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10 *Central Bag & Burlap Co.*

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

13 CENTRAL BAG & BURLAP CO.,

14 Plaintiff,

15 v.

16 DIZPOT LLC; and DOES 1 through 10,

17 Defendants.

Civil Action No.:

**COMPLAINT FOR PATENT
INFRINGEMENT
(35 U.S.C. § 271)**

DEMAND FOR JURY TRIAL

18
19 Plaintiff Central Bag & Burlap Co. ("CBB") files this Complaint against Defendants
20 Dizpot LLC ("Dizpot") and DOES 1 through 10 (collectively, "Defendants"), alleging as
21 follows:

22 **I. THE PARTIES**

23 1. CBB is a Colorado corporation, having its principal place of business at 1700
24 E 68th Avenue, Denver, Colorado 80229.

25 2. Upon information and belief, Dizpot is an Arizona limited liability company
26 in good standing with a principal place of business at 2430 W Mission Lane, #6, Phoenix,
27 Arizona 85021. Upon further information and belief, Dizpot also owns and operates a retail
28 store and distribution warehouse at this same principal place of business. Upon additional

1 information and belief, Dizpot owns and operates the website www.dizpot.com, which is an
2 online retail store for various packaging products for the cannabis industry. The content of
3 Dizpot's website and its interactive functionality is incorporated herein by this reference.

4 3. Dizpot is subject to process by serving its Statutory Agent, John Taylor Swick,
5 at 208 E. Hayward Ave., Phoenix, Arizona 85020.

6 4. CBB is ignorant of the true names and capacities of the defendants sued herein
7 as DOES 1 through 10, inclusive, and therefore sues said defendants by fictitious names.
8 CBB will amend this Complaint to allege their true names and capacities when ascertained.

9 5. CBB is informed and believes and thereupon alleges that at all times relevant
10 herein, each of the DOE defendants, and each of the named defendants, were the agents
11 and/or employees of one or more of the other defendants, were acting within the course and
12 scope of said agency and/or employment, and that each defendant has aided and assisted one
13 or more of the other defendants in committing the wrongful acts alleged herein.

14 6. CBB is informed and believes and thereupon alleges that Defendants and each
15 of them, conspired and agreed among themselves to do the acts complained of herein and
16 were, in doing the acts complained of herein, acting pursuant to said conspiracy, and that
17 each defendant sued herein is jointly and severally responsible and liable to CBB for
18 damages alleged herein.

19 **II. JURISDICTION AND VENUE**

20 7. This is an action arising from Dizpot's infringement of CBB's federally-issued
21 United States Design Patent No. D901,305 entitled "Jar" ("the '305 Patent") in violation of
22 35 U.S.C. § 271 *et seq.* The '305 Patent is attached hereto as Exhibit A and incorporated
23 herein by reference. This Court has jurisdiction over the subject matter of this action
24 pursuant to 28 U.S.C. §§ 1331 and 1338.

25 8. This Court has personal jurisdiction over Dizpot because its principal place of
26 business is in this judicial district, it is an Arizona limited liability company, it has brick-
27 and-mortar retail outlets in this District, it has committed and continues to commit acts of
28 infringement in violation of 35 U.S.C. § 271 in the State of Arizona, places infringing

1 products into the stream of commerce, and with the knowledge or understanding that such
2 products are sold in the State of Arizona, including in this District. Upon information and
3 belief, Dizpot derives substantial revenue from the sale of infringing products within this
4 District, expects its actions to have consequences within this District, and derives substantial
5 revenue from interstate commerce.

6 9. Venue over this action is proper in this Court under 28 U.S.C. § 1400(b)
7 because Dizpot resides in this judicial district, Dizpot has committed acts of infringement in
8 this District, and has a regular and established place of business in this District.

9 **III. GENERAL ALLEGATIONS**

10 **A. CBB's Intellectual Property**

11 10. CBB is engaged in the business of, among other things, designing, developing,
12 manufacturing, supply and distribution of packaging products for various industries,
13 including agricultural, retail, restaurant, sanitation, and cannabis packaging. CBB's cannabis
14 packaging products are offered and sold through its DBA, MMC Depot.

15 11. CBB has protected its innovative designs through seeking and obtaining
16 numerous trademarks, trade dress, and design patents issued by the United States Patent and
17 Trademark Office ("USPTO").

18 12. One of CBB's recognized and unique packaging designs is a square-bottom jar
19 for concentrate, which is manufactured and sold under CBB's QUBE® brand. Information
20 about that product is listed on CBB's website at www.mmcdepot.com and example
21 photographs of the QUBE® jar are set forth below:



1 13. Further, on November 10, 2020, the USPTO duly and legally issued United
2 States Design Patent No. D901,305 entitled "Jar" (see Exhibit A). CBB is the owner of all
3 right, title, and interest in and to the '305 Patent, including the right to sue and collect
4 damages for past infringement thereof. The assignment to CBB is recorded at reel and frame
5 number 053922/0668, and is attached hereto as Exhibit B, and by this reference incorporated
6 herein.

7 14. CBB incorporates the patented design of the '305 Patent in its QUBE® Jar.

8 **B. Defendants and their Conduct**

9 15. Upon information and belief, Defendants are in the business of offering for
10 sale, selling, marketing, and advertising, among other things, packaging products for the
11 cannabis industry. According to Dizpot's website, Dizpot also offers for sale square-
12 bottomed jars for the cannabis industry (hereafter, "Accused Product"):



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17 **9ML Child Resistant
18 Square Concentrate
19 Jar-Black**

**9ML Child Resistant
Square Concentrate
Jars-White**

**Child Resistant
Square Concentrate
Jars-Clear**

20 16. The overall appearance of the '305 Patent design and the corresponding design
21 of the Accused Product are substantially the same. Indeed, an ordinary observer of the
22 Defendants' jars will perceive the overall appearance of the jar design protected by the '305
23 Patent and the Accused Product to be substantially the same.

24 17. Table 1 illustrates Defendants' infringement by comparing figures from the
25 '305 Patent with exemplary images of a sample QUBE® jar and a sample of the Accused
26 Product.

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TABLE 1

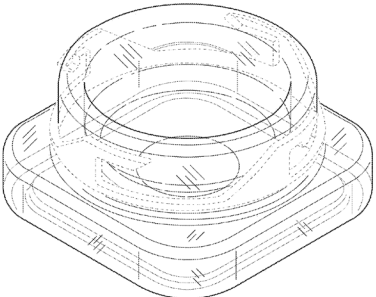


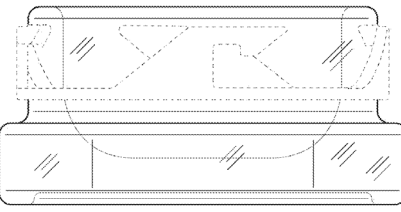


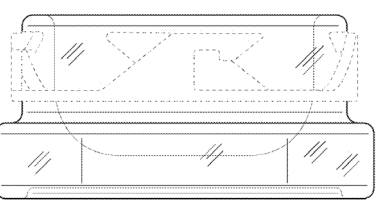


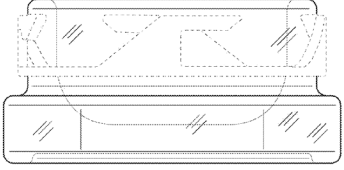


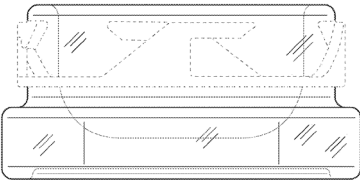


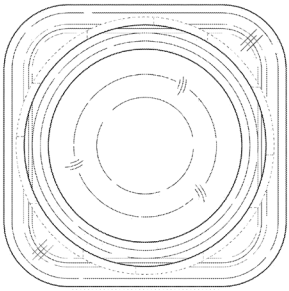


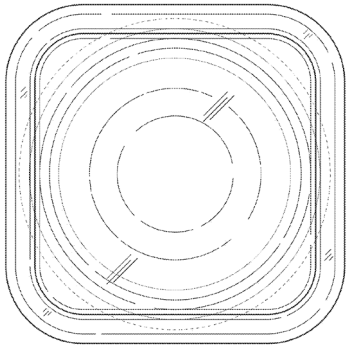


'305 Patent Figures	QUBE® Jar	Accused Product
 <p data-bbox="446 661 511 693">FIG. 1</p>		
 <p data-bbox="462 1060 552 1102">FIG. 2</p>		
 <p data-bbox="446 1480 535 1522">FIG. 3</p>		
 <p data-bbox="454 1837 535 1879">FIG. 4</p>		

TABLE 1		
'305 Patent Figures	QUBE® Jar	Accused Product
 <p style="text-align: center;">FIG. 5</p>		
 <p style="text-align: center;">FIG. 6</p>		
 <p style="text-align: center;">FIG. 7</p>		

18. As shown in these pictures, the Accused Product has a design that is the same or substantially the same as the design of the '305 Patent and Defendants' Accused Product. The designs are so similar as to be nearly identical such that an ordinary observer, giving such attention as a purchaser usually gives, would be so deceived by the substantial

1 similarity between the designs to be induced to purchase Defendants' Accused Product
2 believing them to be substantially the same as the design protected by the '305 Patent.

3 19. At least as early as November 29, 2021, Defendants have had actual
4 knowledge of the '305 Patent and of their infringement thereof through written notice. A
5 copy of the notice is attached as Exhibit C and is incorporated herein by reference in its
6 entirety.

7 20. Defendants responded to CBB's written notice on January 24, 2022, and
8 advised it had ceased offering to sell and selling the Accused Product.

9 21. However, CBB discovered this was not true. CBB was still able to buy and
10 obtained Accused Products from Defendants in late January 2022 and advised Defendants
11 as such on June 28, 2022. A copy of the invoice reflecting this willful and deliberate sale is
12 attached as Exhibit D and CBB's follow-up letter is attached as Exhibit E, and they are
13 incorporated herein by reference in their entirety.

14 22. Moreover, to make matters worse, CBB was contacted in May 2022 by a
15 Dizpot employee for a quote or price list to purchase large distributor level quantities of
16 CBB's QUBE® jar. Specifically, Dizpot requested "container" distributor pricing, which
17 means pricing for bulk quantities of approximately 225,000 QUBE® jars per "container."
18 CBB's distributor pricing for "container" quantities is such that if Dizpot bought one (1)
19 "container," that would cost well over \$100,000.

20 23. Accordingly, using CBB's "container" distributor pricing and Dizpot's mark-
21 up in its sales pricing reflected for its Accused Product in Exhibit D, Dizpot's potential profit
22 per "container" could be upwards of \$30,000 or more. Treble damages, if awarded, could
23 thus be upwards of \$90,000 for each "container" of Accused Product sold.

24 24. In light of the above, Defendants indisputably had actual knowledge of the
25 '305 Patent, and yet continued their making and use of the Accused Product that infringes
26 the '305 Patent. Indeed, it is highly likely that Dizpot has sold the Accused Product in
27 "container" level quantities and has enjoyed profits well into the six figures and potentially
28 beyond.

1 25. Defendants did not regularize its activities when given many chances to do so
2 over the last months, and Defendants' infringement of the '305 Patent has been and continues
3 to be willful and intentional and with full knowledge of the existence and validity of the '305
4 Patent. The willful and intentional nature of Defendants' infringement entitles CBB to an
5 award of treble damages pursuant to 35 U.S.C. § 284, Defendants' profits under 35 U.S.C. §
6 289, and to an award of its attorney's fees pursuant to 35 U.S.C. § 285.

7 **IV. FIRST CLAIM FOR RELIEF**

8 **(Infringement of U.S. Patent No. D901,305, 35 U.S.C. § 271(a))**

9 26. CBB incorporates paragraphs 1 through 25 as though fully set forth herein.

10 27. By importing, using, offering for sale, and selling its jar in the United States
11 that infringes the '305 Patent, without authorization or license from CBB, Defendants have
12 been and are currently in violation of 35 U.S.C. § 271(a).

13 28. The Accused Product's design is nearly identical and substantially similar to
14 the '305 Patent's design such that an ordinary observer would be deceived into purchasing
15 the Accused Product, believing the Accused Product to be the same design protected by the
16 '305 Patent.

17 29. Due to Defendants' infringement of the '305 Patent, CBB is entitled to recover
18 from Defendants damages adequate to compensate for the infringement in an amount subject
19 to proof at trial, but in no event less than a reasonable royalty, together with interest and
20 costs under 35 U.S.C. § 284.

21 30. Additionally, CBB is entitled to recover Defendants' total profits from the sale
22 of its Accused Product, pursuant to 35 U.S.C. § 289.

23 31. Further, Defendants had pre-suit knowledge of CBB's rights in the '305 Patent
24 and have intentionally copied said design for their own products in an effort to pass them off
25 as if they originated, are associated with, are affiliated with, are authorized by, and/or are
26 approved by CBB. Accordingly, Defendants' infringement of the '305 Patent has been and
27 continues to be willful and intentional and with full knowledge of the existence and validity
28 thereof.

1 32. Due to Defendants' infringement of the '305 Patent, CBB has suffered, is
2 suffering, and will continue to suffer irreparable injury and damage for which CBB has no
3 adequate remedy at law. CBB is therefore entitled to a permanent injunction, pursuant to 35
4 U.S.C. § 283, against Defendants' further infringing conduct.

5 33. The willful and intentional nature of Defendants' infringement entitles CBB to
6 an award of treble damages pursuant to 35 U.S.C. § 284, Defendants' profits pursuant to 35
7 U.S.C. § 289, and to an award of its attorney's fees pursuant to 35 U.S.C. § 285.

8 **V. PRAYER FOR RELIEF**

9 WHEREFORE, CBB prays that the Court enter an Order for Judgment as follows:

- 10 A. That Defendants have willfully infringed the '305 Patent;
- 11 B. That Defendants, and their respective agents, servants, officers, directors,
12 employees, and all persons acting in concert with them, directly or indirectly, be
13 permanently enjoined from infringing, inducing others to infringe, or contributing to the
14 infringement of the '305 Patent;
- 15 C. That Defendants, and their respective agents, servants, officers, directors,
16 employees, and all persons acting in concert with them, directly or indirectly, be ordered to
17 deliver up to CBB for destruction, or certify destruction of, all products that infringe the '305
18 Patent;
- 19 D. That Defendants account for and pay to CBB damages adequate to compensate
20 CBB for Defendants' unlawful conduct, in an amount to be proven at trial, together with
21 interest and costs as fixed by the Court;
- 22 E. That Dizpot pay to CBB damages to the full extent permitted by law;
- 23 F. That CBB be awarded treble damages under 35 U.S.C. § 284, Defendants'
24 profits under 35 U.S.C. § 289, and its costs and attorneys' fees in accordance with 35 U.S.C.
25 § 285, and any other appropriate statute or on the Court's own power;
- 26 G. Directing and compelling all Defendants, and anyone acting in concert with or
27 participating to:

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- 1. Deliver up for destruction all Accused Products in Defendants' possession, custody or control;
- 2. Notify their customers of this Order for Judgment; and
- 3. File a report with the Court in writing and under oath setting forth in detail the manner and form in which the Defendants have complied with any permanent injunction.

H. That CBB be awarded pre-judgment and post-judgment interest; and

I. That the Court award such other and further preliminary and permanent relief to CBB as the Court deems equitable and appropriate.

VI. JURY DEMAND

CBB hereby demands a jury trial on issues so triable.

DATED: August 19, 2022

Respectfully submitted,
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