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7 BRIO WATER TECHNOLOGY, INC.

8 **UNITED STATES DISTRICT COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

10
11 BRIO WATER TECHNOLOGY,
INC., a California corporation

12 Plaintiff,

13
14 v.

15 BHRS GROUP, LLC, a New Jersey
limited liability company, and
16 DOES 1-10, inclusive,

17 Defendants.
18

COMPLAINT FOR:

- 1) **DECLARATORY RELIEF – INVALIDITY OF ‘147 PATENT**
- 2) **DECLARATORY RELIEF – NON-INFRINGEMENT OF ‘147 PATENT**
- 3) **DECLARATORY RELIEF – INVALIDITY OF ‘134 PATENT**
- 4) **DECLARATORY RELIEF – NON-INFRINGEMENT OF ‘134 PATENT**
- 5) **DECLARATORY RELIEF – INVALIDITY OF ‘355 REGISTRATION**
- 6) **DECLARATORY RELIEF – NON-INFRINGEMENT OF ‘355 REGISTRATION**
- 7) **LANHAM ACT VIOLATION [FRAUDULENT TRADEMARK REGISTRATION] [15 U.S.C. § 1120]**
- 8) **WALKER PROCESS FRAUD – VIOLATION OF SECTION 2 OF THE SHERMAN ACT**

DEMAND FOR JURY TRIAL

1 Plaintiff Brio Water Technology, Inc. (“BRIO” or “Plaintiff”) hereby brings this
2 complaint against Defendant BHRS Group, LLC (“BHRS” or “Defendant”).

3 **JURISDICTION AND VENUE**

4 1. This Court has subject matter jurisdiction over this matter due to the
5 federal questions presented herein, including, but not limited to, pursuant to Section
6 43(a) of the Lanham Act (15 U.S.C. § 1120), Section 2 of the Sherman Act (15 U.S.C.
7 § 2), the Declaratory Judgment Act, 28 U.S.C. § 2201, and under the patent (35 U.S.C.
8 §§ 100-390) and trademark laws of the United States (15 U.S.C. §§ 1051, *et seq.*).

9 2. This Court has personal jurisdiction over Defendant BHRS Group, LLC
10 (“Defendant”) as to each of the performed acts alleged herein giving rise to BRIO’s
11 claims against Defendant, as Defendant purposefully directed its activities toward
12 BRIO, a corporation incorporated under the laws of the State of California with its
13 principal place of business in California, and performed acts by which it purposefully
14 availed itself of the privilege of conducting activities in California.

15 3. BRIO’s claims and the instant dispute arises out of Defendant’s forum-
16 related activities, and the exercise of jurisdiction comports with fair play and
17 substantial justice. *See, e.g. Yahoo! Inc. v. La Ligue Contre Le Racisme Et*
18 *L’Antisemitisme* 433 F.3d 1199, 1205–1206 (9th Cir. 2006); *Bancroft & Masters, Inc.*
19 *v. Augusta Nat. Inc.*, 223 F.3d 1082, 1089 (9th Cir. 2000), *holding modified by Yahoo!*
20 *Inc.*, 433 F.3d 1199; *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063,
21 1079 (10th Cir. 2008). Defendant has attempted to enforce asserted intellectual
22 property rights against BRIO by sending a cease-and-desist letter to BRIO in
23 California alleging BRIO’s sale of its unique 300 Series hot and cold water dispensers
24 (also referred to herein as, the “Dispensers” or “BRIO Dispensers”) infringed upon
25 Defendant’s intellectual property rights, in addition to sending cease and desist letters
26 and take down notices to various e-commerce platforms with the intended and actual
27 effect of de-listing BRIO’s Dispensers from the e-commerce websites and causing

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1 BRIO to enter into release and indemnification agreements in order to continue to list
2 its Dispensers, based on false claims of patent and trade dress infringement.

3 4. Defendant has directed and targeted its activities to a California resident,
4 BRIO, and caused substantial economic damages to BRIO in California, where BRIO
5 is incorporated and maintains its principal place of business.

6 5. Moreover, this Court’s exercise of jurisdiction over Defendant would
7 comport with notions of fair play and justice, as evidenced by, among other things,
8 Defendant previously availing itself of the jurisdiction of this very Court, having filed
9 a Complaint against BRIO in 2020 in the matter styled, *BHRS Group, LLC v. Brio*
10 *Water Technology, Inc., f/k/a Down Town Wholesalers, Inc.*, C.D. Cal. Case No. 2:20-
11 cv-07652 which was dismissed with prejudice after Brio’s Motion to Dismiss was
12 granted.

13 6. Venue is proper in this District under 28 U.S.C. §§ 1391 (b), (c), and
14 1400(b) because a substantial part of the events giving rise to BRIO’s claims occurred
15 in this District, and because Defendant is subject to personal jurisdiction here.

16 **THE PARTIES**

17 7. BRIO is a corporation organized and existing under the laws of the State
18 of California, with its principal place of business located at 3860 Capitol Avenue,
19 Whittier, California 90601.

20 8. Defendant is a limited liability company organized under the laws of the
21 State of New Jersey with its principal place of business located at 585 Prospect St.,
22 Suite 301B, Lakewood, NJ, 08701.

23 **NATURE OF THE ACTION**

24 9. BRIO brings this action to put a stop to an ongoing, egregious attempt by
25 Defendant to sabotage BRIO’s retail water product business and to recoup the
26 substantial damages Defendant has inflicted upon BRIO to date.

27 10. BRIO is a California-based supplier of high-quality hot and cold water
28 dispensers, filtration systems, and other water products.

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1 11. Defendant holds itself out as a competitor of BRIO and sells water
2 dispensers under the brand name “Avalon”.

3 12. Over the last several years, and in part due to the COVID-19 pandemic, a
4 substantial portion of BRIO’s business, has migrated online, with BRIO becoming
5 heavily reliant upon sales listed on online retail websites such as HomeDepot.com
6 (“Home Depot”) and Wayfair.com (“Wayfair”) and through virtual online stores
7 operated through platforms such as Amazon.com (“Amazon”) and Shopify.com
8 (“Shopify”).

9 13. During this time, Defendant has repeatedly targeted BRIO, apparently
10 because it cannot compete fairly in the marketplace, with harassing cease and desist
11 letters asserting spurious legal claims, a frivolous lawsuit brought in this very Court,
12 which was dismissed with prejudice by the Honorable John W. Holcomb, and now,
13 most recently, by issuing take down requests to the very online retailers and e-
14 commerce platforms which support BRIO’s business, based on unfounded claims of
15 patent infringement and trade dress infringement.

16 14. Defendant’s latest tactics have created a justiciable case and controversy
17 and necessitated this lawsuit.

18 15. In a series of cease and desist letters and takedown requests sent to Home
19 Depot, Wayfair, Amazon, and Shopify (referred to herein as, the “Platforms”) during
20 2021 and 2022, Defendant has alleged, among other things, that BRIO’s Dispensers
21 infringe upon U.S. Trademark Registration No. 6,315,355 (the “355 Registration”)
22 and U.S. Design Patent Nos. D876,147 (“147 Patent”) and D878,134 (the “134
23 Patent,” referred to collectively with the ‘355 Registration and the ‘147 Patent as the
24 “Asserted IP”)

25 16. Defendant’s letters and takedown requests have failed to address
26 numerous facts undercutting its claims.

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1 17. Defendant purchased water hot and cold water dispensers from a supplier
2 that owns the designs, and which utilized them for years on its own line of hot and cold
3 water dispensers, before Defendant attempted to pass the designs off as its own.

4 18. That supplier is the same manufacturer used by BRIO to create the tooling
5 and molding for its own unique brand of hot and cold water dispensers (the BRIO 300
6 Series Dispensers). However, unlike Defendant, BRIO owns the intellectual property
7 rights to its Dispensers.

8 19. In 2010, a supplier shared by BRIO and defendant manufactured and
9 designed a “paddle faucet,” which the common supplier in turn used and sold on water
10 dispensers all across the world since that time.

11 20. In fact, a virtually identical paddle faucet design to the one incorporated
12 into the water dispenser design over which Defendant claims intellectual property
13 rights was developed by the common supplier between 2013 and 2014 and has been
14 continuously sold by the common supplier since that time [and has even been offered
15 for sale by the common supplier directly on Amazon.com].

16 21. The common supplier owns intellectual property rights to the paddle
17 faucet design claimed by Defendant, and Defendant is merely an exclusive distributor
18 of the product in the United States.

19 22. Defendant’s letters and takedown requests to the Platforms have also
20 failed to address the numerous legal reasons why their claims have no merit.

21 23. For example, Defendant has marketed and sold water dispensers
22 embodying the ’147 Patent, and the ’134 Patent since at least 2016, despite not filing
23 for patent protection until 2018, thereby violating the one-year “on-sale” ban (35
24 U.S.C § 102) and rendering the ’147 Patent and ’134 Patent invalid in light of
25 Defendant’s own prior art pursuant to 35 U.S.C. §§ 102, 103.

26 24. Other prior art exists which clearly demonstrates that BRIO’s Dispensers
27 do not infringe upon the ’147 Patent or the ’134 Patent.

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1 25. The '355 Registration is generic and is merely a basic form of water
2 dispenser faucets common to the water product industry, and which is utilized by other
3 competitors to Defendant.

4 26. The '355 Registration is not distinctive and has not acquired secondary
5 meaning; Defendant's representations during the examination process of the '355
6 Registration claiming five years of exclusive use of the design are false.

7 27. The '355 Registration is functional in design and is distinguishable from
8 the distinctive design features of the paddle faucets utilized by BRIO's Dispensers.

9 28. Notwithstanding the baseless nature of Defendant's claims, their cease-
10 and-desist letters and take down requests have largely had their desired effect.

11 29. Despite BRIO's attempts to assure the Platforms that Defendant's claims
12 have no merit, Amazon and Shopify, as apparent risk mitigation strategies, have
13 responded to Defendant's take down requests by de-listing BRIO's Dispensers from
14 their websites until further notice.

15 30. Other platforms, such as Home Depot and Wayfair have required BRIO to
16 sign written waivers and indemnify them for any liability arising out of the claims
17 asserted by Defendant, in order for BRIO to continue to list its Dispensers on their
18 platforms.

19 31. Defendant's successful attempts to delist BRIO's Dispensers on Amazon
20 and Shopify have resulted in excess of \$3,062,500 in damages to date, with BRIO's
21 damages increasing each day Defendant refuses to withdraw its knowing
22 misrepresentations to the e-commerce platforms on and through which BRIO operates.

23 32. In order to protect and ensure its sustained success in the retail water
24 product market, BRIO seeks relief from the Court declaring that Defendant's Asserted
25 IP is invalid, and, or in the alternative, a declaration that BRIO's Dispensers do not
26 infringe the Asserted IP.

27 33. Further, BRIO seeks damages sufficient to make BRIO whole based on
28 Defendant's blatant violations of the Lanham Act, the fraud committed on the USPTO

1 by Defendant through its anticompetitive activity, which Defendant then used to
2 damage BRIO, and in order to deter Defendant from continuing to engage in its anti-
3 competitive conduct.

4 **GENERAL ALLEGATIONS**

5 ***Defendant’s False Claims of Intellectual Property Rights***

6 34. Beginning in 2010, Foshan Midea Water Dispenser Manufacturing Co., Ltd
7 (“Midea” or the “Supplier”) developed a style of “paddle faucets,” which it used on its
8 water dispensers, that it subsequently sold in the United States, the Middle East, and all
9 over the world.

10 35. Between 2013 and 2014, Midea, through its designers and engineers,
11 developed the paddle faucet design displayed below (the “Midea Paddle Faucet”), which
12 it began by using on one model number of water cooler (YL1439S), which it sold to
13 Defendant.

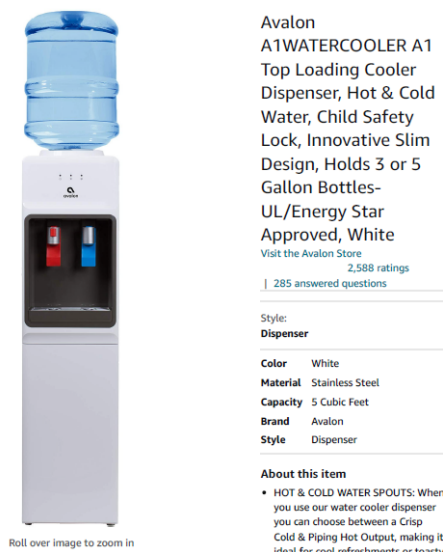
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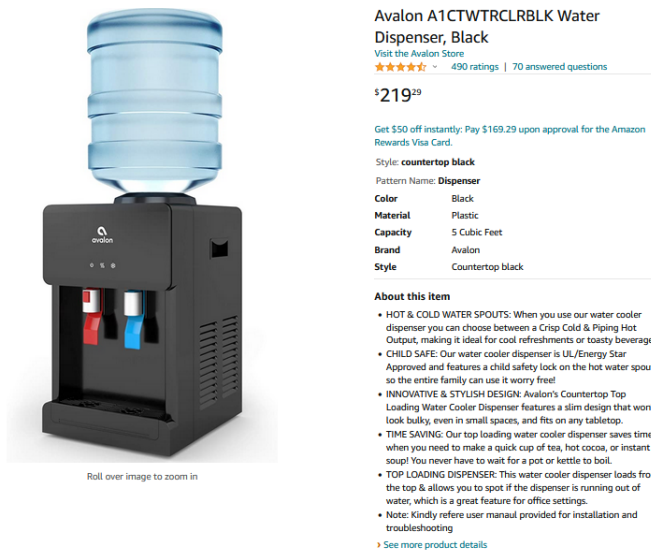
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(Figure 1: “Midea Paddle Faucet”)

26 36. Although Midea provided the exclusive right to Defendant to distribute in
27 the United States water dispensers incorporating the Midea Paddle Faucet depicted
28 above, it reserved the rights to its design and all intellectual property rights.

37. As early as 2013, but no later than 2016, Defendant began selling stand alone and tabletop water dispensers incorporating Midea’s Paddle Faucet as shown in the following images displayed on Amazon.com:



(Figure 2)



(Figure 3)

38. In fact, the “Avalon” brand of tabletop and standalone water dispensers with the Midea Paddle Faucet design is currently displayed on Amazon.com, with “First Made Available” dates of July 21, 2015,¹ November 16, 2015,² May 12, 2016,^{3,4} and March 10, 2017⁵

39. In June 2018, well over a year after it first marketed for sale water dispensers incorporating the Midea Paddle Faucet, Defendant filed two patent applications which were later allowed and published by the United States Patent and

¹ https://www.amazon.com/Avalon-A1WATERCOOLER-Dispenser-Innovative-Bottles-UL/dp/B0125S2K0M?ref_=ast_sto_dp (last accessed February 4, 2022)

² https://www.amazon.com/Avalon-Loading-Water-Cooler-Dispenser/dp/B0182MJB16?ref_=ast_sto_dp (last accessed February 4, 2022),

³ https://www.amazon.com/Avalon-Premium-Countertop-Dispenser-Approved/dp/B01FL2B8PW?ref_=ast_sto_dp (last accessed February 4, 2022)

⁴ https://www.amazon.com/Avalon-Premium-Countertop-Dispenser-Approved/dp/B01FL1SUU4?ref_=ast_sto_dp (last accessed February 4, 2022)

⁵ https://www.amazon.com/Avalon-Cleaning-Bottom-Loading-Dispenser/dp/B06XJ8DMD1?ref_=ast_sto_dp (last accessed February 4, 2022)

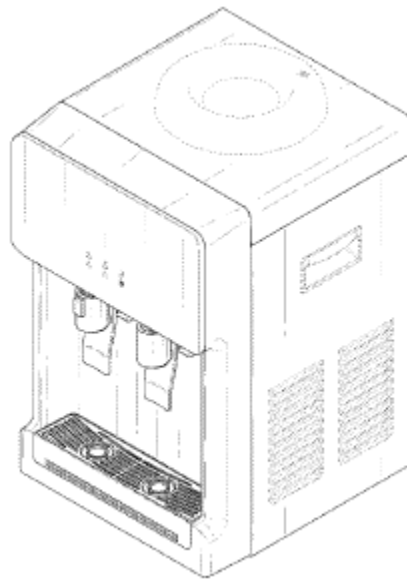
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1 Trademark Office (“USPTO”) in 2020 as Patents ‘147 and ‘134 (collectively, the
2 “Asserted Patents”).

3 40. In its applications, Defendant purported to be the assignee of the Asserted
4 Patents from Jonathan Rubin, who is Defendant’s Chairman and Chief Executive
5 Officer.

6 41. A copy of the ‘147 Patent is attached hereto as **Exhibit 1**.

7 42. The ‘147 Patent consists of a single claim for an “ornamental design for a
8 beverage dispenser.” As reflected below, it incorporates nearly all of the same elements
9 of the water dispensers that Avalon began offering for sale no later than 2016 on
10 Amazon.com, including the Midea Paddle Faucet design in its entirety:



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21 (Figure 4, ‘147 Patent Image)

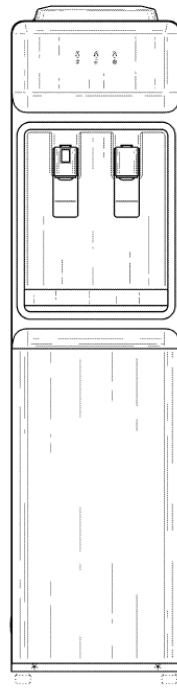
22 43. A copy of the ‘134 Patent is attached hereto as **Exhibit 2**.

23 44. The ‘134 Patent consists of a single claim for an “ornamental design for a
24 beverage dispenser.” As reflected in the image below, it incorporates nearly all, if not
25 all, of the same elements in the stand-alone water dispensers that Avalon began offering
26 for sale no later than 2015 on Amazon.com, including the Midea Paddle Faucet design:

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(Figure 5, ‘134 Patent Image)

45. Then, on September 3, 2020, Defendant filed an application to trademark “a three-dimensional configuration of two spouts surrounding [sic] by cylindrical covers with a rectangular button jutting out of the front of the left of the spout cover, as well as two press paddles located behind the spouts with holes in the upper portion of the paddles and the lower portion of the paddles protruding out.”

46. Like the Asserted Patents, the ‘355 Registration incorporates the design of Midea’s Paddle Faucet in its entirety. A copy of the ‘355 Registration is attached hereto as **Exhibit 3**.

47. Notably, in connection with the trademark application for the ‘355 Registration, Defendant filed a Petition on September 3, 2020 with the USPTO seeking to expedite the initial examination of the application process on the basis that Defendant recently “became aware that a factory in China is manufacturing a water cooler product that incorporates and infringes the distinctive trade dress design that is the subject of the instant application [and] BHRS learned that the factory shipped the infringing product to the United States during the week of August 7, 2020 and expects the infringing

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1 products to arrive at the U.S. Customs and Border Protection at the Long Beach,
2 California port of entry imminently.”

3 48. However, BHRS is, and was well aware, that Midea, a Chinese supplier,
4 had designed, developed, and had been selling water dispensers utilizing the Midea
5 Paddle Faucet no later than 2014.

6 49. Accordingly, Defendant’s Petition to the USPTO cannot be interpreted as
7 anything other than a false statement to secure the ‘355 Registration in violation of 37
8 C.F.R § 2.146.

9 50. Moreover, at the time Defendant applied for the ‘355 Registration, at least
10 one competitor was offering for sale a water dispenser with the same elements of the
11 paddle faucet design claimed by Defendant, namely, a “rectangular button jutting out of
12 the front left spout cover,” with the “lower portion of the paddles protruding out.”

13 51. Additionally, several other competitors were actively selling water
14 dispensers with similar designs consisting of paddles that extend out the bottom of a
15 spout cover.

16 52. As a result of its misrepresentations, and despite the foregoing, Defendant
17 ultimately succeeding in misleading the USPTO into registering the ‘355 Registration
18 on April 6, 2021.

19 ***BRIO Develops Its 300 Series Line of Water Dispensers***

20 53. In August 2020, BRIO entered into a tooling and molding agreement with
21 Midea, whereby Midea agreed to help BRIO develop and customize its own unique hot
22 and cold water dispenser design.

23 54. Section 10 of the Tooling and Molding Agreement specifically states that,
24 “BRIO owns and will hold the patent to all designs [Midea] provides to BRIO for
25 Tooling Under this Agreement.”

26 55. Pursuant to the Tooling and Molding Agreement, BRIO has marketed and
27 sold a line of water dispensers known as the BRIO 300 Series (also sometimes referred

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1 to and known as the “320 Series” due to the model number bearing the numbers “320”).

2 56. In several ways, Brio’s 300 Series Dispensers (the “Dispensers”) are
3 distinct from the water dispensers that Defendant has historically sourced from Midea
4 and incorporated into its “Avalon” brand of water dispensers, including with respect to
5 the unique paddle faucet designed and utilized by BRIO (hereinafter the “BRIO Paddle
6 Faucet”)

7 57. The BRIO Paddle Faucet is distinguishable from the Midea Paddle Faucet
8 in several ways, including, but not limited to:

- 9 a. The cylindrical covers on the BRIO Paddle Faucet (covering the
10 spouts) are black,⁶ contain three swirl-like lines to indicate heat with
11 respect to the hot water spout, and a snowflake with respect to the
12 cold-water spout.
- 13 b. The rectangular button on the BRIO Paddle Faucet has a ribbed
14 texture, whereas the Midea Paddle Faucet is plain.
- 15 c. The Brio Paddle Faucet has a distinct design on the paddles, which
16 consists of a crisscross design with a rectangular rubber grip on the
17 bottom of the paddle; in contrast, the Midea Paddle Faucet is plain.
- 18 d. The press paddles of the Brio Paddle Faucet are trapezoidal in shape,
19 whereas the press paddles on the Midea Paddle Faucet are
20 rectangular in shape.
- 21 e. BRIO prominently displays its distinctive BRIO mark and tradename
22 on its Dispensers, which incorporate the BRIO Paddle Faucet,
23 whereas Defendants display its “Avalon” brand name on its water
24 dispensers that incorporate the Midea Paddle Faucet.

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28 ⁶ A limited number of models have had silver cylindrical covers.

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1 ***Defendant’s History of Targeting BRIO***

2 58. On or around January 14, 2020, long before Defendant began targeting
3 BRIO’s Platforms, Defendant sent BRIO a cease-and-desist letter claiming that BRIO
4 was infringing upon Defendant’s trade dress and product designs of its water dispensers
5 and filters.

6 59. BRIO responded to Defendant’s letter by explaining why Defendant’s
7 claims were without merit, due to the fact that, among other things, Defendant’s claimed
8 trade dress rights were based on designs that belonged to Midea, not Defendant.

9 60. Not surprisingly, Defendant never responded to BRIO and effectively
10 abandoned the claims made in its January 14, 2020 letter.

11 61. Instead, upon information and belief, Defendant began causing multiple
12 false and fraudulent customer reviews to be published on Amazon.com about BRIO’s
13 line of Brio® water products.

14 62. In fact, on June 4, 2020, BRIO was forced to send cease-and-desist
15 correspondence to Defendant demanding it halt its publication of fake, negative
16 customer reviews about BRIO’s products.

17 63. Then, in apparent retribution, Defendant filed a lawsuit against BRIO in the
18 United States District for the Central District of California on August 21, 2020, asserting
19 baseless claims against BRIO for violations of the Lanham Act, California’s Unfair
20 Competition Law and False Advertising Law, and Trade Libel.

21 64. The Court granted BRIO’s Motion to Dismiss Defendant’s Complaint on
22 December 14, 2020, and, after giving Defendant an opportunity to amend its Complaint,
23 granted BRIO’s Motion to Dismiss the First Amended Complaint on June 7, 2021, and
24 dismissed Defendant’s lawsuit in its entirety with prejudice, *see* [BHRS Grp., LLC v. Brio](#)
25 [Water Tech., Inc.](#), No. 2:20-CV-07652-JWH-JCx, 2021 U.S. Dist. LEXIS 251417 (C.D.
26 Cal. June 7, 2021)

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1 65. On the heels of Court’s dismissal order, Defendant then began engaging in
2 the conduct giving rise to this lawsuit.

3 ***Defendant Sends Cease-and-Desist Letters and Repeated Take Down Requests to***
4 ***BRIO’s E-Commerce Partners***⁷

5 66. On **May 27, 2021**, Defendant’s lawyers sent via Federal Express
6 Overnight Mail and via E-Mail a cease-and-desist letter to BRIO, at its facility in
7 Vernon, California. Attached hereto as **Exhibit 4** is a copy of Defendant’s May 27,
8 2021 cease-and-desist correspondence to BRIO.

9 67. Defendant’s correspondence to BRIO asserted intellectual property rights
10 to the Asserted IP and claimed that BRIO’s Dispensers “outright cop[ied]”
11 Defendant’s trademarked and patent designs.”

12 68. Notably, Defendant’s attorneys stated:

13
14 BHRS...is a...provider of water coolers, including its
15 popular Avalon A1, A2, A6, A7 and A8 series of coolers
16 (the “Avalon Coolers”). [T]he Avalon Coolers feature
17 highly distinctive, non-functional design elements,
18 including spigots, spouts, spout covers, and press paddles,
19 that have been used by [Defendant] on its water cooler
20 products continuously since no later than July 21, 2015.
21 That distinctiveness and the fact that [Defendant’s] trade
22 dress designs have acquired secondary meaning has been
23 recognized by the U.S. Patent and Trademark Office
24 (“USPTO”) as evidenced by the ’355 Registration. The
25 Avalon Coolers also feature several protected innovative
26 ornamental designs for beverage dispensers—which include
27 the design of the spigots, spouts, spout covers, and press
28 paddles—which the USPTO has recognized as novel and
non-obvious, as evidenced by the ’147 and ’134 Patents.
[emphasis added]

7 The term “partners” is used purely in the colloquial sense and is not intended to characterize or alter the nature of the legal relationship between BRIO and the various e-commerce companies referenced herein.

1 69. In other words, Defendant acknowledged that it offered for sale and sold
2 water dispensers (which are also sometimes referred to as “coolers”) containing the same
3 designs reflected in the Asserted IP for over a year prior to the date on which Defendant
4 filed for the Asserted Patents.

5 70. Unbeknownst to BRIO, without waiting to receive a response from BRIO
6 or contacting its attorneys, Defendant had already begun to disseminate multiple other
7 cease-and-desist letters and take down requests to platforms listing BRIO’s Dispensers
8 for sale.

9 71. On June 23, 2021, BRIO delivered a fulsome response to Defendant,
10 pointing out the myriad reasons why Defendant’s claims for patent and trade dress
11 infringement lacked all merit. A copy of BRIO’s **June 23, 2021** correspondence is
12 attached hereto as **Exhibit 5**.

13 72. Unfortunately, this did not deter Defendant from pursuing an all-out assault
14 on BRIO’s business and reputation.

15 *Home Depot*

16 73. On or around **May 26, 2021**, Defendant’s lawyers sent cease-and-desist
17 correspondence to legal counsel for Home Depot, Inc. (also referred to as “Home
18 Depot”).

19 74. Like with its cease-and-desist correspondence to BRIO, Defendant’s
20 correspondence to Home Depot asserted intellectual property rights in the Asserted
21 Patents and the ‘355 Registration and claimed that BRIO’s 300 Series Dispensers
22 “outright cop[ied]” Defendant’s trademarked and patented designs.

23 75. Defendant’s correspondence noted that Home Depot sold BRIO’s
24 Dispensers alongside Defendant’s water dispensers in a variety of configurations and
25 demanded that Home Depot remove BRIO’s Dispensers from its online stores.

26 76. On **June 14, 2021**, again without awaiting a formal response from BRIO,
27 Defendant followed-up on its initial cease-and-desist correspondence to Home Depot,
28 to accuse Home Depot of willfully infringing Defendant’s trade dress and design

1 patents by listing BRIO’s Dispensers for sale and threatening to sue Home Depot for
2 disgorgement of profits and treble damages. Defendant again demanded that Home
3 Depot cease listing BRIO’s Dispensers for sale.

4 77. On **June 23, 2021**, BRIO provided a copy of its response to Defendant’s
5 cease-and-desist letter (**Exhibit 5**) to Home Depot.

6 78. Home Depot required BRIO to release Home Depot for all claims asserted
7 by Defendant, in addition to indemnifying Home Depot against liability arising out of
8 the claims asserted by Defendant.

9 79. While Home Depot continued to list BRIO’s Dispensers for sale on
10 HomeDepot.com, Defendant’s accusations discredited BRIO’s product line and
11 jeopardized its credibility in the eyes of a valued partner.

12 *Wayfair*

13 80. On **June 9, 2021**, Defendant sent a cease-and-desist letter to Wayfair,
14 LLC (also referred to as “Wayfair”), raising the same claims and arguments contained
15 in its prior letters to Home Depot and BHRS.

16 81. Wayfair is an American e-commerce company that sells furniture and
17 home-goods; BRIO has listed its Dispensers for sale with Wayfair and conducts a
18 substantial amount of business on Wayfair.

19 82. BRIO responded to Wayfair on **June 23, 2021**, providing Wayfair a copy
20 of its response to Defendant’s cease and desist letter (**Exhibit 5**).

21 83. Like Home Depot, Wayfair permitted BRIO to continue to list its
22 Dispensers for sale on its website, provided BRIO enter into a release with Wayfair
23 and indemnify Wayfair for any liability arising from the claims asserted by Defendant.

24 84. Once more, Defendant’s accusations damaged BRIO’s reputation with a
25 valued business partner.

26 85. While BRIO was fortunate Wayfair and Home Depot permitted BRIO to
27 continue to list its Dispensers for sale, BRIO’s other partners have refused to reinstate

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1 BRIO’s Dispensers to their online marketplace due to Defendant’s baseless
2 infringement allegations.

3 *Amazon*

4 86. On or around **May 24, 2021**, Defendant lodged a Complaint with Amazon
5 alleging that BRIO’s “Brio 300 Series Slimline Top Loading Water Cooler Dispenser”
6 infringed upon the Asserted IP. A copy of Defendant’s Complaint to Amazon is
7 attached hereto as **Exhibit 6**.

8 87. Amazon is an American multinational technology company headquartered
9 in Seattle, Washington, which operates one of the largest e-commerce platforms in the
10 world (Amazon.com).

11 88. BRIO has listed its Dispensers for sale on Amazon.com and conducts a
12 substantial amount of business on Amazon.com.

13 89. Several months later, on or around **September 25, 2021**, Brio was advised
14 that Amazon had removed some of its listings because, Defendant, this time through
15 one of its lawyers, made yet another Complaint to Amazon.

16 90. Since that time, BRIO has repeatedly attempted, including in letters dated
17 November 24, 2021 and January 11, 2022, to persuade Amazon that Defendant’s
18 intellectual property claims lack merit.

19 91. However, to date, Amazon continues to refuse to permit BRIO to list its
20 Dispensers on its virtual Amazon store.

21 *Shopify*

22 92. On **June 15, 2021**, Defendant reported to Shopify, Inc. (also referred to as
23 “Shopify”) that BRIO was infringing upon its ‘355 Registration by selling its 300
24 Series Dispensers. A copy of the notice BRIO received from Shopify conveying the
25 contents of Defendant’s report is attached hereto as **Exhibit 7**.

26 93. Shopify is a Canadian multinational e-commerce company headquartered
27 in Canada; BRIO has listed its Dispensers for sale with Shopify and conducts a
28 substantial amount of business through Shopify.

1 94. On June 23, 2021, BRIO provided Shopify a copy of its response to
2 Defendant’s cease and desist letter (**Exhibit 5**), which fully discredited Defendant’s
3 claims.

4 95. On or around January 17, 2022, Shopify received another trademark
5 infringement notice from Defendant.

6 96. Once more, BRIO responded to the notice lodged by Defendant
7 explaining to Shopify why Defendant’s claims lacked merit.

8 97. However, in response to Defendant’s second complaint against BRIO,
9 Shopify terminated BRIO’s custom domain, briocoolers.com entirely.

10 98. In e-mail correspondence dated January 25, 2022, Shopify stated, “We
11 appreciate that you disagree with the complainant’s position, but...Shopify is not able
12 to resolve disputes between third parties or its merchants as to the applicability of
13 intellectual property law...We are not able to reenable your store or to allow the
14 content to be reposted. If the parties are able to resolve their dispute, or if a court or IP
15 office issues an applicable order, please let us know.”

16 99. In light of the foregoing, and Defendant’s other acts of interference, BRIO
17 has no choice but to file the instant lawsuit.

18 100. Defendants’ bad faith and unlawful tactics have caused substantial
19 economic damages to BRIO.

20 101. As of September 25, 2021, when Amazon took down BRIO’s listings of
21 its Dispensers, BRIO projected generating \$450,000 in monthly gross profits from the
22 sale of its Dispensers on Amazon.

23 102. BRIO anticipated generating at least the same volume of monthly gross
24 profits from the sale of its Dispensers on Shopify.

25 103. Accordingly, BRIO’s estimated lost profits to date exceed at least
26 \$2,812,500 million (between lost sales on Amazon, Shopify, and traffic directed to
27 other websites from Amazon and Shopify) before accounting for the roughly \$250,000
28 BRIO has expended on incidental costs responding to Defendant’s repeated false

1 claims of infringement, the approximately 3,000,000 units of inventory which is not
2 currently being sold, and the harm and damage done to BRIO’s goodwill and
3 reputation in the water product industry and with its customers, who can no longer
4 locate and acquire BRIO’s Dispensers through two of the largest ecommerce platforms
5 in the world.

6 104. BRIO’s damages continue to accrue with each passing day that Defendant
7 refuses to withdraw its baseless infringement claims against BRIO.

8
9 **FIRST CLAIM FOR RELIEF**

10 **(Declaration of Invalidity of the ‘147 Patent)**

11 105. BRIO restates and incorporates by reference the allegations set forth in
12 paragraph 1 through 104 of this Complaint as if fully set forth herein.

13 106. Defendant has alleged and continues to allege, over BRIO’s objections
14 that it the ‘147 Patent is valid, such that an immediate, real, and justiciable controversy
15 exists between BRIO and Defendant regarding the enforceability of the ‘147 Patent.

16 107. The single claim asserted in the ‘147 Patent fails to meet the conditions of
17 patentability and/or otherwise comply with one or more provisions of 35 U.S.C. §§
18 101, *et seq.*, including, 35 U.S.C. §§101, 102, 103 and/or 112.

19 108. By way of non-limiting example, the claim made in the ‘147 Patent is
20 unenforceable pursuant to 35 U.S.C §§ 102, 103 because its claim is not novel and/or
21 is rendered obvious by prior art.

22 109. Additionally, or in the alternative, BRIO seeks judgment declaring that
23 the claims of the ‘147 Patent are invalid because they were procured through
24 fraudulent and inequitable conduct.

25 110. In order to obtain the ‘147 Patent, Defendant knowingly misrepresented to
26 the USPTO the true inventor of designs and claims contained within the ‘147 Patent,
27 failed to disclose its relationship with Midea and Midea as the true inventor, and
28 claimed ownership rights in designs in which it held no intellectual property rights.

1 Moreover, Defendant failed to disclose to the USPTO that Defendant had been
2 offering for sale the very designs embodied in the ‘147 Patent for over a year prior to
3 the filing of the application for the ‘147 Patent.

4 111. A judicial declaration is necessary and appropriate so that BRIO may
5 ascertain its rights regarding the ‘147 Patent.

6 112. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
7 *seq.*, BRIO requests a judicial declaration that the ‘147 Patent is invalid.

8
9 **SECOND CLAIM FOR RELIEF**

10 **(Declaration of Non-Infringement of the ‘147 Patent)**

11 113. BRIO repeats and re-alleges each and every allegation contained in
12 paragraphs 1 through 112 of this Complaint, as if fully set forth herein.

13 114. Defendant has alleged and continues to allege, over BRIO’s objections,
14 that BRIO’s Dispensers infringe the ‘147 Patent, such that an immediate, real, and
15 justiciable controversy exists between BRIO and Defendant regarding whether BRIO
16 infringes the ‘147 Patent.

17 115. The ‘147 Patent recites a single claim to the “ornamental design for a
18 beverage dispenser, substantially as shown and described” in eight drawing sheets.

19 116. BRIO has not infringed the single claim asserted in the ‘147 Patent either
20 directly, contributorily, or by inducement, literally or under the doctrine of equivalents
21 through its use, importation, sale, and/or offer for sale of the BRIO Dispensers.

22 117. By way of non-limiting example, a comparison of the claim and design of
23 the ‘147 Patent to the existence of prior art demonstrates that an ordinary observer can
24 see there is no infringement of the ‘147 Patent.

25 118. Defendant’s own “Avalon” countertop water cooler was offered for sale
26 no later than 2016, thereby qualifying as prior art, and is more aesthetically similar to
27 the ‘147 Patent in overall appearance than the accused BRIO product.

28 ///

1 119. Thus, comparing the accused BRIO product to the ‘147 Patent drawing in
2 view of Defendant’s own prior art confirms non-infringement.

3 120. By way of non-limiting example, US Patent D717,911 discloses a similar
4 design to Defendant’s “Avalon” countertop product, and, because it was filed in April
5 2013, it qualifies as prior art to the ‘147 Patent.

6 121. Comparing the accused BRIO product to the ‘147 Patent drawing in view
7 of US Patent D717,911 confirms non-infringement.

8 122. By way of non-limiting example, US Patent D825,243 discloses a similar
9 design to Defendant’s product, and because it was filed in June 2016, it qualifies as
10 prior art to the ‘147 Patent.

11 123. Comparing the accused BRIO product to the ‘147 Patent drawing in view
12 of US Patent D825,243 confirms non-infringement.

13 124. Accordingly, to the extent the ‘147 Patent is not deemed invalid and
14 unenforceable, pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
15 *seq.*, BRIO requests a judicial declaration that its sale of its Dispensers does not and
16 will not infringe the single claim asserted by the ‘147 Patent.

17
18 **THIRD CLAIM FOR RELIEF**

19 **(Declaration of Invalidity of the ‘134 Patent)**

20 125. BRIO restates and incorporates by reference the allegations set forth in
21 paragraphs 1 through 124 of this Complaint as if fully set forth herein.

22 126. Defendant has alleged and continues to allege, over BRIO’s objections,
23 that the ‘134 Patent is valid, such that an immediate, real, and justiciable controversy
24 exists between BRIO and Defendant regarding the enforceability of the ‘134 Patent.

25 127. The single claim asserted in the ‘134 Patent fails to meet the conditions of
26 patentability and/or otherwise comply with one or more provisions of 35 U.S.C. §§
27 101, *et seq.*, including, 35 U.S.C. §§101, 102, 103 and/or 112.

28 ///

1 128. By way of non-limiting example, the claims of the ‘134 Patent are
2 unenforceable pursuant to 35 U.S.C §§ 102, 103 because its claims are not novel
3 and/or rendered obvious by prior art.

4 129. Additionally, or in the alternative, BRIO seeks judgment declaring that
5 the claims of the ‘134 Patent are invalid because they were procured through
6 fraudulent and inequitable conduct.

7 130. In order to obtain the ‘134 Patent, Defendant knowingly misrepresented to
8 the USPTO the true inventor of the design and the claim contained within the ‘134
9 Patent, failed to disclose its relationship with Midea and Midea as the true inventor,
10 and claimed ownership rights in a design in which it held no intellectual property
11 rights.

12 131. In addition, Defendant failed to disclose the existence of relevant prior art,
13 including the very designs which it marketed and sold for over a year prior to filing its
14 application for the ‘134 Patent.

15 132. A judicial declaration is necessary and appropriate so that BRIO may
16 ascertain its rights regarding the ‘134 Patent.

17 133. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
18 *seq.*, BRIO requests a judicial declaration that the ‘134 Patent is invalid.
19

20 **FOURTH CLAIM FOR RELIEF**

21 **(Declaration of Non-Infringement of the ‘134 Patent)**

22 134. BRIO repeats and re-alleges each and every allegation contained in
23 paragraphs 1 through 133 of this Complaint, as if fully set forth herein.

24 135. Defendant has alleged and continues to allege that BRIO’s Dispensers
25 infringe the ‘134 Patent, over BRIO’s objections, such that an immediate, real, and
26 justiciable controversy exists between BRIO and Defendant regarding whether BRIO
27 infringes the ‘134 Patent.

28 ///

1 136. The ‘134 Patent recites a single claim to the “ornamental design for a
2 beverage dispenser, substantially as shown and described” in five drawing sheets.

3 137. BRIO has not infringed the single claim asserted in the ‘134 Patent either
4 directly, contributorily, or by inducement, literally or under the doctrine of equivalents
5 through its use, importation, sale, and/or offer for sale of the BRIO Dispensers.

6 138. By way of non-limiting example, a comparison of the claim and design of
7 the ‘134 Patent to the existence of prior art demonstrates that an ordinary observer can
8 see there is no infringement of the ‘134 Patent.

9 139. Defendant’s own “Avalon” floor-standing water dispenser products were
10 offered for sale no later than 2015, thereby qualifying as prior art and are more
11 aesthetically similar to the ‘134 Patent in overall appearance than the accused BRIO
12 product.

13 140. Comparing the accused BRIO product to the ‘134 Patent drawing in view
14 of Defendant’s own prior art confirms non-infringement.

15 141. By way of further non-limiting example, US Patent D714,580 discloses a
16 similar design to Defendant’s “Avalon” floor-standing water dispenser product, and,
17 because it was filed in September 2012, it qualifies as prior art to the ‘134 Patent.

18 142. Comparing the accused BRIO product to the ‘134 Patent drawing in view
19 of US Patent D714,580 also confirms non-infringement.

20 143. Accordingly, to the extent the ‘134 Patent is not deemed invalid and
21 unenforceable, pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
22 *seq.*, BRIO requests a judicial declaration that its sale of its Dispensers does not and
23 will not infringe the single claim asserted by the ‘134 Patent.

24
25 **FIFTH CLAIM FOR RELIEF**

26 **(Declaration of Invalidity of the ‘355 Registration)**

27 144. BRIO restates and incorporates by reference the allegations set forth in
28 paragraph 1 through 143 of this Complaint as if fully set forth herein.

1 145. Under 15 U.S.C. § 1119, the Court has the power to order the cancellation
2 of a federal trademark registration.

3 146. Defendant has alleged and continues to allege, over BRIO’s objections,
4 that the ‘355 Registration is valid, such that an immediate, real, and justiciable
5 controversy exists between BRIO and Defendant regarding the validity and
6 enforceability of the ‘355 Registration.

7 147. The ‘355 Registration includes a single international class, Class 11,
8 relating to “Spouts, spout covers, and press paddles sold as an integral part of water
9 coolers.”

10 148. The ‘355 Registration “mark consists of a three-dimensional configuration
11 of two spouts surrounded by cylindrical covers with a rectangular button jutting out of
12 the front of the left spout cover, as well as two press paddles located behind the spouts
13 with holes in the upper portion of the paddles and the lower portion of the paddles
14 protruding out.”

15 149. By way of non-limiting example, BRIO seeks a judgment declaring that
16 the ‘355 Registration is unenforceable for one or more of the following reasons: (a) it
17 is generic; (b) it is functional (as evidenced by the USPTO’s own findings during the
18 examination process); (c) it lacks secondary meaning; and (d) it was procured through
19 fraudulent and inequitable conduct.

20 150. The paddle faucet design contained in the ‘355 Registration is common in
21 the water product industry, and the design is merely a basic form of dispenser faucets.
22 In fact, it is an identical copy of the Midea Paddle Faucet, and other competitors sell
23 water dispensers with similar designs to the ‘355 Registration consisting of paddles
24 that extend out on the bottom.

25 151. Notably, in response to concerns raised by the USPTO regarding the ‘355
26 Registration’s lack of distinctiveness, Defendant falsely claimed five years of
27 exclusive use of the ‘355 Registration mark to the USPTO, despite that Midea has been
28 selling products incorporating paddle faucets since 2010 and incorporating the Midea

1 Paddle Faucet designed used by Defendant specifically since between 2013 and 2014,
2 a fact which Defendant has and clearly had knowledge of during the course of the
3 examination of the ‘355 Registration mark.

4 152. Moreover, the ‘355 Registration design yields a utilitarian advantage
5 relating to the delivery of water from the water dispenser to a drink container;
6 numerous alternative designs exist and have been used by competing manufacturers of
7 water dispensers to provide the same utilitarian advantages; and Defendant utilizes a
8 simple mode of manufacture, which is also utilized by its competitors.

9 153. In addition to all of the foregoing, the ‘355 Registration was procured
10 through fraudulent and inequitable conduct.

11 154. In order to obtain the ‘355 Registration, Defendant knowingly
12 misrepresented to the USPTO the inventor of designs claimed in the ‘355 Registration,
13 failed to disclose its relationship with Midea and Midea as the true inventor, and
14 falsely claimed exclusive use of the ‘355 Registration and ownership rights in designs
15 in which it held no intellectual property rights.

16 155. A judicial declaration is necessary and appropriate so that BRIO may
17 ascertain its rights regarding the ‘355 Registration.

18 156. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
19 *seq.*, BRIO requests a judicial declaration that the ‘355 Registration is invalid.

20
21 **SIXTH CLAIM FOR RELIEF**

22 **(Declaration of Non-Infringement of the ‘355 Registration)**

23 157. BRIO repeats and re-alleges each and every allegation contained in
24 paragraphs 1 through 156 of this Complaint, as if fully set forth herein.

25 158. Defendant has alleged and continues to allege that BRIO’s Dispensers,
26 and specifically the BRIO Paddle Faucet utilized on BRIO’s Dispensers, infringe the
27 ‘355 Registration, a fact which BRIO disputes and has disputed, such that an
28 immediate, real, and justiciable controversy exists between BRIO and Defendant

1 regarding whether BRIO’s Dispensers infringe upon the ‘355 Registration, assuming
2 the ‘355 Registration is valid.

3 159. A comparison of the ‘355 Registration to the BRIO Paddle Faucet design
4 demonstrates that there is no likelihood of confusion between the ‘355 Registration
5 mark and the BRIO Paddle Faucet design utilized on BRIO's Dispensers.

6 160. By way of the non-limiting examples described below, the BRIO Paddle
7 Faucet does not resemble the ‘355 Registration mark, which Defendant claims is
8 embodied in Defendant’s Avalon Coolers.

9 161. The rectangular button on the left spout of BRIO Dispensers has a ribbed
10 texture, whereas the ‘355 Registration and Defendant’s Avalon Coolers are plain.

11 162. The press paddles of the Brio Paddle Faucet are trapezoidal in shape,
12 whereas the press paddles of the Midea Paddle Faucet are rectangular in shape.

13 163. Additionally, the BRIO Dispensers have a distinct design on the paddles
14 which consist of a crisscross design with a rectangular rubber grip on the bottom of the
15 paddles; in contrast, the paddles embodied in the ‘355 Registration mark and
16 Defendant’s Avalon Cooler are plain.

17 164. Moreover, the BRIO Dispensers prominently display the “BRIO” mark
18 and trade name on the Dispensers, further undercutting any likelihood of confusion.

19 165. By way of further example and without limiting the grounds of non-
20 infringement that will be asserted, BRIO notes that: (1) the likelihood of confusion is
21 low given the price point at which the BRIO Dispensers are sold and the likelihood
22 consumers will exercise a higher degree of care when deciding to purchase a BRIO
23 Dispensers versus one of Defendant’s “Avalon” dispensers; (2) Defendant knowingly
24 adopted the design set forth in the ‘355 Registration, which copies the paddle faucet
25 designs engineered by Midea; (3) unlike BRIO’s Paddle Faucet design, the ‘355
26 Registration is weak as it is a replica or nearly identical to designs used by other
27 competitors; (4) there is no evidence of actual confusion amongst consumers of

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ATTORNEYS AT LAW
LOS ANGELES

1 BRIO’s Dispensers and the designs contained in the ‘355 Registration, as embodied in
2 Defendant’s Avalon Coolers.

3 166. Thus, when taking into account that the ‘355 Registration lacks
4 distinctiveness and is functional, and comparing the accused BRIO Dispensers to the
5 ‘355 Registration, as embodied in Defendant’s Avalon’s Coolers, there is no likelihood
6 of confusion sufficient to warrant a finding of trade dress infringement.

7 167. Accordingly, to the extent the ‘355 Registration is not deemed invalid and
8 unenforceable, pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
9 *seq.*, BRIO requests a judicial declaration that its sale of its Dispensers does not and
10 will not infringe the ‘355 Registration.

11
12 **SEVENTH CLAIM FOR RELIEF**

13 **(Lanham Act Violation – False or Fraudulent Trademark Registration 15 U.S.C.**
14 **§ 1120)**

15 168. BRIO repeats and re-alleges each and every allegation contained in
16 paragraphs 1 through 167 of this Complaint, as if fully set forth herein.

17 169. Defendant procured the ‘355 Registration by executing a false and/or
18 fraudulent declaration.

19 170. Specifically, in its application filed on September 3, 2020, Defendant’s
20 Chief Executive Officer and Chairman, Jonathan Rubin (“Rubin”) declared that “The
21 Mark has become distinctive of the goods/services through the applicant’s
22 substantially exclusive and continuous use of the mark in commerce that the U.S.
23 Congress may lawfully regulate for at least five years immediately before the date of
24 this statement.”

25 171. In actuality, at the time Defendant applied for the ‘355 Registration mark
26 (the “‘355 Mark”), a competitor was offering for sale a water dispenser with the same
27 paddle faucet design claimed by Defendant, including the “rectangular button jutting

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1 out of the front left spout cover,” with the “lower portion of the paddles protruding
2 out.”

3 172. Additionally, several other competitors were actively selling water
4 dispensers with similar designs consisting of paddles that extend out the bottom of
5 spouts.

6 173. Defendant had knowledge of the falsity of the statement contained in
7 paragraph 170, based on its familiarity with the water product market. A cursory
8 review of the water dispensers displayed on any e-commerce platform would reveal
9 other brands of water dispensers incorporating all or substantially all of the
10 components of the ‘355 Mark.

11 174. Defendant’s false statement was material to the approval of the ‘355
12 Mark; but for Defendant asserting substantially exclusive and continuous use, the
13 USPTO would not have registered the ‘355 Mark because of its lack of distinctiveness.
14 *See* 37 C.F.R. § 2.41(a)(2).

15 175. In addition, Rubin declared that Defendant was the owner of the ‘355
16 Registration mark.

17 176. In actuality, the ‘355 Mark was designed by Midea between 2013 and
18 2014, and Midea used it on water dispensers it sold to Defendant. However, at all
19 times, Midea has owned the intellectual property rights associated with the ‘355 Mark.
20 Neither Defendant nor Rubin is not the assignee of Midea’s intellectual property rights.

21 177. But for Defendant asserting it was the owner of the ‘355 Mark, the
22 USPTO would not have registered the ‘355 Mark to Defendant. *See* 15 U.S.C. §
23 1051(a)(1); 37 C.F.R. § 2.71(d).

24 178. Defendant had knowledge of the falsity of its statements set forth in
25 paragraph 175 as it sourced the water dispensers containing the ‘355 Mark from Midea
26 directly and had no basis to claim ownership of the design of the ‘355 Mark.

27 ///

28 ///

1 179. Defendant made the foregoing false statements with the intent to deceive
2 the USPTO because absent the foregoing statements, the USPTO would not have
3 registered the ‘355 Mark to Defendant.

4 180. Of note, Defendant filed for the ‘355 Mark after abandoning the claims in
5 its prior cease and desist letters to BRIO, at which time it did not possess a relevant,
6 registered trade dress.

7 181. Moreover, as noted in its September 9, 2020 Petition to expedite the ‘355
8 Registration, Defendant filed for the ‘355 Registration after apparently learning of a
9 unnamed factory in China that shipped a product to the United States during the week
10 of August 7, 2020 which allegedly incorporated the trade dress design claimed by
11 Defendant.

12 182. Given the foregoing, it is evident Defendant merely filed for the ‘355
13 Registration in order to harass and deter potential competitors from engaging in the
14 sale of water dispensers.

15 183. Defendant’s false and/or fraudulent procurement of registration has
16 damaged and, unless enjoined, will continue to damage BRIO in violation of Section
17 38 of the Lanham Act, 15 U.S.C. § 1120.

18 184. Defendant has invoked the ‘355 Registration in order to damage BRIO’s
19 relationships with BRIO’s online retail and e-commerce partners, including by forcing
20 BRIO to indemnify its online retail partners, Home Depot and Wayfair, for the claims
21 asserted by Defendant and, causing Amazon and Shopify to remove BRIO’s online
22 listings of its Dispensers from their e-commerce platforms.

23 185. As set forth herein, Defendant’s acts have inflicted substantial economic
24 loss upon BRIO, in addition to damaging its credibility, goodwill, and reputation in the
25 water product industry.

26 186. As BRIO’s damages continue to compound with each passing day its full
27 product line remains unavailable on two of the world’s largest e-commerce platforms,
28 BRIO has no adequate remedy at law.

EIGHTH CLAIM FOR RELIEF

(Walker Process Fraud – Violation of Section 2 of the Sherman Act)

187. BRIO repeats and re-alleges each and every allegation contained in paragraphs 1 through 186 of this Complaint, as if fully set forth herein.

188. A *Walker Process* Fraud antitrust claim arises when a defendant commits common law fraud on the USPTO to obtain a patent, and then asserts the fraudulent obtained patent against party to secure or maintain a monopoly.

Fraud on the USPTO

189. In declarations in support of the Asserted Patents dated June 22, 2018, Rubin declared, pursuant to 37 C.F.R § 1.63, that he was the “original inventor or an original joint inventor of a claimed invention in the application.”

190. Rubin further declared that he had invented a “new original and ornamental design,” for a beverage dispenser as contained in the illustration sheets affixed to the applications for the Asserted Patents.

191. In fact, Midea, a Chinese supplier, developed and designed the water dispensers embodied in the Asserted Patents and sold them to Defendant.

192. In turn, Defendants applied its “Avalon” mark to Midea’s dispensers embodying the Asserted Patents and began offering them for sale.

193. Defendant’s claim that was Rubin was the original inventor or original joint inventor of the water dispensers embodied in the Asserted Patents is false.

194. As the purchaser of Midea’s water dispensers embodied in the Asserted Patents, Defendant had knowledge that Rubin was not the inventor of the water dispensers embodied in the Asserted Patents, particularly as Rubin serves as Defendant’s CEO and Chairman and his knowledge is imputable to Defendant.

195. Nevertheless, Defendant held Rubin out as the original inventor of the Asserted Patents because otherwise Defendant could not claim to be the assignee of the rights of the designs embodied in the Asserted Patent, which is a fundamental bar to the USPTO allowing the Asserted Patents.

1 196. Furthermore, according to Defendant’s May 27, 2022 Cease and Desist
2 correspondence to BRIO (**Exhibit 4**), Defendant has sold its Avalon Coolers
3 embodying the designs of the Asserted Patents since no later than July 21, 2015.

4 197. Indeed, Defendant’s own listings of Avalon Coolers on Amazon.com,
5 which embody the designs of the Asserted Patents in their near, if not total, entirety,
6 indicate that Defendant first made designs embodying the designs of the Asserted
7 available for sale on Amazon.com in 2015 with respect to the ‘134 Patent and in 2016
8 with respect to the ‘147 Patent.

9 198. Defendant failed to disclose these material facts to the USPTO because
10 had they done so, the Examiner would not have allowed the Asserted Patents because
11 they violate the one-year on-sale ban pursuant to 35 U.S.C. § 102 and are material
12 prior art.

13 ***Anti-Competitive Conduct***

14 199. Defendant and BRIO are competitors in the retail water product market,
15 with both entities specifically offering for sale an array of water coolers, dispensers,
16 filtration devices, and other equipment for water consumption.

17 200. Defendant has previously contended in court filings that it is a “leading
18 hydration equipment company” selling a variety of water cooler products under the
19 “Avalon” brand.

20 201. Defendant has also alleged BRIO is a “much smaller company” who sells
21 hydration products “in the same categories as Defendant’s Avalon products.”

22 202. Defendant’s attempts to enforce the Asserted Patents, by, among other
23 things, sending cease-and-desist correspondence to Home Depot and Wayfair and
24 takedown requests to Amazon and Shopify alleging BRIO is infringing upon its
25 intellectual property rights, are designed to deter BRIO and others from continuing to
26 transact business in the retail water product market and from selling water coolers and
27 dispensers specifically.

28 ///

1 203. Defendant’s conduct is tantamount to an attempt to monopolize the retail
2 water product market, and the market for water coolers and water dispensers
3 specifically, and is predatory and unlawful.

4 204. Defendant has knowingly asserted ownership rights in the Asserted
5 Patents which it does not possess, and Defendant continues to attempt to enforce
6 plainly invalid and unenforceable patents for purposes of limiting, or altogether
7 eliminating a competitor, in order to expand its percentage share of the retail water
8 product marketplace and the marketplace for water coolers and dispensers specifically.

9 205. Defendant’s anti-competitive conduct described herein has succeeded in
10 damaging BRIO and limiting BRIO’s footprint in the retail water product market, as
11 BRIO currently cannot market and sell its Dispensers on Amazon.com—one of, if not
12 the world’s largest e-commerce platform—in addition to through Shopify, another
13 prominent e-commerce platform through which BRIO conducts substantial business.
14 This has resulted in millions of dollars of damages to BRIO to date, in amounts
15 exceeding \$3,062,500.

16 206. Coupled with the foregoing acts, Defendant has repeatedly demonstrated a
17 malicious pattern and practice of targeting BRIO with spurious claims and threats,
18 including as evidenced by Defendant’s January 2020 cease and desist correspondence
19 to BRIO.

20 207. Defendant’s conduct against BRIO is particularly concerning and
21 indicative of a dangerous probability of achieving monopoly power given that
22 numerous other competitors in the retail water product marketplace utilize some or all
23 of the designs embodied in the Asserted Patents, and, unless restrained, Defendant is
24 likely to pursue other competitors with the same spurious claims it has drummed up
25 against BRIO.

26 208. As a result of Defendant’s commission of *Walker Process* fraud, BRIO
27 has been forced to bring this action, while attempting to survive in the retail water
28 product industry, despite being handicapped by Defendant’s anti-competitive conduct.

PRAYER FOR RELIEF

WHEREFORE, BRIO prays for judgment and relief as follows:

On the First Claim for Declaratory Relief:

1. For an order declaring the ‘147 Patent invalid and unenforceable against BRIO specifically;
2. For BRIO’s attorney’s fees;
3. For costs of suit incurred herein; and,
4. For such other and further relief as the Court may deem proper.

On the Second Claim for Declaratory Relief:

1. For an order declaring that BRIO’s Dispensers do not directly or indirectly infringe the ‘147 Patent, either literally or under the doctrine of equivalents, and that it is not liable for damages or injunctive relief based on any claim of the ‘147 Patent;
2. For costs of suit incurred herein; and,
3. For such other and further relief as the Court may deem proper.

On the Third Claim for Declaratory Relief:

1. For an order declaring the ‘134 Patent invalid and unenforceable against BRIO specifically;
2. For BRIO’s attorney’s fees;
3. For costs of suit incurred herein; and,
4. For such other and further relief as the Court may deem proper.

On the Fourth Claim for Declaratory Relief:

1. For an Order declaring that BRIO’s Dispensers do not directly or indirectly infringe the ‘134 Patent, either literally or under the doctrine of equivalents, and that it is not liable for damages or injunctive relief based on any claim of the ‘134 Patent;
2. For costs of suit incurred herein; and,
3. For such other and further relief as the Court may deem proper.

CSREEDER, PC
ATTORNEYS AT LAW
LOS ANGELES

On the Fifth Claim for Declaratory Relief:

1. For an order declaring ‘355 Registration is invalid and unenforceable against BRIO, and ordering a cancellation of the ‘355 Registration;
2. For BRIO’s attorney’s fees;
3. For costs of suit incurred herein; and,
4. For such other and further relief as the Court may deem proper.

On the Sixth Claim for Declaratory Relief:

1. For an order declaring BRIO’s Dispensers do not infringe the ‘355 Registration;
2. For costs of suit incurred herein; and,
3. For such other and further relief as the Court may deem proper.

On the Seventh Claim for Lanham Act Violation – False or Fraudulent Trademark Registration [15 U.S.C. § 1120]

1. For an award of damages to BRIO in excess of \$3,062,500
2. For BRIO’s attorney’s fees;
3. For costs of suit incurred herein; and,
4. For such other and further relief as the Court may deem proper.

On the Eighth Claim for Walker Process Fraud – Violation of Section 2 of the Sherman Act

1. For an award of damages to BRIO in excess of \$3,062,500
2. For BRIO’s attorney’s fees and costs;
3. For treble damages against Defendant pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15, in amounts exceeding \$9,187,500;
4. For prejudgment interest and,
5. For such further and additional relief as the Court deems just and proper.

JURY DEMAND

BRIO demands a jury trial on all issues and claims so triable.

1 DATED: March 10, 2022

Respectfully submitted,

2 **CSREEDER, PC**

3 By: Christopher S. Reeder

4 Christopher S. Reeder
5 Elan Bloch
6 Benjamin S. Tragish

7 **ATTORNEYS FOR PLAINTIFF, BRIO**
8 **WATER TECHNOLOGY, INC.**

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11 **CSREEDER, PC**
12 **ATTORNEYS AT LAW**
13 **LOS ANGELES**

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