

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>Inzer Advance Designs, Inc.</b>	:	<b>CIVIL CASE NO.: 22-283</b>
124 W. Tyler	:	
Longview, TX 75606	:	<b>JUDGE: _____</b>
	:	
<b>Plaintiff,</b>	:	<b>ORIGINAL COMPLAINT</b>
	:	
<b>v.</b>	:	
	:	
<b>Jonathan Elick</b>	:	<b>JURY TRIAL DEMANDED</b>
	:	
<b>Darksyde Ironwear LLC</b>	:	
2083 Anderson Station Rd.	:	
Chillicothe, OH 45601	:	
	:	
<b>Jointly and Severally,</b>	:	
<b>Defendants.</b>	:	

This is an action filed by Plaintiff Inzer Advance Designs, Inc. ("**Inzer**"), by and through counsel, for claims against Defendants Jonathan Elick ("**Elick**") and Darksyde Ironwear LLC ("**Darksyde**"). Inzer states as follows:

**NATURE OF THE CLAIMS**

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 101 *et seq.* for infringement of Inzer's exclusive rights in the invention claimed in United States Patent No. 9,895,594 ("**the '594 Patent**") and United States Design Patent No. D819,218 ("**the '218 Design Patent**").

2. This is also an action for trademark infringement under the Lanham Act, 15 U.S.C. § 1125(a)(1)(A), for infringement of Inzer's unregistered trademark rights, and for deceptive trade practices under the Ohio Uniform Deceptive Trade Practices Act, Ohio Rev. Code §4165.02, and also for unfair competition under Ohio common law. The corresponding counts relate to word marks used in connection with support products for weightlifting, specifically the sport of powerlifting.

### **THE PARTIES**

3. Inzer is a corporation organized under the laws of the State of Texas, with a principal place of business at 124 W. Tyler, Longview, TX 75606.

4. Darksyde is a domestic limited liability company organized under the laws of the State of Ohio, with a registered address at 2083 Anderson Station Rd., Chillicothe, OH 45601.

5. Darksyde may be served with process by serving its registered agent, Elick, at 2083 Anderson Station Rd. Chillicothe, OH 45601.

6. On information and belief, Elick is the president and/or CEO of Darksyde, and he too may be served at 2083 Anderson Station Rd., Chillicothe, OH 45601.

### **JURISDICTION AND VENUE**

7. The Court has original jurisdiction over the patent claims pursuant to 28 U.S.C. §§ 1331 and 1338(a). The Court also has original jurisdiction over the

trademark and unfair competition claims pursuant to 28 U.S.C. §§ 1331 and 1338(b), and also 15 U.S.C. §§ 1121(a).

8. The Court also has diversity jurisdiction under 28 USC § 1332 inasmuch as there is complete diversity between Inzer on the one hand and Darksyde / Elick on the other hand.

9. The Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a), as these claims are so related to the federal claims within the Court's original jurisdiction that such state law claims form part of the same case or controversy under Article III of the United States Constitution.

10. The Court has personal jurisdiction over Darksyde under Fed. R. Civ. P. 4 and under Ohio Revised Code § 2307.382, at least because Darksyde is organized in Ohio, and because, on information and belief, Darksyde transacts business in Ohio, has committed the acts alleged in this Complaint in Ohio and/or has regularly solicited business or derived substantial revenue from the infringing goods promoted, advertised, sold, used, and/or consumed in Ohio. Specifically, upon information and belief, Darksyde and Elick have sold and are selling goods that infringe Inzer's intellectual property in Ohio and have thus purposefully availed themselves of the privilege of doing business in Ohio.

11. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400, at least because Darksyde resides within this judicial district.

## **FACTUAL BACKGROUND**

### **A. OVERVIEW OF PLAINTIFF INZER**

Inzer repeats and incorporates by reference the allegations of the above paragraphs.

12. Inzer is a world leader in the design and manufacture of powerlifting equipment.

13. Inzer also supports powerlifting competitions and powerlifting growth endeavors worldwide, with a goal of growing the sport of powerlifting and a lifestyle of strength.

14. As part of its business endeavors, Inzer has invested significant resources in creating and developing distinctive brand names to identify its products as Inzer's products.

15. As a result of those business endeavors, Inzer has acquired significant and enforceable common law rights in the **POWER SURGE™** trademark (hereinafter referred to as the "**POWER SURGE Mark**" and/or the "**Inzer Mark**"). The POWER SURGE Mark is inherently distinctive, or in the alternative has acquired secondary meaning given the long and exclusive use of the mark by Inzer in connection with powerlifting equipment.

16. Self-evidently, the word SURGE is the dominant portion of the POWER SURGE Mark.

17. Inzer also maintains its position as an industry leader through constant innovation, and has procured patent rights to protect its inventions, including the '594 Patent and '218 Design Patent.

**B. THE INZER MARK**

18. Inzer has developed and used its POWER SURGE™ Mark in connection with powerlifting products to develop other product names that consumers identify with Inzer's prestige and quality.

19. Inzer has used the POWER SURGE™ Mark to designate a line of knee wraps. An example of Inzer's POWER SURGE™ brand knee wrap is pictured below:



20. The POWER SURGE™ Mark is a distinctive, arbitrary wordmark.

21. Inzer has offered for sale and sold wraps in interstate commerce under its POWER SURGE™ Mark since at least 2006.

22. On information and belief, Inzer was the first to use the POWER SURGE™ Mark in interstate commerce in connection with powerlifting equipment, including in Ohio.

1. As the original user and owner of the POWER SURGE™ Mark, Inzer has priority over Darksyde as to the use of the word SURGE in connection with powerlifting equipment.

**C. DARKSYDE'S INFRINGEMENT OF THE INZER MARK**

Inzer repeats and incorporates by reference the allegations of the above paragraphs.

23. Upon information and belief, Darksyde is a manufacturer of powerlifting equipment and a competitor of Inzer.

24. On information and belief, after Inzer began its use of the POWER SURGE™ Mark, Elick and Darksyde began using the confusingly similar name SURGE to promote Darksyde's own line of powerlifting equipment without Inzer's authorization.

25. Elick and Darksyde's unauthorized use of SURGE, being the dominant portion of the Inzer Mark, has occurred in at least Darksyde's sales/offers to sell what Darksyde calls its "**Surge**" line of products that includes, or included, at least hip bands, bench bands, and wrist support wraps, such as the following products:

- SURGE wrist wraps (offered in sizes of 24 and 36 inches) (**Accused Product 1**);

- SURGE knee wraps (offered in sizes of 2.5m and 3m) (**Accused Product 2**); and
- SURGE bench band (offered in sizes small, medium, large, XL, XXL, and XXXL) (**Accused Product 3**).

26. In 2019, Inzer wrote to Elick and Darksyde to demand, among other things, that Darksyde cease offering its confusingly similar "**Surge**" line of products.

27. In an email dated December 19, 2019, Elick responded in part with the following statement, "1. Regarding Surge wrist and knee wraps.... Maybe I'll work on adjusting a few things to make them different. They were never available for sale on the website anyway. Sorry, can't send any product. Don't have any left. No plans to produce more just yet."

28. Contrary to Elick's email statement of December 19, 2019, Elick and Darksyde continued to thereafter advertise and offer for sale at least some products in the "**Surge**" line, at least via a website posted to [www.darksydegear.com](http://www.darksydegear.com).

29. By using "**Surge**" as a brand for powerlifting equipment, including at least for hip bands, bench bands, and wrist support wraps, Elick and Darksyde's use is confusingly similar to Inzer's POWER SURGE™ Mark, for the identical or commercially related products, and is likely to confuse consumers.

30. As a result of Elick and Darksyde's infringement of Inzer's POWER SURGE™ Mark, Inzer has been, and will continue to be, harmed.

**D. INZER'S '594 PATENT**

Inzer repeats and incorporates by reference the allegations of the above paragraphs.

31. On April 28, 2017, Inzer caused to be filed an application at the United States Patent and Trademark Office (the "**PTO**") for the invention claimed in the '594 Patent.

32. On February 20, 2018, the PTO issued the '594 Patent to Inzer. A copy of the '594 Patent is attached hereto as **Exhibit 1**.

33. Claim 1 of the '594 Patent recites:

A weightlifting wrap constructed of a stretchable woven material, said weightlifting wrap including a plurality of exposed elongate pliable strand members on at least one outer surface of said weightlifting wrap, said plurality of elongate pliable strand members being arranged into at least two separate bands on at least one of said outer surfaces of said weightlifting wrap, each of said bands comprising a plurality of adjacent rows of said elongate pliable strand members.

**E. DARKSYDE'S INFRINGEMENT OF THE '594 PATENT**

34. Without Inzer's authorization, Elick and Darksyde make, use, offer for sale, and/or sell, in the United States, including at least Ohio, products that infringe the '594 Patent.

35. On information and belief, Darksyde manufactures, sells, and offers for sale (or alternatively has manufactured, sold, and offered for sale), in the United States, including at least Ohio, at least a line of products under "Surge" including the products identified herein as Accused Products 1 – 5.



36. An image of an Accused Product, it being unclear if it is Accused Product 1 or 2, which image was posted to Instagram by Defendants at <https://www.instagram.com/p/B30n7IMgmZg/?hl=en>, is below:



37. An image of Accused Product 3, which image was posted to [darksydegear.com](https://darksydegear.com) by Defendants, is below:



38. On information and belief, Accused Products 1 - 3 infringe all elements of at least Claim 1 of the '594 Patent, literally or under the doctrine of equivalents.

39. On information and belief, Accused Products 1 - 3 are made of stretchable woven material.

2. On information and belief, Accused Products 1 - 3 include a plurality of exposed elongate pliable strand members on at least one outer surface. For example, in the image above at paragraph 37, the light purple / gray colored portions are pluralities of such strand members.

40. On information and belief, Accused Products 1 - 3 include elongate pliable strand members exposed on at least one surface. For example, in the image above at paragraph 37, the light purple / gray colored strand members are clearly visible on one of the outer surfaces of the band.

41. On information and belief, Accused Products 1 - 3 include elongate pliable strand members being arranged into at least two separate bands on at least one outer surface of the wrap. For example, in the image above at paragraph 37, the light purple / gray colored strand members are arranged into four separate bands.

42. On information and belief, Accused Products 1 - 3 include bands of elongate pliable strand members comprising a plurality of adjacent rows of said elongate pliable strand members. For example, in the image above at paragraph 37, the adjacent rows of such members are visible in the purple-

colored bands, and those bands are made up of adjacent rows of such members.

43. On information and belief, Accused Product 1 is a weightlifting wrap.

44. On information and belief, Accused Product 2 is a weightlifting wrap.

3. On information and belief, Accused Product 3 is made of the same "Surge wrap material" used in the construction of Accused Products 1 and 2.

45. On information and belief, Elick and Darksyde manufacture, sell, and/or offer for sale a line of products under the name "Cyborg", including, but not limited to, the

- Cyborg Wrist Wraps (offered in sizes of 18, 24, and 36 inches) (**Accused Product 4**); and
- Cyborg Knee Wraps (offered in 2.5 meters) (**Accused Product 5**).

4. On information and belief, Elick and Darksyde offer the Accused Product 4 for sale online via at least Instagram.com and Darksydegear.com. A picture of Accused Product 4, taken from Darksydegear.com at <https://www.darksydegear.com/product-page/cyborg-wrist-wraps-24in>, is below:



46. On information and belief, Elick and Darksyde offer the Accused Product 5 for sale online via at least Instagram.com and Darksydegear.com. A picture of Accused Product 5, taken from Darksydegear.com at <https://www.darksydegear.com/product-page/cyborg-knee-wraps-2-5m>, is below:



47. On information and belief, Accused Products 4 and 5 infringe all elements of at least Claim 1 of the '594 Patent, literally or under the doctrine of equivalents.

48. On information and belief, Accused Products 4 and 5 are made of stretchable woven material.

49. On information and belief, Accused Products 4 and 5 include a plurality of exposed elongate pliable strand members on at least one outer surface. For example, in the image above at paragraph 49, the gray-colored portions are pluralities of such strand members.

50. On information and belief, Accused Products 4 and 5 include elongate pliable strand members exposed on at least one surface. For example, in the image above at paragraph 49, the gray-colored strand members are clearly visible on one of the outer surfaces of the band.

51. On information and belief, Accused Products 4 and 5 include elongate pliable strand members being arranged into at least two separate bands on at least one outer surface of the wrap. For example, in the image above at paragraph 49, the gray-colored strand members are arranged into three separate bands.

52. On information and belief, Accused Products 4 and 5 include bands of elongate pliable strand members comprising a plurality of adjacent rows of said elongate pliable strand members. For example, in the photograph above at paragraph 49, the adjacent rows of such members are clearly visible in the gray-colored bands, and those bands are made up of adjacent rows of such members.

53. On information and belief, Accused Product 4 is a weightlifting wrap.

54. On information and belief, Accused Product 5 is a weightlifting wrap.

#### **F. INZER'S '218 DESIGN PATENT**

55. On June 24, 2016, Inzer caused to be filed an application at the PTO for the '218 Design Patent.

56. On May 29, 2018, the PTO issued the '218 Design Patent to Inzer. A copy of the '218 Design Patent is attached hereto as **Exhibit 2**.

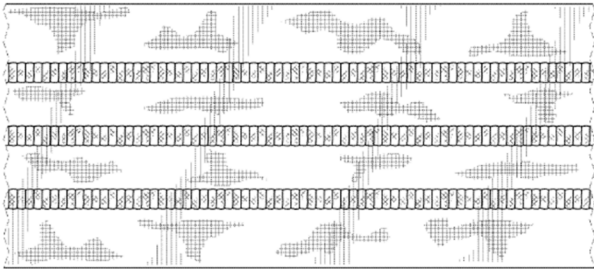

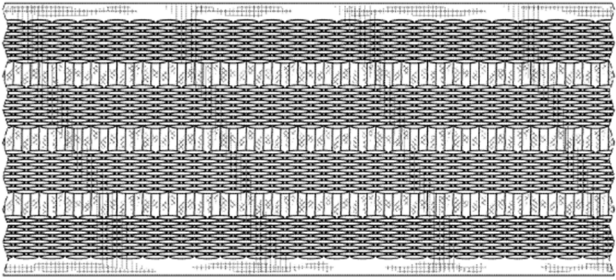

57. Without Inzer's authorization, Elick and Darksyde make, use, offer for sale, and/or sell, in the United States, products having designs that infringe the '218 Design Patent.

58. On information and belief, Elick and Darksyde offers Accused Product 1 for sale online via at least Instagram.com and Facebook.com.

59. The overall appearance of the design claimed in the '218 Design Patent and the design of Accused Product 1 are substantially the same.

60. An ordinary observer would perceive the overall appearance of the designs of the '218 Design Patent and the design of Accused Product 1 to be substantially the same when compared in the context of the prior art.

61. **Table 1** below illustrates Accused Product 1's infringement by comparing figures from the '218 Design Patent with images of Accused Product 1 from Darksyde's Instagram account at <https://www.instagram.com/p/B30n7IMgmZg/?hl=en>:

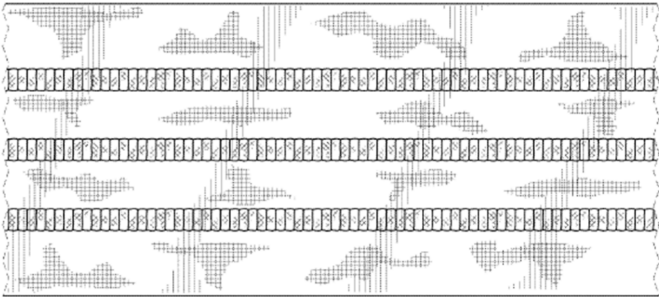

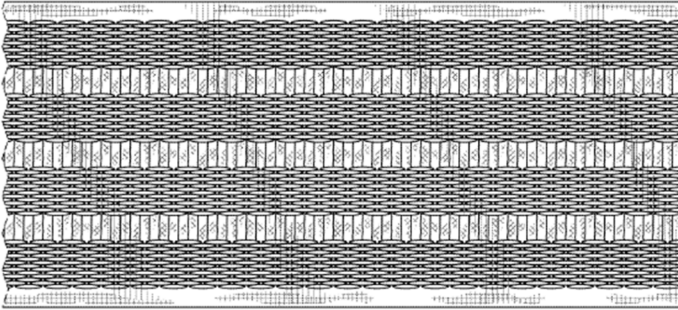

Table 1: Comparison of the '218 Design Patent with Accused Products 1 and 2	
The '218 Design Patent	One of Accused Products 1 or 2, Accused Product 3 being made of the same material
 <p>FIG. 5</p>	
 <p>FIG. 6</p>	

62. On information and belief, Darksyde offers Accused Products 1 and/or 2 for sale online via at least Instagram.com and Facebook.com.

63. The overall appearance of the design claimed in the '218 Design Patent and the design of Accused Product 2 are substantially the same.

64. An ordinary observer would perceive the overall appearance of the designs of the '218 Design Patent and the design of Accused Product 2 to be substantially the same when compared in the context of the prior art.

65. Table 2 below illustrates Accused Product 2's infringement by comparing figures from the '218 Design Patent with images of Accused Product 2 from Darksyde's website at <http://darksydegear.com/details.asp?ID=22>:

Table 2: Comparison of the '218 Design Patent with Accused Product 5	
The '218 Design Patent	Accused Product 4, on information and belief Accused Product 5 being made of the same material
 <p>FIG. 5</p>	
 <p>FIG. 6</p>	



66. On information and belief, Darksyde offers Accused Products 4 and/or 5 for sale online via at least Instagram.com and Facebook.com.

67. The overall appearance of the design claimed in the '218 Design Patent and the design of Accused Products 4 and 5 are substantially the same.

68. An ordinary observer would perceive the overall appearance of the designs of the '218 Design Patent and the design of Accused Products 4 and 5 to be substantially the same when compared in the context of the prior art.

**COUNT I**  
**INFRINGEMENT OF INZER'S POWER SURGE MARK**  
**(15 U.S.C. § 1125)**

Inzer repeats and incorporates by reference the allegations of the above paragraphs.

69. Elick and Darksyde have willfully and in bad faith infringed Inzer's POWER-SURGE™ Mark by using SURGE, a brand that is substantially similar to Inzer's POWER-SURGE™ Mark, without authorization from Inzer, in interstate commerce, and in connection with Elick and Darksyde's powerlifting equipment products, including but not limited to Accused Products 1 – 3, in a way likely to cause confusion or mistake or to deceive as to an affiliation between, on the one hand, Elick and Darksyde, and, on the other hand, Inzer, as to the origin of Darksyde's goods.

70. Inzer has been and will continue to be irreparably harmed by Elick and Darksyde's infringement of Inzer's rights in the POWER-SURGE Mark, where

Inzer has no adequate remedy at law unless Elick and Darksyde are enjoined by this Court.

71. As a result of Defendants' infringement, Inzer has incurred money damages in excess of \$75,000.00, and will continue to incur money damages until enjoined by this Court.

**COUNT II**  
**OHIO UNIFORM DECEPTIVE TRADE PRACTICES ACT**  
**OHIO REVISED CODE § 4165.02**

Inzer repeats and incorporates by reference the allegations of the paragraphs.

72. Elick and Darksyde's acts, as described above, particularly with regard to Accused Products 1 – 3, constitute a willful violation of the Ohio Uniform Deceptive Trade Practices Act, Ohio Revised Code § 4165.02, by causing likelihood of confusion or misunderstanding as to the source, sponsorship, approval of goods, or services and/or an affiliation, connection, or association with Inzer.

73. Elick and Darksyde's acts are willful and have been committed with the intent to cause confusion or mistake and to deceive.

74. Inzer has been and will continue to be damaged by Elick and Darksyde's violations of the Ohio Uniform Deceptive Trade Practices Act in an amount that exceeds \$75,000.00.

75. Elick and Darksyde's conduct will also continue to cause irreparable harm to Inzer, for which Inzer has no adequate remedy at law, unless and until enjoined by this Court.

**COUNT III**  
**COMMON LAW UNFAIR COMPETITION**

Inzer repeats and incorporates by reference the allegations of the above paragraphs.

76. Elick and Darksyde's acts, as described above, particularly with regard to Accused Products 1 – 3, reflect a scheme by which they, without authority, consent, or privilege, intended to imitate or pass off their goods as those of Inzer or as goods that have received the sponsorship or approval of Inzer.

77. Such conduct constitutes unfair competition in violation of Ohio common law.

78. Elick and Darksyde's acts are willful and have been committed with the intent to cause confusion or mistake and to deceive.

79. Inzer has been and will continue to be damaged by Elick and Darksyde's unfair competition in an amount that exceeds \$75,000.

80. Elick and Darksyde's conduct will also continue to cause irreparable harm to Inzer, for which Inzer has no adequate remedy at law, unless and until enjoined by this Court.

**COUNT IV**  
**INFRINGEMENT OF UTILITY PATENT NO. 9,895,594**  
**(35 U.S.C. § 271)**

Inzer repeats and incorporates by reference the allegations of above paragraphs.

81. Inzer owns all right, title, and interest in the '594 Patent and possesses the right to sue for and obtain equitable relief and damages for past, present, and future infringement of the '594 Patent.

82. The '594 Patent is presumed to be valid.

83. Elick and Darksyde have directly infringed and continue to directly infringe, either literally or under the doctrine of equivalents, at least Claim 1 of the '594 Patent in violation of 35 U.S.C. § 271(a).

84. By making, importing, using, offering to sell, or selling Accused Products 1 - 5 in the United States, including Ohio, Elick and Darksyde have infringed, and continue to infringe, at least Claim 1 of the '594 Patent in violation of 35 U.S.C. § 271(a).

85. Inzer has been and will continue to be damaged by Elick and Darksyde's violations of 35 U.S.C. § 271(a) in connection with the '592 Patent in an amount that exceeds \$75,000.00.

86. Inzer has been and will continue to be irreparably harmed by Elick and Darksyde's infringement of the '594 Patent, for which Inzer has no adequate remedy at law unless and until Elick and Darksyde are enjoined by this Court.

**COUNT V**  
**INFRINGEMENT OF DESIGN PATENT NO. D819,218**  
**(35 U.S.C. § 271)**

Inzer repeats and incorporates by reference the allegations of the above paragraphs.

87. Inzer owns all right title, and interest in the '218 Design Patent and possesses the right to sue, obtain equitable relief, and recover damages for past, present, and future infringement of the '218 Design Patent.

88. The '218 Design Patent is presumed to be valid.

89. Elick and Darksyde have directly infringed, and continue to directly infringe, either literally or under the doctrine of equivalents, at least Claim 1 of the '594 Patent in violation of 35 U.S.C. § 271(a).

90. By making, importing, using, offering to sell, or selling Accused Products 1- 5 in the United States, including Ohio, Elick and Darksyde have infringed, and continue to infringe, the '218 Design Patent in violation of 35 U.S.C. § 271(a).

91. Inzer has been and will continue to be damaged by Elick and Darksyde's violations of 35 U.S.C. § 271(a) in connection with the '218 Design in an amount that exceeds \$75,000.00.

92. Inzer has been and will continue to be irreparably harmed by Darksyde's infringement of the '218 Design Patent, for which Inzer has no adequate remedy at law unless and until Elick and Darksyde are enjoined by this Court.

**PRAYER FOR RELIEF**

Inzer respectfully requests judgment against Darksyde as follows:

- a. A judgment that Elick and Darksyde have willfully infringed the Inzer Mark;
- b. A judgment finding that this case is exceptional under the Lanham Act and awarding Inzer his reasonable attorney's fees and costs thereunder;
- c. An order enjoining Darksyde, its officers, agents, members, employees, successors, assigns, and all those in privity and/or acting in concert with them, permanently and preliminarily during the pendency of this action, from advertising, selling, marketing, or distributing Elick and Darksyde's goods and services, including, but not limited to, powerlifting equipment, under the Inzer Mark or any other confusingly similar names or marks, and/or otherwise using the Inzer Mark, or any confusingly similar names or marks, in connection with any goods or services that are within the zone of natural business expansion of the goods and services of Inzer;
- d. An order requiring Elick and Darksyde to pay Inzer its actual damages, including, but not limited to, disgorgement of Elick and Darksyde's profits, and trebled pursuant to 15 U.S.C. § 1117(a) & (b), arising out of Elick and Darksyde's acts of willful infringement of the Inzer Mark;
- e. A judgment that Elick and Darksyde willfully infringed the '594 Patent;

- f. An order enjoining Darksyde, its officers, agents, members, employees, successors, assigns, and all those in privity and/or acting in concert with them, permanently and preliminarily during the pendency of this action, from infringing the '594 Patent.
- g. An order requiring Elick and Darksyde to pay Inzer all damages caused by Darksyde's infringement of the '594 Patent, pursuant to 35 U.S.C. § 284;
- h. A judgment that Elick and Darksyde willfully infringed the '218 Design Patent;
- i. An order enjoining Darksyde, its officers, agents, members, employees, successors, assigns, and all those in privity and/or acting in concert with them, permanently and preliminarily during the pendency of this action, from infringing the '218 Design Patent.
- j. An order requiring Elick and Darksyde to pay Inzer all damages caused by Darksyde's infringement of the '218 Design Patent, pursuant to 35 U.S.C. § 284, and/or the total profit made by Darksyde from its infringement of the '218 Design Patent, pursuant to 35 U.S.C. § 289;
- k. Awarding Inzer punitive damages to deter any future willful infringement as the Court finds appropriate;
- l. A judgment and order requiring Elick and Darksyde to pay Inzer supplemental damages or profits for any continuing post-verdict infringement up until entry of judgment, with an accounting as needed;

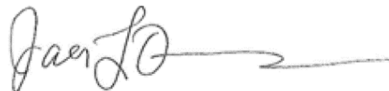
- m. A judgment and order requiring Elick and Darksyde to pay Inzer pre-judgment and post-judgment interest on any damages or profits awarded;
- n. An award of Inzer's attorney fees for bringing and prosecuting this action;
- o. Such further and additional relief as the Court deems just and proper.

**JURY DEMAND**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Inzer demands a trial by jury for all claims so triable.

Dated: May 24, 2022

Respectfully Submitted,



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