

1 UMBERG ZIPSER LLP
2 Mark A. Finkelstein (SBN 173851)
3 mfinkelstein@umbergzipser.com
4 Molly J. Magnuson (SBN 229444)
5 mmagnuson@umbergzipser.com
6 1920 Main Street, Suite 750
7 Irvine, CA 92614
8 Telephone: (949) 679-0052
9 Facsimile: (949) 679-0461

6 DICKINSON WRIGHT PLLC
7 John S. Artz (*Applying Pro Hac Vice*)
8 JArtz@dickinson-wright.com
9 Yafeez S. Fatabhoy (*Applying Pro Hac Vice*)
10 YFatabhoy@dickinson-wright.com
11 350 S. Main Street, Ste. 300
12 Ann Arbor, MI 48104
13 Telephone: (248) 433-7262
14 Facsimile: (844) 670-6009

11 *Attorneys for Plaintiff*
12 *National Presto Industries, Inc.*

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 NATIONAL PRESTO
16 INDUSTRIES, INC.,

17 Plaintiff,

18 v.

19 KONWIN, INC.,

20 Defendant.

CASE NO.: 22-cv-5860

**COMPLAINT FOR (1) PATENT
INFRINGEMENT, (2) TRADE
DRESS INFRINGEMENT, (3)
UNFAIR COMPETITION UNDER
FEDERAL LAW, (4) UNFAIR
COMPETITION UNDER
CALIFORNIA LAW**

DEMAND FOR JURY TRIAL

23
24 NOW COMES Plaintiff National Presto Industries, Inc. (“National Presto”),
25 by and through its attorneys, and for its Complaint against Defendant Konwin, Inc.
26 (“Konwin” or “Defendant”), hereby alleges as follows:
27
28

1 **INTRODUCTION**

2 1. This is an action for: (I) infringement of U.S. Patent No. D633,189
3 under 35 U.S.C. § 271; (II) federal trade dress infringement of the aesthetic
4 appearance of a product under 15 U.S.C. § 1125; (III) federal unfair competition
5 under 15 U.S.C. § 1125; and (IV) common law unfair competition.

6 2. This action is based on Defendant’s willful, knowing, persistent, and
7 unauthorized conduct, including through its manufacture, distribution, advertising,
8 promoting, offering to sell, selling and/or importing the Konwin Dish Heater
9 Model No. JHS-1000RS, SKU 1006387524 (the “Konwin Heater”), which
10 infringes upon National Presto’s rights in its design patent as well as its product
11 appearance trade dress rights in the HEATDISH® parabolic heater.

12 3. National Presto has reached out to Defendant on numerous occasions
13 and advised of its concerns, however, Defendant, after initially responding once,
14 now fails to respond to National Presto’s communications.

15 4. Given Defendant’s failure to respond, National Presto is left with no
16 choice but to initiate this suit to protect its rights.

17 **THE PARTIES**

18 5. Plaintiff National Presto is a corporation organized and existing under
19 the laws of the State of Wisconsin with its principal place of business at 3925 N.
20 Hastings Way, Eau Claire, Wisconsin 54703.

21 6. Upon information and belief, Defendant Konwin Inc. (“Konwin”) is
22 incorporated under the laws of the State of California, with a registered agent
23 located at 2314 S. Vineyard Ave Ste. J, Ontario CA 91761. Upon information and
24 belief, Konwin has no active principal place of business within the United States
25 and does not currently have a regular and established place of business within the
26 United States.

1 **JURISDICTION AND VENUE**

2 7. This Court has jurisdiction for the Patent Infringement Claim (Count
3 I) pursuant to 28 U.S.C. §§ 1331 and 1338(a). As to the Federal Trade Dress
4 Infringement Claim (Count II) and the Federal Unfair Competition Claim (Count
5 III), this Court has jurisdiction pursuant to 15 U.S.C. § 1121.

6 8. As to Common Law Unfair Competition (Count IV), the factual basis
7 is so related to the Federal Claims (I-III) that they form part of the same case or
8 controversy pursuant to 28 U.S.C. § 1367(a) and are thus subject to this Court’s
9 subject matter jurisdiction.

10 9. This Court has personal jurisdiction over Defendant as it is
11 incorporated under the laws of California and maintains a registered agent within
12 this District. Moreover, upon information and belief, Defendant has no regularly
13 established place of business or principal place of business within the United
14 States.

15 10. Additionally, pursuant to 28 U.S.C. § 1400(b) and 28 U.S.C. §
16 1391(b)(3), venue is proper in this judicial district as, upon information and belief,
17 Defendant has no regularly established place of business or principal place of
18 business within the United States.

19 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

20 **A. National Presto – a Leader in Housewares and Small Appliances**
21 **Since 1905**

22 11. National Presto was founded in Eau Claire, Wisconsin in 1905, and
23 has steadily become an industry leader in manufacturing, distributing, promoting,
24 offering for sale, and selling some of the premier products in the home appliances
25 and housewares industries.

1 12. Initially starting off with pressure cookers and canners, National
2 Presto's business has evolved to cover products for numerous aspects of consumer
3 life. Examples of National Presto's numerous offerings include the famous
4 Frydaddy® deep fryer (below left), the Pizzaz® pizza oven (below center), and the
5 Salad Shooter® (below right).



6
7
8
9
10
11
12
13
14 13. Due to National Presto's innovation and success, it is recognized as a
15 premier manufacturer, distributor, and seller of housewares products.

16 **B. National Presto Created and Introduced its HEATDISH®**
17 **Parabolic Heater with its Unique and Distinctive Appearance**

18 14. One of National Presto's most iconic products is its unique and
19 distinctive parabolic heater, branded the HEATDISH® parabolic heater, which it
20 has been selling for over thirty-four (34) years.



1 15. National Presto first introduced the HEATDISH® parabolic heater in
2 1989, and was inspired to make a product design that was unique and one of a kind.
3 Taking inspiration from high-tech technology at the time (a satellite dish), the
4 HEATDISH® parabolic heater features a unique appearance, dominated by a large
5 dish and curved grille resembling a “Bundt Cake” mold with a center recess and
6 where the grille is placed such that it is nestled to the base in a slightly slanted
7 upward position – similar to a satellite dish.

8 16. Specifically, and as shown above, the appearance of the HEATDISH®
9 parabolic heater comprises several elements, including most prominently a curved
10 grille, made of bars arranged radially around a heating element, together with bars
11 forming two concentric circles combined with a recessed center, which together
12 with the grille’s curvature, gives the grille a “Bundt cake” shape and a reflective
13 coating on the dish, giving off a warm, orange glow when the heating element
14 operates and where the grille and dish are nestled into the base such that it is
15 oriented in a slightly slanted upward position.

16 17. After developing the design of the HEATDISH® parabolic heater,
17 National Presto introduced it to numerous retail stores.

18 18. National Presto has thereafter continuously and exclusively sold its
19 HEATDISH® parabolic heater since 1989.

20 **C. The HEATDISH® parabolic maintained the same aesthetic**
21 **appearance while undergoing some minor refreshes through its**
22 **product life cycle**

23 19. While National Presto’s product has also undergone minor refreshes
24 over its thirty four (34) year life cycle, National Presto has always ensured that the
25 HEATDISH® maintained the same overall “look” such that it would be
26
27
28

1 recognizable to consumers. That means utilizing, among other things, the same
2 “Bundt cake” shape grille.

3 20. The marketing piece below features all commercially available
4 versions of the HEATDISH® parabolic heater over its life span.



14 21. As shown above and below, while the HEATDISH® parabolic heater
15 did undergo minor changes, primarily to the base and shroud (or housing), the
16 aesthetics of the dish and grille – the most prominent and distinctive portions of
17 the product – did not change.



24 22. National Presto’s HEATDISH® parabolic heater has thus retained the
25 same overall appearance throughout its life. This iconic look is dominated by the
26

1 prominent dish and distinctive grille with its Bundt-cake shape that is nestled into
2 the base such that it is slanted slightly upwards.

3 23. The appearance of the HEATDISH® parabolic heater grille is
4 particularly unique, having, among other attributes, a prominent central recess such
5 that the emblem badge is depressed or inset. This unique shape is manufactured at
6 greater expense than other grilles due to the cost of bending the grille.

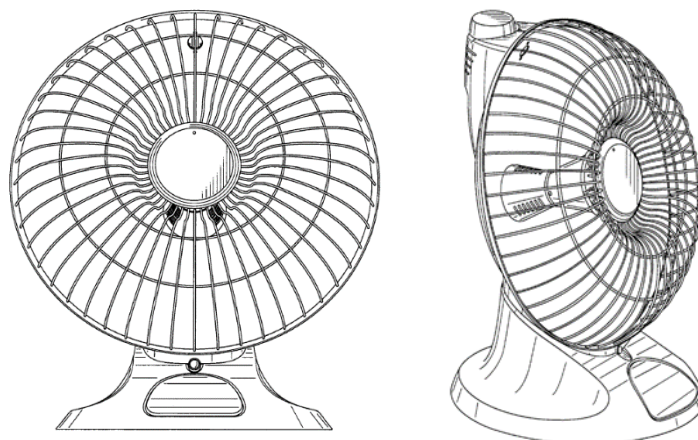
7 24. As shown above, each iteration of the HEATDISH® parabolic heater
8 employs this same unique “Bundt-Cake” like grille with center recess.

9 **D. National Presto Protects its Intellectual Property Rights in the**
10 **HEATDISH® Parabolic Heater**

11 25. Given this unique aesthetic appearance, National Presto has obtained
12 various forms of intellectual property protection to protect its rights in the
13 HEATDISH®. One such right is U.S. Patent No. D633,189 (the “D’189 Patent”).
14 See **Exhibit A**. National Presto is the current owner of the D’189 Patent by
15 assignment.

16 26. The D’189 Patent was filed on November 19, 2009 and issued on
17 February 22, 2011.

18 27. The D’189 Patent protects the ornamental design for a parabolic, dish-
19 style heater as described and depicted in the patent and as excerpted below:



1 **E. National Presto Has Sold and Promoted the Unique Appearance**
2 **of the HEATDISH® Parabolic Heater for Over 34 Years**

3 28. In addition to utilizing a unique design, for which National Presto has
4 secured design patent protection, National Presto has also extensively promoted its
5 HEATDISH® parabolic heater utilizing a systematic and continuous marketing
6 program.

7 29. The HEATDISH® parabolic heater has been extremely successfully
8 earning it the ability to be consistently sold for over 34 years – a feat not many
9 products can claim.

10 30. This promotion is dominated by the creation and implementation of
11 an in-store point-of-sale display highlighting the predominant portions of the
12 product, namely the grille and dish.



23
24 31. As shown above, Presto’s point-of-sale display features a
25 HEATDISH® parabolic heater turned on and angled toward passing customers,
26 surrounded by promotional material and pallets of product for customers to
27

1 purchase. When on, the HEATDISH® parabolic heater emits an attractive orange
2 glow that highlights the grille and draws attention to it from afar, thereby drawing
3 the consumer to the product. Notably, the merchandising and promotional material
4 surrounding the illuminated physical HEATDISH® parabolic heater also features
5 the HEATDISH® parabolic heater illuminated with its grille and dish brightly
6 glowing orange. National Presto’s display also elevates the HEATDISH®
7 parabolic heater so that it can be seen by consumers from across the store, including
8 as they enter.

9 32. The effect of all of this – consumers are inundated with numerous
10 images of the brightly lit grille and dish of the HEATDISH® parabolic heater when
11 they see the display in stores. National Presto has utilized displays similar to this
12 since the introduction of the HEATDISH® parabolic heater in 1989.

13 33. In conjunction with the eye-catching display that National Presto
14 utilizes to promote the aesthetic appearance of the HEATDISH® parabolic heater,
15 National Presto also has earned the ability to position its HEATDISH® product on
16 the end-caps of retail stores at no charge to National Presto. These spots are highly
17 coveted and are valued at millions of dollars of years in promotional spend. This
18 is because nearly every consumer walking in the main aisle of the store is exposed
19 to the products on the end-cap.

20 34. This product visibility and impression – and, in particular, the fact that
21 it is prominently displayed on an aisle end-cap – drives sales and has come to be
22 associated with a single source. Indeed, this display only highlights the appearance
23 of the HEATDISH® parabolic heater; it does not promote the functionality of its
24 features. Retailers recognize that the end-cap display, unique design, and National
25 Presto’s effort to promote and highlight the HEATDISH® parabolic heater
26 appearance leads to its continued success, even lauding the appearance of the
27 HEATDISH® parabolic heater as “best in class.”

1 35. Unsurprisingly, given this consistent promotion and its unique
2 appearance, sales of the HEATDISH® parabolic heater have been tremendously
3 successful over the years.

4 36. The large sales, unique appearance, and consistent promotion ensures
5 that the appearance of the HEATDISH® parabolic heater and, in particular its
6 distinctive grille, has become recognized to consumers as a source identifier.

7 **F. Home Depot Introduces the Copycat KONWIN DISH HEATER**

8 37. In late 2021, National Presto became aware that Home Depot, Inc. has
9 been selling a nearly identical appearing parabolic heater.

10 38. Branded, the Konwin Heater, this heater mirrors National Presto’s
11 HEATDISH® parabolic heater.

12 39. Like the HEATDISH® parabolic heater, the Konwin Heater includes,
13 most prominently, a curved grille, made of bars arranged radially around the
14 heating element, together with bars forming two concentric circles combined with
15 a recessed center grille, which together with the grille’s curvature, gives the grille
16 a “Bundt cake” shape and a reflective coating on the dish, giving off a warm,
17 orange glow when the heating element operates such that the grille and dish are
18 nestled into the base such that it is in a slightly slanted upward position.

19 40. The HEATDISH® parabolic heater and the Konwin Heater products
20 are both parabolic heaters with nearly identical ornamental appearances that are
21 advertised and packaged in a virtually identical manner in the similar channels of
22 trade.

23 41. As shown below in the side-by-side comparison of the HEATDISH®
24 parabolic heater and Konwin Heater products, they have a virtually identical
25 appearance in both the on and off settings.



HEATDISH® parabolic heater



Konwin Heater



HEATDISH® parabolic heater



Konwin Heater

42. On information and belief, the Konwin Heater was sold in Home Depot stores in at least San Diego, CA and Redmond, WA at a price point similar to the HEATDISH® parabolic heater. Consumers are even more likely to be confused as to the source of the product when they are nearly identical in appearance and sold at similar price points. It is alleged upon information and

1 belief that Defendant is knowingly selling this nearly identical product at various
2 Home Depot locations.

3 43. Because of the nearly identical appearance of the products, the
4 advertising, the similar price points, and the channels of trade for which the
5 products are sold, there is a high likelihood that any quality defects of the Konwin
6 Heater will be inferred onto the National Presto HEATDISH® parabolic heater,
7 thus tarnishing National Presto’s brand and causing irreparable harm to the
8 goodwill it has developed in its HEATDISH® parabolic heater and mark.

9 44. National Presto reached out to Defendant advising them of National
10 Presto’s significant intellectual property rights in the HEATDISH® parabolic
11 heater and demanding that it cease sales of its heater. While Defendant initially
12 responded to National Presto, it has now ceased all responses – leaving multiple
13 communications now unanswered.

14 45. Seeing as Defendant failed to respond to National Presto, National
15 Presto similarly reached out to Defendant’s distributor, Home Depot on numerous
16 occasions. However, these communications too remain unanswered.

17 **FIRST CAUSE OF ACTION:**
18 **PATENT INFRINGEMENT – U.S. DESIGN PATENT NO. D633,189**
19 **UNDER 35 U.S.C. § 271**

20 46. Plaintiff re-alleges and incorporates by reference the foregoing
21 paragraphs as though fully set forth herein.

22 47. Upon information and belief Defendant had and has knowledge of
23 National Presto’s D’189 Patent as of the date it first offered for sale or sold its
24 infringing Konwin Heater.

25 48. Defendant had actual notice of National Presto’s D’189 Patent at least
26 as early as the filing of this Complaint.
27
28

1 49. Defendant is directly infringing or inducing infringement of National
2 Presto's D'189 Patent including by making, using, offering to sell, selling, or
3 importing into the United States, the infringing Konwin Heater.

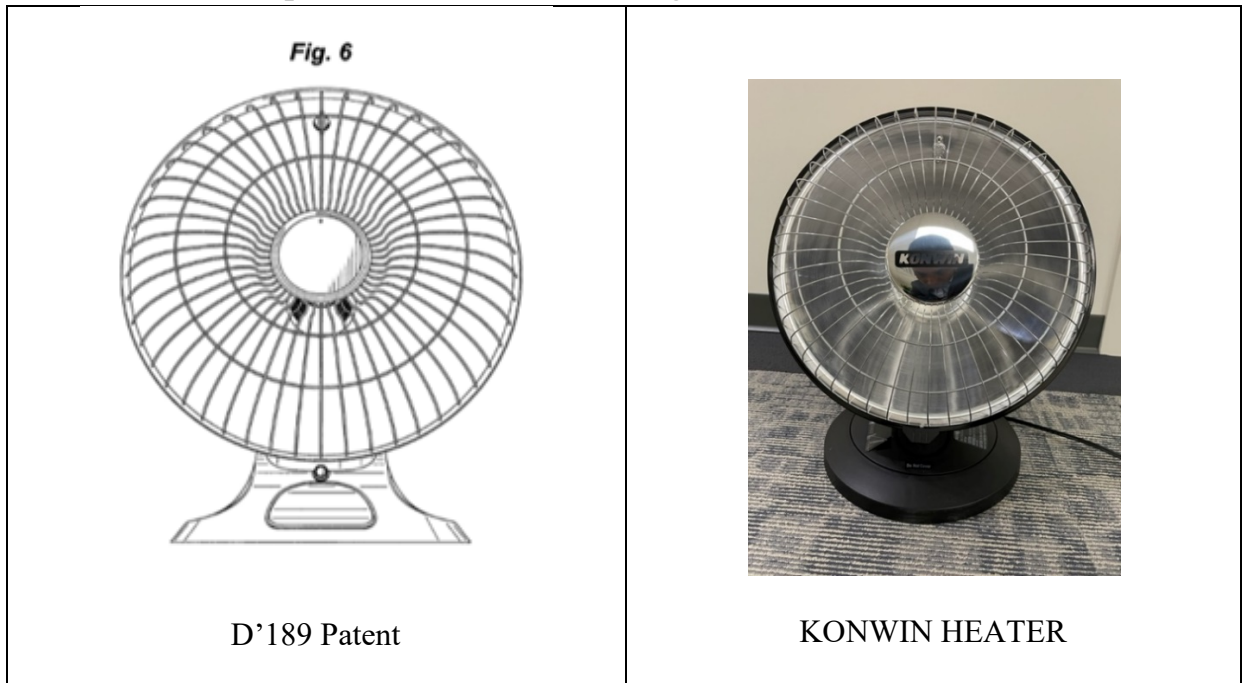
4 50. With knowledge of National Presto's rights in the D'189 Patent,
5 Defendant induced and/or contributed to infringement of National Presto's D'189
6 Patent.

7 51. Defendant's Konwin Heater product infringes the single claim of the
8 D'189 Patent as they are virtually identical in appearance.

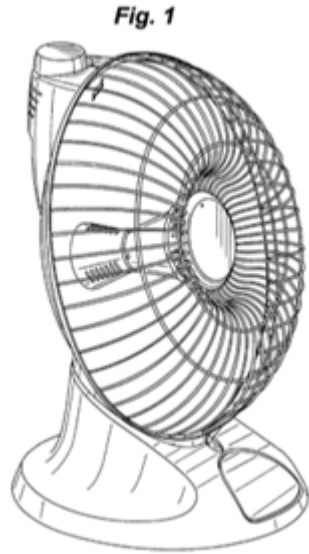
9 52. Upon information and belief, Defendant is infringing on National
10 Presto's D'189 Patent by manufacturing, marketing, advertising, offering for sale,
11 importing, and selling an infringing parabolic, dish-style heater product, the
12 Konwin Heater, with knowledge and with the intent that third parties will use that
13 product.

14 53. Upon information and belief, Defendant's infringement of the D'189
15 Patent is and has been willful.

16 54. Examples of Defendant's infringement of the D'189 Patent include:



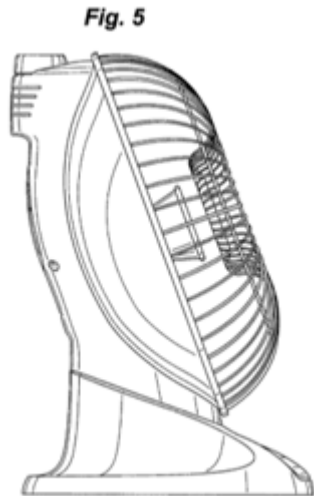
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



D'189 Patent



KONWIN HEATER



D'189 Patent



KONWIN HEATER

55. Defendant's infringement was undertaken without permission or license to use National Presto's D'189 Patent.

56. National Presto has been damaged as a result of Defendant's infringement of the D'189 Patent as described herein.

1 57. National Presto is entitled to and claims all damages allowable by law
2 including adequate compensation for the infringement, costs, interest, attorneys'
3 fees, lost profits and/or Defendant's profits (for which National Presto demands an
4 equitable accounting).

5 58. National Presto further seeks a declaration by the Court that it is
6 entitled to a finding that this case is exceptional and enhance damages up to three
7 times the amount found or assessed pursuant to 35 U.S.C. § 284.

8 **SECOND CAUSE OF ACTION:**
9 **– FEDERAL TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1125**
10 **FOR THE AESTHETIC APPEARANCE OF THE PRODUCT**

11 59. Plaintiff re-alleges and incorporates by reference the foregoing
12 paragraphs as though fully set forth herein.

13 60. As discussed above, the HEATDISH® parabolic heater carries a
14 unique appearance and National Presto has established itself in the eyes of
15 consumers in the market as the sole source for parabolic heaters having this
16 appearance. This has established a trade dress unique to the HEATDISH®
17 parabolic heater for which Defendant sought to capitalize on by the introduction of
18 the Konwin Heater.

19 61. As described herein, National Presto has created a unique trade dress
20 for its HEATDISH® parabolic heater. Specifically, the HEATDISH® parabolic
21 heater most prominently features a curved grille, made of bars arranged radially
22 around the heating element, together with bars forming two concentric circles
23 combined with a recessed center grille, which together with the grille's curvature,
24 gives the grille a "Bundt cake" shape and a reflective coating on the dish, giving
25 off a warm, orange glow when the heating element operates such that the grille and
26 dish are nestled into the base such that it is oriented in a slightly slanted upward
27 position.

1 62. The Konwin Heater also utilizes the same design implemented by the
2 HEATDISH® parabolic heater. As described herein, the Konwin Heater is a
3 parabolic heater also prominently featuring a curved grille, made of bars arranged
4 radially around the heating element, together with bars forming two concentric
5 circles combined with a recessed center grille, which together with the grille’s
6 curvature, gives the grille a “Bundt cake” shape and a reflective coating on the
7 dish, giving off a warm, orange glow when the heating element operates such that
8 the grille and dish are nestled into the base such that it is oriented in a slightly
9 slanted upward position.

10 63. The trade dress used by National Presto is non-functional. For
11 example, the design is ornamental in that the shape, curvature, glow, the design of
12 the grille, the curvature, configuration and relative spacing of the various
13 components, and the logo are all non-functional design elements.

14 64. National Presto has become known as the source for a parabolic heater
15 having the above-described overall appearance. National Presto has enjoyed
16 significant sales of this product, including to customers in California. As a result
17 of this distinction, the HEATDISH® parabolic heater has achieved valuable
18 goodwill and secondary meaning in its trade dress.

19 65. Due to the significant similarities in the trade dress between the
20 HEATDISH® parabolic heater and the Konwin Heater, there is a high likelihood
21 that consumers will be confused and attribute the National Presto goodwill to
22 Defendant’s Konwin Heater.

23 66. Upon information and belief, with full knowledge of National Presto’s
24 ownership and use of the HEATDISH® parabolic heater trade dress, Defendant
25 manufactured and offered for sale a product, the Konwin Heater, which copied and
26 used the distinctive elements of the HEATDISH® parabolic heater trade dress on
27

1 and in connection with its parabolic heater, and incorporates the distinctive glow
2 to convey heat for which National Presto has become known.

3 67. The HEATDISH® parabolic heater having this trade dress has been
4 sold for over thirty-four (34) years.

5 68. Defendant has been selling the KONWIN DISH HEATER, which
6 includes Plaintiff's unique and distinctive trade dress, at various Home Depot
7 stores, a direct competitor to the retail stores where National Presto sells its
8 product.

9 69. Numerous other parabolic heaters are manufactured and sold that
10 have significantly different aesthetic appearances, while performing the same
11 function, that do not create the customer confusion that the Konwin Heater has
12 created since its introduction.

13 70. Upon information and belief, Defendant distributes the infringing
14 products throughout the United States through Home Depot's distribution centers,
15 including its distribution center in Central California.

16 71. Upon information and belief, Konwin primarily sells the infringing
17 products at Home Depot stores at a similar price to the HEATDISH® parabolic
18 heater.

19 72. Upon information and belief, Defendant has relied on, and will
20 continue to rely on National Presto's existing goodwill, consumer recognition,
21 marketing, promotion, and advertising of the HEATDISH® parabolic heater so that
22 Defendant can enhance the sales of its infringing products.

23 73. The actions and conduct of Defendant complained of herein have
24 damaged National Presto and will, unless restrained, further impair, if not destroy,
25 the value of the HEATDISH® parabolic heater trade dress and the goodwill
26 associated with them.

1 74. Defendant's trade dress infringement has caused National Presto to
2 sustain monetary damage, loss, and injury, in an amount to be determined at the
3 time of trial.

4 75. Defendant's trade dress infringement, unless enjoined by this Court,
5 will continue to cause National Presto to sustain irreparable damage, loss, and
6 injury, for which National Presto has no adequate remedy at law.

7 76. As a direct and proximate result of Defendant infringing and unlawful
8 acts, National Presto has suffered and will continue to suffer damages in an amount
9 that is not presently ascertainable, but will be determined at trial.

10 **THIRD CAUSE OF ACTION:**
11 **FEDERAL UNFAIR COMPETITION FOR FALSE AND MISLEADING**
12 **CONDUCT UNDER 15 U.S.C. § 1125**

13 77. Plaintiff re-alleges and incorporates by reference the foregoing
14 paragraphs as though fully set forth herein.

15 78. The National Presto HEATDISH® parabolic heater has unique non-
16 functional ornamental design features that has acquired secondary meaning
17 because consumers associate National Presto as the source of the goods having the
18 unique appearance of the HEATDISH® parabolic heater.

19 79. Defendant's acts and conduct as described supra are likely to cause
20 confusion, cause mistake, and/or deceive the public into mistakenly believing that
21 the infringing product is either the HEATDISH® parabolic heater or that the
22 infringing product originates or is somehow connected to or associated with
23 National Presto. Such acts constitute unfair competition, at least because
24 Defendant has obtained an unfair advantage as compared to National Presto by
25 placing its products in a similar retail space and selling its products in identical
26 channels of trade. Moreover, Defendant's uses of the design patent and unique
27

1 trade dress seeks to benefit off the secondary meaning for which National Presto
2 has worked tirelessly to create as discussed supra.

3 80. Upon information and belief, the acts of Defendant alleged in the
4 foregoing paragraphs are intentional, willful, with bad faith, and with the intention
5 of deceiving and misleading the public and causing harm to National Presto.

6 81. Upon information and belief, Defendant has made, and will continue
7 to make, substantial profits and gain from its use of the HEATDISH® parabolic
8 heater trade dress in the United States, to which it is not entitled in law or equity.

9 82. Upon information and belief, Defendant’s acts and conduct
10 complained of herein constitute unfair competition in violation of 15 U.S.C. §
11 1125(a).

12 83. National Presto has suffered, and will continue to suffer, irreparable
13 harm as a direct and proximate cause of Defendant’s unfair competition, including,
14 but not limited to, the diversion of sales from National Presto to Defendant, and/or
15 a lessening of the goodwill associated with the HEATDISH® parabolic heater.

16 84. As a direct and proximate result of Defendant’s infringing and
17 unlawful acts, National Presto has suffered and will continue to suffer damages in
18 an amount that is not presently ascertainable, but will be determined at trial.

19 85. As a direct and proximate result of Defendant infringing and unlawful
20 acts, National Presto has suffered and will continue to suffer damages in an amount
21 that is not presently ascertainable, but will be determined at trial.

22 **FOURTH CAUSE OF ACTION:**
23 **UNFAIR COMPETITION UNDER CALIFORNIA LAW – Cal. Bus. & Prof.**
24 **Code § 17200, et seq.**

25 86. Plaintiff re-alleges and incorporates by reference the foregoing
26 paragraphs as though fully set forth herein.

1 87. Defendant used and knowingly directly benefited from the use of
2 National Presto’s design patent and trade dress in connection with the advertising,
3 offering for sale, and sale of the Konwin Heater. Specifically, the usurping of the
4 distinct product ornamental design including, but not limited to, the slotted grille
5 appearance, the two concentric rings, the color scheme of the dish and grille, and
6 the overall parabolic design are all evidence of the infringement by Defendant.

7 88. Defendant’s wrongful conduct in stealing National Presto’s
8 intellectual property interfered with National Presto’s ability to conduct its
9 business within the meaning ascribed by California common law.

10 89. National Presto did not provide Defendant with a license to use the
11 intellectual property infringed on and described in this Complaint.

12 90. Use of National Presto’s intellectual property in the manner
13 attributable to Defendant is likely to cause confusion, or to cause mistake, or to
14 deceive customers at the venues in which the Defendant performs into believing
15 that the heaters those customers are receiving are being provided with the
16 authorization of National Presto.

17 91. Defendant’s acts were willful, knowing, and intentional.

18 92. National Presto has been damaged by infringing activities of
19 Defendant as National Presto has lost significant sales of its HEATDISH®
20 parabolic heater. Defendant precluded National Presto from realizing future sales
21 and are capitalizing on the clear need among the consuming public for these
22 parabolic heaters.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff National Presto respectfully requests that this
25 Honorable Court issue an order as follows:

- 26 a) Enter judgment against Defendant that:
27
28

- i. Defendant has engaged in willful and intentional infringement of National Presto's D'189 Patent pursuant to 35 U.S.C. § 271 and 35 U.S.C. § 289;
 - ii. Defendant has engaged in intentional infringement of National Presto's trade dress rights in the HEATDISH parabolic heater pursuant to 15 U.S.C. § 1125;
 - iii. Defendant has unfairly competed with National Presto;
 - iv. Defendant has acted willfully and intentionally in violation of National Presto's rights;
- b) Issue a preliminary and permanent injunction prohibiting Defendant, its officers, agents, servants, employees and attorneys, and those in active concert or participation with them or any of them:
- i. From infringing in any manner the D'189 Patent owned by National Presto;
 - ii. From infringing National Presto's rights in the HEATDISH®;
 - iii. From unfairly competing with National Presto;
 - iv. From representing, suggesting in any fashion to any third party, or performing any act that may give rise to the belief that Defendant, or any of its goods, are authorized by National Presto.
 - v. From passing off, inducing or enabling others to sell or pass off any goods as products produced by National Presto, which are not in fact genuine National Presto parabolic heaters, or not produced under the control and supervision of National Presto and approved by National Presto.
- c) That Defendant be required, pursuant to 15 U.S.C. § 1116(a), to file, with the Court and serve upon National Presto, within thirty (30) days

1 of the entry of injunction prayed for herein, a written report under oath
2 or affirmed under penalty of perjury setting forth in detail the form
3 and manner in which it has complied with the permanent injunction.

4 d) That Defendant be required to deliver up to National Presto for
5 destruction, any and all instructions, advertisements, or products
6 relating to the Konwin Heater that relates to the infringements as
7 complained in this Complaint.

8 e) That Defendant be required to pay all damages to National Presto for
9 the infringement pursuant to 35 U.S.C. §§ 284 and 289.

10 f) That Defendant be required, pursuant to 15 U.S.C § 1117, to account
11 to National Presto for any and all profits derived by them, either
12 individually or jointly to be ordered to disgorge, and be ordered to pay
13 all damages sustained by National Presto by reason of Defendant's
14 actions complained herein, including an award of treble damages as
15 provided for the statute.

16 g) A declaration that Defendant has competed unfairly with National
17 Presto under Cal. Bus. & Prof. Code § 17200, *et seq.*, and that
18 Defendant's actions in doing so be adjudged intentional, willful, and
19 done knowingly.

20 h) That National Presto be awarded both pre-judgment and post-
21 judgment interest on each and every damage award.

22 i) That this case be declared exceptional and that Defendant be required
23 to pay enhanced damages, including for any willful infringement, and
24 also pay National Presto its attorney's fees, costs and disbursements.

25 j) That the Court award any other damages and such other further relief
26 as this Court may deem just and proper.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: August 18, 2022

UMBERG ZIPSER LLP

By: /s/ Mark A. Finkelstein
Mark A. Finkelstein
Molly J. Magnuson

DICKINSON WRIGHT PLLC
John S. Artz
Yafeez S. Fatabhoy

*Attorneys for Plaintiff National Presto
Industries, Inc.*

DEMAND FOR JURY TRIAL

National Presto demands a jury trial as to all claims and issues that are triable
by jury in this action.

Dated: August 18, 2022

UMBERG ZIPSER LLP

By: /s/ Mark A. Finkelstein
Mark A. Finkelstein
Molly J. Magnuson

DICKINSON WRIGHT PLLC
John S. Artz
Yafeez S. Fatabhoy

*Attorneys for Plaintiff National Presto
Industries, Inc.*