

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

NUWAVE, LLC,

Plaintiff,

v.

SOUND AROUND, INC.,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff NuWave, LLC (“Plaintiff” or “NuWave”), by its attorneys, as and for its Complaint against Defendant Sound Around, LLC, alleges as follows:

NATURE OF THE CASE

1. This is an action for (1) patent infringement under the laws of the United States, 35 U.S.C. *et seq.*; (2) trade dress infringement in violation of the Lanham Act, 15 U.S.C. §§ 1051-1127; (3) violation of the New York Deceptive Practices Act; and (4) unfair competition under New York common law.

2. This case is brought to protect one of Plaintiff’s most valuable assets, namely the goodwill and consumer recognition in Plaintiff’s protectable configuration associated with its NuWave Precision Induction Cooktop® line of products and to stop Defendant’s unauthorized manufacture, offer for sale, sale, use, and/or importation of products (below, right) that are nearly identical, and intentionally confusingly similar, to Plaintiff’s distinctive and protectable configuration (below, left).



THE PARTIES

3. Plaintiff NuWave is a privately owned company that specializes in designing, manufacturing, and selling various houseware small appliances such as, among other things, convection ovens, induction cooktops, and coffee roasters. Plaintiff is an Illinois limited liability company with its principal place of business located 560 Bunker Ct. Vernon Hills, IL 60061.

4. On information and belief, Defendant Sound Around, Inc. is a New York corporation with its principal place of business located at 1600 63rd Street, Brooklyn, NY 11204.

5. On information and belief, Sound Around, Inc. operates under various brand names including: NutriChef, NutriChef Kitchen, and Pyle, among others.

6. Plaintiff believes, and therefore alleges, that Defendant utilizes the names NutriChef and NutriChef Kitchen (with varying capitalizations and spacing) for its kitchenware products, including the products at issue in this Complaint.

Jurisdiction and Venue

7. This Court has original jurisdiction over Plaintiff's federal claims namely, patent, and trade dress infringement, and unfair competition under 15 U.S.C. § 1121 and pursuant to 28

U.S.C. §§ 1331 and 1338 (a) and (b). In addition, this Court has subject matter jurisdiction over Plaintiff's related state and common law claims under 28 U.S.C. §§ 1338 and 1367.

8. This Court has personal jurisdiction over Defendant because Defendant is a citizen and resident of this State and this District.

9. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391 and 1400 because Defendant resides in this District and Defendant is engaging in various activities within this State and this District, including offering for sale, selling, using, distributing or importing its products in this District.

10. Venue is also proper in this District under 28 U.S.C. § 1391 and 1400 because Plaintiff's claims arose in this District, at least a substantial part of the events giving rise to Plaintiff's claims occurred in this District, and Defendant is doing business in this District.

**HISTORY OF NUWAVE AND ITS
NUWAVE PRECISION INDUCTION COOKTOP®**

11. Founded in 1997 as Hearthware Home Products, Inc., the company now known as NuWave, LLC is a leading designer, manufacturer and promoter of innovative household goods, including electric appliances, kitchenware and food storage.

12. NuWave has designed and marketed numerous successful and award winning household appliances it sells in interstate commerce including, for example, its: NuWave® Oven, NuWave Pro Infrared Oven®, Gourmet Coffee Roaster™, Precision Coffee Roaster®, i-Roast® Coffee Roaster, Twister NuWave®, NuWave Mini Infrared Oven®, PerfectGreen® Fry Pan, NuWave Party Mixer™, NuWave Precision Induction Cooktop® (also known as the NuWave PIC®), NuWave Precision Induction Cooktop2® (also known as the NuWave PIC2®), NuWave Precision Induction Cooktop Pro®, NuWave PIC® Gold, NuWave PIC® Flex, and its Flavor-Lockers®, just to name a few.

13. The NuWave Precision Induction Cooktop® was first introduced to the market at least as early as 2011.

14. Additional iterations followed in subsequent years including NuWave Precision Induction Cooktop2®, NuWave PIC® Gold, and the NuWave PIC® Flex.

15. The distinctive, non-functional design elements (such as the circular top surface and “duckbill” control panel) has not changed across the various iterations of the NuWave Precision Induction Cooktop (collectively referred to herein as the “NuWave® Cooktops”) and is believed to be well known to Plaintiff’s customers and has become associated with the NuWave Precision Induction Cooktop® line of products. An exemplary picture of NuWave Precision Induction Cooktop® with its distinctive rounded appearance and duckbill control panel design is shown below:



16. Plaintiff’s rounded configuration and duckbill control panel for its NuWave® Cooktops has been very successful and is well known in the marketplace. The recognition of the NuWave® Cooktop’s design is further enhanced by the extensive advertising efforts of Plaintiff and the fact that Plaintiff has received multiple awards, ratings, and recognitions associated with its various advertising campaigns for its products (including multiple awards for Plaintiff’s advertisements directed toward the NuWave ® Cooktop).

17. Additionally, prior to Defendant's acts described herein, Plaintiff has spent millions of dollars on its advertising campaigns and TV infomercials related to its NuWave® Cooktops.

18. Plaintiff continues to spend several hundred thousand dollars per week in advertising and marketing its products, in particular, the NuWave® Cooktops, through various media such as internet advertising, short and long form of TV infomercials, event sponsorships, trade shows, and social media advertising, just to name a few.

19. In particular, Plaintiff has had numerous top performing infomercials that advertise and promote its various products, including, without limitation, the NuWave® Cooktops.

20. In fact, since launching the NuWave® Cooktops in 2011, and prior to Defendant's acts described herein, Plaintiff frequently ranked in the top Housewares Infomercials for the NuWave® Cooktops in the United States.

21. Since moving its sales to the Amazon.com marketplace, the NuWave® Cooktop has consistently been a top-ranked product within applicable product categories.

22. Plaintiff also spends, and had spent, millions of dollars researching and designing ("R&D") its products, including without limitation, the NuWave® Cooktops.

23. These R&D expenses are directed toward the technology encompassed in the products as well as the design and image of the products themselves and their packaging.

24. Customers that purchase products from Plaintiff have come to expect a high level of quality in these products, and this expectation of quality is further enhanced by the extensive awards, ratings, and recognitions Plaintiff has received for its various products.

25. The above-listed awards, ratings and recognitions for Plaintiff's advertising campaigns and product designs are no accident; Plaintiff spends countless hours crafting and

designing products and advertising campaigns that demonstrate recognizable elements to strengthen its brand and design recognition in the competitive housewares market.

26. Since the initial launch of its NuWave® Cooktops, Plaintiff has continuously advertised and promoted the total image, shape, configuration, overall look, appearance and impression of the NuWave® Cooktops; and, as a result, Plaintiff has acquired a valuable reputation and goodwill among the public as a result of such association.

27. Unlike the conventional portable induction cooktops, the NuWave® Cooktops exhibit a unique rounded design configuration and “duckbill” control panel that make them readily identifiable to customers and potential customers.

28. Prior to Defendant’s acts described herein, Plaintiff’s NuWave® Cooktops have achieved substantial commercial success. In fact, since introduction to the United States, the sales of the NuWave Cooktop products have reached well over millions of dollars annually.

29. Plaintiff’s rounded design configuration for its NuWave® Cooktops is not functional. The rounded design configuration is not essential to the use or purpose of portable induction cooktops, does not affect the cost or quality of portable induction cooktops, and the inability to use the rounded configuration does not put Plaintiff’s competitors at a significant non-reputation-related disadvantage.

30. NuWave also takes effort to protect the intellectual property rights associated with its products, including the NuWave® Cooktops, and has received numerous patents and trademark registrations protecting its inventions and marks.

31. As a result of Plaintiff’s substantial and continuous advertising and promotion of the NuWave® Cooktops, the total image, rounded shape, duckbill control panel, configuration, overall look, appearance and impression of the NuWave® Cooktops, Plaintiff also has protectable

rights in several unregistered common law trademarks and trade dress associated with the NuWave Cooktops®.

32. As a result of its unique and distinctive design, as well as Plaintiff's extensive advertising and promotion of the NuWave® Cooktops, the total image, rounded shape, duckbill control panel, configuration, overall look, appearance and impression of the NuWave® Cooktops have caused a relevant segment of the general public to now associate the NuWave® Cooktops with Plaintiff and Plaintiff's brand name, and Plaintiff has acquired a valuable reputation and goodwill among the public as a result of such association. Plaintiff's NuWave Cooktops configuration is an intellectual property asset of enormous value as symbols of Plaintiff and its quality products, reputation, and goodwill.

33. In contrast, on information and belief, with the exception of Defendant's infringing conduct discussed herein, no other countertop induction cooktops in the United States market feature a similar shape or configuration.

34. Exemplary pictures of competing induction cooktops with either a square or rectangular top surface are shown below:



35. The unique rounded design configuration and duckbill control panel in Plaintiff's NuWave® Cooktops has become associated with Plaintiff through extensive advertising and marketing, award recognitions, and substantial sales.

36. Because customers have come to associate the design of the NuWave® Cooktops with Plaintiff through Plaintiff's internet advertising, short and long form of TV infomercials, event sponsorships, trade shows, and social media advertising, the inclusion of that design on the product packaging assists potential customers in finding Plaintiff's products in the crowded housewares market, and in particular in comparison to other countertop cooktops.

37. In other words, customers remember the circular shape and duckbill control panel from Plaintiff's internet advertising, short and long form TV infomercials, event sponsorships, trade shows, and social media advertising, and associate the NuWave® Cooktops with such marketing when they encounter the cooktops in the marketplace.

38. On account of the strong association between Plaintiff and its product design, the trade dress associated with the NuWave® Cooktops has acquired a secondary meaning in the marketplace.

NuWave and Its Design Patent

39. Plaintiff is the assignee and current owner of a design patent, U.S. Design Patent D651,448 ("the '448 patent," Exhibit A), entitled "COOKTOP," of which the NuWave® Cooktop is an embodiment.

40. The '448 patent was duly and legally issued by the U.S. Patent and Trademark Office on January 3, 2012, and covers an inventive, novel, and ornamental product design for an induction cooktop.

Defendant's Infringing and Unfair Conduct

41. On information and belief, on or about July of 2020, Defendant introduced an induction cooktop under the name NutriChef Portable Single Burner Induction Cooktop or similar naming.

42. Since that introduction, Defendant has sold its cooktop product under at least two different model numbers: NCIT1S and NCIT2S (collectively, the “Accused Product” or the “NutriChef Cooktop”).

43. Defendant is a competitor of NuWave.

44. Defendant is marketing, advertising, making, using, importing, selling and offering for sale the NutriChef Cooktop, which is substantially similar and virtually identical to, and infringes the inventive, ornamental, and novel design covered by the ‘448 patent.

45. On information and belief, Defendant is marketing, advertising, making, using, importing, selling, and offering for sale the infringing NutriChef Cooktop throughout the United States via its online websites and stores: including www.pyleusa.com.

46. On information and belief, Defendant’s products are also available on the internet through the online marketplace at www.amazon.com.

47. In the eye of an ordinary observer, giving such attention as a purchaser usually gives, the patented design of the ‘448 patent and the design of the NutriChef Cooktop are substantially the same and virtually identical, so as to deceive and induce the observer into purchasing the NutriChef Cooktop, under the mistaken belief that it is the NuWave® Cooktop.

48. Viewed as a whole, consumers are confusing the product design of the NutriChef Cooktop and the product design of the NuWave® Cooktop, both of which are illustrated below:



NuWave® Cooktop



NutriChef Cooktop

49. The non-functional product design of the NuWave® Cooktop has acquired a secondary meaning and consumers associate its unique, distinctive product design with Plaintiff.

50. Among other reasons why the NuWave® Cooktop's design has acquired a secondary meaning, as discussed above, Plaintiff has invested significant marketing and advertising resources in connection with that product, which has been featured on numerous websites, in catalogs, trade shows, social media, just a name a few, that are in circulation or consumed throughout the United States.

51. Among other reasons, the design of the NuWave® Cooktop has acquired a secondary meaning because, as discussed above, Plaintiff has enjoyed significant sales of that product throughout the United States, as well as in Europe and in Asia.

52. Among other reasons, the design of the NuWave® Cooktop has acquired a secondary meaning because, as discussed above, Plaintiff has received multiple awards, ratings, and recognitions associated with Plaintiff's advertising campaigns for the NuWave® Cooktop.

53. Plaintiff began selling the NuWave® Cooktop with its unique and distinctive circular design well prior to Defendant's sale of the NutriChef Cooktop, and, as a result, has priority over the design.

54. The substantial similarities between the design of the NutriChef Cooktop and the circular design and duckbill control panel of the NuWave® Cooktop are causing consumers to confuse, mistake, or to be deceived about an affiliation, connection, or association between Defendant and Plaintiff and their respective products, when they are not.

55. The substantial similarities between the design of the NutriChef Cooktop and the design of the NuWave® Cooktop are causing consumers to be deceived as to the origin of the

NuWave® Cooktop or the NutriChef Cooktop, as well as Plaintiff's sponsorship, or approval of the NutriChef Cooktop.

56. Defendant's infringement of the design of the NuWave® Cooktop is willful and deceptive, as the NutriChef Cooktop is intended to copy Plaintiff's product design, causing irreparable harm to Plaintiff.

57. This act of copying further demonstrates the acquired distinctiveness of Plaintiff's product design.

58. By virtue of the acts complained herein, Defendant has created a likelihood of injury to Plaintiff's business reputation and goodwill, caused a likelihood of consumer confusion, mistake, and deception as to the source of origin or relationship of Plaintiff's and Defendant's goods, and has otherwise competed unfairly with Plaintiff by unlawfully trading on and using Plaintiff's rounded configuration and duckbill control panel without Plaintiff's permission or consent.

59. The NuWave® Cooktops and the NutriChef Cooktops are both sold via online markets, such as Amazon.com, and appear in the same search results.

60. On account of the substantial recognition of the design of the NuWave® Cooktops and the strong association between that design and Plaintiff and its products, there is a strong likelihood that consumers will be confused to believe that the NutriChef Cooktops are Plaintiff's products or that they are authorized, endorsed, sponsored or approved by Plaintiff.

61. On account of the substantial recognition of the design of the NuWave® Cooktops and the strong association between that design and Plaintiff and its products, there is a strong likelihood that customers will be confused into believing that the infomercials and advertising

campaigns related to the NuWave® Cooktops are promoting the NutriChef Cooktops, when they are not.

COUNT ONE
Trade Dress Infringement (Induction Cooktops)

62. Plaintiff NuWave, LLC incorporates by reference the preceding paragraphs as if restated herein in their entirety.

63. By selling the NutriChef Cooktops, Defendant is infringing Plaintiff's trade dress rights, namely, the distinctive product designs of the NuWave® Cooktop.

64. Consumers are confusing the NutriChef Cooktop's design with the NuWave® Cooktop's design because they are virtually identical in appearance.

65. Defendant's marketing, advertising, and sale of the NutriChef Cooktop is causing consumers and the general public to erroneously believe that Plaintiff is the origin of, sponsors, and approves those products and that the NutriChef Cooktops are the same products as the NuWave® Cooktop.

66. Defendant's marketing, advertising, and sale of the NutriChef Cooktops is a violation of the Lanham Act, 15 U.S.C. § 1125.

67. As a result of Defendant's infringement of Plaintiff's rights to trade dress in its product designs, Plaintiff is suffering irreparable harm, including but not limited to, the loss of goodwill it has built with consumers through its own extensive marketing, advertising, and sale of the NuWave® Cooktop, among other irreparable harm.

68. Plaintiff has no adequate remedy at law for Defendant's actions, entitling it to injunctive relief.

69. Defendant's infringing activities are willful and intentional, making this an exceptional case and justifying the imposition of treble damages pursuant to 15 U.S.C. § 1117.

70. Plaintiff is also entitled to recover monetary damages, including, but not limited to, Defendant's profits, actual damages, costs, and treble damages.

COUNT TWO
Common Law Unfair Competition

71. Plaintiff NuWave, LLC incorporates by reference the preceding paragraphs as if restated herein in their entirety.

72. By marketing, advertising and selling the NutriChef Cooktops, Defendant is acting with the purpose and intent to deceive consumers into believing that the NutriChef Cooktop is the NuWave® Cooktop.

73. By marketing, advertising, and selling the NutriChef Cooktops, Defendant intends to harm and is, in fact, harming Plaintiff's business.

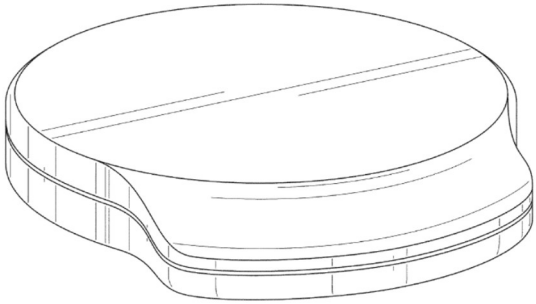



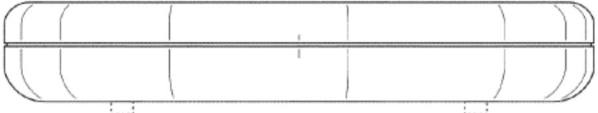

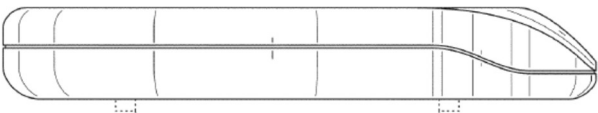

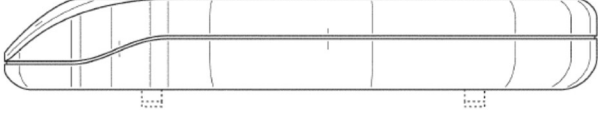

74. As a result of Defendant's unfairly competitive activities, Plaintiff has been damaged and will continue to be damaged unless Defendant is enjoined from advertising and selling the NutriChef Cooktops.

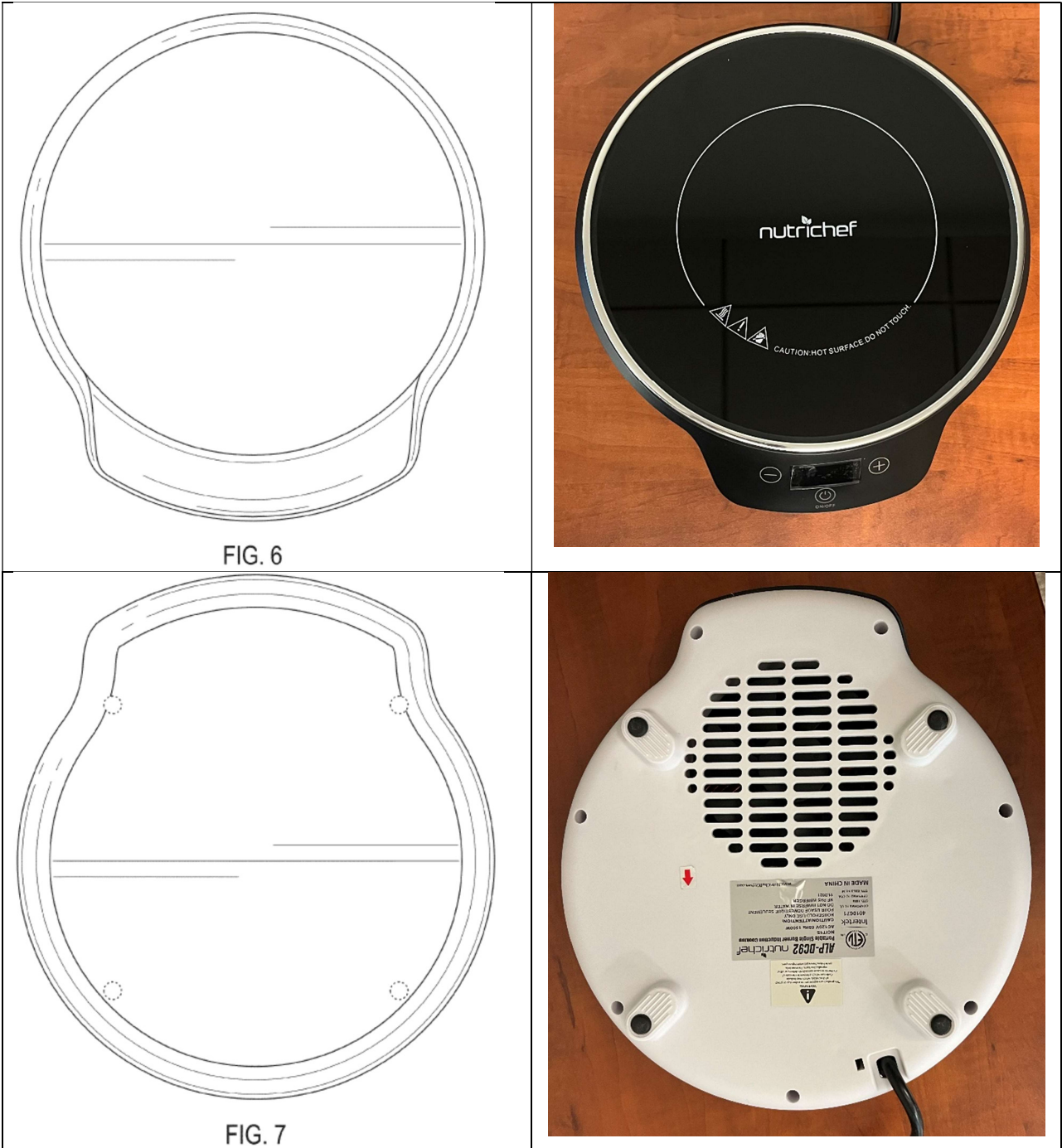
75. Plaintiff is also entitled to recover monetary damages as a result of Defendant's actions.

COUNT THREE
Patent Infringement (U.S. Patent No. D651,448)

76. Plaintiff NuWave, LLC incorporates by reference the preceding paragraphs as if restated herein in their entirety.

77. As shown in the following claim chart, the NutriChef Cooktop incorporates all of the protected elements of the '448 Patent:

| U.S. Patent No. D651,448 | NutriChef Cooktop |
|---|--|
|  <p data-bbox="462 554 522 583">FIG. 1</p> |  |
|  <p data-bbox="483 743 560 772">FIG. 2</p> |  |
|  <p data-bbox="479 953 565 982">FIG. 3</p> |  |
|  <p data-bbox="483 1232 560 1262">FIG. 4</p> |  |
|  <p data-bbox="483 1430 560 1459">FIG. 5</p> |  |



78. Defendant has directly infringed and continues to directly infringe the ‘448 patent by making, importing, using, offering to sell and/or selling the infringing NutriChef Cooktops.

79. Defendant has infringed and continues to infringe the ‘448 patent by contributing to and/or actively inducing direct infringement of the ‘448 patent by others. The infringing

activities by Defendant include, encouraging, aiding and abetting others to make, import, use, offer to sell and/or sell the infringing NutriChef Cooktops in the United States.

80. Defendant had notice of the '448 patent by virtue of Plaintiff marking its NuWave® Cooktop with notice of the '448 patent.

81. Defendant has, with reckless disregard of the '448 patent and Plaintiff's rights under that patent, willfully and wantonly infringed the '448 patent, entitling Plaintiff to treble damages under 35 U.S.C. § 284. This conduct further warrants a finding that this case is exceptional under 35 U.S.C. § 285, entitling Plaintiff to an award of its reasonable attorney fees.

82. By reason of Defendant's infringement of the '448 patent, Plaintiff has and will continue to suffer substantial irreparable damage and injury, the full extent of which is presently unknown. Defendant has benefitted from its unlawful infringement of the '448 patent and will continue to be unjustly enriched unless and until enjoined by this Court.

COUNT FOUR
(Violation of New York Deceptive Trade Practices Act)

83. Plaintiff NuWave, LLC incorporates by reference the preceding paragraphs as if restated herein in their entirety.

84. Through its sale of the NutriChef Cooktop with designs that are being confused with the unique, distinctive design of the NuWave® Cooktop, Defendant is violating New York's Deceptive Trade Practice Act:

- By creating confusion and misunderstanding as to the source, sponsorship, approval, and certification of the NutriChef Cooktop, namely, that Plaintiff is the source of, sponsors, approves, and/or certifies those products; and,
- By creating confusion and misunderstanding as to their affiliation, connection, and association with Plaintiff and the NuWave® Cooktop.

85. Defendant's willful and deceptive actions are influencing consumers' purchasing decisions.

86. As a result of Defendant's deceptive trade practices, Plaintiff is suffering irreparable harm to the goodwill it has built with consumers through its own extensive marketing, advertising, and sale of its NuWave® Cooktop, among other irreparable harm.

87. Plaintiff has no adequate remedy at law for Defendant's actions, entitling it to injunctive relief.

88. Plaintiff is also entitled to recover monetary damages as a result of Defendant's actions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff NuWave, LLC respectfully seeks the following relief against Defendant:

A. Judgement that Defendant's conduct infringes Plaintiff's trade dress rights, in violation of 15 U.S.C. § 1125;

B. Damages in an amount to be proven at trial, in the form of Defendant's profits, actual damages suffered by Plaintiff, compensation for corrective advertising, and attorneys' fees, in accordance with 15 U.S.C. § 1117;

C. Judgement that Defendant's conduct infringes Plaintiff's patent rights in the '448 patent, in violation of 35 U.S.C. § 271;

D. Monetary damages in an amount to be proven at trial, in the form of lost profits, Defendant's profits or, in the alternative, a reasonable royalty based upon Defendant's sales;

E. Treble damages as a result of the willful and deliberate nature of Defendant's infringement, in accordance with 35 U.S.C. § 284;

F. Attorneys' fees, in accordance with 35 U.S.C. § 285;

G. A preliminary, mandatory, and permanent injunction enjoining, restraining and ordering Defendant, and its officers, agents, servants, employees, attorneys, and other persons who are in active concert or participation with them:

1. To cease advertising, promoting, making, using, offering to sell, selling, and/or importing Defendant's infringing NutriChef Cooktops, and any other product that is substantially the same as, or confusingly similar in appearance to Plaintiff's design, the '448 patent, and/or the NuWave® Cooktop;
2. To deliver and destroy all inventory of, and all literature, advertisements, and other materials displaying the NutriChef Cooktops or any product that is substantially the same as, or confusingly similar in appearance to the NuWave® Cooktop;

H. Attorneys' fees, pre-judgment interest, and post-judgment interest; and

I. For all other relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury as to all issues so triable.

DATED: September 22, 2022

Respectfully submitted by,

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