

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

**BTL INDUSTRIES, INC.**, a  
Delaware corporation,

**Plaintiff**

v.

**GLOWNAR AESTHETICS LLC**, a  
Florida limited liability company.

**Civil Action No.** \_\_\_\_\_

**Jury Trial Demanded**

**COMPLAINT**

Plaintiff BTL Industries, Inc. (hereinafter “BTL”), by and through its undersigned counsel, files this Complaint against Glownar Aesthetics LLC (hereinafter “Glownar”) and alleges as follows:

**NATURE OF THIS ACTION**

1. This is a civil action by BTL against Glownar for trademark infringement, unfair competition, false designation of origin, false advertising under the Lanham Act, 15 U.S.C. §§ 1114, 1125(a), unlawful and deceptive acts under the N.Y Gen. Bus. L §349, injury to business reputation and dilution under N.Y Gen. Bus. L §360-1, trademark dilution and unfair competition under the common laws of New York, and patent infringement under the patent laws of the United States, 35 U.S.C. § 1 et seq.

2. BTL and its affiliates pioneered the use of high-intensity electromagnetic energy for non-invasive aesthetic muscle toning. BTL launched the popular EMSCULPT aesthetic body-contouring device in the United States in June 2018. EMSCULPT has been cleared by

the U.S. Food and Drug Administration (FDA) for non-invasive toning and strengthening of muscles in the abdomen, buttocks, legs, and arms. BTL and its affiliates have since protected the ground-breaking EMSCULPT device with numerous patents and federally registered trademarks.

3. According to their website, Glownar is a U.S. “professional beauty distributor.” To that end, Glownar offers for sale, and sells, various medical related equipment, including devices advertised as Sculpt XPro devices.

4. As detailed below, Glownar’s actions violate BTL’s federal and common law trademark rights, constitute unfair competition, injury to business reputation and dilution under New York law, and unlawful and deceptive practices under federal, state, and common law.

5. Furthermore, on information and belief, Glownar’s actions violate BTL’s federal patent rights and constitute patent infringement.

6. Glownar’s infringing, misleading, and fraudulent conduct irreparably harmed BTL’s EMSCULPT brand, the goodwill associated with the EMSCULPT brand, and the quality and goodwill of BTL’s EMSCULPT device. Importantly, upon information and belief, the Sculpt XPro devices, which unlike BTL’s EMSCULPT device, are not FDA cleared, may pose serious health and safety risks to the public as the devices are of unknown quality and condition. Customers who bought the Sculpt XPro devices and ultimately the patients treated using those devices were misled into believing they were purchasing and using an FDA-cleared device to their potential health detriment.

7. BTL has filed this action to protect itself and the public against Glownar's unauthorized use of BTL's trademarks and promotion and sale of counterfeit devices that infringe BTL's patent rights.

### **PARTIES**

8. BTL is a privately held corporation organized and existing under the laws of Delaware with a principal place of business at 362 Elm Street, Marlborough, Massachusetts 01752. BTL is the owner or the exclusive U.S. licensee of U.S. Patent Nos. 9,636,519, 10,695,576 and 10,478,634, as well as the owner or exclusive licensee of the trademarks at issue in this instant action.

9. On information and belief, Glownar is a limited liability company organized and existing under the laws of the State of Florida, with a corporate office at 380 Kings Hwy Brooklyn NY, 11223. On information and belief, Glownar has also registered to do business in New York with the New York Secretary of State as a foreign LLC.

### **JURISDICTION AND VENUE**

10. This Court has subject-matter jurisdiction over BTL's claims arising under the Lanham Act, 15 U.S.C. § 1121, and 15 U.S.C. § 1501, BTL's claims arising under the patent laws of the United States, 35 U.S.C. § 1 et seq, pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a)-(b).

11. This Court has supplemental jurisdiction over BTL's claims arising under the laws of New York, pursuant to 28 U.S.C. § 1367(a) because the state-law claims are so related to BTL's federal law claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

12. This Court has personal jurisdiction over Glownar because Glownar has a regular and established place of business in Brooklyn, New York and committed acts of trademark infringement, patent infringement, injury to business reputation and dilution under New York law, and false, misleading, and deceptive advertising under the Lanham Act and New York law.

13. Venue is proper in this District under 28 U.S.C §1400(b) because Glownar has a regular and established place of business in this District and has committed acts of infringement in this District. Venue is also proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events that gave rise to the claims occurred in this District, and Glownar is subject to personal jurisdiction in this District.

### **FACTUAL ALLEGATIONS**

14. BTL specializes in the innovation, development, and implementation of equipment and treatments for non-invasive body contouring. A true and correct copy of BTL's press release entitled "BTL Continues to Make Waves With Its Revolutionary HIFEM® Technology" is attached hereto as Exhibit 1. BTL and its affiliates developed proprietary and patent-protected HIFEM-brand technology that uses high-intensity electromagnetic stimulation to tone and strengthen muscles in targeted areas. BTL applied its proprietary technology to develop a series of new FDA-cleared devices and developed protocols for using the technology for aesthetic therapies.

15. BTL's EMSCULPT device and treatments use high-intensity electromagnetic energy to induce powerful muscle contractions not achievable through voluntary contractions. The EMSCULPT device is currently cleared by the FDA as a non-invasive

treatment for the abdomen, buttocks, arms, calves and thighs. A true and correct copy of BTL's EMSCULPT webpage is attached hereto as Exhibit 2.

16. A representative picture of an EMSCULPT device is shown below:



17. BTL markets and distributes its non-invasive aesthetic body-contouring EMSCULPT device to healthcare professionals, and licenses these healthcare professionals to provide associated treatment services administered via authentic EMSCULPT devices that incorporate its proprietary technology, muscle toning protocols, and applicators in the United States.

18. The aesthetic industry has recognized BTL and its innovations, praising BTL's EMSculpt device as a "pioneer or trailblazer throughout the aesthetic enhancement world," and identifying BTL's EMSculpt device as "unparalleled in the industry." A true and correct copy of the article entitled "How Does EMSculpt Work? Your EMSculpt Questions Answered" by Holden Timeless Beauty is attached hereto as Exhibit 3. The EMSculpt device has been renowned as a "breakthrough in non-invasive body shaping," with The Bend Magazine noting that EMSculpt "is not a different version of an existing device. It's a totally new technology." True and correct copies of the articles "Why is Emsculpt a Breakthrough in Non-Invasive Body Shaping?" by DC Derm Docs and "Emsculpt: A Muscle Builder and a Fat Burner" by The Bend Magazine are attached hereto as Exhibits 4 and 5, respectively.

19. Indeed, commentators have recognized the technology's significant departure from prior body-contouring procedures, comparing EMSculpt to an iPhone or Botox, and describing the EMSculpt device as a "revolutionary advance in non-surgical body contouring." A true and correct copy of the article entitled "EmSculpt Changing the Rules" by Health Life Magazine is attached hereto as Exhibit 6.

### **THE PATENTS-IN-SUIT**

20. As a result of BTL's efforts and technological advances over the prior body-contouring devices, BTL applied for and was awarded U.S. Patents Nos. 9,636,519 ("the '519 patent"), 10,695,576 ("the '576 patent"), and 10,478,634 ("the '634 patent").

21. The '519 patent, entitled "Magnetic Stimulation Methods and Devices for Therapeutic Treatments" was duly and legally issued on May 2, 2017. A true and correct copy of the '519 patent is attached as Exhibit 7.

22. The '519 patent names Jakub Ladman, Zdeněk Hurych, Jiří Mrázek, Ondra Prouza, and Ondrej Pribula as co-inventors.

23. The '519 patent relates to, among other things, a magnetic stimulation device producing a time varying magnetic field for treatment. *See* Exhibit 7, '519 patent, claim 1.

24. As noted above, the inventions claimed in the '519 patent represent an advancement over what was then the existing available body-contouring devices and procedures.

25. The '576 patent, entitled “Aesthetic Method of Biological Structure Treatment by Magnetic Field” was duly and legally issued on June 30, 2020. A true and correct copy of the '576 patent is attached as Exhibit 8

26. The '576 patent names Thomás Schwarz and Ondra Prouza as co-inventors.

27. The '576 patent relates to, among other things, a novel device that uses magnetic and induced electric fields for muscle toning a patient. The claimed devices “produce a time varying magnetic field for patient treatment which has a unique hardware components topology, provide effective treatment protocols and provide a new treatment.” *See* Exhibit 8, '576 patent, col. 3, lines 14-17.

28. As noted above, the inventions claimed in the '576 patent represent an advancement over what was then the existing available body-contouring devices and procedures.

29. The '576 patent has been in full force and effect since its issuance. BTL is the exclusive licensee of the '576 patent and owns the right to seek damages for past, current, and future infringement thereof.

30. The '634 patent, entitled "Aesthetic Method of Biological Structure Treatment by Magnetic Field" was duly and legally issued on Nov. 19, 2019. A true and correct copy of the '576 patent is attached as Exhibit 9.

31. The '634 patent names Thomás Schwarz and Ondra Prouza as co-inventors.

32. The '634 patent relates to, among other things, methods for toning muscles of a patient using time-varying magnetic fields. *See* Exhibit 9, Claim 1.

33. As noted above, the inventions claimed in the '634 patent represent an advancement over what was then the existing available body-contouring devices and procedures.

34. The '634 patent has been in full force and effect since its issuance. BTL is the exclusive licensee of the '634 patent and owns the right to seek damages for past, current, and future infringement thereof.

35. BTL's EMSCULPT device has also received numerous awards and accolades from well-respected media outlets and aesthetic industry organizations. For example, RealSelf identified BTL's EMSCULPT device as one of the 2019 and 2020 "Most Worth It Procedures." True and correct copies of RealSelf, Inc.'s 2019 and 2020 rankings are attached hereto as Exhibits 10 and 11, respectively. Harper's Bazaar named EMSCULPT the "Best Body-Firming Treatment" in its 2020 Anti-Aging Awards. A true and correct copy of the article entitled "BAZAAR's 2020 Anti-Aging Awards" is attached hereto as Exhibit 12. BTL's EMSCULPT device earned the American Health & Beauty 2018 Readers' Choice Award for "Most Innovative device." A true and correct copy of the article entitled "Emsculpt Awarded 'Most Innovative device'" by American Health & Beauty is attached hereto as Exhibit 13. And NewBeauty named BTL's EMSCULPT device one of the "Best



Innovations” in its NewBeauty 2019 Awards. A true and correct copy of the article entitled “NewBeauty 2019 Award Winners: Best Innovations” by NewBeauty Editors is attached hereto as Exhibit 14.

36. BTL’s market success and superior performance are by-products of technological innovations. BTL continues to implement these innovations today, for example, by continuing to obtain additional FDA indications for use of its non-invasive aesthetic body-contouring devices.

### **BTL’S TRADEMARKS**

37. BTL uses and licenses registered and unregistered trademarks and trade dress to market its aesthetic equipment and treatments in the U.S. (the “BTL Trademarks”), including the following federally registered marks:

<b>Reg. No.</b>	<b>Mark</b>	<b>Reg. Date</b>	<b>First Use in Commerce or Priority Date</b>	<b>Goods/Services</b>
5,572,801	EMSCULPT	Oct. 2, 2018	Sept. 29, 2017	Class 10: Medical apparatus and instruments for the treatment of cellulite; medical apparatus and instruments for body toning and body shaping; medical apparatus and instruments for the removal of fat, circumference reduction, tightening of skin, reduction of wrinkles, reduction of scars, reduction of stretch marks, rejuvenation of skin, and treatment of pigmentation spots; above medical apparatuses with exception for the treatment of the nasopharynx including inhalers and nasal irrigators; massage apparatus; medical apparatus and instruments for aesthetic skin treatment procedures; medical apparatus generating electromagnetic, magnetic, electrical, mechanical or thermal energy for use in skin treatment procedures; medical apparatus particularly apparatus for pain management, elimination of muscle spasms; gynaecological and urological apparatus and instruments, namely, for genital rejuvenation, treatment

				sexual dysfunction, gynecological treatment and pelvic floor treatment
6,069,279	EMSCULPT	Jun. 2, 2020	Sept. 29, 2017	Class 44: medical services; gynecology services; medical equipment rental; cosmetic and plastic surgery; beauty salons; liposuction services; removal of body cellulite

38. The BTL Trademarks have been used exclusively and continuously by BTL and have never been abandoned. The above U.S. registrations are valid and subsisting in full force and effect. True and correct “status” copies of these registrations, obtained from the Trademark Status Document Retrieval (“TSDR”) database of the United States Patent and Trademark Office, are attached hereto as Exhibit 15. These registrations constitute *prima facie* evidence of their validity and of BTL’s exclusive right to use the trademarks pursuant to 15 U.S.C. § 1057(b).

39. The BTL Trademarks perform an important source-identifying function for BTL’s aesthetic body-contouring devices and associated treatment services, signifying to purchasers that the devices come from BTL, and that the services are rendered by BTL devices and administered by service providers trained and authorized by BTL. The BTL Trademarks are inherently distinctive, and they have acquired considerable brand loyalty through BTL’s sales and promotion and through direct word-of-mouth promotion by consumers. In addition, BTL has expended significant time, money, and resources in developing, marketing, advertising, promoting, and selling its products and services under the BTL Trademarks in the United States. The market reputation and consumer goodwill associated with the BTL Trademarks are of incalculable and inestimable value to BTL.

### **GLOWNAR’S UNLAWFUL CONDUCT**

40. Upon information and belief, Glownar promoted on its website and through social media posts on Instagram and Facebook directly to customers a body-toning device called

Sculpt XPro that uses electrical muscle stimulation (EMS) to strengthen muscles and break down fat. True and correct copie Glownar’s website offering for sale the Sculpt XPro device is attached as Exhibits 16.

41. Upon information and belief, on several occasions, Glownar has promoted its Sculpt XPro device with the hashtag #emsculpt in social media posts on Instragram and Facebook.

42. Upon information and belief, Glownar is aware, and indeed advertises, that the Sculpt XPro uses non-invasive electromagnetic technology to reduce fat and stimulate muscle.

43. Upon information and belief, Glownar used its website, as well as through social media posts via Instragram and Facebook, to direct potential and actual customers to its New York office for training on and purchasing the Sculpt XPro device.

44. Furthermore, upon information and belief, Glownar intended for and thus induced its customers to use the Sculpt XPro devices to treat patients.

45. Upon information and belief, Glownar is aware of BTL’s trademarks and patents.

### **BTL HAS BEEN HARMED BY GLOWNAR’S CONDUCT**

46. Glownar’s use of BTL’s trademarks in connection with promoting infringing devices has injured and, if done again, will continue to irreparably harm BTL’s business and goodwill associated with its brand, as well as BTL’s reputation for providing high-quality and safe body-contouring aesthetic devices, which are subject to strict quality control standards.

47. Glownar’s actions are likely to and/or have caused confusion, mistake, or deception as to the source and origin of the devices offered for sale and sold by Glownar.

Upon information and belief, Glownar was aware that using the hashtag #emsculpt would cause or likely would cause confusion as to the relationship between the Sculpt XPro and BTL's EMSCULPT device. Glownar's actions have also diverted profits from BTL.

48. Glownar's offer for sale, sale, and use of the Sculpt XPro device also infringe BTL's patent rights. Upon information and belief, the Sculpt XPro device uses BTL's patented technology to operate and function. Upon information and belief, Glownar induced others to use the Sculpt XPro device in a manner that would infringe BTL's patent rights.

### **FIRST CLAIM FOR RELIEF**

#### **(Trademark Infringement under 15 U.S.C. § 1114)**

49. BTL realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

50. BTL owns exclusive rights to enforce the BTL trademarks in the U.S. The United States trademark registrations for the BTL trademarks are in full force and effect. Upon information and belief, Glownar had knowledge of BTL's rights in its BTL trademarks and willfully infringed those trademarks. Glownar's willful, intentional, and unauthorized use of the BTL Trademarks likely caused confusion, mistake, and deception as to the origin and quality of the Glownar Sculpt XPro device among the general public.

51. Glownar's actions constitute willful trademark infringement under Section 32 of the Lanham Act, 15 U.S.C. § 1114.

52. The injuries and damages BTL sustained have been directly and proximately caused by Glownar's wrongful promotion, marketing, offering for sale, and sale of the Sculpt XPro device that infringe BTL's brand.

53. As a result of Glownar's infringement, BTL has been damaged. BTL is entitled to recover for damages sustained as a result of Glownar's wrongful acts in an amount yet to be determined, plus the cost of this action.

## **SECOND CLAIM FOR RELIEF**

### **(False Advertising under 15 U.S.C. § 1125)**

54. BTL realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

55. Glownar's promotion, marketing, offering for sale, and sale of the Sculpt XPro device using the BTL Trademarks constitute false advertising and created a likelihood and/or caused actual confusion, mistake, and deception among the general public as to the affiliation, connection, or association between the Sculpt XPro device and BTL.

56. By using the BTL Trademarks in its promotion, marketing, offering for sale, and sale of the Sculpt XPro device, Glownar engaged in false advertising and created the false impression that the Sculpt XPro device are genuine BTL devices or are otherwise associated with BTL.

57. Glownar's actions constitute a willful violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125.

58. Glownar's false advertising practices constitute misleading descriptions and misrepresentations of fact in commerce that, in commercial advertising and promotion, mispresent the nature, characteristics, and quality of the Sculpt XPro devices in violation of the Lanham Act, 15 U.S.C. § 1125.

59. The injuries and damages BTL sustained have been directly and proximately caused by Glownar's wrongful promotion, marketing, offering for sale, and sale of the Sculpt XPro devices that infringe BTL's brand.

60. As a result of Glownar's infringement, BTL has been damaged. BTL is entitled to recover for damages sustained as a result of Glownar's wrongful acts in an amount yet to be determined, plus the cost of this action.

### **THIRD CLAIM FOR RELIEF**

#### **(Unlawful and Deceptive Acts Under N.Y. Gen. Bus. L §349)**

61. BTL realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

62. This claim arises under New York General Business Law §349.

63. Glownar engaged in unlawful and deceptive acts through its misrepresentation to consumers that the Sculpt XPro devices were related to actual BTL EMSCULPT products by using the hashtag #emsculpt.

64. Glownar's intentional acts constitute unlawful and deceptive acts under New York General Business Law §349.

65. The injuries and damages BTL sustained have been directly and proximately caused by Glownar's wrongful promotion, marketing, offering for sale, and sale of the Sculpt XPro devices.

66. As a result of Glownar's actions, BTL has been damaged. BTL is entitled to recover for damages sustained as a result of Glownar's wrongful acts in an amount yet to be determined, plus the cost of this action.

### **FOURTH CLAIM FOR RELIEF**

**(Injury to Business Reputation and Dilution under N.Y. Gen. Bus. L §360-l)**

67. BTL realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

68. This claim arises under New York General Business Law §360-l.

69. Glownar engaged in acts that resulted in injury to BTL's business reputation and dilution of the EMSCULPT trademarks through its deliberate use of BTL's Trademarks on or in connection with the promotion, offering for sale, and sale of the Sculpt XPro device, specifically using the hashtag #emsculpt repeatedly.

70. Glownar's intentional acts constitute an injury to business reputation and dilution under New York General Business Law §360-L.

71. The injuries and damages BTL sustained have been directly and proximately caused by Glownar's wrongful promotion, marketing, offering for sale, and sale of the Sculpt XPro devices.

72. As a result of Glownar's actions, BTL has been damaged. BTL is entitled to recover for damages sustained as a result of Glownar's wrongful acts in an amount yet to be determined, plus the cost of this action.

**FIFTH CLAIM FOR RELIEF**

**(Common Law Trademark Infringement and Unfair Competition)**

73. BTL realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

74. This claim arises under the common law of the State of New York.

75. Glownar engaged in unfair competition through its reliance and exploitation of consumer mistake and confusion, and its deliberate efforts to exploit the goodwill of BTL's Trademarks in connection with the marketing and sale of the Sculpt XPro devices.

76. Glownar's intentional acts constitute trademark infringement and unfair competition in violation of New York common law.

77. The injuries and damages BTL sustained have been directly and proximately caused by Glownar's wrongful promotion, marketing, offering for sale, and sale of the Sculpt XPro devices that infringe BTL's brand.

78. As a result of Glownar's actions, BTL has been damaged. BTL is entitled to recover for damages sustained as a result of Glownar's wrongful acts in an amount yet to be determined, plus the cost of this action.

**SIXTH CLAIM FOR RELIEF**  
**(Infringement of U.S. Patent No. 9,636,519)**

79. BTL realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

80. BTL is informed and believes, and on this basis alleges, that Glownar has committed and may commit in the future acts of direct infringement of the '519 patent by making, using, selling, offering for sale, and/or importing into the United States the Sculpt XPro devices.

81. BTL is informed and believes, and on this basis alleges, that Glownar has and currently is intentionally aiding and encouraging third parties (including Glownar customers and end users) to use the Sculpt XPro devices in the United States in a manner that it knows would infringe or has a high probability of infringing the '519 patent, with the specific intent that those using Sculpt XPro devices infringe the '519 patent.

82. Glownar's use of #emsculpt in its social media posts demonstrates that it was aware of BTL's EMSCULPT device. BTL lists the '519 patent at



<https://www.btl.net.com/patents> as covering the Emsculpt device. Accordingly, Glownar knew or should have known about the '519 patent.

83. BTL is informed and believes, and on this basis alleges, that Glownar has intentionally aided and encouraged third parties (including Glownar's supplier) to import into the United States the Sculpt XPro devices, having known that the acts it was causing would infringe or have a high probability of infringing the '519 patent and with the specific intent that those performing the acts infringe the '519 patent.

84. As a result of Glownar's infringement of the '519 patent, BTL has been damaged. BTL is entitled to recover for damages sustained as a result of Glownar's wrongful acts in an amount yet to be determined, plus the cost of this action.

### **SEVENTH CLAIM FOR RELIEF**

#### **(Infringement of U.S. Patent No. 10,695,576)**

85. BTL realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

86. BTL is informed and believes, and on this basis alleges, that Glownar has committed and may commit in the future acts of direct infringement of the '576 patent by making, using, selling, offering for sale, and/or importing into the United States Sculpt XPro devices.

87. BTL is informed and believes, and on this basis alleges, that Glownar has and currently is intentionally aiding and encouraging third parties (including Glownar customers and end users) to use Sculpt XPro devices in the United States in a manner that it knows would infringe or has a high probability of infringing the '576 patent, with the specific intent that those using Sculpt XPro devices infringe the '576 patent.

88. Glownar's use of #emsculpt in its social media posts demonstrates that it was aware of BTL's EMSCULPT device. BTL lists the '576 patent at <https://www.btl.net.com/patents> as covering the Emsculpt device. Accordingly, Glownar knew or should have known about the '576 patent.

89. BTL is informed and believes, and on this basis alleges, that Glownar has intentionally aided and encouraged third parties (including Glownar's supplier) to import into the United States Sculpt XPro devices, having known that the acts it was causing would infringe or have a high probability of infringing the '576 patent and with the specific intent that those performing the acts infringe the '576 patent.

90. As a result of Glownar's infringement of the '576 patent, BTL has been damaged. BTL is entitled to recover for damages sustained as a result of Glownar's wrongful acts in an amount yet to be determined, plus the cost of this action.

## **EIGHT CLAIM FOR RELIEF**

### **(Infringement of U.S. Patent No. 10,478,634)**

91. BTL realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

92. BTL is informed and believes, and on this basis alleges, that Glownar has committed and may commit in the future acts of induced infringement of the '634 patent by inducing others to use in the United States the Sculpt XPro devices.

93. BTL is informed and believes, and on this basis alleges, that Glownar has and currently is intentionally aiding and encouraging third parties (including Glownar customers and end users) to use the Sculpt XPro devices in the United States in a manner that it knows

would infringe or has a high probably of infringing the '634 patent, with the specific intent that those using the Sculpt XPro devices infringe the '634 patent.

94. Glownar's use of #emsculpt in its social media posts demonstrates that it was aware of BTL's EMSCULPT device. BTL lists the '634 patent at <https://www.btl.net.com/patents> as covering the Emsculpt device. Accordingly, Glownar knew or should have known that its marketing and sale of the Sculpt XPro indirectly infringes and encourages others to directly infringe the '634 patent.

95. BTL is informed and believes, and on this basis alleges, that Glownar has used its Sculpt XPro device to treat the abdomen of one patient and the buttocks of another patient in a manner that directly infringes the '634 patent.

96. As a result of Glownar's infringement of the '634 patent, BTL has been damaged. BTL is entitled to recover for damages sustained as a result of Glownar's wrongful acts in an amount yet to be determined, plus the cost of this action.

### **PRAYER FOR RELIEF**

WHEREFORE, BTL requests that this Court enter judgement against Glownar as follows:

- A. That Glownar has violated the Lanham Act, 15 U.S.C. § 1114 by committing acts of trademark infringement;
- B. That Glownar has violated the Lanham Act, 15 U.S.C. § 1125 by committing acts of federal unfair competition, false designation of origin, and false advertising;

- C. That Glownar has violated the New York Gen. Bus. L §349 by committing unlawful and deceptive acts;
- D. That Glownar has violated the New York Gen. Bus. L §360-L by committing acts that injured BTL's business reputation and diluted BTL's marks;
- E. That Glownar has violated New York common law;
- F. That Glownar pay damages to BTL adequate to compensate BTL for Glownar's unlaw, unfair, and deceptive acts;
- G. That Glownar is liable for treble damages for its willful acts;
- H. That Glownar has infringed the '519 patent;
- I. That Glownar pay damages adequate to compensate BTL for Glownar's infringement of the '519 patent, together with interest and costs under 35 U.S.C. § 284;
- J. That Glownar has infringed the '576 patent;
- K. That Glownar pay damages adequate to compensate BTL for Glownar's infringement of the '576 patent, together with interest and costs under 35 U.S.C. § 284;
- L. That Glownar has infringed the '634 patent;
- M. That Glownar pay damages adequate to compensate BTL for Glownar's infringement of the '634 patent, together with interest and costs under 35 U.S.C. § 284;
- N. That Glownar be ordered to pay pre-judgment and post-judgement interest on the damages assessed;

- O. That Glownar's infringement is willful and that the damages awarded to BTL should be enhanced up to three times the actual damages awarded;
- P. That this is an exceptional case under 35 U.S.C. § 284 and that Glownar pay BTL's attorney's fees and costs in this action; and
- Q. That BTL be awarded any such other and further relief, including equitable relief, as this Court deems just and proper.

### **JURY DEMAND**

BTL hereby demands a trial by jury on all issues so triable.

Dated: August 22, 2022

The Law Office of Rami Bardenstein, LLC

By /s/ Rami Bardenstein

Rami Bardenstein

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