

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**WITH-U E-COMMERCE (SHANGHAI)
CO., LTD.,**

Plaintiff,

v.

**THE PARTNERSHIPS and
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE “A”,**

Defendants.

Civil Action No. 1:22-cv-3815

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

Plaintiff With-U E-Commerce (Shanghai) Co., Ltd. (“Plaintiff” or “With-U”) files this action against the Partnerships and Unincorporated Associations identified in Schedule A (collectively, “Defendants”) and alleges as follows:

INTRODUCTION

1. This action seeks to combat online infringers who trade upon Plaintiff’s reputation and goodwill by selling and/or offering for sale unauthorized and unlicensed products, namely the pop-up canopy tents shown in **Exhibit 1** (the “Infringing Products”), that infringe upon Plaintiff’s Design Patent (the “Design Patent”).

2. The Defendants create and operate numerous Amazon Marketplace Accounts identified in Schedule A (the “Defendant Amazon Stores”) that appear to be selling genuine pop-up canopy tent products, while actually selling Infringing Products to unknowing consumers. The Defendant Amazon Stores share unique identifiers, such as using the similar product images, advertising, design elements, and other similarities that establish a logical relationship between them and suggests that Defendants’ Amazon operations arises out of the same transaction,

occurrence, or series of transactions or occurrences. Specifically, as highlighted in Exhibit 1, all Defendant Amazon Stores offer products embodying identical canopy top cap and pole combinations, indicating that the Infringing Products are commonly sourced and then sold under different brand names. Defendants attempt to avoid liability by going to great lengths to conceal both their identities and the full scope and interworking of their operation.

3. In short, based on the uncanny similarities in specific design elements of the Infringing Products, they are likely manufactured from a common source with the Defendant Amazon Stores simply acting as fronts to avoid any potential liability. Specifically, many of the Defendant Amazon Stores contain similarly branded Infringing Products.

4. Therefore, Plaintiff has been forced to file this action to combat Defendants' continued infringement of the Design Patent, as well as to protect unknowing customers from purchasing Infringing Products via Amazon. Plaintiff has been and continues to be irreparably harmed from the loss of its design patent rights to exclude others from making, using, selling, offering for sale, and importing its patented design as a result of Defendants' actions. As such, Plaintiff seeks both injunctive and monetary relief.

JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271, *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court may properly exercise specific personal jurisdiction over Defendants since each of the Defendants directly targets business activities toward consumers in the United States, including Illinois, through at least the fully interactive, commercial Internet stores operating as the Defendant Amazon Stores. Specifically, Defendants are reaching out to do business with

Illinois residents by operating numerous commercial, interactive Defendant Amazon Stores through which Illinois residents can purchase products embodying Plaintiff's Design Patent. Each of the Defendants has targeted sales from Illinois residents by operating online stores that offer shipping to the United States, including Illinois, accept payment in U.S. dollars and, on information and belief, has sold products featuring Plaintiff's patented design to residents of Illinois. Moreover, each Defendant offers expected shipping times to a Chicago area code of less than a week, indicating that the Infringing Products are likely already present in or near Illinois at Amazon warehouses. Each of the Defendants is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused Plaintiff substantial injury in the State of Illinois.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391. Defendants are residents of China and do not reside in the United States.

THE PARTIES

8. Plaintiff is a type of limited corporation formed under the laws of the People's Republic of China. Plaintiff has a principal place of business at RM 214B No. 358 Building, No. 3663 N. Zhongshan Rd., Putuo District, Shanghai, China.

9. Plaintiff offers for sell and sells its own pop-up canopy tents which embody the Design Patent through its own website and various online retailers, such as Amazon. Plaintiff has established its products as the first to market with such a design and has an established a growing reputation and quality reviews. Plaintiff's pop-up canopy tents have been well received by customers throughout the world.

10. Plaintiff is the owner by assignment of the Design Patent, a true and correct copy of which is attached hereto as Exhibit 2.

11. The Design Patent was filed on February 24, 2020 and duly issued on August 3, 2021. The Design Patent has an earliest effective priority date of August 6, 2017.

12. Plaintiff has not licensed or authorized Defendants to use the patented design as claimed in the Design Patent, and none of the Defendants are authorized retailers of Plaintiff's products embodying the design.

13. According to the addresses provided by Defendants when registering their Amazon Stores, Defendants are individuals and business entities who reside in the People's Republic of China. Defendants conduct business throughout the United States, including within the State of Illinois and this Judicial District, through the operation of the fully interactive, commercial online marketplaces operating under the Defendant Amazon Stores. Each Defendant targets the United States, including Illinois, and has offered to sell and continues to sell Infringing Products to customers within the United States, including the State of Illinois. Based on the short, estimated shipping time, the Infringing Products are likely already stored in or near Illinois at Amazon warehouses.

14. On information and belief, Defendants are an interrelated group of infringers working in active concert to make, use, offer for sale, sell, and/or import into the United States for subsequent sale or use, products that infringe directly and/or indirectly the Design Patent in the same transaction, occurrence, or series of transactions or occurrences. For example, Defendants all sell and/or offer for sale the same infringing products with minor variations as well as similar if not identical product images and descriptions as shown in Exhibit 1. Tactics used by Defendants to conceal their identities and the full scope of their operation make it virtually impossible for Plaintiff to learn Defendants' true identities and the exact interworking of their network. In the

event that Defendants provide additional credible information regarding their identities, Plaintiff will take appropriate steps to amend the Complaint.

15. Defendants go to great lengths to conceal their identities and often use multiple fictitious names and addresses to register and operate their network of Defendant Amazon Stores. On information and belief, Defendants regularly create new online marketplace accounts on various platforms using the identities listed in Schedule A, as well as other unknown fictitious names and addresses. Such Defendant Amazon Store registration patterns are one of many common tactics used by the Defendants to conceal their identities, the full scope and interworking of their operation, and to avoid being shut down. In essence, the Defendant Amazon Stores operate as fronts for commonly sourced pop-up canopy tents.

16. Even though Defendants operate under multiple fictitious names, there are numerous similarities among the Defendant Internet Stores. The Defendant Internet Stores include notable common features beyond selling the almost identical Infringing Products, including the similar product images, the same accepted payment methods, check-out methods, meta data, illegitimate SEO tactics, lack of contact information, identically, or similarly priced items and volume sales discounts, the same incorrect grammar and misspellings, similar hosting services, and the use of the same text and images.

17. In addition to operating under multiple fictitious names, Defendants in this case and defendants in other similar cases against online infringers use a variety of other common tactics to evade enforcement efforts. For example, infringers like Defendants will often register new online marketplace accounts under new aliases once they receive notice of a lawsuit. Infringers also typically ship products in small quantities via international mail to minimize detection by U.S. Customs and Border Protection.

18. Further, infringers such as Defendants typically operate multiple credit card merchant accounts and PayPal accounts behind layers of payment gateways so that they can continue operation despite Plaintiff's enforcement efforts, such as take down notices. On information and belief, Defendants maintain off-shore bank accounts and regularly move funds from their PayPal accounts or other financial accounts to off-shore bank accounts outside the jurisdiction of this Court. Indeed, analysis of PayPal transaction logs from previous similar cases indicates that offshore infringers regularly move funds from U.S.-based PayPal accounts to China-based bank accounts outside the jurisdiction of this Court.

19. Defendants, without any authorization or license from Plaintiff, have knowingly and willfully offered for sale, sold, and/or imported into the United States for subsequent resale or use products that infringe directly and/or indirectly the Design Patent, and continue to do so via the Defendant Amazon Stores. Each Defendant Amazon Store offers shipping to the United States, including Illinois, and, on information and belief, each Defendant has sold Infringing Products into the United States, including Illinois.

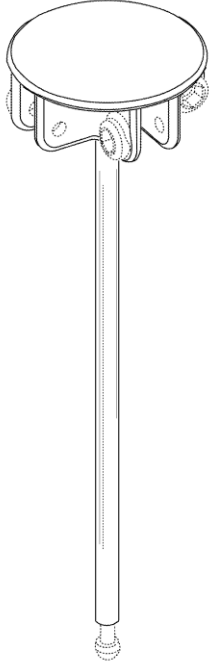
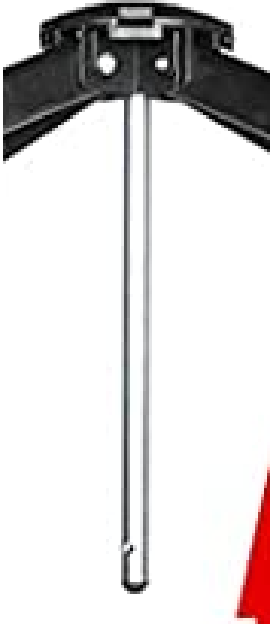
20. Defendants' infringement of the Design Patent in connection with the offering to sell, selling, and/or importing of the Infringing Products is irreparably harming Plaintiff's design patent rights.

**COUNT I - INFRINGEMENT OF UNITED STATES DESIGN PATENT
(35 U.S.C. § 271)**

21. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

22. Defendants offer for sale, sell, and/or import into the United States for subsequent resale or use Infringing Products that infringe directly and/or indirectly the claimed ornamental

design of the Design Patent, *i.e.*, the ornamental design for a canopy center top cap and pole combination, as shown below:

| Claim | Basis of Infringement |
|--|---|
|  <p data-bbox="461 1108 532 1136">FIG. 5</p> |  |

23. Defendants have infringed the Design Patent through the aforementioned acts and will continue to do so unless enjoined by this Court. Defendants' infringing conduct has caused Plaintiff to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering for sale, and importing the patented inventions. Plaintiff is entitled to injunctive relief pursuant to 35 U.S.C. § 283.

24. Unless a preliminary and permanent injunction is issued enjoining Defendants and all others acting on in active concert therewith from infringing the Design Patent, Plaintiff will be greatly and irreparably harmed.

25. Plaintiff is entitled to recover damages adequate to compensate for the infringement, including Defendants' profits pursuant to 35 U.S.C. § 289. Plaintiff is entitled to recover any other damages as appropriate pursuant to 35 U.S.C. § 284.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment against Defendants as follows:

1) That Defendants, their affiliates, officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through, under or in active concert with them be temporarily, preliminarily, and permanently enjoined and restrained from:

- a. offering for sale, selling, and importing any products not authorized by Plaintiff and that include any reproduction, copy or colorable imitation of the design claimed in the Patented Design;
- b. aiding, abetting, contributing to, or otherwise assisting anyone in infringing upon the Patented Design; and
- c. effecting assignments or transfers, forming new entities or associations or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in Subparagraphs (a) and (b).

2) Entry of an Order that, upon Plaintiff's request, those in privity with Defendants and those with notice of the injunction, including, without limitation, any online marketplace platforms such as iOffer, eBay, AliExpress, Alibaba, Amazon, Wish.com, Walmart.com, and Dhgate, web hosts, sponsored search engine or ad-word providers, credit cards, banks, merchant account providers, third party processors and other payment processing service providers, Internet search engines such as Google, Bing and Yahoo (collectively, the "Third Party Providers") shall:

- a. disable and cease providing services being used by Defendants, currently or in the future, to engage in the sale of goods that infringe the Patented Design;
 - b. disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of infringing goods using the Patented Design; and
 - c. take all steps necessary to prevent links to the Defendant Internet Stores identified on Schedule A from displaying in search results, including, but not limited to, removing links to the Defendant Internet Stores from any search index;
- 3) That Plaintiff be awarded such damages as it shall prove at trial against Defendants that are adequate to compensate Plaintiff for infringement of the Patented Design, and all of the profits realized by Defendants, or others acting in concert or participation with Defendants, from Defendants' unauthorized use and infringement of the Patented Design;
- 4) That Plaintiff be awarded from Defendants, as a result of Defendants' use and infringement of the Patented Design, three times Plaintiff's therefrom and three times Defendants' profits therefrom, after an accounting, pursuant to 35 USC § 284;
- 5) That Plaintiff be awarded its reasonable attorneys' fees and costs; and
- 6) Award any and all other relief that this Court deems just and proper.

DATED: July 22, 2022

Respectfully submitted,

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