

1 Byron E. Ma (SBN 299706)
2 John Karl Buche (SBN 239477)
3 BUCHE & ASSOCIATES, P.C.
4 2029 Century Park E., Suite 400N
5 Los Angeles, California 90067
6 Telephone: (858) 459-9111
7 Fax: (858) 430-2426
8 bma@buchelaw.com
9 jbuche@buchelaw.com

10 Attorneys for Plaintiff
11 With-U E-Commerce (Shanghai) Co., Ltd.

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

14 WITH-U E-COMMERCE (SHANGHAI)) Civil Case No.: 8:22-cv-1295
15 CO., LTD., a China limited corporation,)

16 Plaintiff,)

17 v.)

18 GLOBAL SHADE CORPORATION, a)
19 California corporation; WAL-MART.COM)
20 USA, LLC, a California Limited Liability)
21 Company; WALMART FULFILLMENT)
22 SERVICES, LLC, a Delaware Corporation;)
23 JIAN HE, an individual; and, DOES 1-10.)

24 Defendants.)

25 **COMPLAINT FOR:**

26 **(I) PATENT INFRINGEMENT OF**
27 **U.S. PATENT NO. 10,669,738; AND,**

28 **(II) PATENT INFRINGEMENT OF**
U.S. PATENT NO. D926,910

JURY TRIAL DEMANDED

Plaintiff With-U E-Commerce (Shanghai) Co., Ltd. (“With-U” or “Plaintiff”) hereby files this Complaint against: Defendant Global Shade Corporation (“Global Shade”); Defendant Jian He (“Jian”); Defendant Wal-Mart.Com USA, LLC (“Wal-Mart.Com”); Defendant WalMart Fulfillment Services, LLC (“WalMart Fulfillment”); and DOES 1-10 (collectively “Defendants”). Plaintiff alleges the follows:

THE PARTIES

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2 1. Plaintiff With-U E-Commerce (Shanghai) Co., Ltd. is a China limited
3 corporation, having an address at RM 214B, No. 358 Building, No. 3663 N. Zhongshan Rd.,
4 Putuo District, Shanghai, China. Plaintiff is also the owner of U.S. Pat. No. 10,669,738
5 (attached herein as Exhibit A). Plaintiff is additionally the owner of U.S. Pat. No. D926,910
6 (attached herein as Exhibit B).

7 2. Plaintiff is informed and thereon alleges that Defendant Global Shade
8 Corporation is a corporation organized and existing under the laws of the state of California
9 with a principal place of business at 9808 Firestone Blvd., Downey, California 90241. On
10 information and belief, service of process is proper on Global Shade on its registered agent
11 for service of process, Andrew Paul Brassard at 9808 Firestone Blvd., Downey, California
12 90241.

13 3. Plaintiff is informed and thereon alleges that Defendant Jian He is an
14 individual residing in the state of California and operating a business at 2500 S Fairview St.,
15 Unit P, Santa Ana, California 92704. Service of process is proper on Jian He at the same
16 address or wherever he may be found.

17 4. Plaintiff is informed and thereon alleges that Defendant Wal-Mart.Com USA,
18 LLC is a limited liability company organized and existing under the laws of the state of
19 California with a principal place of business at 850 Cherry Ave., San Bruno, CA 94066.
20 Service of process is proper on Wal-Mart.Com USA, LLC on its registered agent for service
21 of process at 1505 Corporation, 112, C T Corporation System, 330 N. Brand Blvd., Ste 700,
22 Glendale, CA 91203.

23 5. Plaintiff is informed and thereon alleges that Defendant WalMart Fulfillment
24 Services, LLC is a limited liability company organized and existing under the laws of the
25 state of Delaware with a principal place of business at 702 SW 8th St., Bentonville, AR
26 72716. Service of process is proper on WalMart Fulfillment Services, LLC on its registered
27 agent for service of process at 1505 Corporation, 112, C T Corporation System, 330 N.
28 Brand Blvd. Ste 700, Glendale, CA 91203.



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11 With-U has been selling the Crown Shades Canopy throughout the United States on
12 www.crown-shades.com and through various retail stores throughout the United States. The
13 patented Crown Shades Canopy is a sought-after product because it allows a single user to
14 simply pop-up and takedown (collapse) the canopy by respectively lifting or lowering a
15 central hub in the canopy's ceiling:



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25 11. On June 2, 2020, the PTO issued U.S. Pat. No. 10,669,738 (“the ‘738 Patent”),
26 entitled *Collapsible Canopy Frame Having a Central Lock*, to With-U E-Commerce
27 (Shanghai) Co., Ltd. See Ex. A.

28 12. On Aug. 3, 2021, the PTO issued U.S. Pat. No. D926,910 (“the ‘910 Patent”),

1 entitled *Canopy Center Top Cap and Pole Combination*, to With-U E-Commerce (Shanghai)
2 Co., Ltd. *See* Ex. B. The ‘738 Patent and the ‘910 Patent are collectively referred to herein
3 as the Asserted Patents.

4 13. Shengyong (“Simon”) Yang and Jing Bian are the inventors of the Asserted
5 Patents and they properly executed an assignment of the Asserted Patents to With-U, which
6 was recorded with the United States Patent Office. Accordingly, With-U is the owner of the
7 Asserted Patents with the entire right, title, and interest in the Asserted Patents.

8 14. Upon information and belief, Global Shade owned and operated Eagle Peak
9 Canopy (“Eagle Peak”) and its website www.eaglepeak.com². Global Shade made, used,
10 sold, offered for sale, and imported Eagle Peak pop-up canopies that infringe the ‘738 Patent
11 that include center top cap and pole combinations that infringe the ‘910 Patent. Specifically,
12 Global Shade makes, uses, sells, offers for sale, and imports the following Accused Products:
13 EAGLE PEAK One Person Setup 10’x10’ Straight Leg Pop Up Canopy (attached herein as
14 Exhibit D is a printout of the EAGLE PEAK One Person Setup 10’x10’ Straight Leg Pop Up
15 Canopy offered for sale) (attached herein as Exhibit E is an exemplary instruction manual for
16 the EAGLE PEAK 10’x10’ Straight Leg Pop Up Canopy); EAGLE PEAK One Person setup
17 10’x10’ Slant Leg Pop Up Canopy; EAGLE PEAK 13’x13’ One Person Setup Canopy Tent
18 w/ Automatic Extending Eaves; EAGLE PEAK 8’6’ Portable Walk-in Pop-up Greenhouse
19 Canopy Easy Fast Single Person Setup; and, EAGLE PEAK Day Tripper 8’x8’ Slant Leg
20 Lightweight Compact Portable Canopy; EAGLE PEAK Easy Setup 10’x10’ Straight Leg
21 Pop Up Canopy; EAGLE PEAK Easy setup 10’x10’ Slant Leg Pop Up Canopy; EAGLE
22 PEAK 13’x13’ Easy Setup Straight Leg Canopy; EAGLE PEAK 8’6’ Portable Walk-in Pop-
23 up Greenhouse Canopy Easy Fast Single Person Setup; and, EAGLE PEAK 8’x8’ instant
24 (collectively referred to herein as “Accused Products”). Global Shade also sold the Accused
25 Products on its website and through Amazon® (www.amazon.com).

26 _____
27 ² Global Shade Corporation is identified as the owner of Trademark App. Ser. No. 88/266,553
28 (filed Jan. 18, 2019) for Eagle Peak in connection with canopies. Eagle Peak’s warehouse
address on its website is 2500 S Fairview St., Unit P, Santa Ana, California 92704, which is
the same address as the principal place of business and registered agent for Global Shade.

1 15. Referring to one Accused Product in particular, Global Shade sold an “EAGLE
2 PEAK Easy Setup 10’ x 10’ Straight Leg Pop-Up Canopy” (shown below):



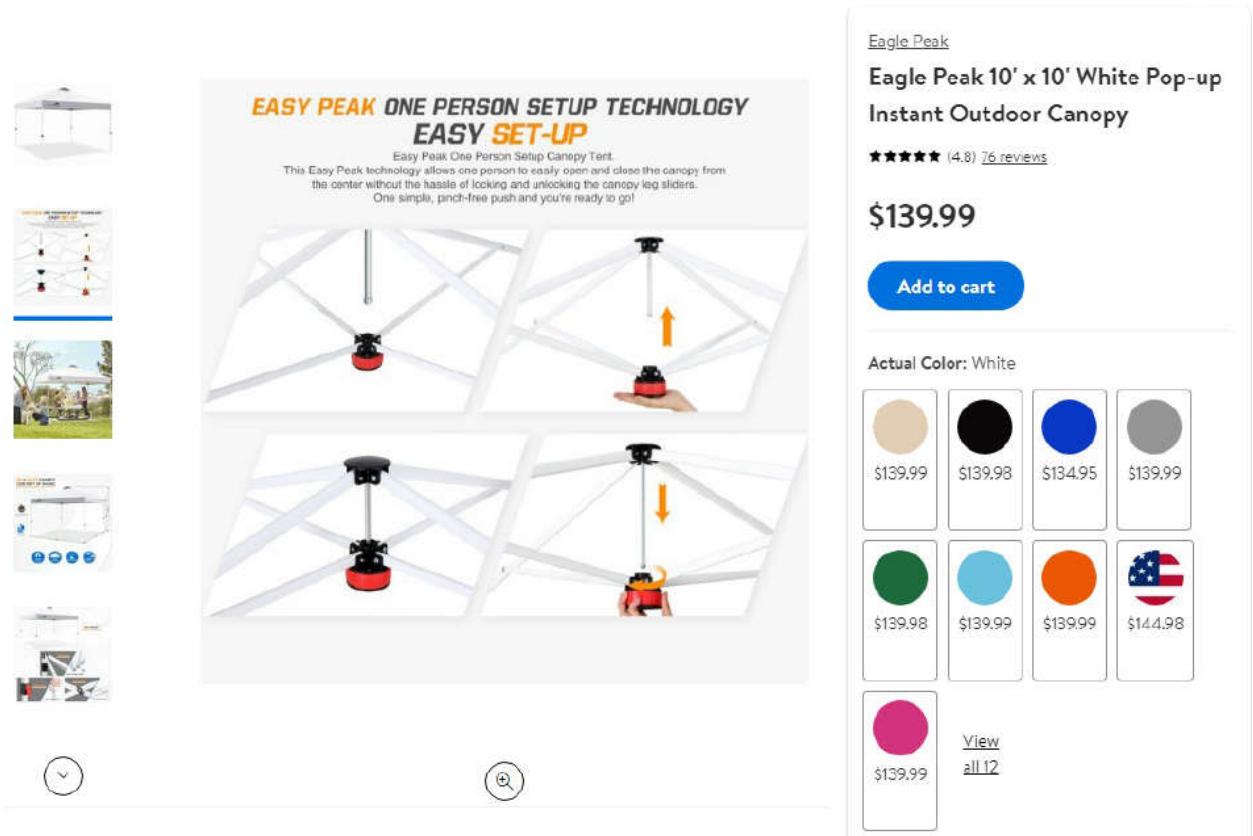
24 See Ex. C, pg. 2. As seen in the Eagle Peak marketing materials, the Accused Products tout
25 an “Easy Peak One Person Setup Technology” and “Easy Setup”(shown below):



21 See Ex. D, pg. 2. Global Shade’s “Easy Peak One Person Setup Technology” discloses a
22 central pole that engages or disengages with a central bottom hub, which “allows one person
23 to easily open and close the canopy from the center without the hassle of locking and
24 unlocking the canopy leg sliders. One simple, pinch-free push and you’re ready to go.” *Id.*

25 16. On information and belief, Wal-Mart.Com sells the same pop-up canopy
26 products with the same “Eagle Peak One Person Setup Technology”, albeit Wal-Mart.Com
27 has different product titles (attached herein as Exhibit E is a printout of an Accused Product
28 being offered for sale on Walmart.com). See Ex. E, pg. 2. On information and belief, that

1 the product titled by Wal-Mart.Com as “Eagle Peak 10’ x 10’ White Pop-up Instant Outdoor
2 Canopy” is the same as the above identified Accused Product:



17 *Id.* On information and belief, products sold by Wal-Mart.Com are delivered to customers
18 (who subsequently infringe the patent through use of the product) in this district by WalMart
19 Fulfillment. *Id.*

20 17. On information and belief, Defendant Jian He uses or used the Accused
21 Products, and was aware of Plaintiff’s intellectual property and actively engaged,
22 encouraged, and willfully participated with infringement of Plaintiff’s intellectual property.

FIRST CAUSE OF ACTION


(Patent Infringement of U.S. Pat. No. 10,669,738)

25 18. Paragraphs 1-17 are hereby incorporated by reference.

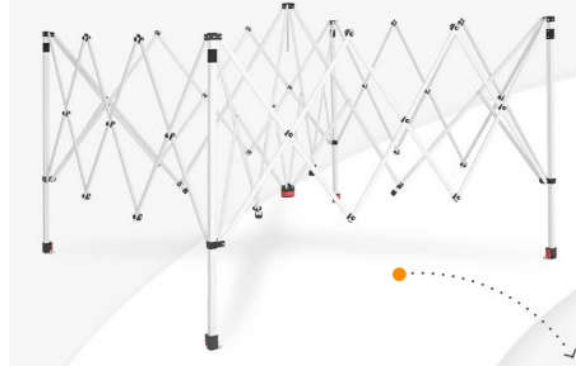
26 19. The ‘738 patent was duly and legally issued on Jun. 2, 2020. The ‘738 Patent
27 was assigned and issued to Plaintiff With-U E-Commerce (Shanghai) Co., Ltd. and it has full
28 rights to sue and recover damages and other relief for infringement of the ‘738 Patent.

20. Pursuant to 35 U.S.C. §271, on information and belief, Defendants Global Shade and Wal-Mart.Com have directly or indirectly infringed at least Claim 1 of the '738 Patent, literally and/or under the doctrine of equivalents by and through making, using, selling and/or importing the Accused Products. Also, Global Shade and Wal-Mart.Com instruct their customers to directly infringe the patent. WalMart Fulfillment delivers the products, including instruction manuals, to customers who directly infringe the products through use. On information and belief, Defendant He is believed to have used and instructed others to use the Accused Products.

21. The Accused Products infringe each and every element of at least Claim 1 of the '738 Patent as follows:

<u>Claim 1</u>	<u>Basis of infringement</u>
<p>A collapsible canopy frame comprising:</p>	<p>Global Shade admits or admitted on its website that the Accused Products are a collapsible canopy:</p>  <p><i>See Ex. C.</i></p>
<p>A. at least three supporting legs,</p>	<p>Global Shade admits or admitted on its website that the canopy has three legs. <i>See Exhibits C & E.</i></p>
<p>B. a plurality of outer retractable units connected between every two adjacent supporting legs, each said outer retractable unit</p>	<p>Global Shade admits on its website that the canopy has outer retractable units connected between every two adjacent supporting legs, each said outer retractable unit comprises a plurality of hinged X-Shaped rod members, each X-shaped rod member comprises a first eave pipe and a second eave pipe hinged to one another:</p>

1 comprises a
2 plurality of
3 hinged X-Shaped
4 rod members,
5 each X-shaped
6 rod member
7 comprises a first
8 eave pipe and a
9 second eave pipe
10 hinged to one
11 another and



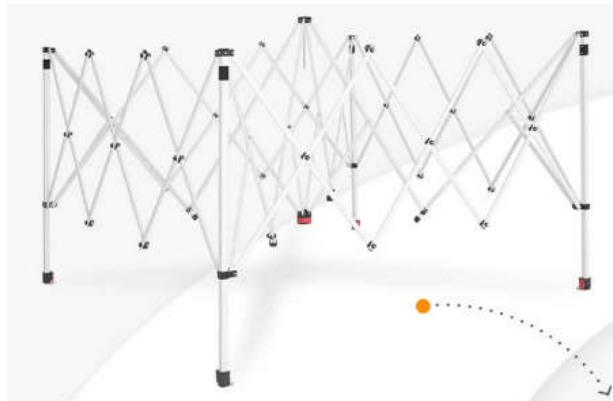
See Ex. C.

On information and belief, the below photograph shows a frame that indicates the X-shaped members of the accused product's frame are pipes:








19 C. a plurality of
20 inner retractable
21 units comprising
22 connected to each
23 supporting leg,
24 each inner
25 retractable unit
26 connected to a
27 supporting leg,
28 wherein said
outer retractable
units and said
inner retractable
units form a roof
frame for said

Global Shade admits on its website that the canopy has inner retractable units connected to each supporting leg to form a roof with the external retractable units:



See Ex. C.

<p>1 collapsible 2 canopy, and</p>	
<p>3 D. a center lock, 4 wherein said 5 plurality of inner 6 retractable units 7 are connected 8 through said 9 center lock, 10</p>	<p>Global Shade admits on its website that the canopy has inner retractable units connected to each supporting leg to form a roof with the external retractable units:</p>  <p>See Ex. C.</p>
<p>11 said central lock 12 comprising:</p>	
<p>13 i. a center top 14 cap, 15 16 17 18 19</p>	<p>Global Shade admits on its website that the Accused Products have a center lock comprising a center top cap (circled in red below):</p>  <p>See Ex. C.</p>
<p>20 ii. a center bottom 21 cap; 22 23 24 25 26 27 28</p>	<p>Global Shade admits on its website that the Accused Products have a center bottom cap (circled in red below):</p>  <p>See Ex. C.</p>

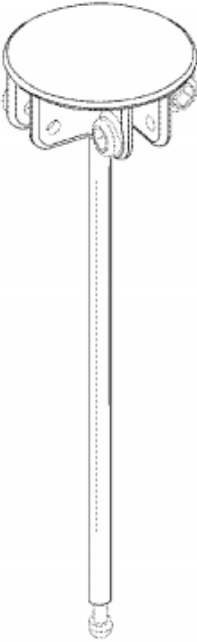

<p>1</p> <p>2 iii. a center pole positioned</p> <p>3 between said</p> <p>4 center bottom</p> <p>5 cap, wherein said</p> <p>6 central lock is</p> <p>7 locked when said</p> <p>8 center pole is</p> <p>9 connected to both</p> <p>10 said center top</p> <p>11 cap and said</p> <p>12 center bottom</p> <p>13 cap, and</p> <p>14 disconnection</p> <p>15 between said</p> <p>16 center bottom cap</p> <p>17 and said center</p> <p>18 pole, wherein</p> <p>19 said central lock</p> <p>20 locks said</p> <p>21 collapsible</p> <p>22 canopy frame in</p> <p>23 an unfolded state</p> <p>24 when said central</p> <p>25 lock is locked and</p> <p>26 permits said</p> <p>27 collapsible</p> <p>28 canopy frame to</p> <p>be folded into a</p> <p>folded state when</p> <p>said central lock</p> <p>is unlocked,</p> <p>wherein said</p> <p>inner ends of said</p> <p>inner retractable</p> <p>units are</p> <p>connected</p> <p>through said</p> <p>central lock.</p>	<p>Global Shade admits on its website that the Accused Products have a center lock comprising a center pole (circled in red below):</p>  <p><i>See Ex. C.</i></p> <p>Global Shade admits on its website that the Accused Products have a center bottom cap detachably connected to said center pole bottom end as shown below:</p>  <p><i>See Ex. C.</i></p>
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30. Paragraphs 1-29 are hereby incorporated by reference.

31. The ‘910 patent was duly and legally issued on Aug. 3, 2021. The ‘910 Patent was assigned and issued to Plaintiff With-U E-Commerce (Shanghai) Co., Ltd. and it has full rights to sue and recover damages and other relief for infringement of the ‘910 Patent.

32. Pursuant to 35 U.S.C. §271, on information and belief, Defendants Global Shade and Wal-Mart.Com have directly or indirectly infringed the claim of the ‘910 Patent, “[t]he ornamental design for a canopy center top cap and pole combination, as shown and described [in the ‘910 Patent,]” by and through making, using, selling and/or importing the Accused Products within the United States and in this judicial district, which an ordinary observer would think is substantially the same as that shown and described in the ‘910 Patent. Also, Global Shade and Wal-Mart.Com instruct their customers to directly infringe the patent. WalMart Fulfillment delivers the products, including instruction manuals, to customers who directly infringe the products through use. On information and belief, Defendant He is believed to have used and instructed others to use the Accused Products.

33. The Accused Products infringe the ornamental design for a canopy center top cap and pole combination, as shown and described in the ‘910 Patent as follows :

<u>Claim</u>	<u>Basis of infringement</u>
	 <p data-bbox="846 1829 992 1864"><i>See Ex. C.</i></p>

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that judgment be entered in favor of Plaintiff and against Defendants and further prays that the Court grant the following relief to Plaintiff:

a. A judgment that Defendants have infringed the ‘738 and ‘910 Patents;

b. A judgment that Defendants have willfully infringed the ‘738 and ‘910 Patents;

c. An award to Plaintiff of its lost profits, Defendants’ total profits, and/or a reasonable royalty for Defendants’ sales of the Accused Products for infringement of the ‘738 and ‘910 Patents;

d. Entry of a preliminary and a permanent injunction pursuant to 35 U.S.C. § 283 enjoining Defendants, as well as their officers, directors, servants, consultants, managers, employees, agents, attorneys, successors, assigns, affiliates, subsidiaries, and all persons in active concert or participation with any of them, from infringement of the ‘738 and ‘910 Patents, including but not limited to making, using, offering to sell, selling, or importing any products that infringe the ‘738 and ‘910 Patents;

e. An order for a trebling of damages and/or enhanced damages due to Defendants’ willful infringement under 35 U.S.C. § 284;

f. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Plaintiff’s reasonable attorneys’ fees under that statute and as may be permitted by other statutes;

g. An award of pre-judgment and post-judgment interest and costs of this action against Defendants; and,

h. For such other and further relief as the Court may deem just and proper.

Dated: July 12, 2022

Respectfully Submitted,

BUCHE & ASSOCIATES, P.C.

By: /s/ Byron E. Ma
Byron E. Ma (CA Bar No. 299706)

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John K. Buche (CA Bar No. 239477)
2029 Century Park East, Suite 400N
Los Angeles, California 90067
Tel: 858.459.9111
bma@buchelaw.com
jbuche@buchelaw.com

Attorneys for Plaintiff