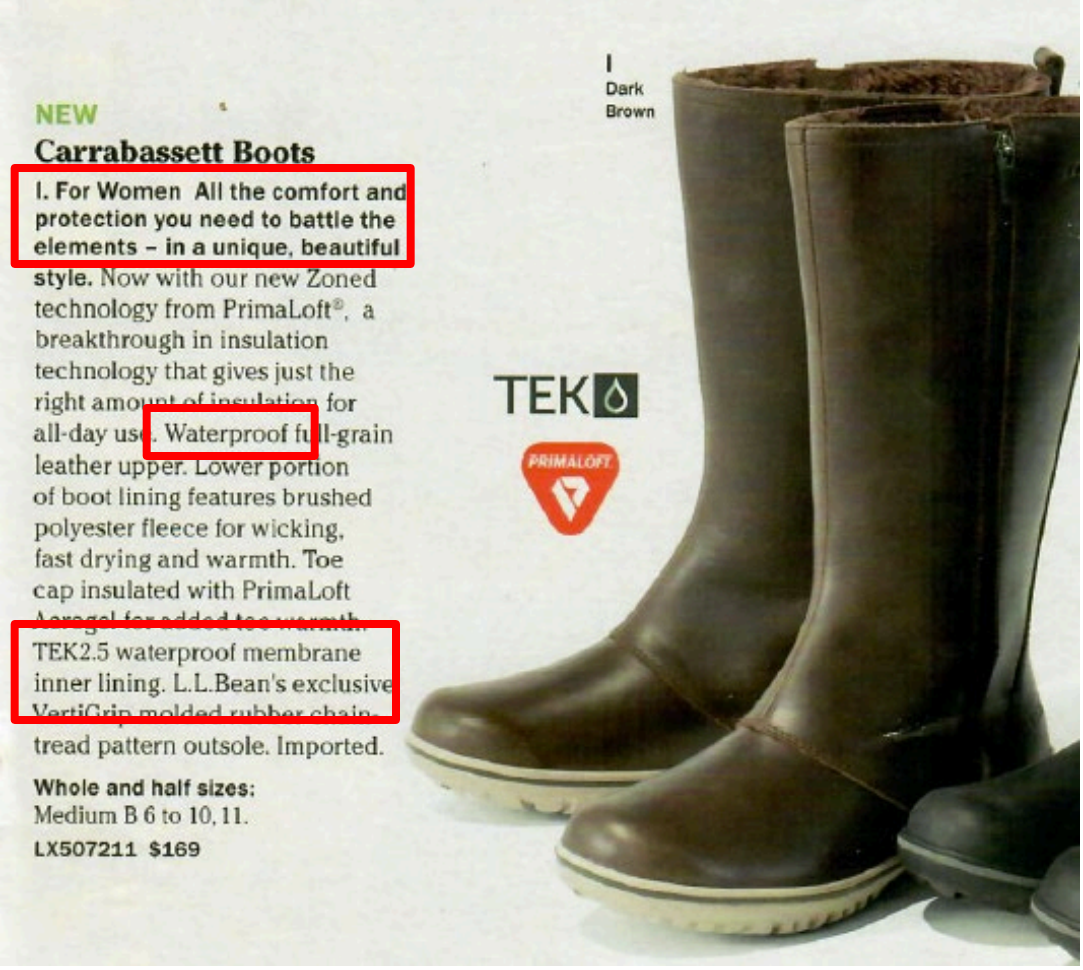

L.L.Bean
Guide to Winter | FREE SHIPPING WITH $50 PURCHASE
READY-FOR-ANYTHING OUTERWEAR
Plus cold-stopping boots and fun-inspiring gear for the whole family

66. Specifically with regard to the Storm Chaser Boots, the Company represents and warrants the Products will "**provid[e] the waterproof protection of rubber boots**" and "**keep[] you dry in rain and snow**."



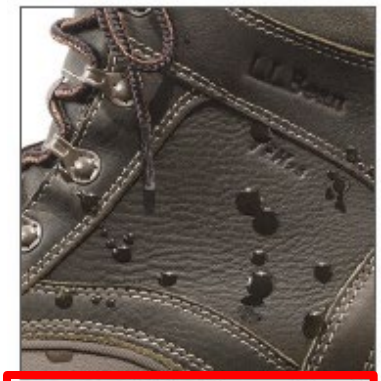
67. L.L. Bean's representations and warranties regarding its "waterproof" Products appeared frequently in its catalogs, mailed out regularly to consumers. The Fall 2019 L.L.Bean catalog similarly claims that the Storm Chaser Boots are "Waterproof" and/or include the "TEK2.5® waterproof/breathable membrane . . . ." Images from the catalog are provided below:

68. Likewise, the same Fall 2019 catalog represented and warranted that the Carrabassett Boots are "Waterproof" with the "TEK2.5 waterproof membrane inner lining," providing the "protection you need to battle the elements":



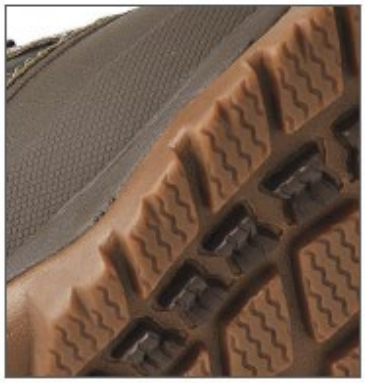
69. Similar representations and warranties appear in the Company's December 2019 Guide to Winter catalog, as shown in the images below. The Company claims its Products, including the Storm Chaser line of boots, are "waterproof"[39] or made with "waterproof full-grain leather upper with our exclusive TEK 2.5 waterproof, breathable lining" that "keeps feet dry":

[39] The Company also claims the Women's Nordic Boot with Arctic Grip is waterproof.



NOR'EASTER LEATHER

Waterproof and stain-resistant protection



MOLDED RUBBER OUTSOLE

Multilugged treads offer superior traction

WATERPROOF & BREATHABLE

Our exclusive TEK 2.5 waterproof/breathable barrier keeps feet dry

NEW

Storm Chaser Boots

A-F. For Men and Women Redesigned with improved leather in Men's and a more lightweight feel in Women's. Our Storm Chaser Boots perform like high-tech waterproof boots but with the comfort of sneakers. Waterproof full-grain leather upper with our exclusive TEK2.5® waterproof, breathable lining. Lace and Pull-On feature 200-gram PrimaLoft insulation. Synthetic mesh padded collar for comfort. Fast-drying mesh fabric lining for moisture management. Molded EVA midsole adds sneaker-like comfort. VertiGrip rubber siped outsole for traction on multiple surfaces. Imported.

Whole and half sizes: Men's Medium D 7 to 12, 13, 14. Women's Medium B 6 to 10, 11.

MEN'S

Oakwood

A. SLIP-ON SHOE
Dark Ash. Oakwood.
HJ507173 $109

Oakwood

B. LACE BOOT
Dark Ash. Oakwood.
HJ507372 $139

Oakwood

C. PULL-ON ZIP BOOT
Dark Ash. Oakwood.
HJ507166 $139

WOMEN'S

Toasted Coconut/Bean Boot Brown

D. SLIP-ON SHOE
Toasted Coconut/Bean Boot Brown, Black (view online).
HJ507154 $109

Toasted Coconut/Bean Boot Brown

E. LACE BOOT
Toasted Coconut/Bean Boot Brown, Black/Black (view online).
HJ507155 $129

Shale Gray/Black

Taupe/Bean Boot Brown

F. PULL-ON ZIP BOOT
Shale Gray/Black, Taupe/Bean Boot Brown.
HJ507153 $129

SHOP ANYTIME AT LLBEAN.COM OR 800-221-4221

70. Similarly, the 2019 Winter Holiday catalog touts that its snow boots "... will keep you on the go in the worst weather" and represented and warranted that the Snowfield Boots are "Waterproof":

NEW **Snowfield Boots**

D, E. For Women Casual snow boots for everyday wear around town or commuting to work. Waterproof full-grain-leather foot and trim. Warm 200-gram PrimaLoft® insulation. Soft, moisture-wicking nylon/acrylic-fleece lining and faux-fur collar. Cushioned, removable EVA insole is covered in warm polyester fleece. EVA midsole and molded nylon shank. Imported.

Whole sizes: Medium B 6 to 11.

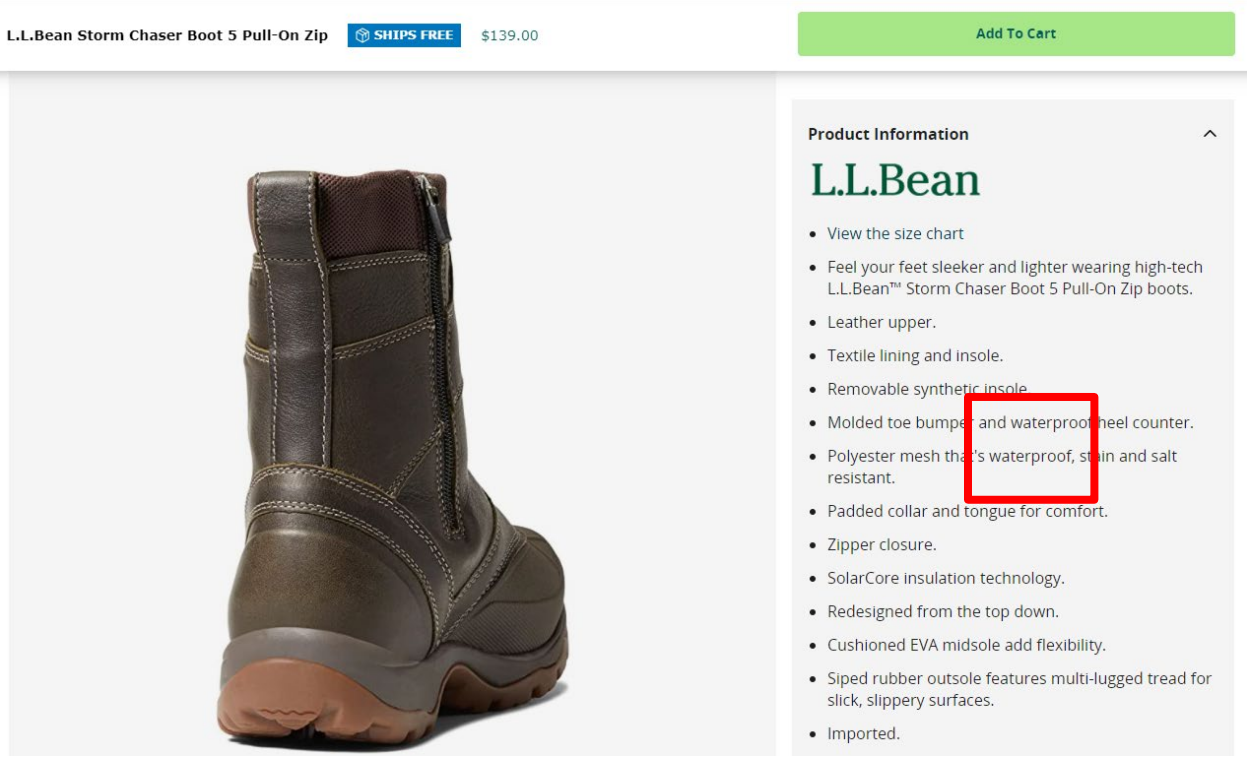
D. TALL WL510324 $169
E. MID WL510322 $159

Representations and Warranties Made by the Company's Authorized Retailers

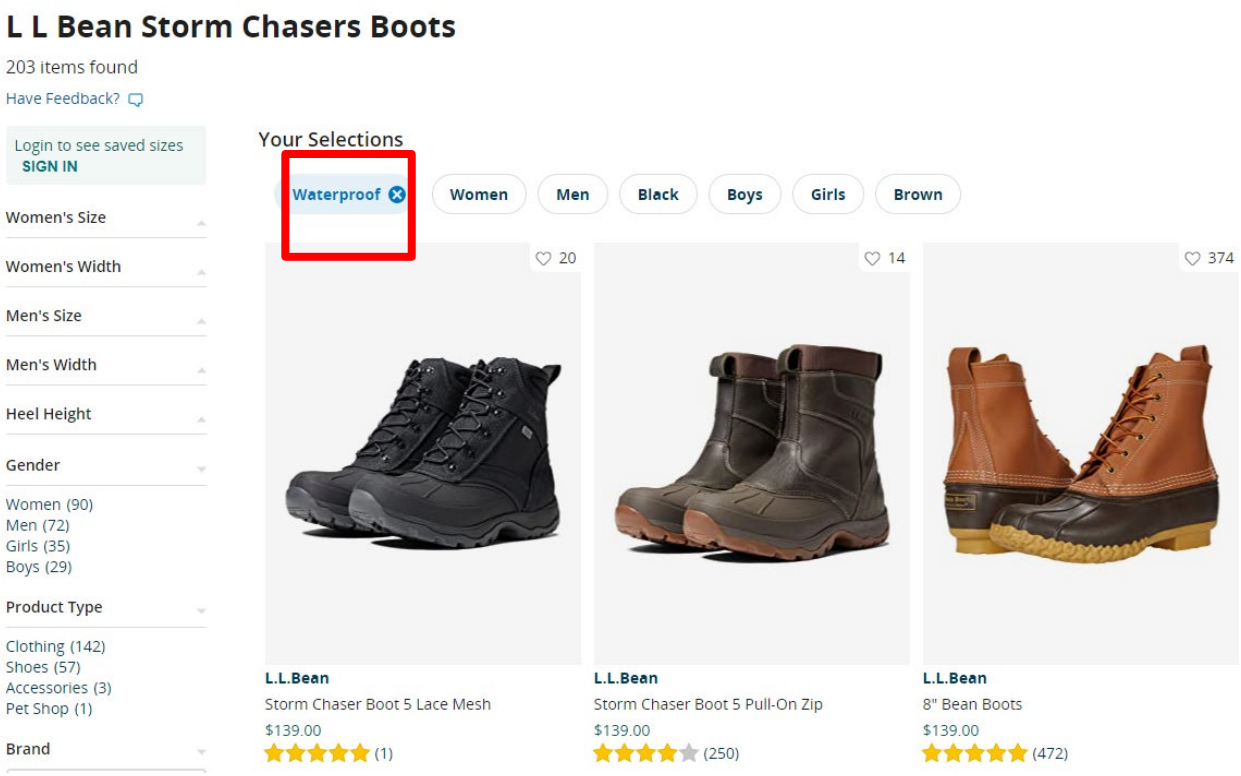
71. While L.L. Bean primarily sells its products directly to consumers, the Company

also reaches customers in 1,200 partner store locations and online through its wholesale relationships with select retailers. L.L. Bean has supplied marketing materials to these partners, which have marketed the Mislabeled Boots to consumers in a manner materially similar to the advertising and labeling set forth above.

72. For example, L.L. Bean's Men's Storm Chaser Boots are advertised as "waterproof" on Zappos.com[40] and appear as a result in Zappos.com's "waterproof" filter:

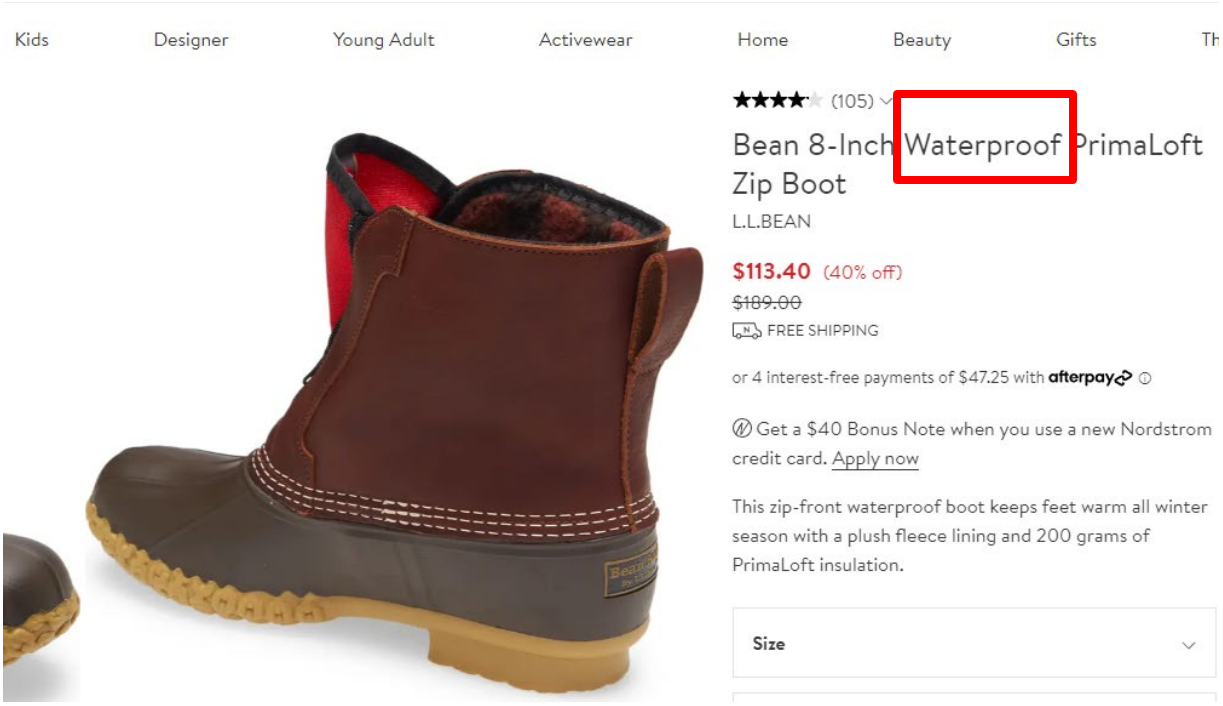


[40] *See* https://www.zappos.com/p/l-l-bean-storm-chaser-boot-5-pull-on-zip/product/9595474.



73. Similarly, L.L. Bean's retail partner Nordstrom's advertises the Bean Boot, Front-Zip as "waterproof":[41]

[41] https://www.nordstrom.com/s/llbean-l-l-bean-bean-8-inch-waterproof-primaloft-zip-boot-women/6143507?origin=category-personalizedsort&breadcrumb=Home%2FBrands%2FL.L.Bean%2FBoots&color=801



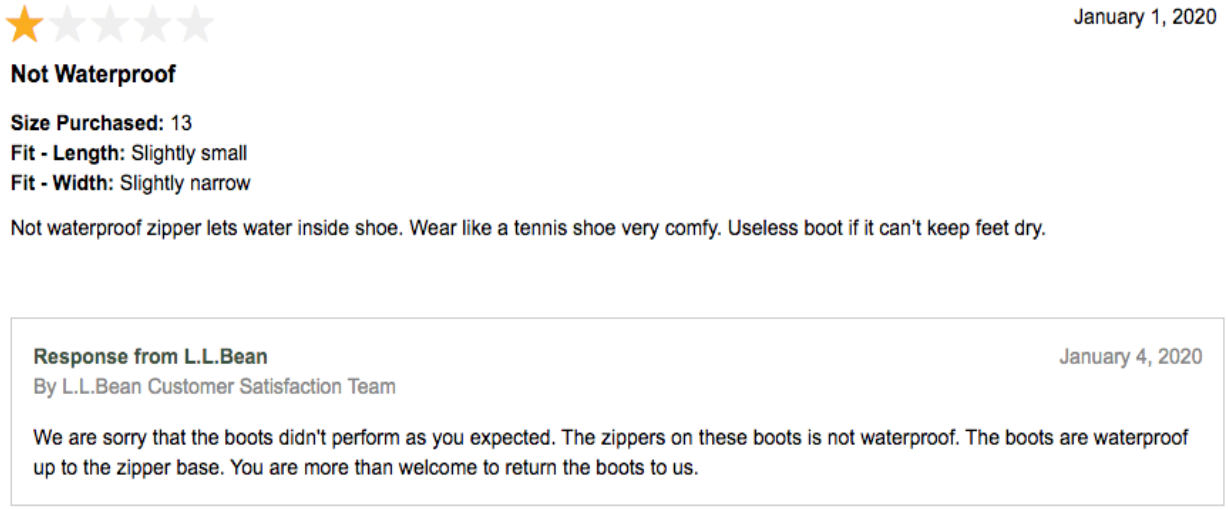
74. As demonstrated above, for years the Company's marketing and labeling communicated a consistent and material message that the Products were "waterproof," providing a "barrier" against water infiltration, without qualification. Moreover, each and every Class member who purchased the Products was exposed to the "waterproof" claim.

The Mislabeled Boots are Not Waterproof

75. The Mislabeled Boots, however, are not waterproof. Rather, the design and construction of the Products with non-waterproof zipper closures and without waterproof zipper gussets allows water to easily penetrate the footwear rendering the "waterproof" representations false and misleading.

76. In fact, in response to a customer complaint regarding water leakage buried in a sub-page on the Company's website, L.L. Bean conceded that its Storm Chaser boots with side-zip are not waterproof. Specifically, in January 2020, when a consumer posted "**Not waterproof zipper lets water inside shoe. . . . Useless boot if it can't keep feet dry**," an L.L. Bean

representative responded by stating "the zippers on these boots [are] not waterproof. The boots are waterproof up to the zipper base." A screen shot of the admission is reproduced below:



January 1, 2020

Not Waterproof

Size Purchased: 13
Fit - Length: Slightly small
Fit - Width: Slightly narrow

Not waterproof zipper lets water inside shoe. Wear like a tennis shoe very comfy. Useless boot if it can't keep feet dry.

Response from L.L.Bean January 4, 2020
By L.L.Bean Customer Satisfaction Team

We are sorry that the boots didn't perform as you expected. The zippers on these boots is not waterproof. The boots are waterproof up to the zipper base. You are more than welcome to return the boots to us.

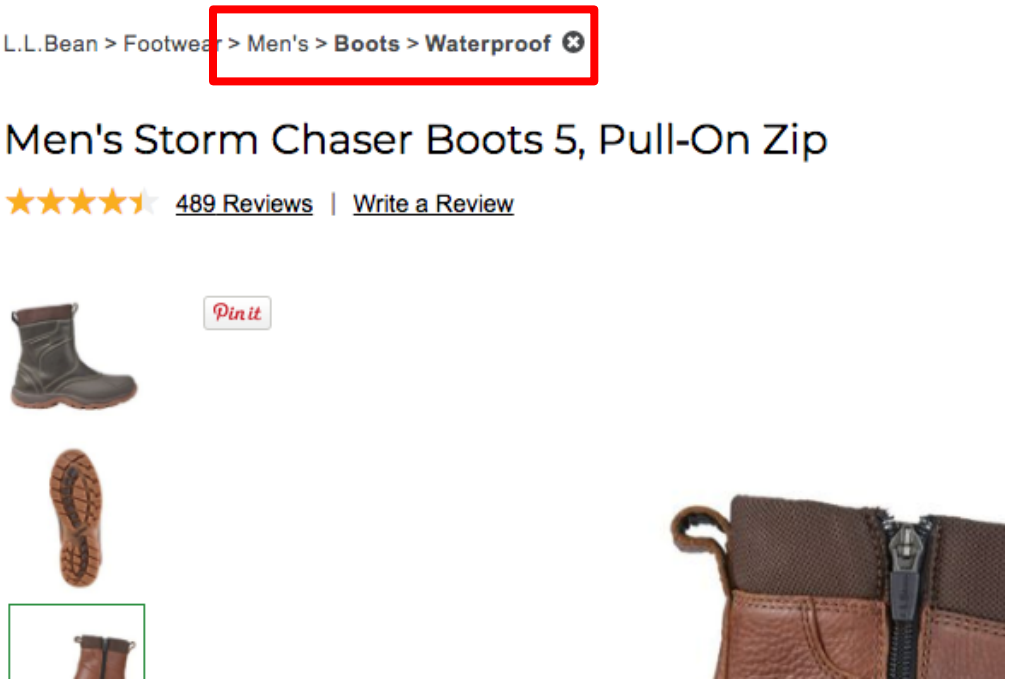
77. Despite the Company's apology to the customer that its boots did not perform as expected, L.L. Bean continued for over two years after this post to label and advertise the boots as waterproof with a waterproof membrane and barrier to keep feet dry, without any qualification.

78. Not surprisingly, after receiving Pre-Suit Notice of Plaintiff's claims in her April 21, 2022 letter, L.L. Bean has modified various marketing materials, admitting that its zippers (and therefore the Products themselves) are not waterproof and/or are merely water resistant.

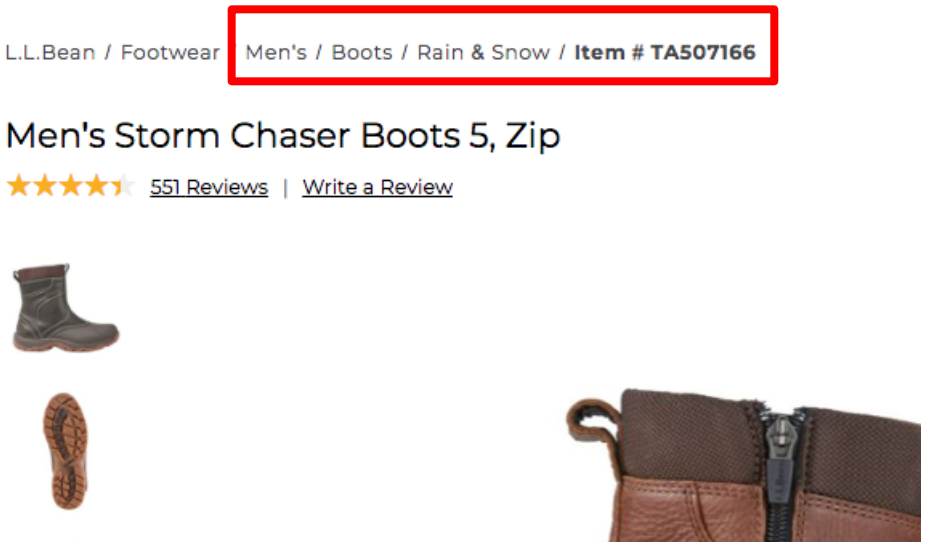
79. For example, Defendant concedes that the Men's Storm Chaser Boots 5, with side-zip are no longer "waterproof" (as shown in the before/after screenshots below) and the Company has added a disclaimer to the product description, stating "Easy on/off side zippers **(not waterproof)**" and "Not designed to stay submerged in water."[42]

[42] *Available at* https://www.llbean.com/llb/shop/123214?page=mens-storm-chaser-boot-5-pull-on-zip-mens.

Previous waterproof claim/product category:



Revised/current product category:



Previous product construction description:

Product Details

Redesigned from the top down, with a richer leather that's waterproof, stain and salt resistant. These winter boots also feature breakthrough SolarCore insulation technology for low weight and maximum insulating power.

Size & Fit

- Order regular shoe size. For half sizes not offered, order up to next whole size.

Specs

- Weight: Approx. 2 lb. 15 oz. per pair.

Why We Love Them

Redesigned to be sleeker and lighter, our Men's Storm Chaser Pull-On Boots perform like high-tech waterproof boots — but with the comfort of sneakers. The rubber half shell and cushioned EVA midsole add flexibility and are built from the same materials used in top-of-the-line walking and running shoes

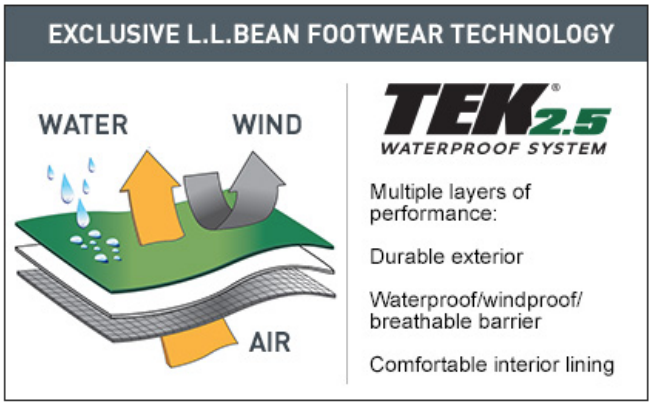
Construction

- NEW Waterproof Nor'easter full-grain nubuck leather.
- Lined with waterproof 200-gram PrimaLoft® for extraordinary warmth in colder weather.
- SolarCore insulation on lasting board for warmth without the weight.
- Mesh padded collar for comfort.
- EVA-molded midsole and footbed provide athletic-shoe comfort.
- Molded toe bumper and waterproof heel counter for enhanced protection.
- Siped rubber outsole features multilugged tread for slick, slippery surfaces.
- TEK2.5® waterproof, breathable membrane inner lining.

Additional Features

- Leather pull-on loop on back and front collar for easy on/off.
- Imported.

Item #: TA507166



Revised/Current product construction description:

Product Details

The toughest all-weather boots with an easy on/off side zip. Built for complete comfort without sacrificing tough-as-nails durability.

Size & Fit

- Order regular shoe size. For half sizes not offered, order up to next whole size.

Specs

- Weight: Approx. 2 lb. 15 oz. per pair.

Why We Love It

Our Storm Chaser Boots perform the way high-tech all-weather boots should, only they're lighter and sleeker – with all the comfort of sneakers. The rugged rubber outsole is not only built for stability, but flexibility too; the cushioned EVA midsole ensures all-day ease – and both are built from the same materials as top-of-the-line walking and running shoes.

Construction

- 200-gram PrimaLoft® polyester insulation keeps feet warm.
- Covered polyurethane foam innersole with NXT for odor control.
- Molded EVA midsole provides exceptional cushion and support.
- Waterproof leather upper with TEK2.5® waterproof membrane and rubber bottom keep feet dry.
- Soft padded nylon collar for added comfort.
- Siped rubber outsole with multi-lugged tread for a strong grip on wet or icy surfaces.
- Lined with moisture-wicking synthetic mesh for breathable, fast-drying comfort.
- Easy on/off side zippers (not waterproof).

Weather Protection

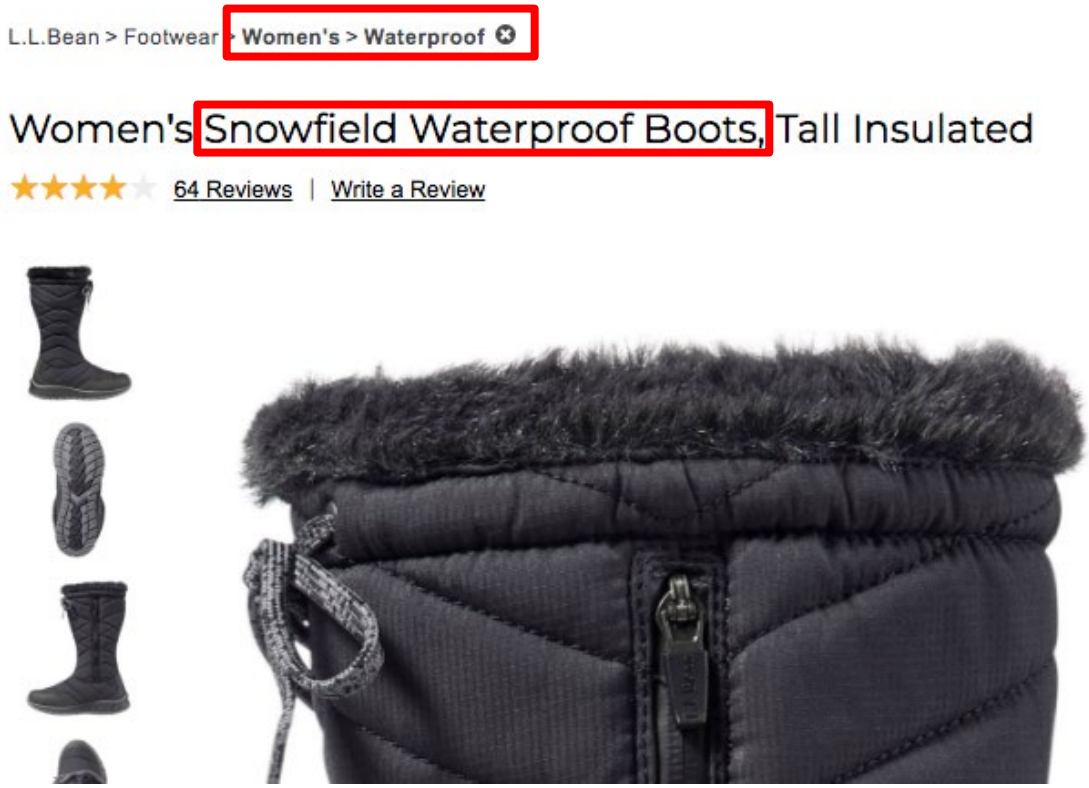
- Not designed to stay submerged in water.
- Best for snow, slush, rain and colder weather.
- Imported.

80. The retail page for the Women's Storm Chaser Boots has been modified similarly since Plaintiff's Pre-Suit Notice to state that the zippers are "not waterproof" and the webpage no

longer states that the Product "provid[es] the waterproof protection of rubber boots."[43]

81. L.L. Bean has modified other Product descriptions in a similar manner since Plaintiff's Pre-Suit Notice. For example, the Women's Snowfield Boots are no longer named or categorized as waterproof and the Product's construction description now states "Please note: zipper is not waterproof."[44]

Previous waterproof claim/product category:



[43] *Available at* https://www.llbean.com/llb/shop/123140?page=strom-chaser-boots-zip-5-womens.
[44] *Available at* https://www.llbean.com/llb/shop/124676?page=womens-snowfield-boot-tall-waterproof-insulated-womens.

Revised/current product category:

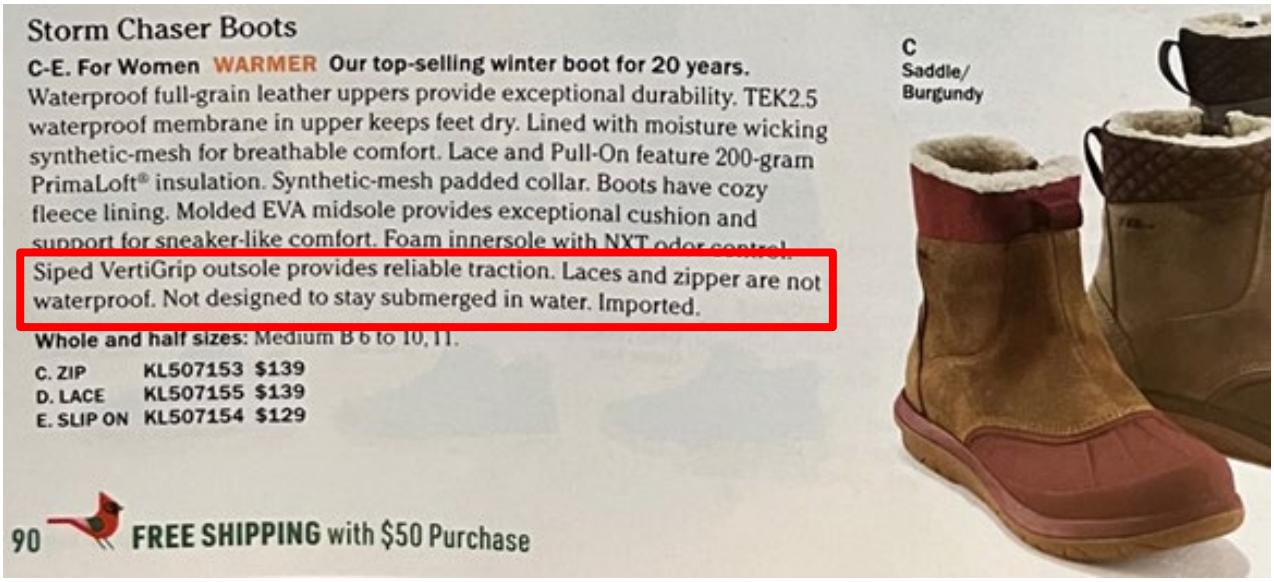
Revised/current product construction description:

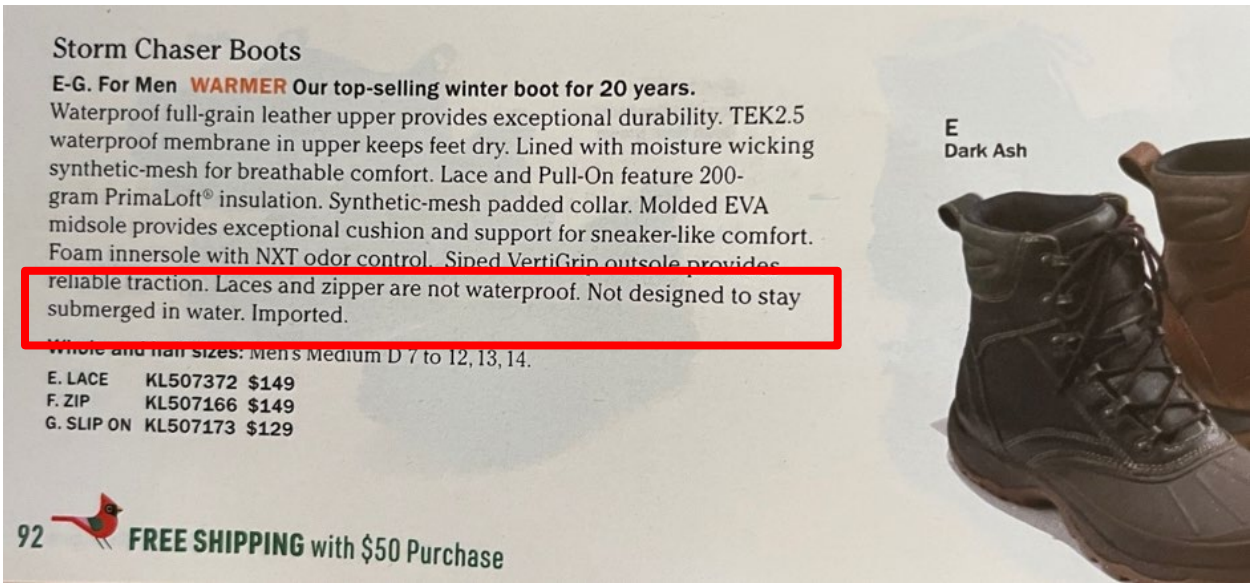
Construction

- Quilted nylon mesh upper with a water-resistant treatment keeps feet dry in snow and slush.
- Synthetic faux-fur collar.
- Moisture-wicking fleece lining is also quick drying.
- Contoured dual-density EVA innersole for comfort and support.
- 200-gram PrimaLoft insulation provides exceptional warmth.
- TEK2.5® membrane and moisture-wicking lining keeps feet dry in slush and snow.
- Exclusive Comfort Ride midsole gives great support and rebound.
- VertiGrip rubber-lugged outsole for reliable traction.
- Please note: zipper is not waterproof.
- Imported.

82. In L.L. Bean's recent Christmas 2022 catalog, the Company added a slew of similar disclaimers. Specifically, the Company noted in the descriptions for its Storm Chaser Boots that

the "[l]aces and zipper are not waterproof. Not designed to stay submerged in water."





83. Similar disclaimers that occurred after Plaintiff's Pre-Suit Notice appear in product descriptions throughout the catalog as shown in the images below.

NEW Ultralight Boots

E, F. For Women WARMER Lightweight warmth for protection against winter's worst. Durable nylon upper features a TEK2.5® waterproof membrane to keep feet dry. 200 grams of PrimaLoft® insulation for exceptional warmth. Super-soft fleece lining. Cushioned EVA midsole for support. Aeroform insole board provides extra warmth. Lightweight rubber outsole with aggressive lugs for excellent traction. Laces and side-zipper not waterproof. Not designed to stay submerged in water. Imported.

Whole and half sizes: Medium B 6 to 10, 11.

E. TALL SIDE ZIP KL517500 $139
F. LACE UP KL518944 $139

NEW Snow Sneakers 5

A, B. For Women **WARMER** **Comfort and protection against winter's worst.** Stain-resistant suede-and-fabric upper. TEK2.5 waterproof system in upper keeps feet dry. 200 grams of our ColdShield insulation for warmth. True Comfort footbed provides all-day support. Comfort Ride midsole for unbeatable comfort. Rugged VertiGrip outsole gives improved traction on slippery surfaces. Laces not waterproof. Not designed to stay submerged in water. Imported.

Bucksport Boots

E, F. For Men Hard-working styles that get the job done. Premium, waterproof oiled-leather upper. Super-durable triple-needle stitching. True Comfort footbed for all day comfort. Cleansport NXT anti-odor sock liner prevents odors. Lugged Vibram® rubber outsoles for reliable traction. Laces not waterproof. Not designed to stay submerged in water. Imported.

NEW Day Venture Boots

A, B. For Women WARM Super-cozy suede upper with faux fur trim for style and warmth. Waterproof TEK2.5® membrane in upper keeps feet dry. An industry-first 60 grams of PrimaLoft® insulation for just-right warmth. Bamboo charcoal lining reduces odor and adds warmth. Comfort Ride midsole provides all-day cushion. VertGrip outsole with Bean-Boot-inspired chain-tread design for rugged traction. Laces not waterproof. Not designed to stay submerged in water. Imported.

Whole and half sizes: Medium B 6 to 10, 11.

A. MUK LUK KL517037 $139
B. ALPINE KL517052 $139

L.L.Bean Snow Boots

A, B. For Men WARMEST Choose from soft tumbled leather or ripstop/leather upper. Waterproof rubber shell and seam-sealed construction. Removable felt liner with faux-fleece collar. Molded vulcanized-rubber bottom with slip-resistant tread. Laces not waterproof. Not designed to stay submerged in water. Imported.

Whole sizes: Medium D 7 to 14. Half sizes order *up*.

A. RIPSTOP/LEATHER
KL507841 $149
B. TUMBLED LEATHER
KL299620 $159

B
Maple

RELIABLE TRACTION

Slip-resistant tread for confidence in wintry conditions

C
Ash/Dark Cement

Black

Ultralight Boots

C. For Men WARMER Lightweight warmth for protection against winter's worst. Lightweight, durable nylon uppers. TEK2.5 waterproof membrane in upper keeps feet dry. 200-gram PrimaLoft insulation for exceptional warmth. Super-soft fleece lining. Cushioned EVA midsole for support. Aeroform insole board provides extra warmth. Lightweight rubber outsole with aggressive lugs for excellent traction. Laces not waterproof. Not designed to stay submerged in water. Imported.

Whole and half sizes: Medium D 7 to 12, 13, 14.

KL510443 $139

D
Black/
Dark Citron

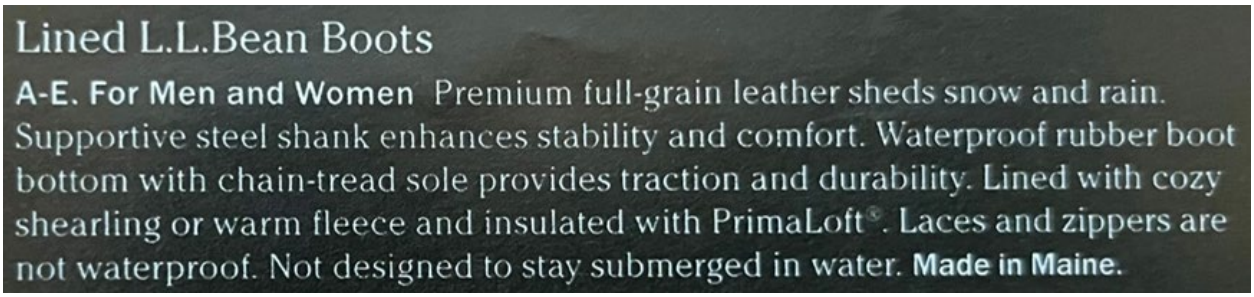
NEW Weather Challenger Boot

D. For Men WARMEST Our warmest winter boot. Durable mesh-and-leather upper. 600 grams of warm PrimaLoft® insulation and a cozy bamboo charcoal lining. TEK2.5 waterproof membrane in upper keeps feet dry. EVA insole and midsole provide all-day comfort. High-grip Vibram lugged outsole ensures reliable winter traction. Laces not waterproof. Not designed to stay submerged in water. Imported.

Whole and half sizes: Medium D 7 to 12, 13, 14.

KL511488 $199


Rangeley Pac Boots
A, B. For Women WARMER
Cozy, stylish boots for complete cold-weather comfort. Waterproof full grain leather upper features our TEK2.5® waterproof system and seam-sealed construction. 200-gram PrimaLoft® insulation. Soft sherpa fleece (tall) or faux fur (ankle) around the collar. Cushioned EVA insole. Waterproof rubber boot bottom and molded rubber outsole with grooved tread for traction. Laces not waterproof. Not designed to stay submerged in water. Imported.
Whole sizes: Medium B 6 to 11. Half sizes order down.
A. TALL KL502965 $179
B. ANKLE KL507255 $149
B
Taupe/Natural
Taupe/Bright Navy
Alloy Gray/Alloy Gray
100
FREE SHIPPING with $50 Purchase

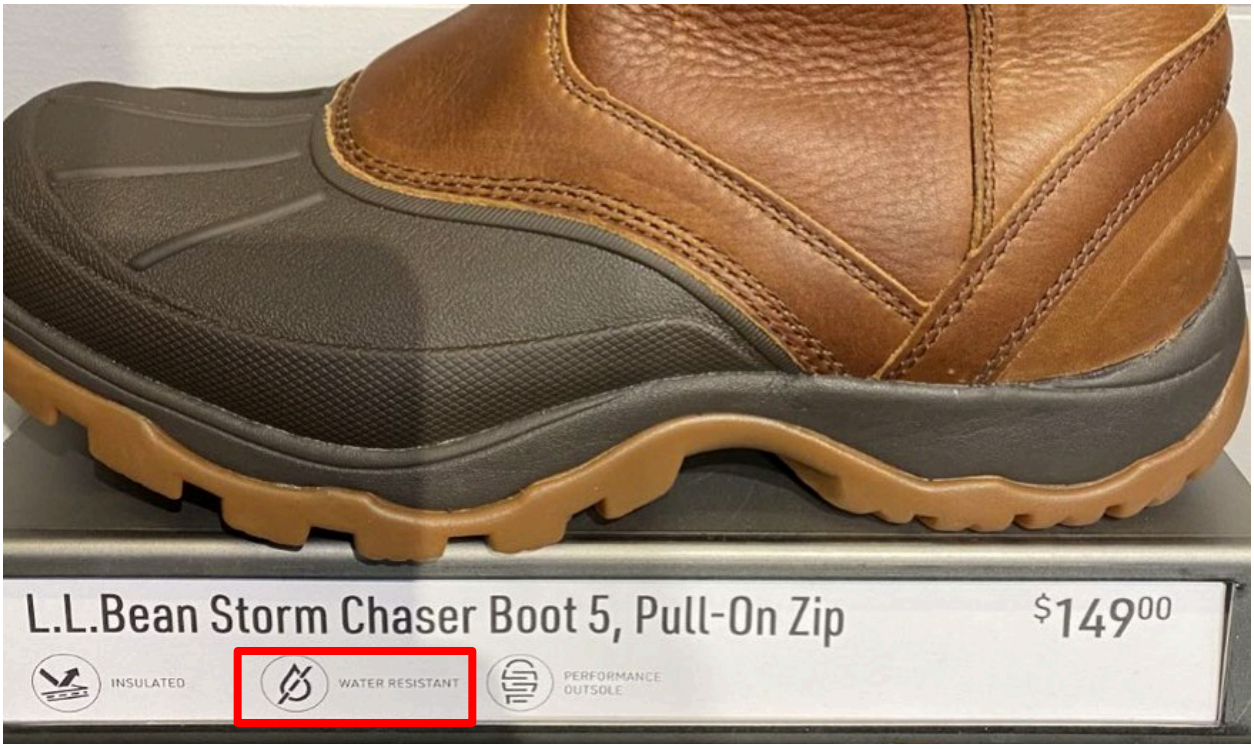

Lined L.L.Bean Boots
A-E. For Men and Women Premium full-grain leather sheds snow and rain. Supportive steel shank enhances stability and comfort. Waterproof rubber boot bottom with chain-tread sole provides traction and durability. Lined with cozy shearling or warm fleece and insulated with PrimaLoft®. Laces and zippers are not waterproof. Not designed to stay submerged in water. Made in Maine.

84. The catalog disclaimer first appeared in L.L. Bean's End of Fall 2022 catalog, where the Company still claimed its Women's Rugged Cozy Boots have waterproof leather uppers, but stated, "Zipper and laces not waterproof," as shown in the catalog image below.

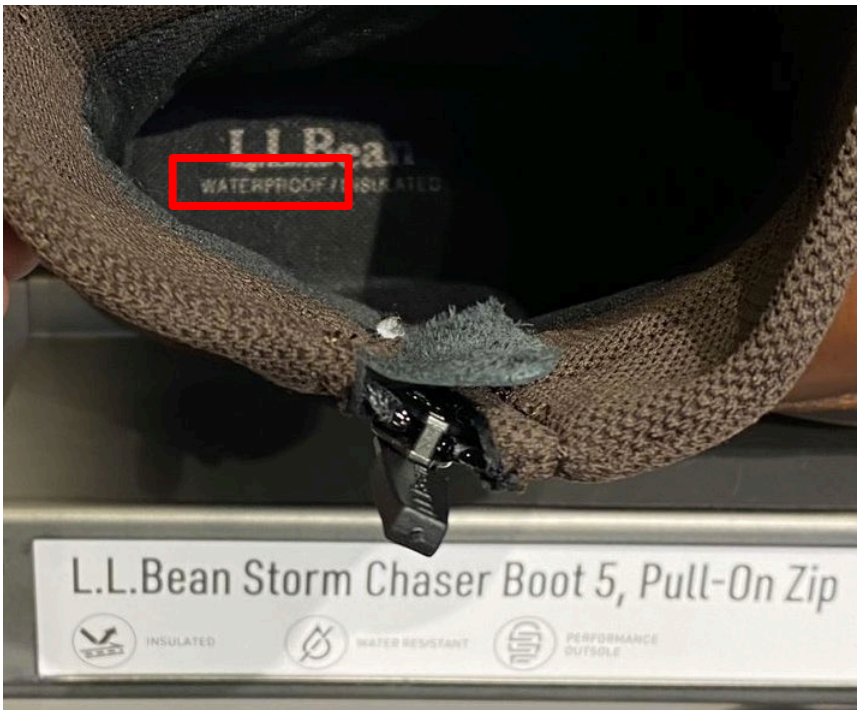
85. L.L. Bean has also made changes to the marketing in its brick-and-mortar stores. Specifically, the channel or shelf strips for the Mislabeled Boots no longer state "WATERPROOF"; rather, the shelf display labels adjacent to the Products now state that they are "WATER RESISTANT", as shown in the before and after photos below.

Previous shelf display:

Current shelf display:



86. However, the Product itself has not been modified and still states that it is "WATERPROOF" on the Product insole, as shown in the photograph below:



87. The in-store marketing for other Mislabeled Boots has been modified in the same manner after Plaintiff's Pre-Suit Notice, as shown in the following examples.

88. Defendant knew or should have known of the falsity of the label on the Mislabeled Boots, due to, inter alia, its use of zippers in the Mislabeled Boots that were neither waterproof nor recommended for use in waterproof footwear by the manufacturer of the zippers.

89. Based on the investigation of Plaintiff's counsel, it appears most, if not all, of the Mislabeled Boots are constructed with YKK Corporation of America ("YKK") zipper closures, including the Mislabeled Boots purchased by Plaintiff. None of the zipper enclosures utilized in the Mislabeled Boots are waterproof.

90. Specifically, the majority of the Mislabeled Boots appear to be constructed with a YKK "5CNT" plastic coil zipper chain.[45] The following photographs show zippers on L.L. Bean's Storm Chaser models, which is the model purchased by Plaintiff.

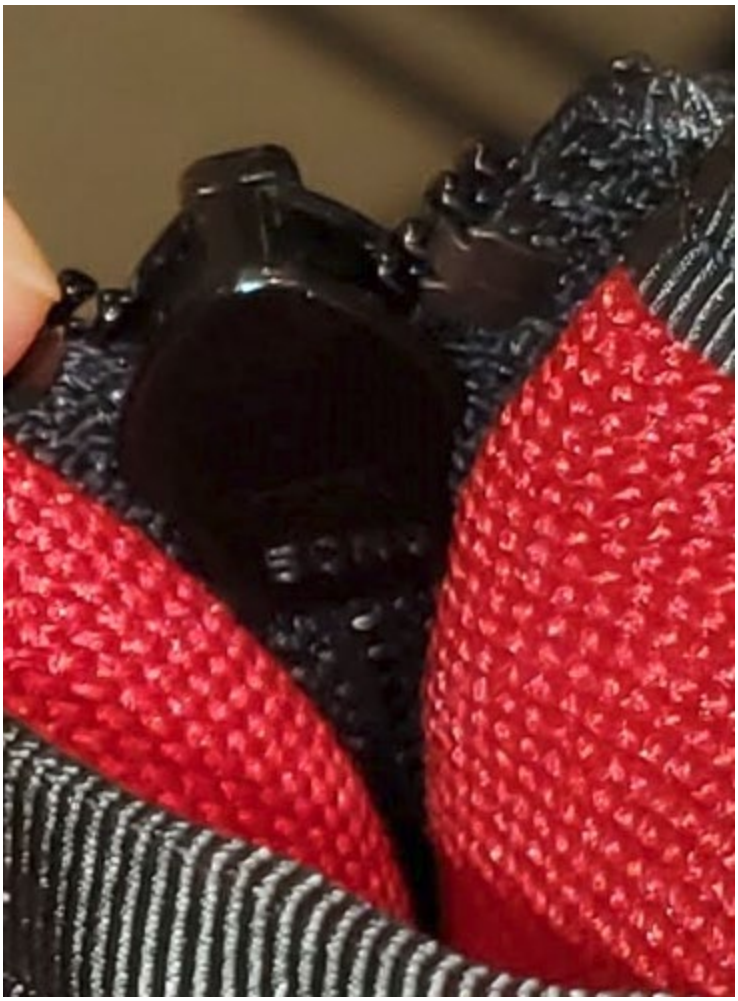
[45] "5CN" refers to a particular size and locking system of plastic coil zipper. *See* YKK's Fastening Catalog, *available at* https://ykk.meclib.jp/FasteningCatalogue/book/index.html#target/page_no=1; *see also* YKK's Asia Slider Catalogue, *available at* https://ykk.meclib.jp/Slider/book/#target/page_no=31; https://www.ykkfastening.com/products/search/detail.html?pdid1=Coil+Zipper+Standard. The "T" refers to the version used on YKK's "AquaGuard" zipper, which YKK specifically states is **not** "waterproof/watertight" on its website. *See* https://www.ykkfastening.com/products/search/detail.html?pdid1=AquaGuard(R)+(Coil) ("This zipper is water repellent, not waterproof/watertight").


YKK
5CT


N
YKK
5CT

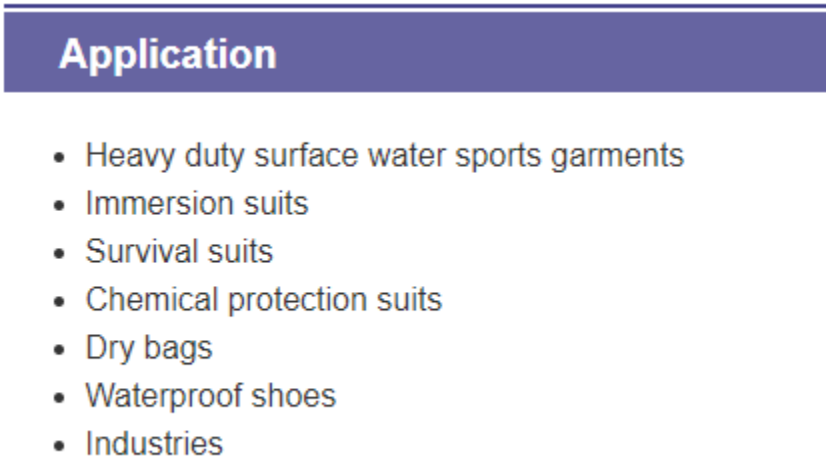
91. Likewise, the following photograph shows the same zipper on L.L. Bean's Rugged Cozy boots.

92. Similarly, the zipper on Bean Boot, Front Zip, utilizes the same YKK plastic coil zipper:



93. YKK's "5CNT" zippers are not waterproof. YKK's "AQUA" catalog, which is attached hereto as Exhibit 2, lists YKK's comprehensive line of zipper closures that are "waterproof" (described as "100% protection against the elements") and "water-resistant" (described as "water repellent" that "reduces water seepage"). The only YKK zippers categorized as being "waterproof" or "water tight" are the Aquaseal®, Flexseal® and Proseal® models. *See* Exhibit 2.

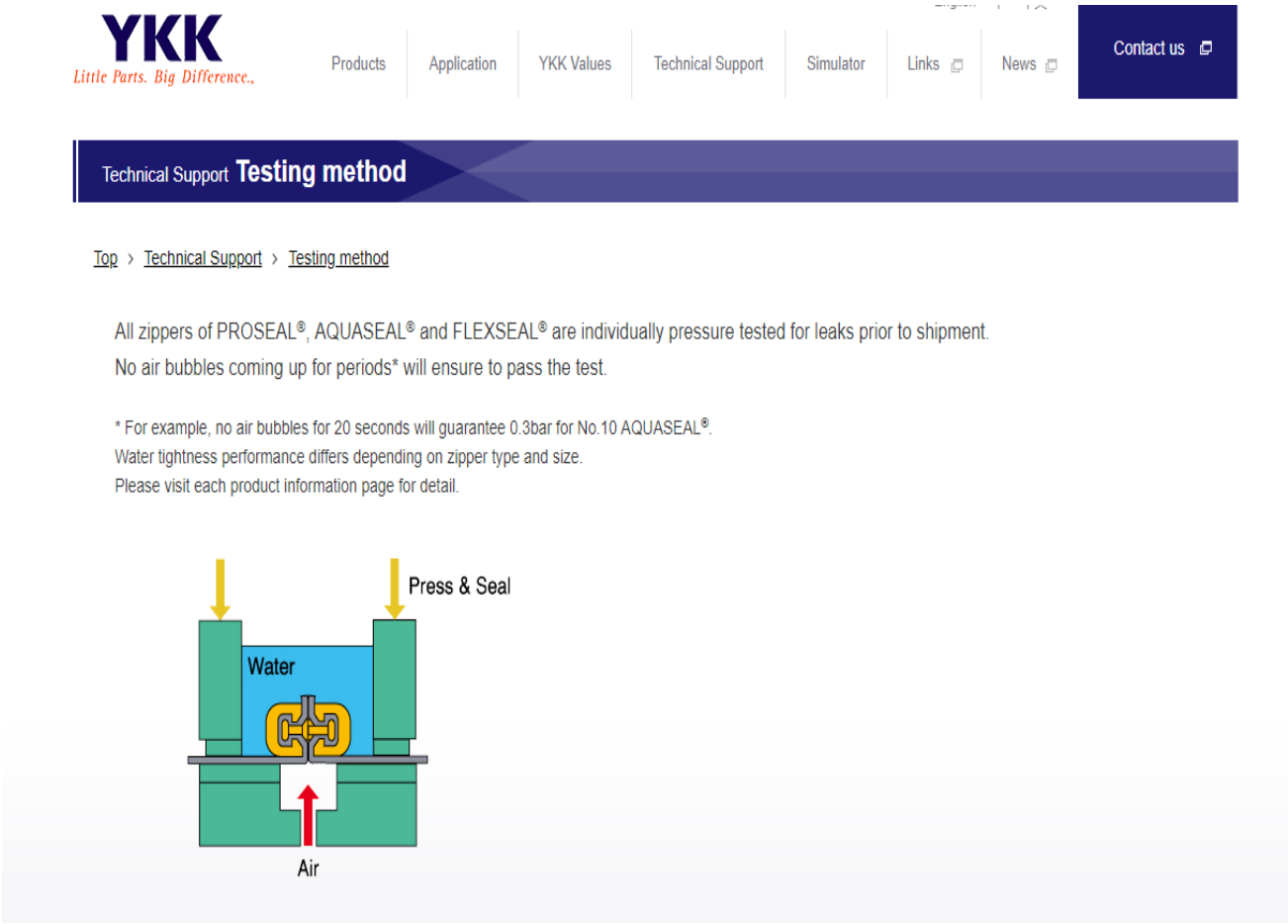
94. Further, the only waterproof zipper YKK offers and recommends for use in footwear is the Flexseal® zipper.[46] A screenshot of YKK's website listing the applications for the Flexseal® zipper is reproduced below:



95. In fact, several high-end hiking boot manufacturers have incorporated the waterproof Flexseal® zipper or other manufacturers' waterproof zippers[47] into their footwear. For example, the Scarpa Phantom Tech boot and Phantom 8000 HD[48] utilize "Flexseal®" zippers to create a waterproof closure on its outer cover.

96. Importantly, the waterproof zippers made by YKK are pressure tested prior to shipment to ensure water tight performance:[49]

[46] *See* https://www.ykkfastening.com/water-protective/flexseal/. The Aquaseal® is recommended for marine sportswear and the Proseal® is intended for use in "diving suits, immersion suits, chemical suits and emergency suits to protect workers from hazardous materials," not in shoe construction *See* https://www.ykkfastening.com/products/search/detail.html?pdid1=AQUASEAL(R); https://www.ykkfastening.com/products/search/detail.html?pdid1=PROSEAL(R); http://ykknorthamerica.com/product/aquaseal/; http://ykknorthamerica.com/product/proseal/.
[47] *See, e.g.*, http://tizip.com/.
[48] *See* https://www.scarpa.com/phantom-8000-s19.
[49] *See* https://www.ykkfastening.com/water-protective/support/testing/.



97. Each of the Aquaseal®, Flexseal® and Proseal® zippers is subject to individual water pressure testing to evaluate for water tightness under various levels of water pressure.

98. None of the Mislabeled Boots, however, use an Aquaseal®, Flexseal® or Proseal® zipper. Moreover, YKK does not use chain type "5CN" zippers in the manufacture of either its Aquaseal®, Flexseal® or Proseal® product lines.[50]

[50] *See* https://www.ykkfastening.com/water-protective/proseal/ (indicating Proseal® uses "4TZN," "8TZN," and "12TZN" zippers); https://www.ykkfastening.com/water-protective/aquaseal/ (indicating Aquaseal® uses "5VFWN" and "10VFWB" zippers); https://www.ykkfastening.com/water-protective/flexseal/ (indicating Flexseal® uses "85SEY" zippers).

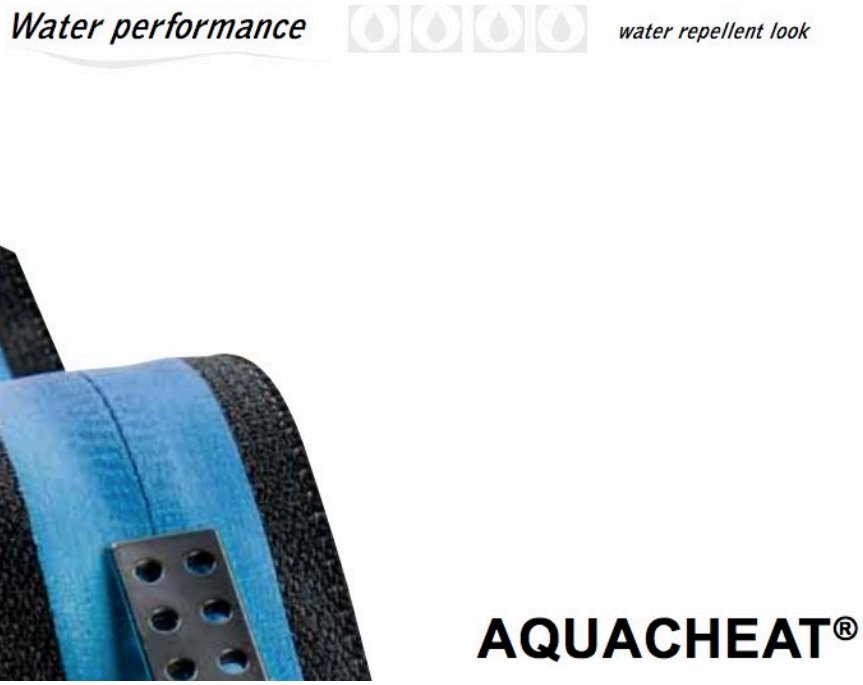
99. Further, at least two models of the Mislabeled Boots are constructed with a covered zipper, as shown in the following image of a Women's Snowfield Waterproof Boot, Tall:[51]

100. Although YKK markets certain zippers as being covered and/or having a polyurethane finish to provide some degree of water resistance, this treatment does not create a "waterproof" zipper. In particular, the treatments used in YKK's Aquacheat® and AquaGuard® zippers provide, at most, only a water repellant zipper as noted in YKK's marketing materials.

101. YKK markets its Aquacheat® zipper as providing merely a "water repellent look":[52]

[51] *Previously available at* https://poshmark.com/listing/LL-Bean-Womens-Snowfield-Insulated-Tall-Waterproof-Winter-Boot-Size-8-61f5b83f074d24303a289ce2?utm_source=gdm&utm_campaign=9886005321&campaign_id=9886005321&ad_partner=google&gskid=aud-946532829540%3Apla-1187535741595&gcid=431634791276&ggid=103371076954&gdid=c&g_network=g&enable_guest_buy_flow=true&gclid=EAIaIQobChMIn6fTz56j9gIVkZOzCh1sZAuuEAQYAyABEgLKP_D_BwE.

[52] *See* Exhibit 2.



102. YKK repeatedly notes the limitations of its zippers and specifically markets its AquaGuard® zipper as "water repellent, not waterproof/watertight," which it discloses in product literature and marketing materials:[53]

[53] *See* Exhibit 2; https://ykkamericas.com/catalog/aquaguard-water-repellent-zipper/; https://www.ykkfastening.com/products/search/detail.html?pdid1=AquaGuard(R)+(Coil).

Water Repellent Zipper

Polyurethane laminated zippers with a special water repellent chemical treatment.

Zipper Care

- **This zipper is not waterproof/watertight, but water repellent.**

AquaGuard® (Coil)

Introducing AquaGuard® , a water repellent zipper. It is created by laminating PU on the backside of a coil zipper. There are three types of film variations: shiny transparent film ,matte transparent film and matte colored film with a high quality appearance.
Now available in fashionable neon color variations for AquaGuard®.
For more detail please access to "AquaGuard® two-tone zipper" page.

Experience our story.

Care Information/Remarks

This zipper is water repellent, not waterproof/watertight.

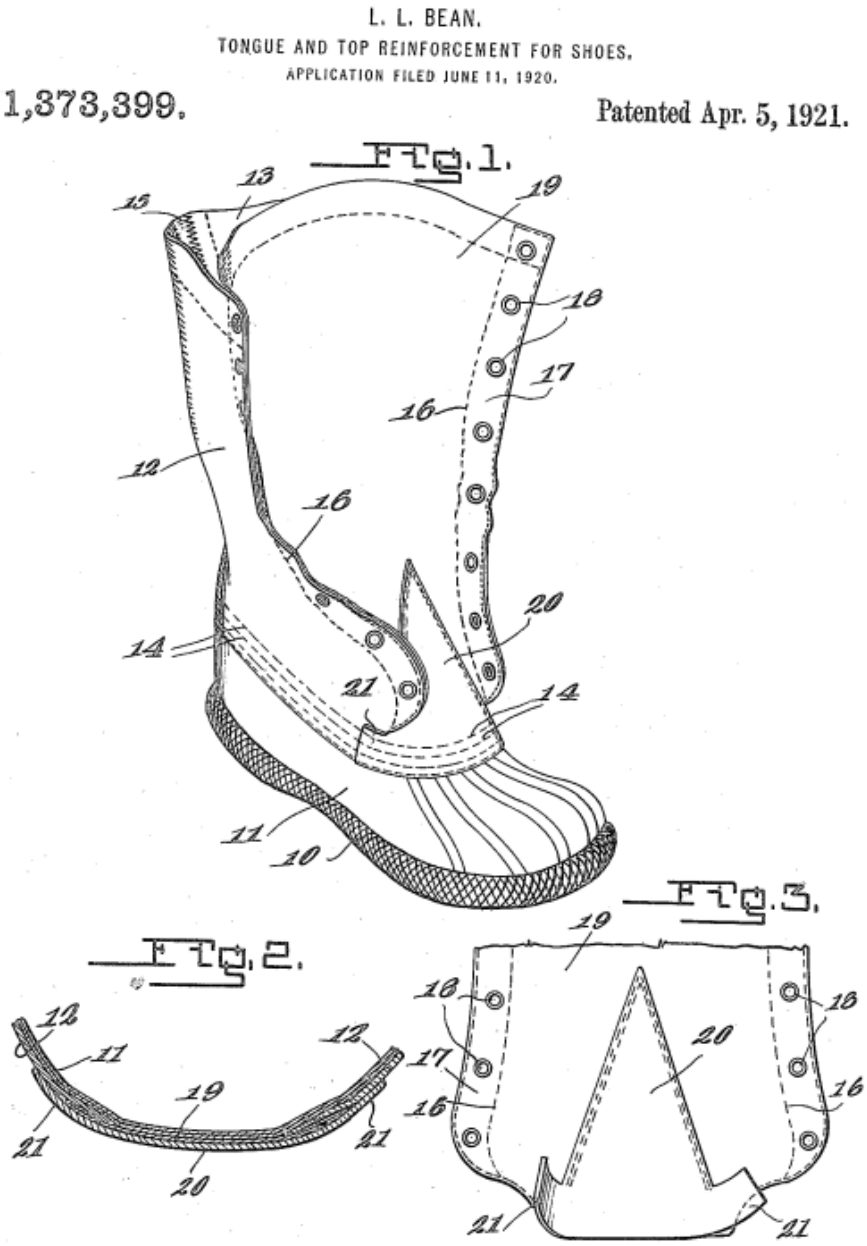
103. Accordingly, the YKK zippers used for the Mislabeled Boots purchased by Plaintiff and other consumers are not waterproof.

104. Indeed, the cost of the truly waterproof Flexseal® zipper recommended for use in footwear by YKK is approximately $40.00 to $45.00 per foot. In contrast, the cost of the non-waterproof zipper closures used in the Mislabeled Boots is a fraction of the price of truly waterproof zipper closures. For example, YKK's Bosubi® and AquaGuard® "water repellent"

zipper models, both size "5" zipper closures used in "5CN" zippers, are approximately $1.10 and $2.30 per foot, respectively. Moreover, the standard "5" coil and Vislon® models that are neither waterproof nor water repellent cost approximately 35 cents and 55 cents per foot, respectively. Clearly, L.L. Bean exacted a substantial price premium from consumers by passing off to them the non-waterproof zippers it actually used in the Mislabeled Boots as higher functioning and more valuable waterproof zippers as part of what it labeled and advertised as a fully "waterproof" boot without qualification.

105. Moreover, apart from using a waterproof zipper, the Company could have utilized a waterproof zipper gusset to provide a waterproof boot. With this design, a piece of material is sewn to the upper of the boot, behind the zipper, attached to both sides of the boot's opening. Presuming the gusset material is waterproof and seam sealed, a gusset allows for waterproof protection up to where it joins to the upper. An illustration of a zipper gusset is provided below:

106. This method of construction is not unknown to L.L. Bean. In fact, the Company's founder patented one of the first boot designs in 1921 for the purpose of making a boot waterproof by utilizing a gusseted tongue that "is secured to the vamp and between the side pieces of the top." An image from the patent is provided below:


L. L. BEAN.
TONGUE AND TOP REINFORCEMENT FOR SHOES.
APPLICATION FILED JUNE 11, 1920.
1,373,399. Patented Apr. 5, 1921.
Fig. 1.
Fig. 2.
Fig. 3.

107. The Company's classic Bean Boots are still manufactured today with a fully gusseted tongue.

108. With respect to zipper gussets, L.L. Bean has manufactured (and to this day still manufactures) some boots with an integrated gusset that fully extends behind the zipper to the top of the boot. As noted above, this design may prevent water that infiltrates the zipper from seeping into the boot, presuming the gusset material is truly waterproof. For example, the Company

utilized a full zipper gusset on prior versions of the Women's Storm Chaser zip and on its Women's Waterproof Nordic Casual Boots,[54] Women's Bethel Waterproof Boots,[55] and Women's Insulated Commuter Boots (illustrated below):[56]

Predecessor Storm Chaser Models:

[54] *See* https://www.llbean.com/llb/shop/83161?page=womens-waterproof-nordic-casual-boots-zip.
[55] *See* https://www.llbean.com/llb/shop/112635?page=bethel-boot-insulated-waterproof-zip-womens.
[56] *See* https://www.llbean.com/llb/shop/88391?page=womens-insulated-commuter-boots.

Women's Waterproof Nordic Casual Boots:

Women's Bethel Waterproof Boot:

Women's Insulated Commuter Boots:

109. As with adding a truly waterproof zipper closure, such extra waterproof gusset material would have added cost and value to the Products, to make them "waterproof" as represented. Again, L.L. Bean was able to obtain a premium price for Products warranted and represented to be "waterproof," while it knowingly and intentionally passed off to consumers inferior non-waterproof boots that allow water infiltration.

110. As noted above in paragraph 16, Plaintiff purchased a pair of Mislabeled Boots with zipper closures, which were labeled and advertised as being "waterproof." Several weeks after purchasing the Mislabeled Boots and wearing them outside in inclement weather, Plaintiff experienced water leakage into the interior of those boots.

111. Plaintiff's experience is not unique. Other consumers have likewise complained that the Products have fallen far short of the Company's "waterproof" claims, even when otherwise pleased with the Product.

112. For example, consumers have stated on the "customer reviews" section of the Company's website (among other comments) regarding the Storm Chaser boots:

- "Not waterproof at all . . . water gets in easily . . .";
- "leaks like a sieve . . . put the side zipper [i]n a trickle of water and it leaked right in. No chance in a puddle . . .";
- "The side zip . . . compromise[s] the waterproof. If you stepped in water over the zipper, some would get in";
- "the zip will leak water in if the boot is submerged".

Screenshots of the complaints are provided below:

February 18, 2021

Poor quality Men's boots

Size Purchased: 9 1/2
Fit - Length: Slightly small
Fit - Width: Somewhat narrow

Not waterproof at all, poor quality, water gets in easily, bad quality boots

Post a Comment

January 27, 2020

leaks like a sieve

Size Purchased: 12
Fit - Length: Slightly small
Fit - Width: Somewhat narrow

put the side zipper on a trickle of water and it leaked right in. No chance in a puddle was told no shipping charge but i have an invoice for 6.95. I hope that's not real

Post a Comment

January 27, 2021

Great boot

Size Purchased: 11 1/2
Fit - Length: Somewhat small
Fit - Width: Slightly narrow

Wore these on a January 2021 trip to Fairbanks AK. I found them to be warm and comfortable. The temp was between minus 10 and minus 20 during my trip. I used them on a snow machine tour and a dog sled tour. I felt that they were just a tiny bit short and might have exchanged for a half size bigger if ai had time. They worked out fine anyway. My feet were warm the entire time in spite of a health condition that gives me cold feet. The side zip is great, but does compromise the waterproof. If you stepped in water over the zipper, some would get in. For me, I must keep my sox pulled up to prevent skin abrasion by the top collar. That is more a function of my ankle than the boot. All in all, I give them an excellent rating.

Post a Comment

★★★★★ February 22, 2022

Great warm winter boots

Size Purchased: 11 1/2
Fit - Width: True to size

Purchased a pair well over year ago. These are great snow boots. They fit well and required no break in for me. The zip makes them quick on and off, though the zip will leak water in if the boot is submerged. The first couple of times I wore them, I thought there was an ankle rub. Turned out to be a little stiff cloth tag with a rough edge. A little very careful work with a pen knife and the tag and stitches were gone along with the rub. I wore them at 18 below in Fairbanks Alaska and was perfectly comfortable. Highly recommended.

Post a Comment

113. Similarly, customers have commented on the Company's website that its Snowfield boots fail to prevent water and/or slush from penetrating the boots. In particular, one customer noted the boots are "Warm but **NOT waterproof**," finding "[t]he placement of **the side zipper allows slush to get inside the boot and make your foot wet. I'm more than disappointed that they are not waterproof as advertised**."[57]

★★★☆☆ January 21, 2022

Warm but NOT waterproof

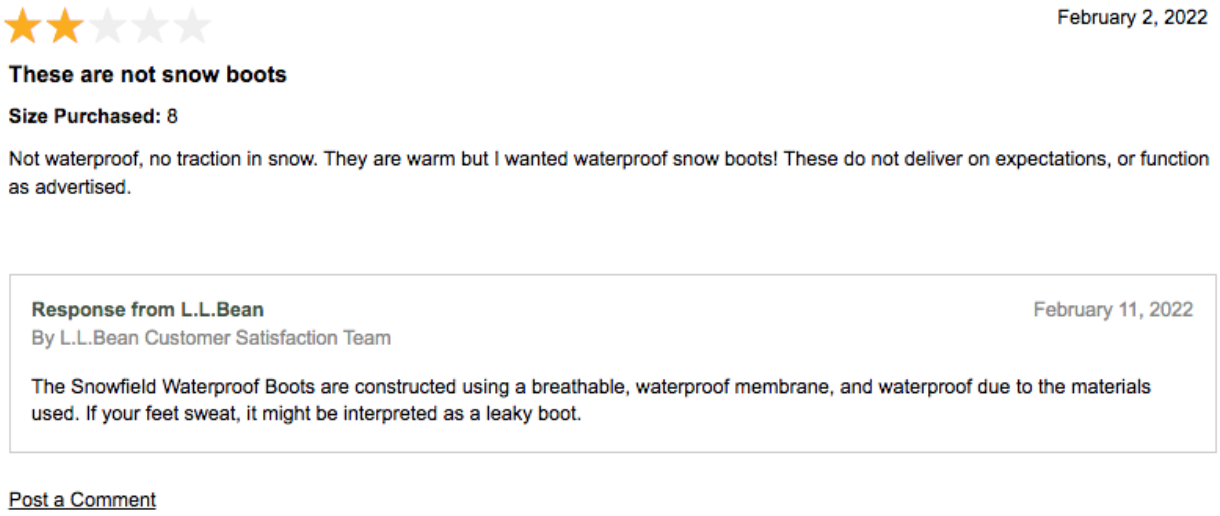
Size Purchased: 8
Fit - Width: True to size

Comfy, warm, but not waterproof. The placement of the side zipper allows slush to get inside the boot and make your foot wet. I'm more than disappointed that they are not waterproof as advertised.

Post a Comment

[57] *See* https://www.llbean.com/llb/shop/124676?page=womens-snowfield-boot-tall-waterproof-insulated-womens.

114. Another customer similarly observed, "**Not waterproof** . . . . They are warm but **I wanted waterproof snow boots! These do not deliver on expectations, or function as advertised**."[58]



February 2, 2022

These are not snow boots

Size Purchased: 8

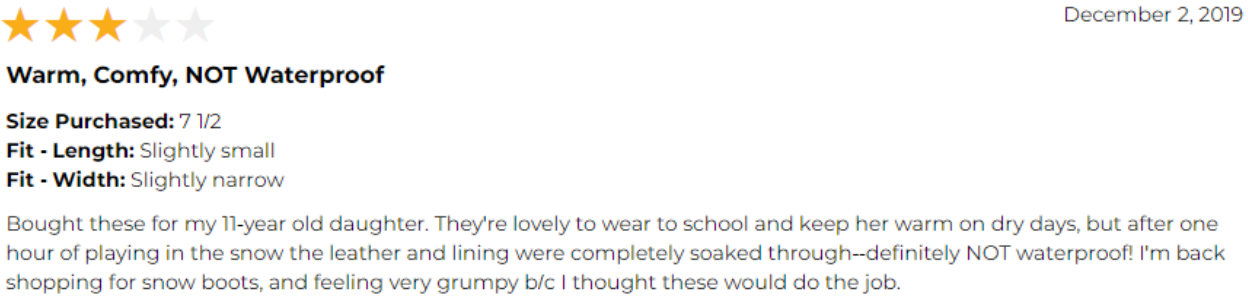
Not waterproof, no traction in snow. They are warm but I wanted waterproof snow boots! These do not deliver on expectations, or function as advertised.

Response from L.L.Bean February 11, 2022
By L.L.Bean Customer Satisfaction Team

The Snowfield Waterproof Boots are constructed using a breathable, waterproof membrane, and waterproof due to the materials used. If your feet sweat, it might be interpreted as a leaky boot.

Post a Comment

115. Similarly, a customer commented on the Company's website that the Women's Waterproof Nordic Boots with Artic Grip are "NOT Waterproof" and were "completely soaked" after playing in the snow:



December 2, 2019

Warm, Comfy, NOT Waterproof

Size Purchased: 7 1/2
Fit - Length: Slightly small
Fit - Width: Slightly narrow

Bought these for my 11-year old daughter. They're lovely to wear to school and keep her warm on dry days, but after one hour of playing in the snow the leather and lining were completely soaked through--definitely NOT waterproof! I'm back shopping for snow boots, and feeling very grumpy b/c I thought these would do the job.

L.L. Bean's False and Misleading Claims are Material

116. As these customer complaints evidence, L.L. Bean's "waterproof" claims are material to consumers.

[58] Remarkably, in response to the comment, an L.L.Bean representative again claimed the boots are "waterproof due to the materials used" and dismissed the customer's concerns, writing, "If your feet sweat, it might be interpreted as a leaky boot."

117. Indeed, on the Products themselves and in various advertisements, including statements made on shelf tags and displays in retail stores, and on the Company's website and social media posts, the "waterproof" claim was one of the primary messages conveyed about the Product, often also appearing in the Product name itself.

118. The representations and omissions challenged herein relate to matters that are material and important to a consumer's purchasing decision, as they concern core claims about the Products which are likely to, and did, influence consumers' purchases of the Mislabeled Boots.

119. The term waterproof in footwear generally refers to a product that will not absorb or allow penetration of water. That means the water cannot seep in through a boot's stitches and zippers. Significantly, the United States Court of International Trade looked toward several dictionary definitions to aid its determination of the common and commercial meaning of the term "waterproof." *LF USA, Inc. v. United States*, 290 F. Supp. 3d 1339, 1344, n.3 (Ct. Int'l Trade Dec. 22, 2017) ("Therefore, waterproof footwear ***must protect the foot by not allowing water or other liquid to penetrate the shoe.***") (emphasis added). The Court ultimately determined that because the footwear at issue "does not provide protection against water, oil, grease, or chemicals or cold or inclement weather" it "does not fit into the definition of 'waterproof footwear' . . . ." *Id*. at 1347.

120. Moreover, the materiality of labeling the Products as waterproof is obvious. Indeed, similar claims have been held to be literally false. *See W.L. Gore & Assocs. v. Totes Inc.*, 1992 U.S. Dist. LEXIS 4129, *15, 23 (D. Del. 1992) (holding "the definitional distinctions between water resistant and waterproof, found in an ordinary English language dictionary, are usually known by the general public. The defendant's use of the term 'waterproof' as a representation, one with an accepted common sense definition as to quality, when its product does

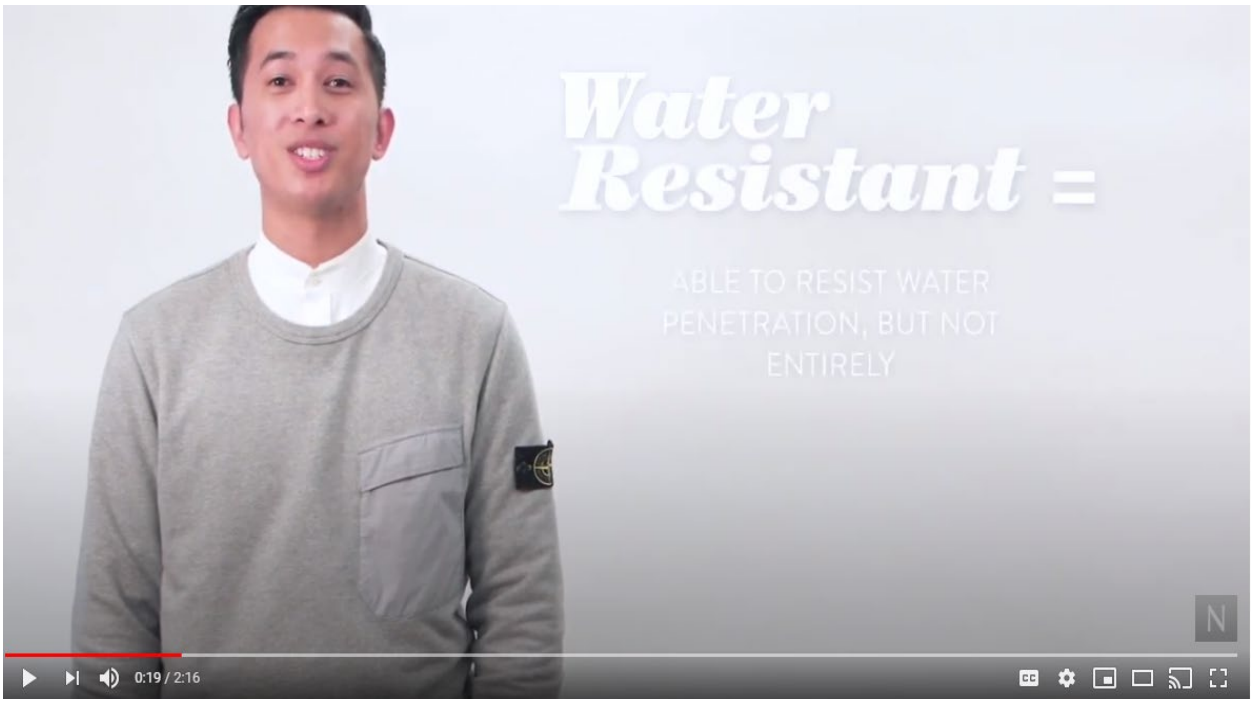
not conform to the generally accepted definition is an unfair and deceptive practice.").

121. It has long been recognized within the industry that "[w]aterproof shoes and boots guarantee that water won't penetrate. They generally feature rubber or treated leather uppers with linings of Gore-Tex or similar waterproof and breathable material. By contrast, the term 'water-resistant' merely indicates that the upper has been treated with a substance that repels water."[59] Consequently, "[o]ften you'll see hang tags or other point-of-purchase material on waterproof footwear, because waterproof is a real selling point."[60]

122. In contrast, according to Mike Marcuccilli, a men's footwear buyer with Chernin's Shoes in Chicago, "[i]f someone can't guarantee waterproof, they say 'water-resistant'--but anything can be water-resistant."[61]

123. Moreover, Nordstrom (one of L.L. Bean's partner retailers) has acknowledged the difference in a marketing video, noting that "water resistant" is able to "resist the penetration of water to a certain degree, but not entirely," whereas "waterproof" is "completely impermeable to water, no matter how much time it spends in water." It further states, "waterproof shoes will keep your feet 100% dry, no matter how long they are exposed to water." True and correct screenshots from the video featuring Nordstrom's shoe expert is provided below: [62]

[59] https://www.chicagotribune.com/news/ct-xpm-1997-02-24-9702240116-story.html
[60] *Id.*
[61] *Id.*
[62] YouTube, Nordstrom, "Shoes: Water Resistant vs. Waterproof | Nordstrom Expert Tips" (Oct. 1, 2019), https://www.youtube.com/watch?v=R-GHAild7RA.



124. Similarly, footwear manufacturer Keen, Inc. explains the difference in waterproof and water resistant attributes on its website, stating:

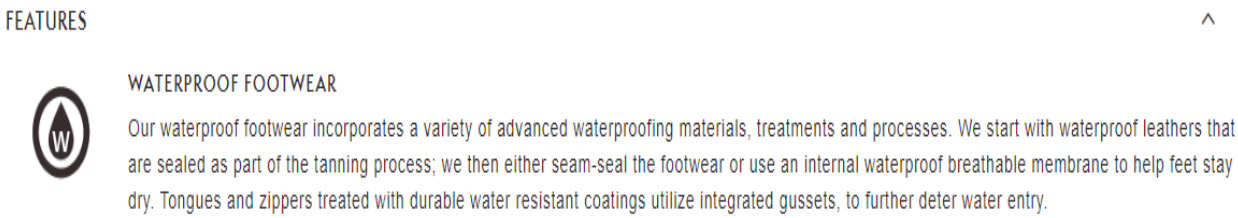
- **Water-resistant**: ability to resist the penetration of water to some degree but not entirely

- **Water-repellent:** not easily penetrated by water, especially as a result of being treated for such a purpose with a surface coating

- **Waterproof:** impervious to water.

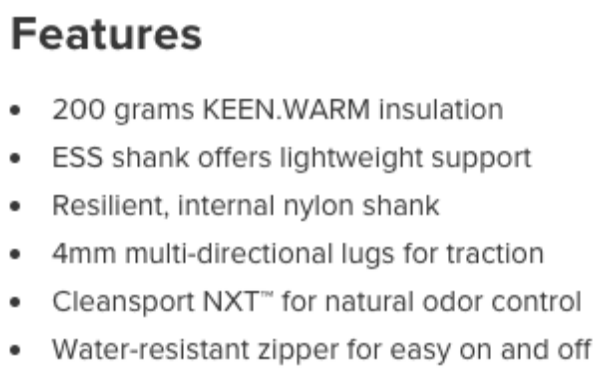
All KEEN products that feature either a KEEN.DRY® membrane or a membrane are waterproof. This feature is available across all KEEN collections on selected styles.[63]

125. Notably, competing manufacturers have labeled similar boots as water resistant or disclaimed or qualified the waterproof nature of key components such as a zipper enclosure. For example, with respect to its Women's Sienna High Waterproof boots, Timberland explains its "waterproof" claim with respect to zippered boots stating, "Tongues and zippers treated with durable ***water resistant*** coatings utilize integrated gussets, to further deter water entry." (emphasis added)[64]



126. Similarly, Keen, Inc. qualifies certain models made with zipper enclosures. For example, the company notes that its Women's Hoodoo III boots have a "waterproof, breathable membrane" and "waterproof nubuck leather and textile upper" and a "***water-resistant zipper.***" (emphasis added)[65]

[63] https://www.keenfootwear.com/en-dk/faq/?pageTitle=Product%20Information&id=360000338133
[64] *Previously available at* https://www.timberland.com/shop/womens-sienna-high-waterproof-boots-brown-a24tw201; *see* https://web.archive.org/web/20210906223845/https://www.timberland.com/shop/womens-sienna-high-waterproof-boots-brown-a24tw201.
[65] https://www.keenfootwear.com/p/W-HOODOO-III-LOW-ZIP.html

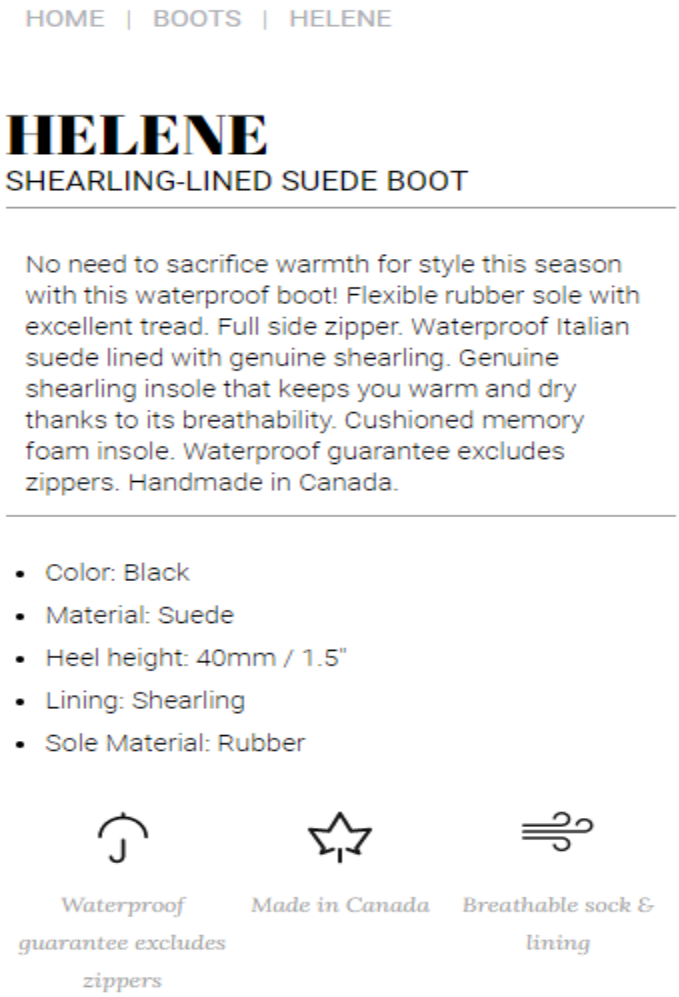


Features

- 200 grams KEEN.WARM insulation
- ESS shank offers lightweight support
- Resilient, internal nylon shank
- 4mm multi-directional lugs for traction
- Cleansport NXT™ for natural odor control
- Water-resistant zipper for easy on and off

127. LaCanadienne, another manufacturer, notes that its Helene boots are constructed with "waterproof" leather, but that the "***Waterproof guarantee excludes zippers.***" This disclaimer is prominently noted on the specific product's webpage (at two locations):[66]

[66] *Previously available at* https://www.lacanadienneshoes.com/us/boots/helene-5618145-black



128. Additionally, LaCanadienne includes a disclaimer or explanation on a dedicated webpage titled "Our Guarantee," that their waterproof guarantee does not include water penetration "through lace openings, zippers, elastics and genuine shearing shafts." [67]

129. Another manufacturer, Jambu & Co., prominently discloses that its Camryn model bootie featuring side zip is simply "water resistant." Screenshots of marketing claims for the Camryn bootie from the company's website are provided below:[68]

[67] https://www.lacanadienneshoes.com/us/la-canadienne-our-guarantee
[68] *Previously available at* https://jambu.com/camryn/

Bridge the worlds of water-resistant comfort and whimsical style with this slip-on ankle bootie. A Jambu Originals style, the Camryn is made of nubuck and kid suede that sheds water to keep feet dry and has a discreet inside zip closure. Underfoot, every step feels like walking on air thanks to memory foam cushioning. Not only does the insole offer all-day comfort, but also shock absorption, moisture wicking, and antimicrobial lining. Navigate any surface with the non-slip All Terra map outsole.

CLASS ACTION ALLEGATIONS

130. Plaintiff seeks class certification under Fed. R. Civ. P. 23(b)(1), (b)(2), (b)(3) and/or (c)(4), as may be deemed appropriate by the Court. Plaintiff brings this action on behalf of herself and on behalf of all other persons who, within the relevant statute of limitations period, purchased Defendant's Products in the United States (herein throughout, the "Class").

131. Plaintiff also seeks to represent a subclass of all Class members who purchased the Products in New York (the "Subclass").

132. The Class and Subclass are collectively referred to as the "Classes."

133. Excluded from the Classes are: (i) Defendant, the officers, employees, principals, affiliated entities and directors of the Defendant at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendant has or had a controlling interest; (ii) the judges to whom this action is assigned and any members of their immediate families; (iii) governmental entities; and (iv) any person that timely and properly excludes himself or herself from the Class in accordance with Court-approved procedures.

134. Also excluded from the Classes are persons or entities that purchased the Mislabeled Boots for purposes of resale.

135. Plaintiff reserves the right to re-define the Classes prior to class certification, to seek certification of one or more multi-state classes, to amend or modify the Classes' definitions with greater specificity or further division into subclasses or limitation to particular issues as discovery and the orders of this Court require.

136. The Court can define the Classes and create additional subclasses as may be necessary or desirable to adjudicate common issues and claims of the Class members if the need arises based on discovery of additional facts.

137. Plaintiff is a member of the Class and Subclass she seeks to represent.

138. Upon information and belief, there are thousands of members of the proposed Class and Subclass. Although Plaintiff does not yet know the exact size of the Classes, the Mislabeled Boots are sold directly by Defendant through its website and catalog, and in major retail stores across the United States, as well as by retailers such as Nordstrom and Zappos.com. Indeed, due to the scope of Defendant's business, Plaintiff believes there are tens of thousands of members of

the Class geographically dispersed throughout the United States, and thousands of members of the Subclass geographically dispersed throughout New York. Therefore, individual joinder of all members of the Classes would be impracticable.

139. The Classes are ascertainable because their definition is objective and specific and the Class members can be identified by objective criteria – the purchase of Mislabeled Boots during the Class Period in a particular geographic location. Individual notice can be provided to Class members "who can be identified through reasonable effort," and to other Class members by "electronic means, or other appropriate means." Fed. R. Civ. P. 23(c)(2)(B). Moreover, because Defendant's labeling, marketing, and advertising campaign as described herein was uniformly displayed at the point of sale, there is no concern that the Classes include individuals who were not exposed to the misrepresentations.

140. There is a well-defined community of interest in the questions of law and fact affecting the parties represented in this action.

141. There are numerous questions of law and fact common to the Classes which predominate over any individual actions or issues, including but not limited to:

a) Whether Defendant's marketing of the Mislabeled Boots is false, misleading, and/or deceptive;

b) Whether Defendant's marketing of the Mislabeled Boots is an unfair business practice;

c) Whether the Mislabeled Boots are waterproof;

d) Whether Defendant's "waterproof" labeling, advertising and marketing constitutes an express and/or implied warranty that the Mislabeled Boots are "waterproof";

e) Whether Defendant breached warranties to Plaintiff and the Classes;

f) Whether Defendant was unjustly enriched by its conduct;

g) Whether Class members suffered a loss as a result of Defendant's misrepresentations and breach of warranties; and

h) Whether, as a result of Defendant's misconduct as alleged herein, Plaintiff and Class members are entitled to restitution, declaratory, and/or monetary relief and, if so, the amount and nature of such relief.

142. All questions as to the labeling, warranties, representations and publicly disseminated advertisements and statements attributable to Defendant at issue herein are similarly common. A determination of Defendant's knowledge as to the false, misleading and deceptive nature of the statements and omissions made on each and every label and advertisement of the Mislabeled Boots will be applicable to all members of the Classes. Further, whether Defendant violated any applicable state laws and pursued the course of conduct complained of herein, whether Defendant acted intentionally or recklessly in engaging in the conduct described herein, and the extent or form of the appropriate declaratory relief, damages, and/or restitutionary relief are common questions to the Classes.

143. Plaintiff's claims are typical of the claims of the members of the Classes as all members of the Classes are similarly affected by Defendant's wrongful conduct. Specifically, Plaintiff and members of the Classes are consumers who purchased Products that were labeled, marketed, advertised, represented, and warranted as being "waterproof," but contained zippers that were not waterproof. Plaintiff, therefore, is no different in any relevant respect from any other member of the Classes she seeks to represent, and the relief sought is common to the Classes. Plaintiff has no interests antagonistic to the interests of the other members of the Class. Plaintiff and all members of the Class have sustained economic injury arising out of Defendant's violations

of common and statutory law as alleged herein.

144. Plaintiff is an adequate representative of the Classes because her interests do not conflict with the interests of the Class members she seeks to represent, she has retained counsel competent and experienced in prosecuting class actions, and she intends to prosecute this action vigorously. The interests of the Class members will be fairly and adequately protected by Plaintiff and her counsel.

145. The elements of Rule 23(b)(2) are met. Defendant has acted and refused to act on grounds that apply generally to the Class and Subclass, such that declaratory relief is appropriate respecting the Class and Subclass as a whole.

146. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Plaintiff and the Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims are consistently adjudicated.

147. Further, in the alternative, the action may be maintained as a class action with respect to particular issues, pursuant to Fed. R. Civ. P. 23(c)(4).

CAUSES OF ACTION

COUNT I
MAGNUSON-MOSS WARRANTY ACT, 15 U.S.C. §§ 2301, *et seq.*
(On Behalf of the Class and Subclass)

148. Plaintiff and Class and Subclass members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows.

149. Plaintiff brings this Count individually and on behalf of members of the Class and Subclass against Defendant.

150. The amounts in controversy of Plaintiff's claims are at least or more than the sum or value of twenty-five ($25) dollars.

151. Defendant's Products are consumer products, as defined in 15 U.S.C. § 2301(1).

152. At all relevant times, Defendant was, and is, a supplier(s) and warrantor(s) as defined in 15 U.S.C. § 2301(4) and (5).

153. In connection with the sale of the Mislabeled Boots, Defendant's written warranties, as defined in 15 U.S.C. § 2301(6), warranted that the Products were "waterproof" and/or provided a waterproof barrier to keep feet dry (collectively, the "Express Warranties" or "Misrepresentations").

154. In fact, the Products do not conform to the Express Warranties because the Products' zipper closures, and thus the Products themselves, are not waterproof.

155. Additionally, Defendant impliedly warranted, as defined in 15 U.S.C. § 2301(7), in connection with the sale of the Products that the Products were of merchantable quality.

156. Defendant breached the warranty expressed and implied in the contract for the sale of the Products in that the Mislabeled Boots are not "waterproof", nor do they provide a waterproof barrier against water infiltration. Thus, the Products could not pass without objection in the trade

under the Defendant's description, the goods were not of fair average quality within the description, and the goods were unfit for their intended and ordinary purpose in that they are not generally recognized as effective for the advertised purpose as waterproof boots. Furthermore, the Products do not conform to the promises or affirmations of fact made in Defendant's advertisements and labeling of the Products. As a result, Plaintiff and Class members did not receive the goods as expressly and impliedly warranted by Defendant.

157. By reason of Defendant's breach of its express and implied warranties, Defendant violated statutory rights owed to Plaintiff and Class members pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*, thereby damaging Plaintiff and Class members.

158. Plaintiff and Class and Subclass members were injured as a direct and proximate result of Defendant's breaches because they would not have purchased or paid as much for the Products if the true facts had been known to them. Moreover, they were injured as a direct and proximate result of Defendant's breaches because the value of the Products delivered to Plaintiff and Class and Subclass members with non-waterproof zippers was less than the value the Products would have had if they were delivered in a fully waterproof condition as promised and warranted by Defendant.

159. Prior to filing this action, Plaintiff, by and through her counsel, provided Defendant with written notice of her claims pursuant to 15 U.S.C. § 2301(e).

COUNT II
BREACH OF EXPRESS WARRANTY, N.Y. U.C.C. § 2–313
(On Behalf of the Class and Subclass)

160. Plaintiff and Class and Subclass members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows.

161. Plaintiff brings this Count individually and on behalf of members of the proposed Class and Subclass against Defendant.

162. Defendant is and at all relevant times was a seller under N.Y. U.C.C. § 2-313.

163. Plaintiff, and each member of the proposed Class and Subclass, are "buyers" within the meaning of N.Y. U.C.C. § 2-313(1)(a).

164. The Products are and at all relevant times were "goods" within the meaning of N.Y. U.C.C. § 2-105(1).

165. Defendant sold the Mislabeled Boots in its regular course of business. Plaintiff and the Class and Subclass members purchased the Mislabeled Boots.

166. Defendant, as a manufacturer, marketer, distributor and/or seller, expressly warranted that the Products were "waterproof." Defendant expressly represented and warranted to Plaintiff and the Class and Subclass members that the Products were a fully "waterproof" boot (i.*e.,* by representing on the Products' labels, advertising, and marketing that they were "waterproof" without qualification or limitation and by making other reinforcing representations as specified throughout this Complaint).

167. Plaintiff, and each member of the proposed Class and Subclass, purchased the Mislabeled Boots with consistent promises and affirmations of fact made by Defendant on the Product's labeling and through marketing and advertising that the Products were "waterproof" and/or would provide a waterproof barrier to keep feet dry. This labeling, marketing, and advertising constitutes express warranties between Plaintiff and the members of the Class and Subclass and Defendant that was part of the basis of the bargain.

168. The foregoing representations and warranties are material to consumers because they concern a material attribute of Defendant's Products that formed a basis of the bargain and

directly influenced Plaintiff and Class and Subclass members' decision to purchase them.

169. Defendant breached express warranties about the Mislabeled Boots because Defendant's affirmations and promises about the Products being "waterproof" were false and the Products do not conform to Defendant's affirmations and promises described above in that they are not waterproof and do permit water infiltration by virtue of being constructed with a non-conforming zipper that is not waterproof and does not have a waterproof gusset.

170. The waterproof information provided on the Mislabeled Boots was false when the sale took place and its falsity was not apparent to Plaintiff and the Class and Subclass members at the time of purchase.

171. All conditions precedent to seeking liability under this claim for breach of express warranty have been performed by or on behalf of Plaintiff and the Class and Subclass in terms of paying for the goods at issue. Defendant had actual and/or constructive notice of the false labeling and advertising information and to date has taken no action to compensate Plaintiff or Class or Subclass members for its breaches of express warranty.

172. Prior to filing this action, Defendant was served by certified mail on April 25, 2022 with a pre-suit notice letter dated April 21, 2022 ("Pre-Suit Notice") that complied in all respects with N.Y. U.C.C. §§ 2-313, 2-607 and the materially similar pre-suit notice requirements of other state laws. Plaintiff's counsel on behalf of Plaintiff and the Class and Subclass sent Defendant Pre-Suit Notice advising Defendant that it had breached the express warranty described herein, among other things, and demanded that it cease and desist from such breaches and pay damages for said breach.

173. Defendant previously knew or should have known of the falsity of the labeling and advertising of the Mislabeled Boots, due to, inter alia, its use of zippers in the Mislabeled Boots

that were neither waterproof nor recommended for use in waterproof footwear by the manufacturer of the zippers, and its failure to equip the Products with a waterproof gusset for the zipper.

174. Defendant has refused or failed to remedy such breaches.

175. By placing the Mislabeled Boots in the stream of commerce, and by operation of law and the facts alleged herein, Defendant also warranted to Plaintiff and Class and Subclass members that the Mislabeled Boots were accurately labeled in conformance with the law.

176. Defendant's breaches of warranty have caused Plaintiff and Class and Subclass members to suffer injuries, by paying too much for falsely labeled products that were not as warranted and hence did not perform as warranted, and entering into transactions they would not have entered into for the consideration paid. As a direct and proximate result of Defendant's breaches of warranty, Plaintiff and Class and Subclass members have suffered damages and continue to suffer damages, including economic damages in terms of the difference between the value of the Products as promised and the value of the Products as delivered.

177. As a result of the breach of these warranties, Plaintiff and Class and Subclass members are entitled to damages in an amount to compensate them for not receiving the benefit of their bargain, and other relief as deemed appropriate.

COUNT III
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY, N.Y. U.C.C. § 2–314
(On Behalf of the Class and Subclass)

178. Plaintiff and Class and Subclass members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows.

179. Plaintiff brings this Count individually and on behalf of members of the Class and Subclass against Defendant.

180. Defendant is and at all relevant times was a merchant under N.Y. U.C.C. § 2-314.

181. The Mislabeled Boots are and at all relevant times were "goods" within the meaning of N.Y. U.C.C. § 2-105(1).

182. A warranty that the Mislabeled Boots were in merchantable condition was implied by law pursuant to N.Y. U.C.C. § 2-314.

183. Defendant sold the Mislabeled Boots in its regular course of business. Plaintiff and the Class and Subclass members purchased the Mislabeled Boots.

184. Defendant, as the designer, manufacturer, marketer, distributor and/or seller, labeled, promised and warranted that the Products were "waterproof" without qualification or limitation and did not allow water infiltration, and in so doing impliedly warranted that the Products were fit for their intended and ordinary purpose as a "waterproof" boot without qualification or limitation, would pass without objection in the trade as a "waterproof" boot without qualification or limitation, were of fair or average quality for a "waterproof" boot without qualification or limitation, and conform to the affirmations of fact and/or promises made on the Products' packaging and labeling without qualification or limitation.

185. Defendant breached the warranty implied in the contract for the sale of the Products in that the Products were not "waterproof" and were not impervious to water infiltration as described throughout this Complaint and, thus, the Products could not pass without objection in the trade under the contract description, the Products were not of fair or average quality within the description, the Products were unfit for their intended and ordinary purpose for which the Products are used, and the Products do not conform to the affirmations of fact and/or promises made on the Products' packaging and labeling. *See* N.Y. U.C.C. § 2-314(2). As a result, Plaintiff and members of the Class and Subclass did not receive the goods as impliedly warranted by Defendant to be

merchantable.

186. Defendant sells the vast majority of its Products to consumers directly through L.L. Bean's website, through L.L. Bean's catalogs, or through one of its retail stores. Plaintiff and the vast majority of Class and Subclass members purchased the Mislabeled Boots directly from L.L Bean through L.L. Bean's website, through L.L. Bean's catalogs, or through one of its retail stores. To the extent that any Class or Subclass members purchased the Products from third-party retailers that have wholesale partnerships with Defendant, privity is not required because Class and Subclass members are intended third-party beneficiaries of the contracts between Defendant and third-party retailers, and because the warranty is intended to benefit purchasers or owners subsequent to the third-party retailers. The retailers through which Defendant sold its product were not intended to be the ultimate consumers of the Products and have no rights under the warranties provided with the Products. The contracts are intended to benefit the ultimate consumer or user of the Products and the warranties are designed for and intended to benefit the ultimate consumers only.

187. As a result of the breach of these warranties, Plaintiff and Class and Subclass members are entitled to damages in an amount to compensate them for not receiving the benefit of their bargain, and other relief as deemed appropriate.

COUNT IV
DECEPTIVE ACTS OR PRACTICES, NEW YORK GEN. BUS. LAW § 349
(On Behalf of Plaintiff and the Subclass)

188. Plaintiff and Subclass members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows.

189. Plaintiff brings this Count individually and on behalf of members of the Subclass against Defendant.

190. By the acts and conduct alleged herein, Defendant committed unfair or deceptive acts and practices by making the "waterproof" misrepresentations about the Products as specified throughout this Complaint.

191. The foregoing deceptive acts and practices were directed at consumers, including Plaintiff and members of the Subclass.

192. The foregoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the characteristics and qualities of the Products to induce consumers to purchase the Products.

193. Plaintiff and Subclass members were injured, and continue to be injured, as a direct and proximate result of Defendant's unfair and deceptive acts and practices because they would not have purchased the Products, or would not have paid as much for the Products, if the true facts had been known to them.

194. Plaintiff, on behalf of herself and each of the other members of the Subclass, seeks to recover actual damages or $50.00, whichever is greater, three times actual damages, and reasonable attorneys' fees and costs.

COUNT V
FALSE ADVERTISING, NEW YORK GEN. BUS. LAW § 350
(On Behalf of Plaintiff and the Subclass)

195. Plaintiff and Subclass members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows.

196. Plaintiff brings this Count individually and on behalf of members of the Subclass against Defendant.

197. Based on the foregoing, Defendant has engaged in consumer-oriented conduct that is deceptive or misleading in a material way, which constitutes false advertising in violation of

Section 350 of the New York General Business Law.

198. Defendant's false, misleading, and deceptive statements and representations of fact about the "waterproof" nature of the Products, as specified throughout this Complaint were and are directed to consumers, including Plaintiff and members of the Subclass.

199. Defendant's false, misleading, and deceptive statements and representations of fact about the "waterproof" nature of the Products, as specified throughout this Complaint, were and are likely to mislead a reasonable consumer acting reasonably under the circumstances.

200. Defendant's false, misleading, and deceptive statements and representations of fact about the "waterproof" nature of the Products, as specified throughout this Complaint have resulted in consumer injury or harm to the public interest.

201. As a result of Defendant's false, misleading, and deceptive statements and representations of fact about the "waterproof" nature of the Products, as specified throughout this Complaint, Plaintiff and Subclass members have suffered and continue to suffer economic injury.

202. Plaintiff and Subclass members suffered an ascertainable loss caused by Defendant's misrepresentations because they paid for Products, which they would not have purchased, or would not have paid as much for, had they known the truth about the Products.

203. Plaintiff, on behalf of herself and each of the other members of the Subclass, seeks to recover actual damages or $500.00, whichever is greater, three times actual damages, and reasonable attorneys' fees and costs.

COUNT VI
UNJUST ENRICHMENT
(On Behalf of the Class and Subclass)

204. Plaintiff and Class and Subclass members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows.

205. Plaintiff brings this claim individually and on behalf of the members of the proposed Class and Subclass against Defendant.

206. Plaintiff and the Class and Subclass members have conferred substantial benefits on Defendant by purchasing Mislabeled Boots, and Defendant has knowingly and willingly accepted and enjoyed these benefits.

207. Defendant either knew or should have known that the payments rendered by Plaintiff and the Class and Subclass members were given and received with the expectation that the Mislabeled Boots would be as represented and warranted. For Defendant to retain the benefit of the payments under these circumstances is inequitable.

208. Through deliberate misrepresentations or omissions in connection with the advertising, marketing, promotion, and sale of the Mislabeled Boots, including representing that the Mislabeled Boots were waterproof, Defendant reaped benefits, which resulted in Defendant wrongfully receiving profits.

209. Equity demands disgorgement of Defendant's ill-gotten gains. Defendant will be unjustly enriched unless Defendant is ordered to disgorge those profits for the benefit of Plaintiff and the Class and Subclass members.

210. As a direct and proximate result of Defendant's wrongful conduct and unjust enrichment, Plaintiff and the Class and Subclass members are entitled to restitution from Defendant and institution of a constructive trust disgorging all profits, benefits, and other compensation obtained by Defendant through this inequitable conduct.

RELIEF DEMANDED

WHEREFORE, Plaintiff on behalf of herself and on behalf of the members of the Classes requests an award, relief and entry of a judgment against Defendant, as follows:

A. For an order certifying the nationwide Class and the Subclass under Rule 23 of the

Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class and Subclass and Plaintiff's attorneys as Class Counsel to represent the members of the Class and Subclass;

B. For an order declaring the Defendant's conduct violates the statutes and warranties referenced herein;

C. For an order finding in favor of Plaintiff, the nationwide Class, and the Subclass on all counts asserted herein;

D. For compensatory damages for Causes of Action for which they are available.

E. For statutory damages allowable under New York Gen. Bus. Law §§ 349 and 350-e.

F. For an order of restitution in such amount that Plaintiff and members of the Classes paid to purchase the Products or paid as a premium over alternative products for Causes of Action for which it is available.

G. For an order of all other forms of equitable relief as the Court may deem proper;

H. An Order awarding Plaintiff and the Class and Subclass their costs of suit, including reasonable attorneys' fees, expenses and pre- and post-judgment interest; and

I. Such other and further relief as may be deemed necessary or appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all causes of action and issues so triable.

Dated: February 17, 2023

Respectfully submitted,

FEINSTEIN DOYLE PAYNE & KRAVEC, LLC

By: */s/ Joseph N. Kravec, Jr.*
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