

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

BETTER WAY INVENTIONS, LLC  
D/B/A TONE-Y-BANDS,  
a Florida Limited Liability Company,  
JANICE H. HALEY, an individual, and  
STEPHEN C. HALEY, an individual,

**CASE NO.: 9:23-cv-80868**

Plaintiffs,

v.

SWIFT GLOBAL LLC DBA SPENCER SPORTS,  
a Texas Limited Liability Company, and  
NBCUNIVERSAL MEDIA, LLC,  
a Delaware Limited Liability Company,

Defendants.

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**COMPLAINT**

Plaintiffs, BETTER WAY INVENTIONS, LLC D/B/A TONE-Y-BANDS, a Florida Limited Liability Company, JANICE H. HALEY, an individual, and STEPHEN C. HALEY, an individual, by and through the undersigned counsel, hereby file this Complaint against Defendants, SWIFT GLOBAL LLC DBA SPENCER SPORTS, a Texas Limited Liability Company, and NBCUNIVERSAL MEDIA, LLC, a Delaware Limited Liability Company, and, in so doing, state as follows:

**JURISDICTION, VENUE AND THE PARTIES**

1. This is an action which is, *in part*, brought pursuant to the Patent and Trademark Laws of the United States, 35 U.S.C. §§ 271, *et. seq.* and 15 U.S.C. §§ 1114, *et. seq.*

2. This Court has original jurisdiction pursuant to Title 28, United States Code, Section 1331, as this case involves a federal question arising under the Constitution, laws, or treaties of the United States.

3. Plaintiff, BETTER WAY INVENTIONS, LLC D/B/A TONE-Y-BANDS, is a Florida Limited Liability Company with its principal address located in Palm Beach County, Florida (hereinafter, “Tone-y-Bands”).

4. Plaintiffs, JANICE H. HALEY and STEPHEN C. HALEY, are residents of Palm Beach County, Florida (collectively, “the Haleys”).

5. At all times material hereto, Defendant, SWIFT GLOBAL LLC DBA SPENCER SPORTS (hereinafter “Spencer Sports”), was a Texas Limited Liability Company and engaged in the conduct of interstate commerce, and, upon information and belief, regularly conducted business in this judicial district, and is otherwise *sui juris*.

6. At all times material hereto, Defendant, NBCUNIVERSAL MEDIA, LLC (hereinafter “NBC”), was a Delaware Limited Liability Company and engaged in the conduct of interstate commerce, and, upon information and belief, regularly conducted business in this judicial district, and is otherwise *sui juris*.

7. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

8. All conditions precedent have been met, waived, or satisfied to bring this lawsuit.

#### **GENERAL ALLEGATIONS**

9. The Haleys are owners and managers of Tone-y-Bands, which is involved primarily in the field of designing fitness and exercise equipment. Tone-y-Bands has invested extensive capital in securing a number of domestic and foreign patents to protect its intellectual property associated therewith.

10. As relevant herein, Tone-y-Bands is the current owner and holder, by assignment from Mr. Haley, of U.S. Design Patent No. 792,796 (“the ‘796 Patent”) for a “Weighted Bracelet”, U.S. Patent No. 9,302,141B2 (“the ‘141 Patent”) for a “Variable weight toning strap and kit”, and U.S. Patent No. 9,707,431B1 (“the ‘431 Patent”) (wherein the ‘796 Patent, the ‘141 Patent, and the ‘431 Patent are collectively referred to herein as “the Patents”) for a “Variable weight toning strap”. See **Exhibit A** (a true and correct copy of the Patents).

11. Collectively, the Patents protect the design and utility of Tone-y-Bands’ weighted toning fitness bracelets (“the Patented Products”).

12. The Patented Products are designed to be worn during exercise and fitness activities to stimulate greater fitness performance and results.

13. Tone-y-Bands principally sells and offers the Patented Products to its valued customers through the Tone-y-Bands website, [www.toneybands.com](http://www.toneybands.com) (“Tone-y-Bands Website”) and through the Tone-y-Bands Amazon Store and corresponding product listings. See **Exhibit B** (true and correct screen captures).

14. Over the years, however, the Patented Products have garnered mass media attention, acclaim, and fame in the consumer marketplace.

15. To date, the Patented Products have been featured twice on NBC’s “Today” show (“The Today Show”)—a morning news talk show operated by NBC that airs weekdays from 7:00 a.m. to 11:00 a.m. on NBC.

16. Specifically, the Patented Products were featured on the “Steals & Deals with Jill Martin” segment (“Steals & Deals Segment”) of The Today Show in 2020 and in 2022.

17. In the Steals & Deals Segment, NBC editors independently select certain featured items to display to viewers for a limited time at generally reduced prices.

18. The Today Show (i.e., NBC) earns a commission on each purchase made through the Steals & Deals Segment.

19. Products featured on the Steals & Deals Segment of The Today Show can sell up to 25,000 products in a twenty-four-hour period.

20. In the 2022 feature of the Patented Products, the Patented Products completely sold out.

21. Given the repeated feature of the Patented Products on the Steals & Deals Segment of The Today Show, Tone-y-Bands has enjoyed an approximately three-year business relationship with NBC.

22. In Tone-y-Bands' application to, and very first communication with, NBC on October 29, 2019, Tone-y-Bands informed NBC that the Patented Products were, indeed, patented and protected. *See Exhibit C* (listing "Patented, innovative design" as a talking point for The Today Show and explaining that, "We invented, designed, and patented Tone-y-Bands weights specifically for the wrist.").

23. Throughout the years, Tone-y-Bands submitted several applications to NBC to be featured on the Steals & Deals Segment of The Today Show.

24. Every application, every year, included links to the Tone-y-Bands Website and to Tone-y-Bands' Amazon product listings where the product descriptions indicate that the Patented Products are, indeed, patented.

25. To date, NBC has received three applications and three samples of the Patented Products.

26. Accordingly, NBC has had actual knowledge of the Patents and the Patented Products since as early as October 29, 2019.

27. In the course of its business relationship with NBC, Tone-y-Bands has worked with the same broker, Lisa Chadwick (“Chadwick”), and the same The Today Show representative, Dana Ravich (“Ravich”), for three years on two television airings.

28. Tone-y-Bands submitted for the January 2023 airing of the Steals & Deals Segment and placed large orders of inventory in anticipation of being featured again in light of (a) the Parties’ prior and existing business relationship in featuring the Patented Products twice before on the Steals & Deals Segment, and (b) the encouragement about the Patented Products’ placement received from Chadwick and Ravich.

29. In approximately August of 2022, Tone-y-Bands was notified that its submission for the January 2023 airing had been rejected because NBC was “working with a company already that has a lot of stock.” **Exhibit D.**

30. Tone-y-Bands managed to cancel some, but not all, of the inventory it had ordered in anticipation of being featured on The Today Show.

31. Upon receiving the rejection, Tone-y-Bands asked Chadwick whether Ravich knew that Tone-y-Bands’ products were patented, to which she replied, “She knows the product and you had a sell out last year. I thought for sure she would pick Tone Y Bands for this fitness segment again.” **Exhibit D.**

32. On or about January 6, 2023, Tone-y-Bands discovered that NBC featured an infringing weighted fitness bracelet offered and/or sold by Spencer Sports, namely, the Spencer Sports Go Yoga Weighted Bracelet Bands ½ lb per band (“Infringing Products”) on the Steals & Deals Segment of The Today Show.

33. The Infringing Products aired and/or were available for purchase through The Today Show for a forty-eight-hour period, namely, from January 6, 2023, to January 8, 2023.

34. Moreover, Spencer Sports deceptively misrepresented and artificially inflated the price of the Infringing Products to satisfy The Today Show's prerequisites and/or requirements to being featured on the Steals & Deals Segment and to intentionally mislead television viewers and prospective consumers into believing that they are actually obtaining a significant discount by purchasing the Infringing Products during the "flash sale" of the same on The Today Show's Steals & Deals Segment.

35. Specifically, The Today Show marketed a ½ lb. band with a list price of \$79.95, with a 64% discount, for a sale price of \$29.00 (the total cost was \$29.00 for the product + \$6.95 for shipping + \$2.52 for taxes = \$38.47).

36. Simultaneous with the show time, a Walmart listing for the Go Yoga Weighted Bracelet Band was listed at \$35.31. *See Exhibit E* (reflecting Walmart listing at time of airing for the same product for price of \$35.31).

37. Upon information and belief, the Spencer Sports website, [www.spencersports.co](http://www.spencersports.co) ("Spencer Sports Website") product listing for the Infringing Products appears to have been created shortly before the January 6, 2023, show air date.

38. In other words, Spencer Sports artificially inflated the price of the Infringing Products to \$79.95 days before airing on The Today Show while simultaneously marketing the real price on Walmart at \$35.31.

39. A test order was placed on January 12, 2023, from Walmart for a total price of \$34.63. The shipment received was for an identical Infringing Product having identical packaging and shipped from the exact same fulfillment center. *See Exhibit E*.

40. Whereas the promoted discount was 64%, the actual discount consumers received was 17.8% or \$6.31 (\$35.31 on Walmart versus \$29.00 on The Today Show). When including

the total purchase cost of shipping and taxes, The Today Show sale was actually \$2.52 more or 8.2% greater than the identical product shipping from the identical fulfillment center that was listed on Walmart at the time of the airing.

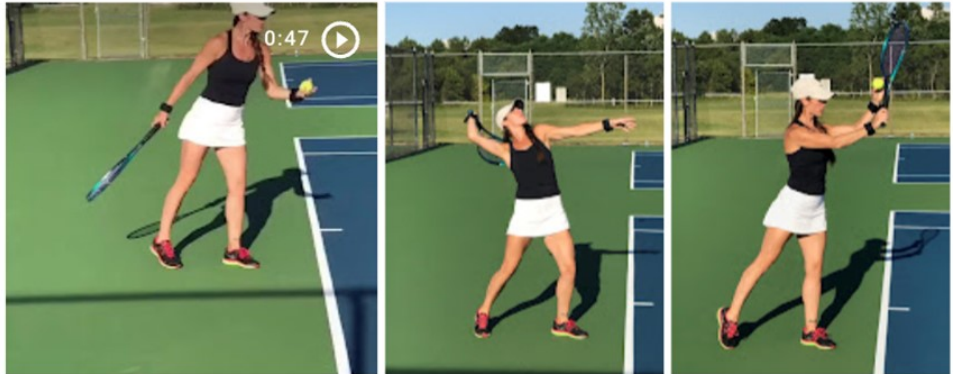
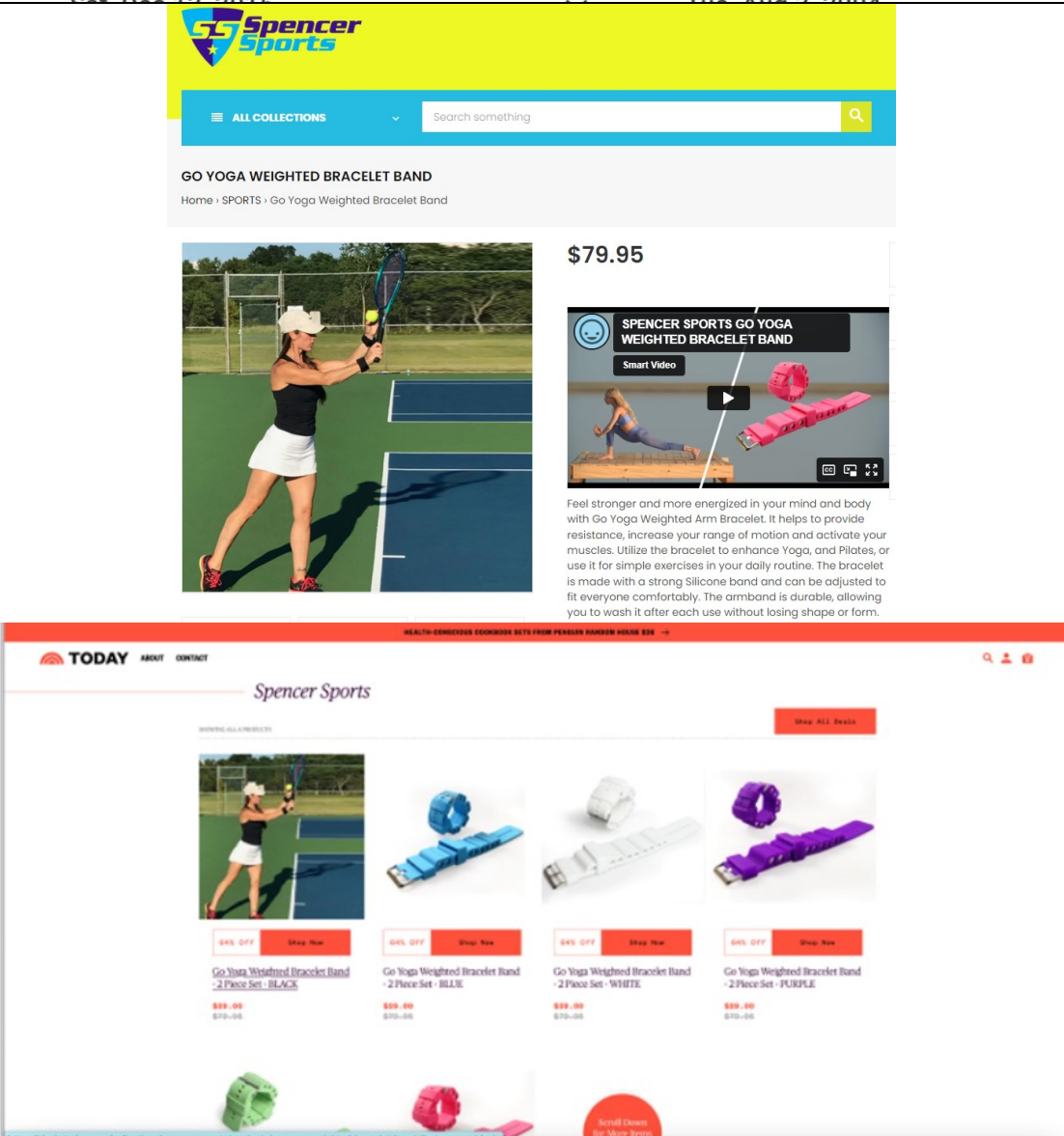
41. Moreover, the product listing for the Infringing Products on both The Today Show website, [www.today.com](http://www.today.com) (“The Today Show Website”), and on the Spencer Sports Website, and on the actual packaging and product information inserts from two Today Show test orders that were placed and received, features proprietary content and materials that were copied and misappropriated from Tone-y-Bands’ website and Amazon listings.

42. More specifically, the Tone-y-Bands Website and Amazon listings feature images, photographs, videos, and other marketing materials and content created and/or owned by Tone-y-Bands that depicts the Patented Products being used (“Proprietary Materials”). *See Exhibit E.*

43. Spencer Sports altered, copied, featured, displayed, and/or incorporated the Proprietary Materials into its listing on The Today Show Website and on its Amazon listings.

[THIS SECTION INTENTIONALLY LEFT BLANK]

*a. Proprietary Materials I*

<p><b>Tone-y-Bands</b></p>	<p>Mon, Aug 7, 2017</p> 
<p><b>Spencer Sports</b></p>	<p>Get Dec 12, 2015</p>  <p>Spencer Sports</p> <p>ALL COLLECTIONS Search something</p> <p>GO YOGA WEIGHTED BRACELET BAND</p> <p>Home &gt; SPORTS &gt; Go Yoga Weighted Bracelet Band</p> <p>\$79.95</p> <p>SPENCER SPORTS GO YOGA WEIGHTED BRACELET BAND</p> <p>Smart Video</p> <p>Feel stronger and more energized in your mind and body with Go Yoga Weighted Arm Bracelet. It helps to provide resistance, increase your range of motion and activate your muscles. Utilize the bracelet to enhance Yoga, and Pilates, or use it for simple exercises in your daily routine. The bracelet is made with a strong Silicone band and can be adjusted to fit everyone comfortably. The armband is durable, allowing you to wash it after each use without losing shape or form.</p> <p>TODAY ABOUT CONTACT</p> <p>Spencer Sports</p> <p>SHOP ALL RESULTS</p> <p>Go Yoga Weighted Bracelet Band - 2 Piece Set - BLACK</p> <p>Go Yoga Weighted Bracelet Band - 2 Piece Set - BLUE</p> <p>Go Yoga Weighted Bracelet Band - 2 Piece Set - WHITE</p> <p>Go Yoga Weighted Bracelet Band - 2 Piece Set - PURPLE</p> <p>Scroll Down to View More</p>



**b. Proprietary Materials II**

**Tone-y-Bands**







**Spencer Sports**

HEALTH-CONSCIOUS COOKBOOK SETS FROM PENGUIN RANDOM HOUSE \$26 →

ABOUT CONTACT

Spencer Sports

SHOWING ALL 6 PRODUCTS [Shop All Deals](#)

 <p><b>64% Off</b> <a href="#">Shop Now</a></p> <p>Go Yoga Weighted Bracelet Band - 2 Piece Set - BLACK</p> <p><del>\$29.00</del> \$70-06</p>	 <p><b>64% Off</b> <a href="#">Shop Now</a></p> <p>Go Yoga Weighted Bracelet Band - 2 Piece Set - BLUE</p> <p><del>\$29.00</del> \$70-06</p>	 <p><b>64% Off</b> <a href="#">Shop Now</a></p> <p>Go Yoga Weighted Bracelet Band - 2 Piece Set - WHITE</p> <p><del>\$29.00</del> \$70-06</p>	 <p><b>64% Off</b> <a href="#">Shop Now</a></p> <p>Go Yoga Weighted Bracelet Band - 2 Piece Set - PURPLE</p> <p><del>\$29.00</del> \$70-06</p>
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[Scroll Down for More Items](#)

otions/spencer-sports/products/copy-of-go-yoga-weighted-bracelet-band-2-piece-set-blue

HEALTH-CONSCIOUS COOKBOOK SETS FROM PENGUIN RANDOM HOUSE \$26 →

TODAY ABOUT CONTACT

[Home](#) / [Spencer Sports](#) / [Go Yoga Weighted Bracelet Band - 2 Piece Set - WHITE](#)



**Go Yoga Weighted Bracelet Band - 2 Piece Set - WHITE**

~~\$29.00~~ **\$29.00**

Free US & International Shipments for orders over \$99.99 with [Prime](#) [Member](#)


[ADD TO BAG](#)

The Go Yoga Weighted Arm Bracelets help to generate resistance, increase your range of motion and activate your muscles. Use them while walking, jogging, climbing stairs, or at the gym. Adjustable strap-on each hand can fit any wrist and can also be worn on your legs. Each bracelet comes with removable adjustable weight pieces. Total weight 1.1 lbs (two bracelets). Washable and durable made from soft cotton. In the box: 2 Go Yoga Weighted Bracelet Bands.

**ALL SALES ARE FINAL. NO RETURNS**

SHIPPING: Item will ship within 1-2 weeks of end of sale date.

**You Might Also Like**

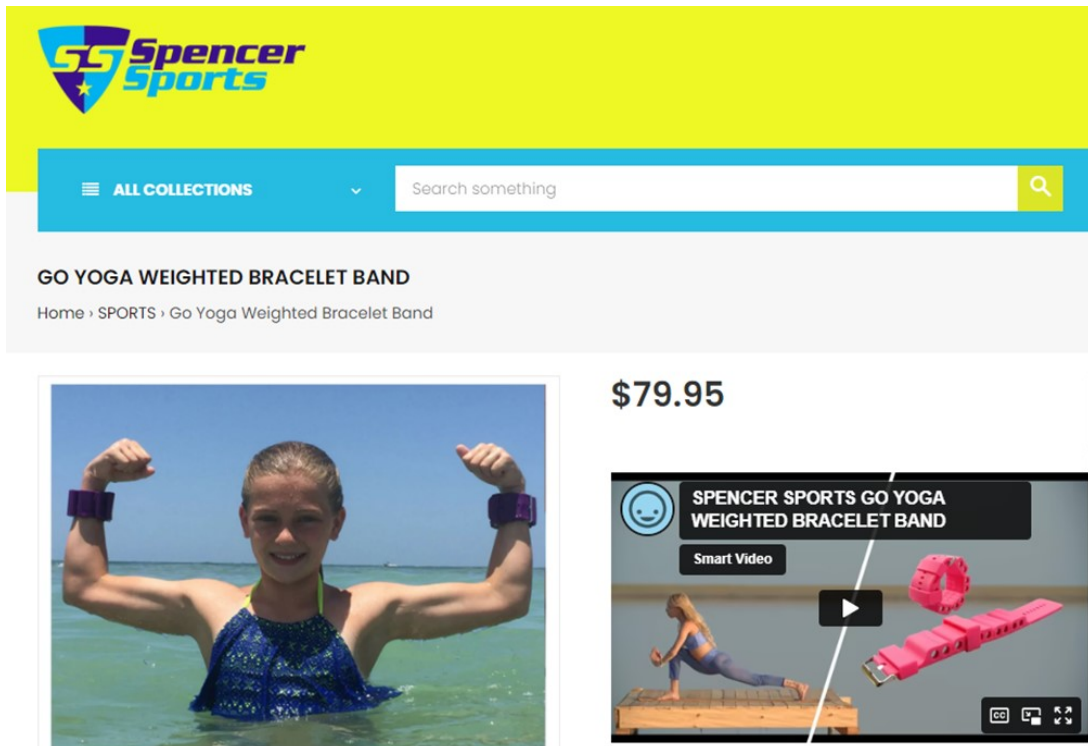


44. Pursuant to 35 U.S.C. § 287, each of the Patents are disclosed on the Tone-y-Bands Website. *See Exhibit F*.

45. In order to copy and misappropriate the Proprietary Materials, and upon information and belief, Spencer Sports accessed the Tone-y-Bands Website and Tone-y-Bands' Amazon listings where Tone-y-Bands' patent and trademark ownership information is clearly visible. *See id.*

46. As such, Spencer Sports had actual knowledge of Tone-y-Bands' valid and subsisting Patents at the time the January 6, 2023, show (offering the Infringing Products for sale) aired.

47. In addition to misappropriating and using the Proprietary Materials, Spencer Sports also copied and used, without the Haleys' permission, consent, or authorization, the image of the Haley's minor daughter (wearing the Patented Products) on, or in connection with, product listings for the Infringing Products. *See below.*



48. Spencer Sports did not obtain the Haleys' permission, consent, authorization, or license to (a) the Patents, (b) the Proprietary Materials, or (c) the image and likeness of the Haleys' minor daughter.

49. Not only did Spencer Sports use the foregoing without permission, but it did so in a concerted, willful, and obvious attempt to deceive and mislead consumers into believing that the Spencer Sports (and its Infringing Products) are somehow affiliated with, associated with, or related to Tone-y-Bands.

50. On or around January 7, 2023, Plaintiffs conducted two test purchases of the Infringing Products directly from The Today Show Website to confirm that the products were, indeed, infringing. Products were shipped on January 16, 2023. *See Exhibit G.*

51. Consequently, on or around January 19, 2023, Plaintiffs' counsel remitted a cease-and-desist letter to both Defendants, placing them on notice of their unlawful conduct and demanding that they immediately cease and desist the same. *See Exhibit H.*

52. To date, no written response or correspondence has been received from either Defendant.

53. Upon information and belief, Spencer Sports continues to make, use, sell, and/or offer the Infringing Products in the United States.

54. Distributors to (and through) whom Spencer Sports has supplied, sold, or offered for sale the aforementioned Infringing Products include, but may not be limited to, NBC, Amazon, and Walmart.

55. Spencer Sports' sale of the Infringing Products to NBC, Amazon, Walmart, and any others, without authorization from Tone-y-Bands infringes the Patents.

56. Similarly, Spencer Sports also owns, operates, or controls the Spencer Sports Website, which actively advertises, offers for sale, and sells products and services to consumers throughout North America, including the infringing weighted fitness bracelets that are the subject of the instant action.

57. As a direct result of the Defendants' actions, the Plaintiffs have retained the services of counsel, and are obligated to pay their counsel all attorneys' fees and costs associated with the investigation, preparation and prosecution of the instant lawsuit.

58. Plaintiffs have complied with and met all conditions precedent and concurrent to the bringing of this action, or all conditions precedent and concurrent to the bringing of this action have been waived or excused by the Defendants' conduct.

**COUNT I - WILLFUL PATENT INFRINGEMENT**

**35 U.S.C. § 271**

**(BY BETTER WAY INVENTIONS, LLC AGAINST SWIFT GLOBAL LLC)**

59. Tone-y-Bands realleges and revers paragraphs one (1) through fifty-six (56) as if fully set forth herein.

60. This is an action for direct and indirect patent infringement pursuant to Title 35, United States Code, Section 271, of the United States Patent Act.

61. Better Way Inventions, LLC (i.e., Tone-y-Bands) is the assignee of the '796 Patent, the '141 Patent, and the '431 Patent.

62. Swift Global LLC (i.e., Spencer Sports) has infringed, and continues to infringe, claims of at least the '796 Patent, the '141 Patent, and the '431 Patent by, *at least*, making, using, selling, or offering for sale, infringing products, *i.e.*, weighted fitness bracelets.

63. Specifically, Spencer Sports has infringed, literally and under the doctrine of equivalents, claims of the '796 Patent, the '141 Patent, and the '431 Patent by using, making,

selling, and offering to sell weighted fitness bracelets with a substantially identical design to that ornamental design claimed in the '796 Patent.

64. Spencer Sports has also infringed, literally and under the doctrine of equivalents, claims of the '141 Patent and the '431 Patent by using, making, selling, and offering to sell weighted fitness bracelets with a function of that claimed by the '141 Patent and the '431 Patent.

65. As set forth above, Spencer Sports clearly had knowledge of the Patents, the Patented Products, and/or Tone-y-Bands by virtue of (a) its unauthorized use of Proprietary Materials which it can only have obtained from the Tone-y-Bands Website or Tone-y-Bands' Amazon listings or social media pages/accounts; (b) its unauthorized use of the image and likeness of the Haleys' minor daughter which it can only have obtained from the Tone-y-Bands Website or Tone-y-Bands' Amazon listings or social media pages/accounts; and (c) its receipt of the January 19, 2023, cease-and-desist letter remitted by undersigned counsel.

66. Spencer Sports has also induced infringement of claims of at least the '796 Patent, the '141 Patent, and the '431 Patent by NBC, Amazon, Walmart, and others, by making, using, and selling infringing weighted fitness bracelets for resale by NBC, Amazon, Walmart, and others with knowledge of the aforesaid Patents covering said weighted fitness bracelets.

67. All such infringing conduct of Spencer Sports has occurred and was committed in a willful manner by at least its knowledge of the aforementioned Patents, and its knowledge of Tone-y-Bands' demands to cease its infringing conduct and recognize the rights under the Patents.

68. Spencer Sports' actions have caused, and continue to cause, irreparable harm to Tone-y-Bands to which there is no adequate remedy at law.

69. Spencer Sports' conduct in this instance is exceptional, and, as such, Tone-y-Bands should be entitled to recover its attorneys' fees in this action pursuant to 35 U.S.C. § 285 which provides that the "court in exceptional cases may award reasonable attorney fees to the prevailing party."

WHEREFORE, BETTER WAY INVENTIONS, LLC D/B/A TONE-Y-BANDS, a Florida Limited Liability Company, by and through the undersigned, hereby respectfully demands judgment against Defendant, SWIFT GLOBAL LLC DBA SPENCER SPORTS, a Texas Limited Liability Company, said judgment which should include provisions:

- a) temporarily and permanently enjoining Spencer Sports and all of those acting in concert with it, including, but not limited to, their agents, affiliates, subsidiaries, officers, directors, attorneys and employees from using, making, selling, or offering to sell infringing weighted fitness bracelets, and all colorable imitations thereof;
- b) compensating Tone-y-Bands for the full amount of damages sustained, including, but not limited to, any and all damage remedies available pursuant to the Patent Laws of the United States, 35 U.S.C. §§ 271, *et. seq.*, which include, but are not limited to, lost profits, a reasonable royalty award, and disgorgement of the profits received by Spencer Sports;
- c) declaring this case exceptional and trebling all damages awarded to Tone-y-Bands;
- d) imposition of all pre and post judgment interest at the maximum allowable rate on the full compensatory and trebled amount awarded to Tone-y-Bands;
- e) awarding remuneration of all attorneys' fees, costs and expenses for Tone-y-Bands having to investigate, prepare and prosecute this action; and
- f) for such further and additional relief this Court deems just and proper under the circumstances.

**COUNT II - CONTRIBUTORY PATENT INFRINGEMENT**

**35 U.S.C. § 271(C)**

**(BY BETTER WAY INVENTIONS, LLC AGAINST NBCUNIVERSAL MEDIA, LLC)**

70. Tone-y-Bands realleges and revers paragraphs one (1) through fifty-six (56) as if fully set forth herein.

71. This is a claim for contributory patent infringement pursuant to Title 35, United States Code, Section 271(c), of the United States Patent Act.

72. Better Way Inventions, LLC (i.e., Tone-y-Bands) is the assignee of the '796 Patent, the '141 Patent, and the '431 Patent.

73. The Infringing Products featured on the Steals & Deals Segment of The Today Show directly infringe the '796 Patent, the '141 Patent, and the '431 Patent.

74. Specifically, the weighted fitness bracelets (i.e., the Infringing Products) supplied by Spencer Sports and sold by NBC on or through its Steals & Deals Segment of The Today Show have a substantially identical design to that ornamental design claimed in the '796 Patent.

75. The weighted fitness bracelets (i.e., the Infringing Products) supplied by Spencer Sports and sold by NBC on or through its Steals & Deals Segment of The Today Show also have a function of that claimed by the '141 Patent and the '431 Patent.

76. As set forth above, NBC clearly had knowledge of the Patents, the Patented Products, and Tone-y-Bands by virtue of (a) its prior three-year business relationship with Tone-y-Bands wherein Tone-y-Bands' Patented Products were featured, aired, and sold on or through the Steals & Deals Segment of The Today Show on two separate occasions (namely, in 2020 and 2022); (b) Tone-y-Bands' application to, and very first communication with, NBC on October 29, 2019, which informed NBC that the Patented Products were, indeed, patented and protected; (c) the confirmation that Tone-y-Bands received from Chadwick upon being rejected for the January 2023 airing, wherein Chadwick confirmed that Ravich knew the Patented Products and

the fact that they were patented; and (d) its receipt of the January 19, 2023, cease-and-desist letter remitted by undersigned counsel.

77. Notwithstanding NBC's actual knowledge that the Infringing Products infringed Tone-y-Bands' Patents, NBC offered for sale and sold Spencer Sports' Infringing Products on the Steals & Deals Segment of The Today Show from at least January 6, 2023, until at least January 8, 2023.

78. Weighted fitness bracelets are a material component of the claimed invention and NBC sold that component.

79. NBC knew that the intended use of the Infringing Products would infringe the Patents.

80. The weighted fitness bracelets are not a staple or commodity article.

81. The weighted fitness bracelets were actually used in a manner that infringed the '796 Patent, the '141 Patent, and the '431 Patent.

82. All such infringing conduct of NBC has occurred and was committed in a willful manner by at least its knowledge of the aforementioned Patents, and its knowledge of Tone-y-Bands' demands to cease its infringing conduct and recognize the rights under the Patents.

83. Moreover, NBC directly benefitted from the sales of the Infringing Products on or through the Steals & Deals Segment of The Today Show inasmuch as NBC received a commission for each purchase of the Infringing Products on or through the Steals & Deals Segment of The Today Show. *See Exhibit I* ("If you purchase something through our links, TODAY earns a commission.").

84. NBC's actions have caused, and continue to cause, irreparable harm to Tone-y-Bands to which there is no adequate remedy at law.



85. NBC's conduct in this instance is exceptional, and, as such, Tone-y-Bands should be entitled to recover its attorneys' fees in this action pursuant to 35 U.S.C. § 285 which provides that the "court in exceptional cases may award reasonable attorney fees to the prevailing party."

WHEREFORE, BETTER WAY INVENTIONS, LLC D/B/A TONE-Y-BANDS, a Florida Limited Liability Company, by and through the undersigned, hereby respectfully demands judgment against Defendant, NBCUNIVERSAL MEDIA, LLC, a Delaware Limited Liability Company, said judgment which should include provisions:

- g) temporarily and permanently enjoining NBC and all of those acting in concert with it, including, but not limited to, their agents, affiliates, subsidiaries, officers, directors, attorneys and employees from using, making, selling, or offering to sell infringing weighted fitness bracelets, and all colorable imitations thereof;
- h) compensating Tone-y-Bands for the full amount of damages sustained, including, but not limited to, any and all damage remedies available pursuant to the Patent Laws of the United States, 35 U.S.C. §§ 271, *et. seq.*, which include, but are not limited to, lost profits, a reasonable royalty award, and disgorgement of the profits received by NBC;
- i) declaring this case exceptional and trebling all damages awarded to Tone-y-Bands;
- j) imposition of all pre and post judgment interest at the maximum allowable rate on the full compensatory and trebled amount awarded to Tone-y-Bands;
- k) awarding remuneration of all attorneys' fees, costs and expenses for Tone-y-Bands having to investigate, prepare and prosecute this action; and
- l) for such further and additional relief this Court deems just and proper under the circumstances.

**COUNT III – FEDERAL UNFAIR COMPETITION**

**15 U.S.C. § 1125(A)**

**(BY BETTER WAY INVENTIONS, LLC AGAINST SWIFT GLOBAL LLC & NBCUNIVERSAL MEDIA, LLC)**

86. Tone-y-Bands realleges and revers paragraphs one (1) through fifty-six (56) as if fully set forth herein.

87. Defendants both used and featured Tone-y-Bands' Proprietary Materials on their respective websites and platforms (i.e., Spencer Sports featured the Proprietary Materials on the Spencer Sports Website and NBC featured the Proprietary Materials on The Today Show Website) in connection with the marketing, offering for sale, and sale of the Infringing Products and without Tone-y-Bands' permission, consent, or authorization.

88. Defendants used the Proprietary Materials to mislead and deceive consumers into believing that Defendants and/or the Infringing Products are sponsored, approved, authorized, or licensed by Tone-y-Bands, which they are not.

89. Further, Defendants made and continue to make false, misleading, and/or deceptive representations by virtue of their use of visual content, images, photographs, designs, and layouts (i.e., the Proprietary Materials) on their respective websites, that are identical or substantially similar to those first used by Tone-y-Bands on Tone-y-Bands' website, Amazon listings, and/or social media pages.

90. Defendants have intentionally and knowingly made false representations intended to deceive and mislead consumers into purchasing the Infringing Products including, without limitation, artificially inflating the price of the Infringing Products prior to the January 6, 2023, show air date to achieve a purported discount of 64%; using the Proprietary Materials in connection with the marketing, offering for sale, and sale of competing, weighted fitness bracelets that infringe the Patents; and using the image and likeness of the Haleys' minor daughter in connection with the marketing, offering for sale, and sale of the Infringing Products (wherein the Haleys' minor daughter is depicted wearing the Patented Products but consumers viewing the image in connection with the sale of the Infringing Products would be reasonably led to believe that she is depicted wearing the Infringing Products).

91. The aforementioned conduct of Defendants concerning their use of identical and confusingly similar website content, sale of infringing products, use of the image and likeness of the Haleys' minor daughter, and use of false representations and other deceptive tactics over the Internet (collectively, "Deceptive Representations and Practices") was done without Tone-y-Bands' permission or consent.

92. Defendants' use of the aforementioned Deceptive Representations and Practices in connection with the Infringing Products and on Defendants' respective websites is likely to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with Tone-y-Bands, or as to the origin, sponsorship, or approval by Tone-y-Bands of the Infringing Products.

93. Defendants' use of the aforementioned Deceptive Representations and Practices in connection with the Infringing Products and on Defendants' respective websites is likely to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with Tone-y-Bands, or as to the origin, sponsorship, or approval by Tone-y-Bands of the Infringing Products and constitutes a false designation of origin.

94. Defendants' use of the Deceptive Representations and Practices in commerce in order to mislead consumers and unfairly detract business away from Tone-y-Bands also amounts to unfair competition.

95. Tone-y-Bands has been damaged by conduct described in paragraphs 85-92 and will suffer irreparable harm unless Defendants are enjoined as described further below.

96. Tone-y-Bands has no adequate remedy at law for future conduct carried out by Defendants.

WHEREFORE, BETTER WAY INVENTIONS, LLC D/B/A TONE-Y-BANDS, a Florida Limited Liability Company, by and through the undersigned, hereby respectfully demands judgment against Defendants, SWIFT GLOBAL LLC DBA SPENCER SPORTS, a Texas Limited Liability Company, and NBCUNIVERSAL MEDIA, LLC, a Delaware Limited Liability Company, said judgment which should include provisions:

- a) Granting an injunction restraining Defendants, their officers, directors, principals, agents, servants, employees, successors and assigns, and all individuals acting in concert or participation with them, from selling, offering for sale, distributing, advertising, marketing, promoting, labeling or packaging any good or service in any way that suggests, implies, or represents that the source of the good or service is Tone-y-Bands;
- b) Directing Defendants to account to Tone-y-Bands for any and all profits derived by them from the sale of the Infringing Products through the use of the Deceptive Representations and Practices described herein;
- c) Awarding Tone-y-Bands its damages sustained and proximately caused by Defendants' aforementioned conduct, including lost profits and loss in consumer goodwill and reputation;
- d) Trebling damages sustained by Tone-y-Bands based at least in part on Defendants' aforementioned conduct;
- e) Deeming this case exceptional under 15 U.S.C. § 1117 and awarding Tone-y-Bands its attorneys' fees sustained in pursuing this action;
- f) Finding the Deceptive Representations and Practices a form of unfair competition and directing Defendants to remove all Deceptive Representations and all other false, misleading, or deceptive statements, representations, or designations, from all of their social media accounts, pages, handles, websites, and webpages;
- g) Finding the Deceptive Practices a form of unfair competition and requiring Defendants to immediately cease all such practices;
- h) Imposing all pre and post judgment interest at the maximum allowable rate on the full compensatory and trebled amount awarded to Tone-y-Bands;
- i) Awarding remuneration of Tone-y-Bands' costs and expenses for Tone-y-Bands to investigate, prepare and prosecute this action; and/or

- j) For such further and additional relief this Court deems just and proper under the circumstances.

**COUNT IV – COMMON LAW UNFAIR COMPETITION**  
**(BY BETTER WAY INVENTIONS, LLC AGAINST SWIFT GLOBAL LLC & NBCUNIVERSAL MEDIA, LLC)**

97. Tone-y-Bands realleges and revers paragraphs one (1) through fifty-six (56) as if fully set forth herein.

98. Defendants both used and featured Tone-y-Bands' Proprietary Materials on their respective websites and platforms (i.e., Spencer Sports featured the Proprietary Materials on the Spencer Sports Website and NBC featured the Proprietary Materials on The Today Show Website) in connection with the marketing, offering for sale, and sale of the Infringing Products and without Tone-y-Bands' permission, consent, or authorization.

99. Defendants used the Proprietary Materials to mislead and deceive consumers into believing that Defendants and/or the Infringing Products are sponsored, approved, authorized, or licensed by Tone-y-Bands, which they are not.

100. Further, Defendants made and continue to make false, misleading, and/or deceptive representations by virtue of their use of visual content, images, photographs, designs, and layouts (i.e., the Proprietary Materials) on their respective websites, that are identical or substantially similar to those first used by Tone-y-Bands on Tone-y-Bands' website, Amazon listings, and/or social media pages.

101. Defendants have intentionally and knowingly made false representations intended to deceive and mislead consumers into purchasing the Infringing Products including, without limitation, artificially inflating the price of the Infringing Products prior to the January 6, 2023, show air date to achieve a purported discount of 64%; using the Proprietary Materials in

connection with the marketing, offering for sale, and sale of competing, weighted fitness bracelets that infringe the Patents; and using the image and likeness of the Haleys' minor daughter in connection with the marketing, offering for sale, and sale of the Infringing Products (wherein the Haleys' minor daughter is depicted wearing the Patented Products but consumers viewing the image in connection with the sale of the Infringing Products would be reasonably led to believe that she is depicted wearing the Infringing Products).

102. The aforementioned conduct of Defendants concerning their use of identical and confusingly similar website content, sale of infringing products, use of the image and likeness of the Haleys' minor daughter, and use of false representations and other deceptive tactics over the Internet (i.e., the Deceptive Representations and Practices) was done without Tone-y-Bands' permission or consent.

103. Defendants' use of the aforementioned Deceptive Representations and Practices in connection with the Infringing Products and on Defendants' respective websites is likely to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with Tone-y-Bands, or as to the origin, sponsorship, or approval by Tone-y-Bands of the Infringing Products.

104. Defendants' use of the aforementioned Deceptive Representations and Practices in connection with the Infringing Products and on Defendants' respective websites is likely to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with Tone-y-Bands, or as to the origin, sponsorship, or approval by Tone-y-Bands of the Infringing Products and constitutes a false designation of origin.

105. Defendants' use of the Deceptive Representations and Practices in commerce in order to mislead consumers and unfairly detract business away from Tone-y-Bands also amounts to unfair competition.

106. Tone-y-Bands has been damaged by conduct described in paragraphs 85-92 and will suffer irreparable harm unless Defendants are enjoined as described further below.

107. Tone-y-Bands has no adequate remedy at law for future conduct carried out by Defendants.

WHEREFORE, BETTER WAY INVENTIONS, LLC D/B/A TONE-Y-BANDS, a Florida Limited Liability Company, by and through the undersigned, hereby respectfully demands judgment against Defendants, SWIFT GLOBAL LLC DBA SPENCER SPORTS, a Texas Limited Liability Company, and NBCUNIVERSAL MEDIA, LLC, a Delaware Limited Liability Company, said judgment which should include provisions:

- a) Granting an injunction restraining Defendants, their officers, directors, principals, agents, servants, employees, successors and assigns, and all individuals acting in concert or participation with them, from selling, offering for sale, distributing, advertising, marketing, promoting, labeling or packaging any good or service in any way that suggests, implies, or represents that the source of the good or service is Tone-y-Bands;
- b) Directing Defendants to account to Tone-y-Bands for any and all profits derived by them from the sale of the Infringing Products through the use of the Deceptive Representations and Practices described herein;
- c) Awarding Tone-y-Bands its damages sustained and proximately caused by Defendants' aforementioned conduct, including lost profits and loss in consumer goodwill and reputation;
- d) Trebling damages sustained by Tone-y-Bands based at least in part on Defendants' aforementioned conduct;
- e) Deeming this case exceptional under 15 U.S.C. § 1117 and awarding Tone-y-Bands its attorneys' fees sustained in pursuing this action;

- f) Finding the Deceptive Representations and Practices a form of unfair competition and directing Defendants to remove all Deceptive Representations and all other false, misleading, or deceptive statements, representations, or designations, from all of their social media accounts, pages, handles, websites, and webpages;
- g) Finding the Deceptive Practices a form of unfair competition and requiring Defendants to immediately cease all such practices;
- h) Imposing all pre and post judgment interest at the maximum allowable rate on the full compensatory and trebled amount awarded to Tone-y-Bands;
- i) Awarding remuneration of Tone-y-Bands' costs and expenses for Tone-y-Bands to investigate, prepare and prosecute this action; and/or
- j) For such further and additional relief this Court deems just and proper under the circumstances.

**COUNT V - UNAUTHORIZED USE OF NAME AND LIKENESS**

**(FLA. STAT. § 540.08)**

**(BY JANICE H. HALEY & STEPHEN C. HALEY AGAINST SWIFT GLOBAL LLC)**

108. The Haleys reallege and rever paragraphs one (1) through fifty-six (56) as if fully set forth herein.

109. The Haleys assert this claim on behalf of their minor daughter, whose image and likeness was used by Spencer Sports without permission, consent, or authorization.

110. The Haleys' daughter's name, likeness, persona and identity have significant commercial and personal value.

111. Indeed, their daughter's image and likeness has been used in connection with the marketing, advertising, promotion, and sale of the Patented Products.

112. Spencer Sports unlawfully exploited, misappropriated and used the image and likeness of the Haleys' minor daughter, in the State of Florida and elsewhere, for its value and for commercial purposes, in connection with the marketing, offering for sale, and sale of the Infringing Products without the Haleys' consent or permission, for commercial and advertising



purposes, in violation of section 540.08 of the Florida Statutes. *See* Fla. Stat. § 540.08(6) (“Any consent provided for in subsection (1) shall be given on behalf of a minor by the guardian of her or his person or by either parent.”).

113. More specifically, Spencer Sports copied, misappropriated, displayed, and used the image of the Haley’s minor daughter (wearing the Patented Products) on, or in connection with, product listings for the Infringing Products (“Image”), at a minimum on the Spencer Sports Website.

114. The Image depicts the Haleys’ minor daughter from the waist up.

115. A member of the general public would readily ascertain that the unauthorized reproductions of the Image feature, reference, depict, and identify the Haleys’ minor daughter.

116. At all times material hereto, the use of the Haleys’ daughter’s image and likeness by Spencer Sports was done without the Haleys’ permission, consent, or authorization.

117. Spencer Sports’ violation, misappropriation and use of the Haleys’ daughter’s image and likeness conferred an unfair commercial benefit and advantage upon Spencer Sports.

118. Spencer Sports had actual knowledge that it was using the Haleys’ daughter’s image and likeness without any right, license or permission in connection with the promotion, marketing, offering for sale, and sale of Spencer Sports’ competing and infringing weighted fitness bracelets. Accordingly, Spencer Sports knowingly used and misappropriated the Haleys’ daughter’s image and likeness in disregard of the rights and interests of the Haleys (and their minor daughter) therein.

WHEREFORE, JANICE H. HALEY & STEPHEN C. HALEY, by and through the undersigned, hereby respectfully demand judgment against Defendant, SWIFT GLOBAL LLC

DBA SPENCER SPORTS, a Texas Limited Liability Company, said judgment which should include provisions:

- a) Temporarily and permanently enjoining Spencer Sports, and all of those acting in concert with it, including, but not limited to, its agents, affiliates, subsidiaries, officers, directors, attorneys and employees from publishing, printing, displaying or otherwise publicly using for purposes of trade or for any commercial or advertising purpose the name, image, portrait, photograph, or other likeness of the Haleys' minor daughter;
- b) Awarding the Haleys the damages sustained and proximately caused by Spencer Sports' aforementioned conduct, including, but not limited to, a reasonable royalty award, disgorgement of the profits received by Spencer Sports, costs, pre and post judgment interest at the maximum allowable rate, and such other and further relief this Court deems just and proper; and/or
- c) For such further and additional relief this Court deems just and proper under the circumstances.

**COUNT VI - COMMON LAW MISAPPROPRIATION OF NAME OR LIKENESS**  
**(BY JANICE H. HALEY & STEPHEN C. HALEY AGAINST SWIFT GLOBAL LLC)**

119. The Haleys reallege and rever paragraphs one (1) through fifty-six (56) as if fully set forth herein.

120. The Haleys assert this claim on behalf of their minor daughter, whose image and likeness was used by Spencer Sports without permission, consent, or authorization.

121. The Haleys' daughter's name, likeness, persona and identity have significant commercial and personal value.

122. Indeed, their daughter's image and likeness has been used in connection with the marketing, advertising, promotion, and sale of the Patented Products.

123. Spencer Sports unlawfully exploited, misappropriated and used the image and likeness of the Haleys' minor daughter, in the State of Florida and elsewhere, for its value and for commercial purposes, in connection with the marketing, offering for sale, and sale of the

Infringing Products without the Haleys' consent or permission, for commercial and advertising purposes, in violation of section 540.08 of the Florida Statutes. *See* Fla. Stat. § 540.08(6) ("Any consent provided for in subsection (1) shall be given on behalf of a minor by the guardian of her or his person or by either parent.").

124. More specifically, Spencer Sports copied, misappropriated, displayed, and used the image of the Haley's minor daughter (wearing the Patented Products) on, or in connection with, product listings for the Infringing Products ("Image"), at a minimum on the Spencer Sports Website.

125. The Image depicts the Haleys' minor daughter from the waist up.

126. A member of the general public would readily ascertain that the unauthorized reproductions of the Image feature, reference, depict, and identify the Haleys' minor daughter.

127. At all times material hereto, the use of the Haleys' daughter's image and likeness by Spencer Sports was done without the Haleys' permission, consent, or authorization.

128. Spencer Sports' violation, misappropriation and use of the Haleys' daughter's image and likeness conferred an unfair commercial benefit and advantage upon Spencer Sports.

129. Spencer Sports had actual knowledge that it was using the Haleys' daughter's image and likeness without any right, license or permission in connection with the promotion, marketing, offering for sale, and sale of Spencer Sports' competing and infringing weighted fitness bracelets. Accordingly, Spencer Sports knowingly used and misappropriated the Haleys' daughter's image and likeness in disregard of the rights and interests of the Haleys (and their minor daughter) therein.

WHEREFORE, JANICE H. HALEY & STEPHEN C. HALEY, by and through the undersigned, hereby respectfully demand judgment against Defendant, SWIFT GLOBAL LLC

DBA SPENCER SPORTS, a Texas Limited Liability Company, said judgment which should include provisions:

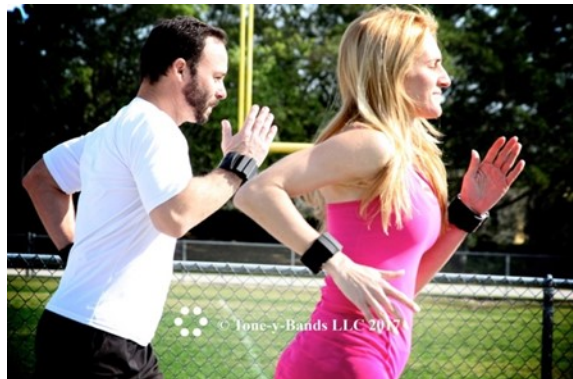
- a) Temporarily and permanently enjoining Spencer Sports, and all of those acting in concert with it, including, but not limited to, its agents, affiliates, subsidiaries, officers, directors, attorneys and employees from publishing, printing, displaying or otherwise publicly using for purposes of trade or for any commercial or advertising purpose the name, image, portrait, photograph, or other likeness of the Haleys' minor daughter;
- b) Awarding the Haleys the damages sustained and proximately caused by Spencer Sports' aforementioned conduct, including, but not limited to, a reasonable royalty award, disgorgement of the profits received by Spencer Sports, costs, pre and post judgment interest at the maximum allowable rate, and such other and further relief this Court deems just and proper; and/or
- c) For such further and additional relief this Court deems just and proper under the circumstances.

**COUNT VII – COPYRIGHT INFRINGEMENT**

**(BY BETTER WAY INVENTIONS, LLC AGAINST SWIFT GLOBAL LLC & NBCUNIVERSAL MEDIA, LLC)**

130. Tone-y-Bands realleges and revers paragraphs one (1) through fifty-six (56) as if fully set forth herein.

131. Tone-y-Bands owns a valid copyright in certain photographs and images that make up the Proprietary Materials including, without limitation, the following photographs (“Copyrighted Works”):





132. The Copyrighted Works are federally registered with the Register of Copyrights pursuant to 17 U.S.C. § 411(a) and are embodied in Copyright Registration No VA 2-347-992, having an effective registration date of May 19, 2023. *See Exhibit J.*

133. Defendants both copied, displayed, and distributed the Copyrighted Works and/or made derivatives of said works without Tone-y-Bands' authorization in violation of 17 U.S.C. §§ 106, 501.

134. Specifically, Defendants used and featured the Copyrighted Works on their respective websites and platforms (e.g., Spencer Sports featured the first image depicted above on the Spencer Sports Website, NBC featured the first image depicted above on The Today Show Website, Spencer Sports featured the second image depicted above on the product packaging, etc.) in connection with the marketing, offering for sale, and sale of the Infringing Products and without Tone-y-Bands' permission, consent, or authorization. **Exhibits E, G.**

135. Defendants performed the acts alleged in the course and scope of their business activities.

136. Based on Tone-y-Bands' prior business relationship with NBC and its January 19, 2023 cease-and-desist letters to both Defendants, the aforementioned Copyright infringements are believed to have been committed willfully and with knowledge that said acts were infringing and violative of Tone-y-Bands' rights.

137. Tone-y-Bands has been damaged from Defendants' conduct in the form of at least actual and potential lost profits and uncontrolled and unconsented proliferation, display, and/or use of the Copyrighted Works.

138. The harm caused to Tone-y-Bands is irreparable if not ceased by Defendants.

139. Defendants have no fair use defense to their actions and their actions are not innocent.

140. To the contrary, at all times material hereto, Defendants' use of the Copyrighted Works was a commercial use from which they derived a profit.

WHEREFORE, BETTER WAY INVENTIONS, LLC D/B/A TONE-Y-BANDS, a Florida Limited Liability Company, by and through the undersigned, hereby respectfully demands judgment against Defendants, SWIFT GLOBAL LLC DBA SPENCER SPORTS, a Texas Limited Liability Company, and NBCUNIVERSAL MEDIA, LLC, a Delaware Limited Liability Company, said judgment which should include provisions:

- a) Finding Defendants' use of the Copyrighted Works constitutes knowing and intentional copyright infringement of Copyright Registration No VA 2-347-992;
- b) Finding Defendants and their officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, are permanently enjoined from (1) using, reproducing, or distributing copies of the Copyrighted Works, or (2) preparing derivative works based upon the Copyrighted Works;
- c) Requiring Defendants to pay to Tone-y-Bands its actual damages and Defendants' profits attributable to the infringement, as provided in 17 U.S.C. § 504;
- d) Requiring Defendants pay to Tone-y-Bands all pre- and post-judgment interest at the maximum allowable rate on the full compensatory amount awarded to Tone-y-Bands;
- e) Requiring Defendants pay to Tone-y-Bands all of its reasonable attorneys' fees, costs, and expenses for Tone-y-Bands having to investigate, prepare and prosecute this action pursuant to 17 U.S.C. § 505; and

- f) For such further and additional relief this Court deems just and proper under the circumstances.

**DEMAND FOR JURY TRIAL**

Plaintiffs, BETTER WAY INVENTIONS, LLC D/B/A TONE-Y-BANDS, a Florida Limited Liability Company, JANICE H. HALEY, an individual, and STEPHEN C. HALEY, an individual, hereby demand trial by jury of all issues so triable as a matter of law.

Dated: May 24, 2023

Respectfully submitted,

By: /s/ Mark C. Johnson  
Mark C. Johnson, Esq.  
[MJ@JohnsonDalal.com](mailto:MJ@JohnsonDalal.com)  
[Info@JohnsonDalal.com](mailto:Info@JohnsonDalal.com)

Fla. Bar. # 84365

**JOHNSON | DALAL**

111 N. Pine Island Road  
Suite 105  
Plantation, FL 33324

AND

Peter Herman, Esq.  
[PGH@PHPALAW.COM](mailto:PGH@PHPALAW.COM)  
[SERVICE@PHPALAW.COM](mailto:SERVICE@PHPALAW.COM)

Fla. Bar. # 353991

Peter Herman, P.A.

3020 NE 32nd Avenue

Suite 226

Fort Lauderdale, FL 33308

*Attorneys for Plaintiffs*