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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

BEARABY INC.,

Plaintiff,

v.

SILK & SNOW INC.,

Defendant.

CASE NO. _____

COMPLAINT

Plaintiff Bearaby Inc. (“Bearaby” or “Plaintiff”), by and through its undersigned counsel of record, for its Complaint against Defendant Silk & Snow Inc. (“S&S”), alleges as follows:

NATURE OF THE CASE

1. Plaintiff files this Complaint against S&S for patent infringement under 35 U.S.C. § 271, false advertising under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), false advertising under New York’s General Business Law § 350, and deceptive practices under New York’s General Business Law § 349, and alleges as follows:

PARTIES

2. Plaintiff Bearaby Inc. is a Delaware corporation with a principal place of business at 500 Delaware Ave, Ste 1 #1960, Wilmington, DE 19899. Bearaby Inc. is the owner of the Asserted Patents.

3. On information and belief, Defendant Silk & Snow Inc. is a Canadian corporation doing business at 675 King St W, Unit 205, Toronto, ON M5V1M9, Canada.

JURISDICTION AND VENUE

4. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a), and under principles of supplemental jurisdiction.

5. This Court has personal jurisdiction over S&S at least because S&S has committed acts of patent infringement within the Southern District of New York.

6. On information and belief, S&S, either directly or indirectly through subsidiaries or intermediaries, makes, uses, sells, offers to sell, and/or imports structures that directly infringe one or more claims of the Asserted Patents in the Southern District of New York.

7. Venue is also proper as to S&S under 28 U.S.C. § 1400(b) at least because S&S has committed acts of patent infringement within this District and is a foreign corporation with no place of business within the United States.

8. This Court also has personal jurisdiction over S&S because S&S transacts business in the state of New York and it disseminates advertising that is false or misleading and is likely to confuse consumers within the state and in the Southern District of New York.

9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 (b)(1), (b)(2), and (c)(2) and 1400(b) because a substantial part of the events giving rise to the claims in this action

occurred in this District and because S&S is a foreign corporation with no place of business within the United States.

FACTS SUPPORTING BEARABY'S REQUESTED RELIEF

A. *Kathrin Hamm, Bearaby, and the Creation of a New Market Leading Weighted Blanket.*

10. Kathrin Hamm is a pioneer, inventor and entrepreneur in the weighted blanket industry.

11. Early on, Ms. Hamm recognized the important therapeutic effect weighted blankets can have on a number of medical conditions, including insomnia, anxiety, and sensory disorders. She understood the early work by Dr. Temple Grandin on the use of Deep Tissue Pressure to treat autism-related anxiety. She learned how the use of weighted blankets could use Deep Tissue Pressure to manage a range of anxiety and sensory related disorders.

12. Ms. Hamm also recognized the drawbacks to traditional weighted blankets. Prior to Ms. Hamm and her company, Bearaby, manufacturers of weighted blankets used a range of techniques and materials to increase the weight of the blankets, such as inserting plastic beads between blanket layers. These techniques reduced the airflow in the blankets and made the blankets stiff and uncomfortable for the user. These materials were also largely synthetic, bad for the environment, and unhealthy. Ms. Hamm wanted to do better.

13. To that end, Ms. Hamm invented a new type of weighted blanket. One that would have the therapeutic benefits of traditional weighted blankets, but without a hot, stifling, and uncomfortable feel. She also vowed to use natural materials to help the environment and the health of her customers.

14. Ms. Hamm started Bearaby in 2018 to sell her new weighted blanket and revolutionized the weighted blanket market.

15. Bearaby and Ms. Hamm's weighted blankets were an instant success. Upon launch in 2018, the company sold an anticipated three months of inventory in two days. By 2020, there was a waitlist 44,000 orders long to buy her groundbreaking weighted blankets. And, in 2021, Bearaby sold many millions of dollars' worth of its innovative and sustainable weighted blankets.

16. The industry recognized Ms. Hamm's and Bearaby's groundbreaking weighted blanket design. For example, in 2020, Fast Company awarded Bearaby the Innovation by Design award, and Reddot awarded its Design Award. In 2021, Good Housekeeping recognized Bearaby in its Best Bedding Awards, and GQ Home awarded Bearaby its Best Weighted Blanket award.

17. Major publications have also recognized Ms. Hamm's and Bearaby's new weighted blanket. Vogue, Bloomberg, Modern Retail, and Morning Brew all wrote features extolling the benefits of the new weighted blanket. In fact, Entrepreneur recognized Ms. Hamm as a leading female business leader for her work creating Bearaby's new weighted blanket. Moreover, Fast Company recognized Bearaby's category leadership in sustainability by deeming Bearaby's weighted blankets the 'most sustainable weighted blanket' in the market, and highlighted its innovative product design, in contrast with the legacy, bead-filled weighted blanket design.

B. *The Unique Design of Bearaby's Weighted Blankets.*

18. Ms. Hamm invented her new weighted blanket (the "Bearaby Weighted Blanket") in 2018. The new blanket uses a number of techniques to create a breathable, natural, and comfortable experience.

19. The Bearaby Weighted Blanket includes the use of large knitted yarns to create a weighted blanket with a unique look and feel.

20. Images of the Bearaby Weighted Blanket knit design are below:



21. The Bearaby Weighted Blanket also uses multiple fibers within the knitted yarns to add weight to the blanket, while keeping a breathable, natural feel.

22. Images of a single yarn and the multiple fibers within the yarn are below:



23. The combination of large knitted yarns with heavy internal fibers created a new type of weighted blanket that changed the weighted blanket industry.

C. Patent Office Awards Bearaby Two Patents for Its Weighted Blanket.

24. Ms. Hamm’s new weighted blanket was also recognized by the United States Patent and Trademark Office (“Patent Office”). Because of her inventions, the Patent Office issued her two patents.

25. Kathrin Hamm is the named inventor and Bearaby is the owner of U.S. Patent No. 10,835,708 (the “’708 Patent”), entitled “Layered Yarn and Weighted Blanket for Deep Pressure Therapy,” which the Patent Office duly and legally issued on November 17, 2020. The ’708 Patent is valid and enforceable, and a true and correct copy is attached hereto as **Exhibit A**.

26. Kathrin Hamm is the named inventor and Bearaby is the owner of U.S. Patent No. 11,260,199 (the “’199 Patent”), entitled “Layered Yarn and Weighted Blanket for Deep Pressure Therapy,” which the Patent Office duly and legally issued on March 1, 2022. The ’199 Patent is valid and enforceable, and a true and correct copy is attached hereto as **Exhibit B**.

27. Collectively, the ’708 and ’199 Patents are referred to as the “Asserted Patents” throughout this Complaint.

D. *Bearaby’s Marketing of its Weighted Blankets as a Natural Alternative to Others in the Market.*

28. Bearaby and Ms. Hamm worked to introduce the world to her new Bearaby Weighted Blanket and create an environmentally conscious company that customers rely upon for safe, sustainable products. To do so, Bearaby heavily markets its business and the benefits of its weighted blankets.

29. Bearaby prominently displays its dedication to natural sleep on its website.

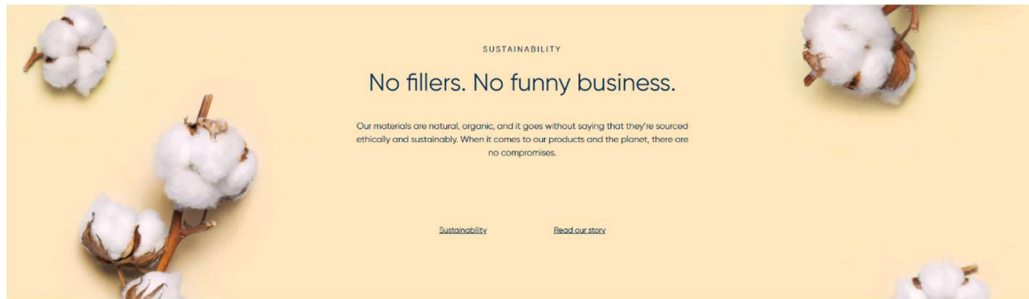
30. Below is a banner from Bearaby’s home page <<https://bearaby.com>> stating that its weighted blankets are a “natural way to sleep well.”

BEARABY WEIGHTED BLANKETS

The natural way to sleep well

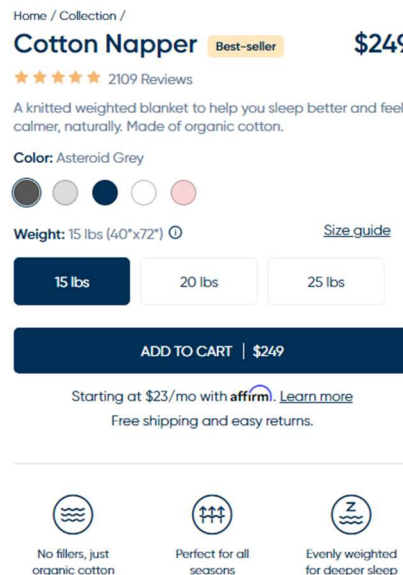
[See all our products](#)

31. Below is another banner from Bearaby’s home page restating Bearaby’s dedication to sustainability and the use of natural products. The use of cotton plants also highlights Bearaby’s use of high quality cotton in its blankets.



32. Bearaby also specifically markets cotton weighted blankets.

33. Below is an image from Bearaby's Cotton Napper sales page <<https://bearaby.com/products/the-napper>>. It shows Bearaby heavily marketing its use of cotton as a feature of the blanket.



34. Bearaby markets itself as an alternative to other companies using synthetic materials in their blankets.

35. Below is an image from Bearaby's Our Story page <<https://bearaby.com/pages/our-story>> detailing how Bearaby, unlike its competitors, does not use plastic-filled or synthetic weighted blankets. It reads “We’re on a mission to free the planet from sweaty, plastic-filled, synthetic weighted blankets that are uncomfortable to use and bad for the environment.”



36. Bearaby also markets the breathability and natural feel of its unique design. Below are images from Bearaby’s Our Story page <<https://bearaby.com/pages/our-story>> detailing how Bearaby’s design creates a breathable blanket with a natural, soft feel.



37. Bearaby has spent considerable time, money, and energy building its unique brand and image. To maintain that brand image, Bearaby relies on its customers to trust that the statements Bearaby makes regarding its use of natural products in its weighted blankets are true. Any diminution of that trust directly affects Bearaby’s ability to market and sell its weighted blankets.

E. S&S Begins Marketing a Weighted Blanket, Similar to the Bearaby Weighted Blanket, with False Claims.

38. At least as early as August 5, 2020, S&S began marketing its weighted blankets to consumers (the “Accused Products”).

39. The nature of the Accused Products, and S&S's related advertisements, leaves no question that S&S's marketing strategy revolves around mimicking Bearaby's successful products while attempting to piggyback on Bearaby's success with blatantly false claims.

40. The Accused Products look similar to the Bearaby Weighted Blanket and S&S heavily relies on its purported use of sustainable materials and cotton to manufacture its products. Specifically, when the Accused Products were launched and, at least until January 2022, S&S advertised that its blankets are "100% Natural Cotton" and "100% organic cotton."

41. S&S and Bearaby are direct competitors in the weighted blanket product segment.

42. Bearaby offers chunky knit weighted blankets in a variety of weights (6, 8, 10, 15, 20, 25, and 35 pounds) and colors.

43. S&S likewise offers chunky knit weighted blankets in four different weights (8, 15, 20, and 25 pounds) and a multitude of colors.

44. The following are a representative sample of S&S's "100% Natural Cotton" and "100% organic cotton" claims as of August 5, 2020 on its website, <<https://www.silkandsnow.com/>> (the "S&S Website") (emphasis added):



Handwoven Weighted Blanket

Handwoven from **100% natural cotton**, our weighted blanket provides all of the beneficial stress-free comfort of a traditional weighted blanket without synthetic materials and pesky glass pellets.

Weight **20 lbs**

\$225 ▾

Colour: Nimbus Gray

[Size Guide](#)



Add to Cart

De-Stress, Naturally

Our all-natural weighted blanket is made from **100% organic cotton**, meaning you can enjoy the therapeutic benefits of your handmade weighted blanket while completely avoiding the harmful effects of synthetic textile production on our planet.



What Sets Us Apart



Breathable

Our all cotton weighted blanket allows you to chill out and cool off, literally.



Sustainable

All-natural cotton makes this weighted blanket more sustainable than conventional options made from synthetic textiles.



Filler Free

We avoid the use of glass or plastic pellets, creating a comfortable weighted blanket, completely crafted by nature.



Better Materials, Better Breathability

Made from an all-natural knitted cotton construction, our weighted blanket ensures you de-stress comfortably, by allowing greater breathability when compared to conventional weighted blankets. Cool off and unwind.

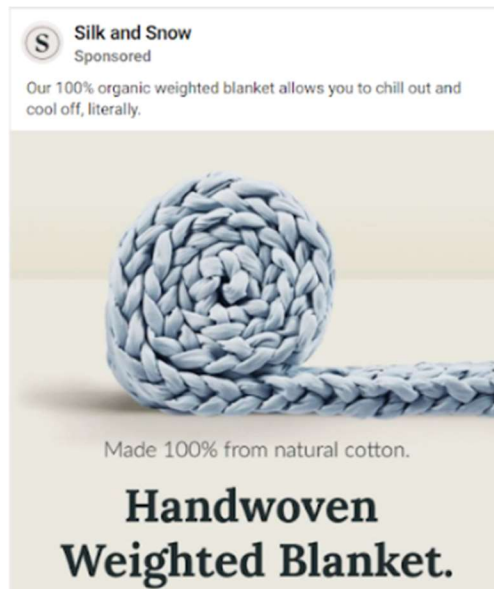
45. S&S has also promulgated these and similar claims on other platforms, including, e.g., on Instagram, Facebook, and via paid Google advertising:



Ad · <https://www.silkandsnow.com>

[Chunky-Knit Weighted Blanket - Beautiful Handwoven Design](#)

Beautiful Handwoven & chunky-knit weighted **blankets**. Filler free. Breathable & cool cotton. Great for stress & anxiety. Free shipping. Choose your perfect weight. Handwoven. 100% Natural, Filler Free. Responsibly Manufactured. Styles: 15 lbs, 20 lbs, 25 lbs, 8 lbs Kids. [End Of Year Sales](#) · [FAQ](#) · [Customer Reviews](#) · [Alpaca Throws & Blankets](#) · [Explore Duvets](#) · [Our Story](#) · [Bed Sheets](#) · [Bed Frames](#)



46. On information and belief, the statements that the Accused Products are made of “100% Natural Cotton” or “100% organic cotton,” are “sustainable,” or are made from “better materials” convey the following false claims:

- a) The Accused Products are made exclusively of natural cotton;
- b) The Accused Products are made exclusively of organic cotton;
- c) The Accused Products’ textile elements are made exclusively of natural, organic cotton;
- d) The Accused Products are more sustainable than competitors’ weighted blankets because they are made entirely of natural, organic cotton; and
- e) The Accused Products are made of superior materials as compared to competitors’ weighted blankets because they are made entirely of natural, organic cotton.

47. On information and belief, at all times, the Accused Products contained and still contain components that are not made of cotton.

48. On information and belief, at the time these claims were made, and through at least as late as January 2022, the Accused Products contained **no cotton whatsoever**.

49. On information and belief, at the time these claims were made, and through at least as late as January 2022, the textile components of the Accused Products were, in fact, comprised entirely of **polyester – a synthetic textile**.

50. On information and belief, in addition, at least as early as November 2021, the S&S Website conveyed two additional false claims: (i) the Accused Products are Global Organic Textile Standard (GOTS) Certified (indicating compliance with an independent standard for use of organic textiles), and (ii) the Accused Products use “at least 95% organic materials.”

51. The Global Organic Textile Standard (GOTS) is an internationally recognized organic textile standard, denoting that the certified product is made from at least 70% certified organic, natural fibers.

52. On information and belief, the textile components of the Accused Products were not comprised of at least 70% organic, natural fibers, and S&S's GOTS certification was therefore fraudulently obtained.

53. Nevertheless, at least as of April 2022, S&S is still listed as a GOTS certified vendor for weighted blankets: <https://global-standard.org/find-suppliers-shops-and-inputs/certified-suppliers/database/search_result/35776>

GLOBAL ORGANIC TEXTILE STANDARD
ECOLOGY & SOCIAL RESPONSIBILITY

THE STANDARD	CERTIFICATION & LABELLING	FIND SUPPLIERS, SHOPS AND INPUTS	RESOURCE LIBRARY	EVENTS	ABOUT US
	<p>CERTIFICATION</p> <p>WHO NEEDS TO BE CERTIFIED</p> <ul style="list-style-type: none"> FIRST PROCESSING STAGES SPINNING WEAVING AND KNITTING WET-PROCESSING MANUFACTURING TRADING <p>HOW TO GET ADDITIVES APPROVED</p>				

General Data

Country	Canada (CA), Ontario
Field of operation	Retailing
Product category	Home Textiles

Contact Data

Contact name	Kenneth Mo
Email address	kenneth@silkandsnow.com
Address	675 King St West
Address 2	Unit 205
Postcode, City	M5V1M9, Toronto
Website	http://www.silkandsnow.com

License Data

License number	OT-037694
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Other Data

Product details	Home Textiles Bed linen Mattress Topper 100% Organic Cotton Home Textiles Bed linen Weighted Blanket 100% Organic Cotton
Certification Body	Oregon Tilth Inc.
Certificate	Click here to view the scope certificate.
Certificate valid until	2023-01-01

54. The foregoing false claims are exacerbated by S&S's direct and disparaging comparison of the Accused Products to the Bearaby Weighted Blanket.

55. At least as early as January 24, 2021, and continuing through the present day, the S&S Website has contained a webpage titled "Bearaby Weighted Blanket Review Canada," available at <https://www.silkandsnow.com/en-ca/bearaby-review-canada/> comparing the Accused Products to the Bearaby Weighted Blanket (the "Comparison Webpage").

56. By way of example, the January 24, 2021 version of the Comparison Webpage, available at <https://web.archive.org/web/20210124145938/https://www.silkandsnow.com/en-ca/bearaby-review-canada/> contained the following table:

	silk&snow	Bearaby
Price	CAD \$160-\$320	Approx. CAD \$195-\$393 (USD \$149-\$299)
Free Trial	<input checked="" type="checkbox"/> 100 Nights	<input type="checkbox"/> 30 Nights Processing and inspection fee of USD \$14.99 for returns
Material	100% cotton	<u>Mixed materials</u>
OEKO-TEX® Standard 100 Certified	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Weights	8 lbs 15 lbs 20 lbs 25 lbs	8 lbs 15 lbs 20 lbs 25 lbs
Sizes	38" x 60" 42" x 72" 48" x 72" 51" x 72"	40" x 60" 40" x 72" 45" x 72" 48" x 72"
Machine Washable	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Warranty	1 year	<input type="checkbox"/>
Free Delivery	<input checked="" type="checkbox"/>	<input type="checkbox"/> US only; international shipping fees apply to Canadian orders

57. The Comparison Webpage furthers S&S’s explicitly false claim that the Accused Products are “100% cotton,” and does so in a context that expressly disparages Bearaby.

58. As shown in the below screenshot of <<https://www.silkandsnow.com/en-ca/bearaby-review-canada/>>, the Comparison Webpage was subsequently revised to remove the false “100% cotton” claim. However, S&S has issued no corrective advertising to undo the harm caused by its false claim.

	silk&snow	Bearaby
Price	CAD \$160-\$320	Approx. CAD \$195-\$393 (USD \$149-\$299)
Free Trial	✔ 100 Nights	✘ 30 Nights Processing and inspection fee of \$19.99 for returns
OEKO-TEX® Standard 100 Certified	✔	✔
Weights	8 lbs 15 lbs 20 lbs 25 lbs	8 lbs 15 lbs 20 lbs 25 lbs
Sizes	38" x 60" 42" x 72" 48" x 72" 51" x 72"	40" x 60" 40" x 72" 45" x 72" 48" x 72"
Machine Washable	✔	✔
Warranty	1 year	✘
Free Delivery	✔	✔

59. S&S has also promulgated these kinds of false comparisons in, e.g., paid Google advertising, as depicted in the below screenshot.

Ad · www.silkandsnow.com/bearaby ▾

Considering a Bearaby Blanket? - Try a Silk & Snow™ instead

Best Handwoven weighted blanket. 100% natural and filler free. Breathable & cool. Free shipping & returns. Great for stress & anxiety. Choose your perfect weight. 100% Natural, Filler Free. Handwoven. Consciously Manufactured. Styles: 15 lbs, 20 lbs, 25 lbs, 8 lbs Kids.
[Bed Sheets](#) · [Explore Duvets](#) · [Customer Reviews](#) · [Our Story](#) · [Bed Frames](#)

60. These false claims are causing direct harm to Bearaby by confusing the consuming public and siphoning off potential sales. Indeed, Bearaby has received inquiries from consumers comparing the Accused Products to the Bearaby Weighted Blanket, and specifically noting consumer preference for the Accused Products because the consumers believe they are made from “100% cotton.”

61. Finally, on information and belief, the Accused Products lack physical labels disclosing (i) the country of origin and (ii) the textile makeup of their components, in clear violation of 16 CFR § 303 *et. seq.*, which requires disclosure of such information for bedding products such as weighted blankets. This failure to disclose the textile makeup of the Accused Products further compounds S&S’s false claims, as discussed above.

F. Bearaby Informs S&S of Its False Claims and Patent Infringement.

62. On or about December 9, 2021, Bearaby notified S&S in writing (the “12/9 Bearaby Letter”) that S&S’s claims concerning the cotton content of the Accused Products, as well as its GOTS certification and organic materials claims, were false or misleading because, based on independent, third-party testing¹ the Accused Products contained no cotton whatsoever, and were actually **100% polyester.**

63. Specifically, in the 12/9 Bearaby Letter, Bearaby advised S&S that:

Silk & Snow’s advertising of its S&S Blanket as “100% natural cotton” constitutes false and misleading advertising in violation of the Lanham Act as well as state laws. Bearaby engaged a third party laboratory to conduct an analysis of the fiber content of an S&S Blanket, and the results demonstrate conclusively that the S&S Blankets are not cotton at all, but rather 100% polyester. Indeed, we also believe that the GOTS certification statement on the Silk & Snow website indicating that your S&S Blanket uses “at least 95% organic materials in our weighted blanket” is also false and will require immediate remedial action.

¹ This test was subsequently repeated and confirmed by a separate laboratory, as well.

64. Bearaby also informed S&S in the 12/9 Bearaby Letter that the Accused Products infringe Bearaby's issued patents and the claims of its allowed—patent application.

65. A true and correct copy of the 12/9 Bearaby Letter is attached as **Exhibit C**.

66. S&S responded to the 12/9 Bearaby Letter by letter dated December 21, 2021 (the "12/21 S&S Letter").

67. In the 12/21 S&S Letter, S&S acknowledged that its claims were false, but attempted to minimize their falsity by asserting that "one of Silk and Snow's suppliers may have substituted the specified cotton filler with polyester for a limited number of lots late this year without Silk and Snow's knowledge or consent, although the blanket exterior was and remains 100% cotton."

68. S&S also agreed to remove its GOTS certification claim from the S&S Website, but took no further action regarding the myriad other false claims raised in the 12/9 Bearaby Letter.

69. Accordingly, on January 5, 2022, Bearaby sent S&S another letter, reiterating that many false claims about the Accused Products remain on the S&S Website, and noting that S&S's response did not explain Bearaby's finding that the Accused Products are composed **entirely of polyester** (the "1/5 Bearaby Letter").

70. A true and correct copy of the 1/5 Bearaby Letter is attached as **Exhibit D**.

71. S&S responded to the 1/5 Bearaby Letter by letter dated January 19, 2022 (the "1/19 S&S Letter").

72. In the 1/19 S&S Letter, S&S acknowledged Bearaby's concerns and committed to making some additional changes to its false claims. In particular, S&S made several additional revisions to the false claims on the S&S Website pertaining to the Accused Products identified in

the 1/5 Bearaby Letter and 12/9 Bearaby Letter, again acknowledging that those claims were, in fact, false.

73. However, S&S has taken no further affirmative steps to remedy the harm it caused to Bearaby through its promulgation of plainly false claims and sale of the Accused Products.

74. S&S has not issued any corrective advertising to undo the harm caused by its false claims.

75. S&S has not had the entity that issued its GOTS certification withdraw that certificate.

76. S&S has refused to compensate Bearaby for the harm it has caused.

77. S&S has continued to run advertisements comparing its Accused Products to the Bearaby Weighted Blanket. *See, e.g.*, < <https://www.silkandsnow.com/en-ca/bearaby-review-canada/>>

78. S&S has continued to claim, on the S&S Website at <<https://www.silkandsnow.com/en-ca/handwoven-weighted-blanket/>>, that:

- a) The Accused Products have a “100% natural cotton exterior” and are “woven with natural cotton.”
- b) The Accused Products are “more sustainable than conventional options” because they are made with “natural cotton.”
- c) The Accused Products are made with “better materials” compared to “conventional weighted blankets.”

79. S&S’s false claims can also be found on other parts of the S&S Website, including: the Accused Products are “made of breathable 100% cotton”; “our all-natural weighted blanket is

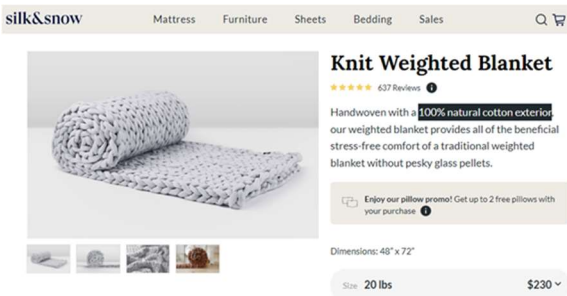
made of 100% natural cotton fibres”. See <<https://www.silkandsnow.com/en-us/best-weighted-blanket-for-kids/>>.



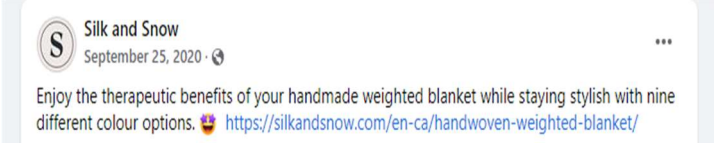
80. In sum, since the 12/9 Bearaby Letter, Bearaby has tried to negotiate with S&S in good faith, but S&S refuses to compensate Bearaby for the harm associated with its false advertising, refuses to issue corrective advertising notifying consumers that its claims were false, and continues to sell the Accused Products.

G. S&S is Infringing Bearaby’s Asserted Patents

81. S&S sells a series of Knit Weighted Blankets in 8, 15, 20, and 25 pound weights that infringe Bearaby’s Asserted Patents (defined above as the Accused Products). All of the Accused Products use the same infringing construction and yarns as the model described below. Representative claims from the Asserted Patents and corresponding infringing features of Accused Products are described below.

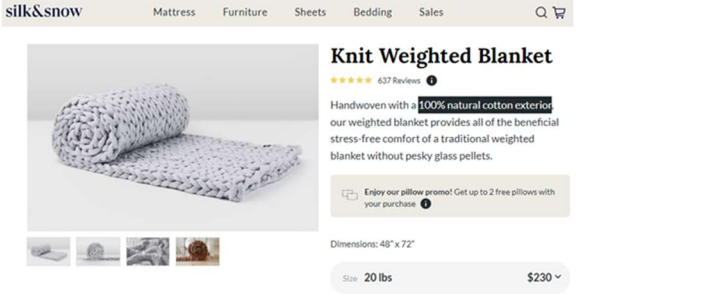


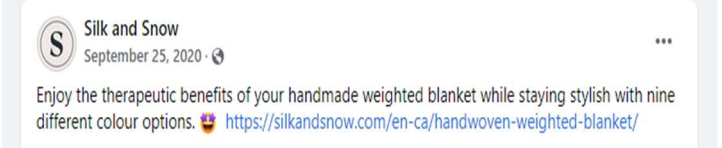
82. Representative claim 1 of the ’708 Patent is reproduced below with the infringing features of the Accused Products:

’708 Patent – Claim 1	S&S Knit Weighted Blanket
A deep pressure therapy blanket, comprising:	<p>S&S sells a weighted blanket used for deep pressure therapy shown below.</p> 
a piece of weighted material, the piece of weighted material comprising:	The Accused Products include a piece of weighted material, specifically the knit yarn comprising most of the blanket.
a length of layered yarn having loops that are interloped to form the piece	The piece of weighted material is made up of interloped yarn, shown below.

'708 Patent – Claim 1	S&S Knit Weighted Blanket
<p>of weighted material, wherein the length of layered yarn comprises:</p>	
<p>an outer tube extending longitudinally from a first end to a second end, the outer tube defining a conduit extending longitudinally therethrough from the first end to the second end, and the outer tube forming the loops that are interloped; and</p>	<p>The length of layered interloped yard has an outer tube extending longitudinally. The outer tube is shown cut below.</p> 
<p>a plurality of inner layers of material disposed within the conduit of the outer tube and extending longitudinally from the first end to the second end,</p>	<p>Within the outer tube, there are a multitude of layers. The layers are shown in the image above.</p>
<p>wherein the length of layered yarn, by itself, is configured and sufficiently weighted to effectuate deep pressure therapy to a person when the deep pressure blanket lies over a person's body.</p>	<p>S&S advertises its weighted blankets for use as a therapeutic treatment (shown below) and the blanket is sufficiently weighted to effectuate deep pressure therapy.</p> 

83. Representative claim 1 of the '199 Patent is reproduced below with the infringing features of the Accused Products:

'199 Patent – Claim 1	S&S Knit Weighted Blanket
<p>A deep pressure therapy blanket, comprising:</p>	<p>S&S sells a weighted blanket used for deep pressure therapy shown below.</p>

'199 Patent – Claim 1	S&S Knit Weighted Blanket
	
<p>a piece of weighted material, the piece of weighted material comprising:</p>	<p>The Accused Products include a piece of weighted material, specifically the knit yarn comprising most of the blanket.</p>
<p>a length of layered yarn having loops that are interloped to form the piece of weighted material, wherein the length of layered yarn comprises:</p>	<p>The piece of weighted material is made up of interloped yarn, shown below.</p> 
<p>an outer tube extending longitudinally from a first end to a second end, the outer tube defining a conduit extending longitudinally therethrough from the first end to the second end, and the outer tube forming the loops that are interloped; and</p>	<p>The length of layered interloped yard has an outer tube extending longitudinally. The outer tube is shown cut below.</p> 
<p>a fiber material arranged within the conduit of the outer tube longitudinally from the first end to the second end,</p>	<p>Within the outer tube, there is a fiber material arranged longitudinally. The fiber material is shown in the image above.</p>
<p>wherein the length of layered yarn is sufficiently weighted by the outer tube and the fiber material to effectuate deep pressure therapy to a person when the deep pressure therapy blanket lies over a person's body.</p>	<p>S&S advertises its weighted blankets for use as a therapeutic treatment (shown below) and the blanket is sufficiently weighted to effectuate deep pressure therapy.</p> 

**FIRST CLAIM FOR RELIEF
PATENT INFRINGEMENT
(U.S. Patent No. 10,835,708)**

84. Bearaby repeats and re-alleges each and every allegation set forth in each of the paragraphs above, and incorporates them by reference.

85. The Accused Products embody every limitation of at least claim 1 of the '708 Patent, literally or under the doctrine of equivalents, as set forth in the above claim charts. Those descriptions are preliminary examples and are non-limiting.

86. S&S has had knowledge and notice of the '708 Patent and its infringement since at least the filing and service of the Complaint, and despite this knowledge continues to commit the aforementioned infringing acts.

87. On information and belief, S&S also had pre-suit knowledge and notice of the '708 Patent and its infringement because Bearaby specifically identified the patent in the 12/9 Bearaby Letter to S&S, and S&S outside counsel reviewed Bearaby's patents.

88. S&S's past and continued acts of infringement of the '708 Patent have caused damages to Bearaby. Thus, Bearaby is entitled to recover damages from S&S in an amount to be determined at trial, including but not limited to lost profits, but in no event less than a reasonable royalty for S&S's infringement together with interest and costs as fixed by the Court pursuant to 35 U.S.C. § 284.

89. On information and belief, such infringement has been, and will continue to be willful, and upon further belief, S&S lacks any reasonable invalidity or non-infringement defense making this case exceptional and entitling Bearaby to increased damages and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285.

90. S&S's ongoing infringement of the '708 patent has caused and will continue to cause irreparable harm to Bearaby unless and until the Court enters an injunction prohibiting S&S from engaging in further acts of infringement.

**SECOND CLAIM FOR RELIEF
PATENT INFRINGEMENT
(U.S. Patent No. 11,260,199)**

91. Bearaby repeats and re-alleges each and every allegation set forth in each of the paragraphs above, and incorporates them by reference.

92. The Accused Products embody every limitation of at least claim 1 of the '199 Patent, literally or under the doctrine of equivalents, as set forth in the above claim charts. Those descriptions are preliminary examples and are non-limiting.

93. S&S has had knowledge and notice of the '199 Patent and its infringement since at least the filing and service of the Complaint, and despite this knowledge continues to commit the aforementioned infringing acts.

94. On information and belief, S&S also had pre-suit knowledge and notice of the claims in the '199 Published Patent Application and its infringement because Bearaby specifically identified the published patent application in the 12/9 Bearaby Letter to S&S, and S&S outside counsel reviewed Bearaby's patents and applications. The claims in the '199 Patent issued substantially identical to those in its published application. Thus, S&S is liable for damages under 35 U.S.C. § 154(d).

95. S&S's past and continued acts of infringement of the '199 Patent have caused damages to Bearaby. Thus, Bearaby is entitled to recover damages from S&S in an amount to be determined at trial, including but not limited to lost profits, but in no event less than a reasonable

royalty for S&S's infringement together with interest and costs as fixed by the Court pursuant to 35 U.S.C. § 284.

96. On information and belief, such infringement has been, and will continue to be willful, and upon further belief, S&S lacks any reasonable invalidity or non-infringement defense making this case exceptional and entitling Bearaby to increased damages and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285.

97. S&S's ongoing infringement of the '199 patent has caused and will continue to cause irreparable harm to Bearaby unless and until the Court enters an injunction prohibiting S&S from engaging in further acts of infringement.

**THIRD CLAIM FOR RELIEF
FALSE ADVERTISING UNDER THE LANHAM ACT
(15 U.S.C. § 1125(a))**

98. Bearaby repeats and re-alleges each and every allegation set forth in each of the paragraphs above, and incorporates them by reference.

99. S&S has unequivocally adopted a marketing strategy that revolves around mimicking Bearaby's successful products while attempting to piggyback on Bearaby's success with blatantly false claims, including comparative claims specifically referencing and disparaging Bearaby.

100. S&S has, in interstate commerce, knowingly, willfully, intentionally and maliciously made false or misleading descriptions of fact, or misrepresentations of fact, concerning the nature, characteristics, and qualities of the Accused Products.

101. As set forth above, beginning no later than August 2020, until at least January 2022 (the "Relevant Period"), S&S's advertising and marketing conveyed the messages that:

- a) The Accused Products are made exclusively of natural cotton;

- b) The Accused Products are made exclusively of organic cotton;
- c) The Accused Products’ textile elements are made exclusively of natural, organic cotton;
- d) The Accused Products are more sustainable than competitors’ weighted blankets because they are made entirely of natural, organic cotton; and
- e) The Accused Products are made of superior materials as compared to competitors’ weighted blankets because they are made entirely of natural, organic cotton.

102. The GOTS certification compounded the effect of these false claims during the period it was displayed on the S&S Website.

103. The claims in S&S’s advertisements during the Relevant Period were literally or impliedly false, false by necessary implication, or materially misleading, because the Accused Products were made entirely of polyester, not cotton, as shown by Bearaby’s repeated, independent, third-party testing:

Excerpt from September 2021 Accused Products Test Result Summary	
<u>FIBER ANALYSIS: QUANTITATIVE</u> (AATCC 20A-18, ASTM D1909 MOISTURE REGAINS APPLIED)	
SUBMITTED	100% COTTON
LAB ANALYSIS	100% POLYESTER*
REMARKS: THE LABELED FIBER CONTENT FOR THE SUBMITTED SAMPLE IS RECOMMENDED AS	100% POLYESTER*

Excerpt from March 2022 Accused Products Confirmatory Test Result Summary

TESTED PROPERTY	REQUIREMENTS	RESULTS
Fiber content analysis (AATCC 20-21 / AATCC 20A-21)		
Grey		
Submitted		NO CLAIM
Lab analysis	No tolerance for single fiber	100% POLYESTER
Remarks: The labeled fiber content for the submitted sample is recommended as		100% POLYESTER

104. The claims in S&S's advertisements during the Relevant Period concern matters of primary and material importance to weighted blanket consumers: textile composition and environmental impact.

105. S&S's false or misleading statements have the capacity to deceive a substantial portion of Bearaby's actual and potential customers and, on information and belief, these statements have actually deceived consumers.

106. S&S's false or misleading claims, which persisted for several years and, on information and belief, were viewed by a substantial number of consumers, threaten irreparable and ongoing harm to Bearaby.

107. By reason of the foregoing, S&S's conduct constitutes false or misleading advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

108. Bearaby has suffered injury caused by S&S's conduct, including through the diversion of potential sales.

109. S&S's conduct also is causing irreparable injury to Bearaby, and will continue to damage Bearaby and to deceive the public unless this Court enjoins S&S's conduct and orders it to correct its false claims.

110. Bearaby has no adequate remedy at law.

**FOURTH CLAIM FOR RELIEF
FALSE ADVERTISING UNDER NEW YORK LAW
(N.Y. GEN. BUS. LAW § 350)**

111. Bearaby repeats and re-alleges each of the allegations set forth in each of the paragraphs above, and incorporates them by reference.

112. S&S has made material, false or misleading statements or representations of fact about the Accused Products. Specifically, S&S has literally, impliedly, or by necessary implication made the following claims, none of which is true:

- a) The Accused Products are made exclusively of natural cotton;
- b) The Accused Products are made exclusively of organic cotton;
- c) The Accused Products' textile elements are made exclusively of natural, organic cotton;
- d) The Accused Products are more sustainable than competitors' weighted blankets because they are made entirely of natural, organic cotton; and
- e) The Accused Products are made of superior materials as compared to competitors' weighted blankets because they are made entirely of natural, organic cotton.

113. The GOTS certification compounded the effect of these false claims during the period it was displayed on the S&S Website.

114. S&S's acts constitute false advertising in the conduct of business, trade, or commerce, or in the furnishing of any service in the state of New York in violation of New York's General Business Law § 350.

115. The public is likely to be damaged because of S&S's deceptive trade practices or acts. Specifically, S&S's false, deceptive, or misleading statements implicate the health and safety of those consumers deceived by S&S.

116. Bearaby has suffered injury caused by S&S's conduct, including through the diversion of potential sales.

117. S&S's conduct is causing irreparable injury to Bearaby, and will continue to damage Bearaby and to deceive the public unless enjoined by this Court.

118. Bearaby has no adequate remedy at law.

**FIFTH CLAIM FOR RELIEF
UNFAIR AND DECEPTIVE TRADE PRACTICES
UNDER NEW YORK LAW
(N.Y. GEN. BUS. LAW § 349)**

119. Bearaby repeats and re-alleges each and every allegation set forth in each of the paragraphs above, and incorporates them by reference.

120. By reason of the acts set forth above, S&S has been and is engaged in deceptive acts or practices in the conduct of a business, trade or commerce in violation of New York's General Business Law § 349.

121. Specifically, S&S has made false, deceptive, or misleading representations of fact or omissions of fact about the Accused Products that are likely to mislead reasonable consumers.

122. The public is likely to be damaged because of S&S's deceptive trade practices or acts. Specifically, S&S's false, deceptive, or misleading statements implicate the health and safety of those consumers deceived by S&S.

123. S&S directs its conduct at consumers, as S&S's false, deceptive, or misleading statements are contained in advertising targeted toward consumers, including, but not limited to, digital advertising.

124. S&S's deceptive acts are likely to mislead a reasonable consumer acting reasonably under the circumstances.

125. S&S's deceptive acts affect the public interest in the state of New York because, on information and belief, consumers located in New York have purchased S&S's products in reliance on S&S's false, deceptive, or misleading statements.

126. Bearaby has suffered injury caused by S&S's conduct, including through the diversion of potential sales.

127. S&S's conduct is causing irreparable injury to Bearaby, and will continue to damage Bearaby and to deceive the public unless enjoined by this Court. Bearaby has no adequate remedy at law.

PRAYER FOR RELIEF

Therefore, Bearaby requests judgment as follows:

1. Judgment under 35 U.S.C. § 271 that S&S infringes one or more of the valid claims of the Asserted Patents;
2. Damages under 35 U.S.C. § 284 adequate to compensate Bearaby for S&S's infringement of the Asserted Patents, including lost profit damages, but not less than a reasonable royalty;
3. That the Court find S&S's acts of infringement willful and award treble damages for such willful infringement pursuant to 35 U.S.C. § 284;
4. A finding that this case is exceptional pursuant to 35 U.S.C. § 285;
5. An award of Bearaby's attorneys' fees incurred in this action pursuant to 35 U.S.C. § 285;
6. An award of costs and pre- and post-judgment interest on Bearaby's compensatory damages;

7. A permanent injunction against S&S to prevent further infringement of the Asserted Patents;

8. A permanent injunction against S&S requiring S&S to issue appropriate corrective advertising reasonably designed to reach all people to whom S&S's false and misleading advertising was disseminated, retracting and correcting the false and misleading claims contained in the advertising;

9. That a permanent injunction enjoin S&S and any employees, agents, servants, officers, representatives, directors, attorneys, successors, affiliates, assigns, and entities owned or controlled by S&S, and all those in active concert and participation with S&S, and each of them who receives notice directly or otherwise of such injunction, from:

a. manufacturing, distributing, disseminating, publishing, or republishing any marketing or advertising materials containing the false claims identified herein, including:

- i. The Accused Products are made exclusively of natural cotton;
- ii. The Accused Products are made exclusively of organic cotton;
- iii. The Accused Products' textile elements are made exclusively of natural, organic cotton;
- iv. The Accused Products are more sustainable than competitors' weighted blankets because they are made entirely of natural, organic cotton; and
- v. The Accused Products are made of superior materials as compared to competitors' weighted blankets because they are made entirely of natural, organic cotton.

b. offering, advertising, or promoting any product or service making false or misleading representations or descriptions of fact, in any medium, regarding S&S's

products, including but not limited to falsely or misleadingly claiming, either literally, impliedly, or by necessary implication, that:

- i. The Accused Products are made exclusively of natural cotton;
- ii. The Accused Products are made exclusively of organic cotton;
- iii. The Accused Products' textile elements are made exclusively of natural, organic cotton;
- iv. The Accused Products are more sustainable than competitors' weighted blankets because they are made entirely of natural, organic cotton; and
- v. The Accused Products are made of superior materials as compared to competitors' weighted blankets because they are made entirely of natural, organic cotton.

c. engaging in any other activity constituting false or misleading advertising or unfair competition with Bearaby;

10. Requiring S&S to account for and pay to Bearaby the profits realized by S&S from its false or misleading advertising and unfair competition with Bearaby;

11. Awarding Bearaby its actual damages, trebled pursuant to 15 U.S.C. § 1117(a), arising out of S&S's acts of false or misleading advertising and unfair competition;

12. Awarding Bearaby interest, including pre-judgment interest, on the foregoing sums;

13. Awarding Bearaby its costs in this civil action;

14. Awarding Bearaby its reasonable attorneys' fees and expenses, pursuant to 15 U.S.C. § 1117(a);

15. Awarding Bearaby exemplary and punitive damages to deter any future willful conduct, as the Court finds appropriate;

16. Directing S&S to file with the Court and serve upon Bearaby counsel within thirty (30) days after entry of judgment a report in writing and under oath setting forth in detail the manner and form in which S&S has complied with the above; and

17. Awarding Bearaby such other and further relief as the Court may deem just and proper.

DATED: April 22, 2022

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

By: /s/ Brian O'Reilly

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