

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

**TONGLU SHENGTUO TRADE CO.,  
LTD.,**

*Plaintiff,*

v.

**ZHOU JUNYI,**

*Defendant.*

**Civil Action No. 1:22-cv-4279**

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff Tonglu Shengtuo Trade Co., Ltd. (“Plaintiff”) files this Declaratory Judgment action against Defendant Zhuo Junyi (“Defendant”) and alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for declaratory judgment of design patent invalidity and non-infringement arising under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.* Specifically, Plaintiff seeks a declaratory judgment of invalidity and non-infringement of U.S. Design Patent No. D954,899 (the “D’899 Patent”) against Defendant.

2. Furthermore, Plaintiff seeks a judgement that Defendant has tortiously interfered with a contractual relationship and that Defendant has tortiously interfered with a prospective business expectancy pursuant to the common law of the state of Illinois.

**THE PARTIES**

3. Plaintiff Tonglu Shengtuo Trade Co., Ltd. is a type of limited liability company organized and existing under the laws of the People’s Republic of China.

4. Upon information and belief, Defendant Zhuo Junyi is an individual citizen of the People's Republic of China, residing in Honghu, China. Under 35 U.S.C. § 293, Defendant, as a nonresident patentee, may be served process or notice of proceedings affecting a patent or rights thereunder via his U.S. Patent and Trademark Office ("USPTO") designated registered agent: Raymond Chew, Chew Patents Group (Jumpy), 28039 Scott Rd., Ste. D-180, Murrieta, CA 92563.

### **JURISDICTION AND VENUE**

5. The Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1338(a), 1367, and 2201(a).

6. On information and belief, the U.S. District Court for the Northern District of Illinois has personal jurisdiction over Defendant because Defendant has constitutionally sufficient contacts with Illinois and this District so as to make personal jurisdiction proper as Defendant has committed the acts complained of herein within this District. Furthermore, on information and belief, Defendant owns and/or controls the Amazon storefront Junyi Basket, through which he and/or his agents offer for sale and do sell products that embody the D'899 Patent within the state of Illinois.

7. Venue is proper in this district under 28 U.S.C. § 1391(c)(3) because Defendant is a foreign individual with no residence or regular and established place of business in the United States.

### **U.S. DESIGN PATENT NO. D954,899**

8. The D'899 Patent is a design patent entitled "Watering Can." A true and correct copy of the D'899 Patent is attached hereto as Exhibit A.

9. The D'899 Patent generally claims the ornamental design for a watering can, as shown and described. *See* Ex. A, FIGs. 1-10.

10. The D'899 Patent was filed on **July 20, 2021** and issued on June 14, 2022.

11. Defendant is the named inventor and applicant of the D'899 Patent with all rights in and to the design patent.

12. Raymond Chew of Chew Patents Group is the attorney/agent of record of the D'899 Patent.

13. On information and belief, Defendant offers for sale and sells watering cans which embody the patented design of the D'899 Patent via the Junyi Basket Amazon storefront.

### **GENERAL ALLEGATIONS**

14. Plaintiff is a seller of, among other things, watering can products .

15. Plaintiff's products are sold online through the Amazon marketplace via the storefront Nerub as early as May 20, 2021. Nerub has enjoyed considerable commercial success over time and is a registered federal trademark since 2019.

16. Plaintiff's products are licensed by Chen Jian, the owner of Chinese Design Patent No. 306024393 (the "Chinese Design Patent"). *See* Exhibit B, copy of Chinese Design Patent; *see also* Exhibit C, copy of License Agreement.

17. The Chinese Design Patent is entitled "Watering Pot" and claims the design of a watering pot. *See* Ex. B, FIGs. 1-7.

18. The Chinese Design Patent was filed with the State Intellectual Property Office of the People's Republic of China on May 16, 2020 and granted on **September 1, 2020**.

19. As is plainly evident from even a cursory glance of the figures of the Chinese Design Patent and the D'899 Patent, both claim the ornamental design of an identical watering can. Critically, the Chinese Design Patent, granted September 1, 2020, anticipates the D'899 Patent, filed July 20, 2021, by more than 10 months.

20. Plaintiff's Amazon sales are conducted under the Amazon Services Solutions Agreement.

21. On or before July 19, 2022, Defendant filed at least five Amazon Infringement Complaints (Complaint IDs: 10424878501, 10452914751, 10400433371, 10441395421) against Plaintiff's products. Therein, Defendant alleged that Plaintiff's products (ASINs: B095H5SWFX, B095H2ZJSB, B095HD8ZZ4) infringe the D'899 Patent.

22. Further, Defendant knew or at least should have known that the Chinese Design Patent is invalidating prior art to the D'899 Patent. The identical nature of the two designs, as discussed herein, can only point to Defendant copying the Chinese Design Patent in an attempt to gain U.S. design patent protection.

23. Chen Jian never authorized Defendant to seek U.S. design patent protection for his Chinese Design Patent.

24. By filing Amazon Infringement Complaints against Plaintiff for the D'899 Patent, Defendant has made bad faith allegations that are knowingly and objectively false.

25. As a direct result of the bad faith and false Amazon Infringement Complaints, Plaintiff's product listings have been removed, prohibiting Plaintiff from selling on Amazon, thereby directly causing harm to Plaintiff's current and future business operations.

26. Therefore, an actual and justiciable controversy exists between the Parties concerning the validity of the D'899 Patent and whether Plaintiff's products infringe the D'899 Patent.

27. Furthermore, an actual and justiciable controversy exists between the Parties as to whether Defendant tortiously interfered with Plaintiff's contractual relationship with Amazon and whether Defendant tortiously interfered with Plaintiff's prospective business expectancy.

28. Plaintiff now seeks a declaratory judgment of invalidity and non-infringement of the D'899 Patent, as well as a judgment that Defendant has tortiously interfered with Plaintiff's contractual relationship with Amazon and tortiously interfered with Plaintiff's prospective business expectancy.

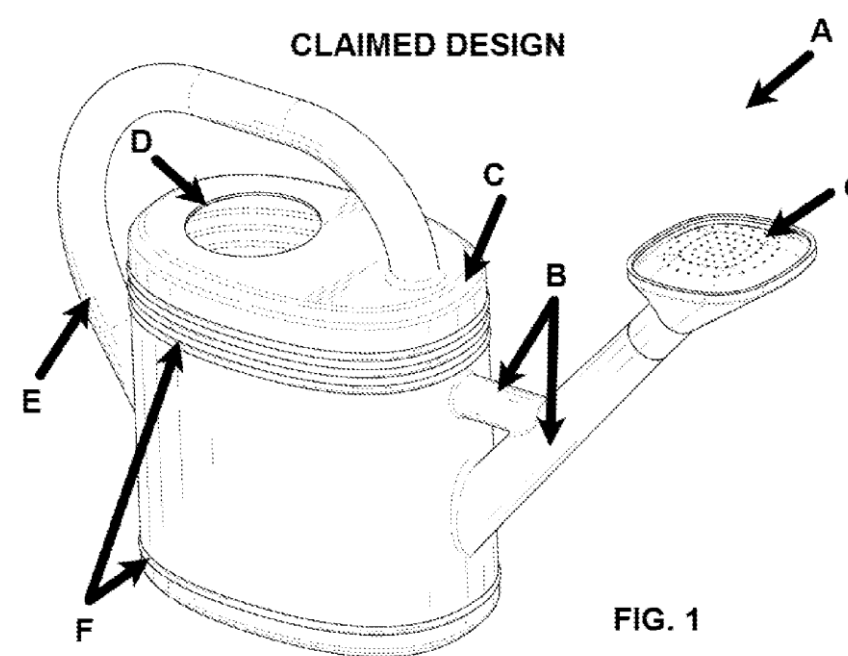

**COUNT I: INVALIDITY OF THE D'899 PATENT**

29. Plaintiff incorporates by reference the preceding paragraphs as though fully set forth herein.

30. The D'899 Patent is invalid for failure to comply with at least the novelty condition of patentability set forth in 35 U.S.C § 102. For example, and without limitation, the D'899 Patent is anticipated by relevant prior art, specifically the Chinese Design Patent.

31. Critically, the Chinese Design Patent was granted on September 1, 2020 while the D'899 Patent was filed on July 20, 2021. Therefore, the Chinese Design Patent anticipates the D'899 Patent by more than 10 months.

32. As is plainly evident from a side-by-side comparison of exemplary figures of the Chinese Design Patent and the D'899 Patent, both claim the ornamental design of an identical watering can, as shown below:

<b>TABLE 1</b>	
<p>D'899 Patent – FIG. 1 (Annotated Perspective View)</p>	<p><b>CLAIMED DESIGN</b></p>  <p><b>FIG. 1</b></p>
<p>Chinese Design Patent – FIG. 1 (Perspective View)</p>	

33. As shown above, the Chinese Design Patent and D'899 Patent are identical in every key design point: (A) an ovular body of the watering can; (B) an upwardly angled spout with a horizontal connection feature; (C) the angled edges along the upper and lower portion of the

watering can; (D) a circular opening on top; (E) the handle attaching to the top and rear of the watering can; (F) ridges along the upper body and lower portion of the body; and (G) a separate rectangular nozzle angled upwards with tiny circular features.

34. Since the Chinese Design Patent fully disclosed the claimed design of the D'899 Patent before the effective filing date of the D'899 Patent, the Chinese Design Patent is anticipatory prior art that invalidates the D'899 Patent as a matter of law.

35. Pursuant to the Federal Declaratory Judgment Act, Plaintiff respectfully requests a declaration by this Court that the D'899 Patent is invalid for failure to comply with at least the novelty condition of patentability as set forth in 35 U.S.C § 102.

### **COUNT II: NON-INFRINGEMENT OF THE D'899 PATENT**

36. Plaintiff incorporates by reference the preceding paragraphs as though fully set forth herein.

37. Since The D'899 Patent is invalid for failure to comply with at least the conditions of patentability set forth in 35 U.S.C § 102, it is axiomatic that the Accused Products do not infringe the D'899 Patent. *Commil USA, LLC v. Cisco Sys., Inc.*, 575 U.S. 632 (2015) (stating that it is axiomatic that one cannot infringe an invalid patent because there is nothing to infringe upon).

38. Pursuant to the Federal Declaratory Judgment Act, Plaintiff respectfully requests a declaration by this Court that the Accused Products to not infringe the D'899 Patent because the D'899 Patent is invalid for failure to comply with at least the novelty condition of patentability set forth in 35 U.S.C § 102.

### **COUNT III: TORTIOUS INTERFERENE WITH CONTRACT**

39. Plaintiff incorporates by reference the preceding paragraphs as though fully set forth herein.

40. Plaintiff and Amazon had a valid and enforceable contractual relationship via Amazon's Amazon Services Business Solutions Agreement in which Plaintiff was permitted to sell goods on the Amazon marketplace in exchange for fees.

41. Defendant was aware of Plaintiff's contractual agreement with Amazon as he knew Plaintiff offered its products as the Amazon storefront Nerub.

42. Defendant intentionally and unjustifiably induced Amazon to breach its agreement with Plaintiff by filing his bad faith Amazon Infringement Complaints with knowledge that the D'899 Patent is invalid.

43. Amazon did in fact breach its agreement with Plaintiff as a result, removing Plaintiff's products from its marketplace.

44. Defendant's actions have caused economic and financial harm to Plaintiff.

**COUNT IV: TORTIOUS INTERFERENCE**  
**WITH PROSPECTIVE BUSINESS EXPECTANCY**

45. Plaintiff incorporates by reference the preceding paragraphs as though fully set forth herein.

46. Plaintiff had a reasonable expectation of entering into a valid business relationship with Amazon and with the consuming public via its online marketplace platform.

47. Defendant was fully aware of Plaintiff's expectation as he knew Plaintiff sold its products on the Amazon platform, as shown by his objectively false Amazon Infringement Complaints.

48. Defendant purposefully interfered with Plaintiff's prospective business relationships by filing his bad faith Amazon Infringement Complaints with knowledge that the D'899 Patent is invalid.



49. As a result of Defendant's false Amazon Infringement Complaints, Amazon removed Plaintiff's products from the Amazon marketplace, thereby causing economic and financial harm to Plaintiff.

**DEMAND FOR JURY TRIAL**

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment as follows:

- a. A declaration that the D'899 Patent is invalid;
- b. A declaration that the Accused Products do not infringe the D'899 Patent;
- c. A judgment against Defendant and in favor of Plaintiff that Defendant has tortiously interfered with Plaintiff's contractual relations;
- d. A judgment against Defendant and in favor of Plaintiff that Defendant has tortiously interfered with Plaintiff's prospective business relationships;
- e. A declaration that this case is exceptional and an award to Plaintiff of its costs, expenses, and reasonable attorneys' fees incurred in this action pursuant to 35 U.S.C § 285; and
- f. Further relief as the Court may deem just and proper.

DATED: August 12, 2022

Respectfully submitted,

By: /s/ David R. Bennett  
David R. Bennett  
**DIRECTION IP LAW**  
P.O. Box 14184  
Chicago, Illinois 60614  
Tel: (312) 291-1667  
dbennett@directionip.com

Of Counsel:  
Timothy T. Wang  
Texas Bar No. 24067927  
twang@nilawfirm.com

**NI, WANG & MASSAND, PLLC**  
8140 Walnut Hill Ln., Ste. 500  
Dallas, TX 75231  
Tel: (972) 331-4600  
Fax: (972) 314-0900

***ATTORNEYS FOR PLAINTIFF  
TONGLU SHENGTUO TRADE  
CO., LTD.***