

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS**

SHERRYWEAR, LLC,)	
)	
Plaintiff,)	Case No. _____
)	
v.)	Jury Trial Demanded
)	
TRACKSMITH CORPORATION,)	
)	
Defendant.)	
)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff SherryWear, LLC (“SherryWear”) alleges the following for its Complaint against Defendant Tracksmith Corporation (“Tracksmith”):

NATURE OF THE ACTION

1. This is an action for willful direct and indirect infringement of Plaintiff SherryWear’s U.S. Patent Nos. 9,808,036 (“the ‘036 Patent”) and 10,219,550 (“the ‘550 Patent”) (collectively, “the patents-in-suit”) in violation of the Patent Act, 35 U.S.C. § 271, based on Defendant Tracksmith’s unauthorized commercial manufacture, use, importation, offer for sale, sale, and marketing of its “Allston Bra” product in the United States.

2. SherryWear seeks injunctive relief to prevent Tracksmith from continuing to infringe the patents-in-suit. In addition, SherryWear seeks to recover

monetary damages resulting from Tracksmith's past and ongoing infringement of the patents-in-suit.

THE PARTIES

3. SherryWear is a Florida limited liability company with its principal place of business at 1786 Cypress Lane, Vero Beach, FL 32963.

4. Defendant Tracksmith is a Delaware corporation with its principal place of business at 285 Newbury Street, Boston, MA 02116.

JURISDICTION AND VENUE

5. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. The Court has personal jurisdiction over Tracksmith because its principal place of business is in Massachusetts. The Court further has personal jurisdiction over Tracksmith because it has purposefully directed its infringing activities (direct and induced infringement) into Massachusetts, including by marketing and selling the Allston Bra in its Newbury Street store in Boston and online to Massachusetts residents; SherryWear's claims arise out of and relate to Tracksmith's activities that are purposefully directed at Massachusetts.

7. Venue lies in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400 because Tracksmith's principal place of business is in Massachusetts and it has committed acts of direct and indirect patent infringement in this District—and it is otherwise subject to personal jurisdiction in this judicial district.

PATENTS-IN-SUIT

8. On March 5, 2019, the United States Patent and Trademark Office duly and legally issued the U.S. Patent No. 10,219,550 (“the ‘550 Patent”), entitled “Pocket Bra System.” A true and accurate copy of the ‘550 Patent is attached hereto as **Exhibit 1.**

9. The second independent claim of the ‘550 Patent, Claim 8, recites:

8. A pocket bra comprising:

a strap assembly comprising a chest strap;

and comprising left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces, the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer, each cup having upper, lower, interior body facing, and opposite exterior edges;

a patch forming a pocket operatively associated with at least one of the left and right cups, the patch having an upper edge, a lower edge, and an exterior edge, the patch having inside and outside surfaces;

the lower edge of the patch coupled to the bra adjacent to a lower edge of the at least one of the left and right cups, and the exterior edge of the patch coupled adjacent to the exterior edge of the at least one of the left and right cups, a pocket opening formed along the upper edge of the patch being unconnected to the at least one of the left and right cups;

the pocket opening capable of repeated receiving and removal of an item when being worn by the wearer;

and wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge crossing such that the opening faces the interior edge of the at least one of the left and right cup to which it is attached.

Exhibit 1.

10. Claim 10 of the '550 Patent is dependent on Claim 8 and recites:

10. The pocket bra of claim 8 further comprising a non-padding item positioned in the pocket.

Id.

11. On November 7, 2017, the United States Patent and Trademark Office duly and legally issued the U.S. Patent No. 9,808,036 (“the ‘036 Patent”), also entitled “Pocket Bra System.” A true and accurate copy of the ‘036 Patent is attached hereto as **Exhibit 2**.

12. The first independent claim of the ‘036 Patent, Claim 1, recites:

1. A pocket bra comprising:

a strap assembly comprising a chest strap;

and comprising left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces, the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer, each cup having upper, lower, interior body facing, and opposite exterior edges;

a patch forming a pocket operatively associated with at least one of the left and right cups, the patch having an upper edge, a lower interior body facing edge, and an opposite lower exterior edge, the patch having inside and outside surfaces;

stitching coupling the lower interior body facing edge, and the opposite lower exterior edge of the patch to at least one of the lower, interior body facing, and opposite exterior edges of the at least one of the left and right cups, or the chest strap;

an opening formed along the upper edge of the patch;

the opening capable of repeated receiving and removal of an item when being worn by the wearer;

and wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge of the patch being offset from an upper edge of the cup.

Exhibit 2.

13. Claim 3 of the '036 Patent is dependent on Claim 1 and recites:

3. A bra pocket system comprising the pocket bra of claim 1 and further comprising a non-padding item removably positioned within the pocket of at least one of the left and right cups.

Id.

14. The second independent claim of the '036 Patent, Claim 6, recites:

6. A pocket bra comprising:

a strap assembly comprising a chest strap;

and comprising left and right cups, each cup being an area to receive a breast of a wearer and having inside and outside surfaces, the strap assembly being attached to the cups whereby the strap assembly connects the cups to the wearer, each cup having upper, lower, interior body facing, and opposite exterior edges;

a patch forming a pocket operatively associated with at least one of the left and right cups, the patch having an upper edge, a lower interior body facing edge, and an opposite lower exterior edge, the patch having inside and outside surfaces;

stitching coupling the lower interior body facing edge, and the opposite lower exterior edge of the patch to the lower, interior body facing, and opposite exterior edges of the at least one of the left and right cups;

an opening formed along the upper edge of the patch;

the opening capable of repeated receiving and removal of an item when being worn by the wearer;

and wherein the upper edge of the patch crosses over a surface of the cup to form the opening, the upper edge crossing in such

that the opening faces the interior body facing edge of the one of the left and right cup to which it is attached, the upper edge of the patch being offset from an upper edge of the cup.

Id.

15. Claim 8 of the '036 Patent is dependent on Claim 6 and recites:

8. A bra pocket system comprising the pocket bra of claim 6 and further comprising a non-padding item removably positioned within the pocket of at least one of the left and right cups.

Id.

16. SherryWear is the lawful assignee and exclusive owner of all right, title, and interest in and to the patents-in-suit, including rights to sue for acts of past, present, and future infringement.

DEFENDANT'S ACTS INFRINGE THE PATENTS-IN-SUIT

17. Defendant Tracksmith makes the Allston Bra, which it advertises, offers, and sells online and through brick-and-mortar stores, including from its flagship store in Boston.

18. The Allston Bra is labeled, "Made in Malaysia"; Tracksmith imports it into the United States for sale.

19. Tracksmith directly sells the Allston Bra on its website at <https://www.tracksmith.com/products/w-allston-pocket-bra?sku=WT66301LAK>, a true and accurate copy of which is attached hereto as **Exhibit 5**¹.

¹ Due to the nature of certain web programming practices, content on Tracksmith's Allston Bra web page (<https://www.tracksmith.com/products/w-allston-pocket->

20. The Allston Bra is a sports bra comprised of a chest and shoulder strap assembly designed to hold the left and right cup to the wearer.

21. The Allston Bra further has a patch on the front chest area (the bra's "pocket"); the pocket opens at its upper edge to permit it to receive an item within; and the pocket's upper edge is offset from the upper edges of the bra's cups.

22. The Allston Bra comprises features that match each element of Claim 8 of the '550 Patent and Claims 1 and 6 of the '036 Patent, either literally or by the doctrine of equivalents, as further illustrated by the claim chart comparing Claim 8 of the '550 Patent to the Allston Bra (**Exhibit 3**) and the claim chart comparing Claims 1 and 6 of the '036 Patent to the Allston Bra (**Exhibit 4**).

23. Accordingly, using, making, offering, selling, or importing the Allston Bra—which Tracksmith has done and continues to do—directly infringes Claim 8 of the '550 Patent and Claims 1 and 6 of the '036 Patent.

24. Third parties have and continue to use the Allston Bra, directly infringing Claim 8 of the '550 Patent and Claims 1 and 6 of the '036 Patent. *See Exhibit 6.*

25. When an item is positioned within the Allston Bra's pocket, each element of Claim 10 of the '550 Patent and Claims 3 and 8 of the '036 Patent are met

bra?sku=WT66301LAK) is not all displayed at once; it therefore cannot directly print entirely to PDF. Accordingly, Exhibit 5 is a compilation of several relevant displayed conditions of that web page.

and thus directly infringed, as further illustrated in the attached claim charts. Exhibits 3, 4.

26. Tracksmith's online marketing material specifies to purchasers that the Allston Bra has a "pocket hidden between the bra lining that will hold anything from a phone to a few gels". Exhibit 5.

27. Third persons have used and continue to use the Allston Bra by inserting items into its pocket, directly infringing Claim 10 of the '550 Patent and Claims 3 and 8 of the '036 Patent. For example, the attached Exhibit 6 is a true and correct copy of a Runner's World online review featuring pictures of a person wearing the Allston Bra and inserting or removing a car key and another item into or from its pocket.

28. Tracksmith has and continues to actively induce others to directly infringe the patents-in-suit through its marketing materials—which state that the Allston Bra has a "pocket hidden between the bra lining that will hold anything from a phone to a few gels" and contains pictures demonstrating a phone inserted into the Allston Bra's pocket—and by the Allston Bra's inherent design. Exhibit 5.

29. Tracksmith has never had authority to use, offer, sell, or import any product or assembly covered by the patents-in-suit or actively induce others to do so.

30. On or about August 26, 2022, SherryWear sent Tracksmith a letter providing both '550 and '036 Patents and identifying with claim charts how the Allston Bra infringes their claims.

31. However, Tracksmith persists in its direct and indirect (inducement) infringing activities described herein and in the attached claim charts.

32. By continuing to engage in commercial activities described in this Complaint, Tracksmith is knowingly, deliberately, intentionally infringing SherryWear's patents-in-suit.

COUNT I

Direct and Induced Infringement of the '550 Patent, 35 U.S.C. § 271

33. SherryWear hereby incorporates the foregoing paragraphs as if fully restated herein.

34. SherryWear is the lawful owner of and continues to maintain all right, title, and interest in and to the '550 Patent, including the right to sue thereon and the right to recover for infringement thereof.

35. The features of Tracksmith's Allston Bra satisfy each element of the Claim 8 of the '550 Patent, either literally or by the doctrine of equivalents.

36. Tracksmith has and continues to make, use, sell, offer to sell, and import the Allston Bra in the United States, directly infringing Claim 8 of the '550 Patent.

37. Inserting an item (e.g., a phone) into the Allston Bra's pocket satisfies each element of Claim 10 of the '550 Patent, either literally or by the doctrine of equivalents.

38. Tracksmith has used and continues to use the Allston Bra by inserting items into its pocket, directly infringing Claim 10 of the '550 Patent.

39. Through at least its marketing material and the Allston Bra's inherent design, Tracksmith also has and continues to intentionally induce others to offer or sell or use the Allston Bra in infringement of Claims 8 and 10 of the '550 Patent, including use by inserting items into its pocket.

40. Tracksmith learned that making, using, offering, selling, importing, or inserting an item into the pocket of the Allston Bra directly infringe the '550 Patent at least as early as its receipt of SherryWear's August 29, 2022, letter—but its infringing activities continue to the present.

41. Tracksmith has and continues to actively, knowingly, deliberately, and intentionally induce third parties (e.g., purchasers of the Allston Bra) to directly infringe Claims 8 and 10 of the '550 Patent, including through its marketing materials and the Allston Bra's inherent design.

42. Tracksmith's continued direct and induced infringement of Claims 8 and 10 of the '550 Patent is willful and deliberate because it knows of the '550 Patent and the infringement thereof at least as early as August 29, 2022, and in no event later than the filing of this lawsuit.

43. As the direct and proximate result of Tracksmith's conduct, SherryWear has suffered—and will continue to suffer if Tracksmith's conduct is not stopped—economic harm, irreparable injury, and damages in an amount to be proven at trial. Because SherryWear's remedy at law is inadequate, SherryWear seeks permanent injunctive relief in addition to damages.

44. SherryWear is also entitled to enhanced damages and reasonable attorney fees adequate to compensate for Tracksmith's willful infringement and other conduct.

COUNT II

Direct and Induced Infringement of the '036 Patent, 35 U.S.C. § 271

45. SherryWear hereby incorporates paragraphs 1 through 32 as if fully restated herein.

46. SherryWear is the lawful owner of and continues to maintain all right, title, and interest in and to the '036 Patent, including the right to sue thereon and the right to recover for infringement thereof.

47. The features of Tracksmith's Allson Bra satisfy each element of Claims 1 and 6 of the '036 Patent, either literally or by the doctrine of equivalents.

48. Tracksmith has and continues to make, use, sell, offer to sell, and import the Allston Bra in the United States, directly infringing Claims 1 and 6 of the '036 Patent.

49. Inserting an item (e.g., a phone) into the Allston Bra's pocket satisfies each element of Claims 3 and 8 of the '036 Patent, either literally or by the doctrine of equivalents.

50. Tracksmith has and continues to use the Allston Bra by inserting items into its pocket, directly infringing Claims 3 and 8 of the '036 Patent.

51. Through at least its marketing materials and the Allston Bra's inherent design, Tracksmith also has and continues to intentionally induce others to offer or

sell or use the Allston Bra in direct infringement of Claims 1, 6, 3, and 8 of the '036 Patent, including by inserting items into its pocket.

52. Tracksmith learned that making, using, offering, selling, importing, or inserting an item into the front pocket of the Allston Bra directly infringes the '036 Patent at least as early as its receipt of SherryWear's August 29, 2022, letter—but its infringing activities continue to the present.

53. Tracksmith has and continues to actively, knowingly, deliberately, and intentionally induce third parties (e.g., purchasers of the Allston Bra) to directly infringe Claims 1, 6, 3, and 8 of the '036 Patent, including through Tracksmith's marketing materials and the Allston Bra's inherent design.

54. Tracksmith's continued direct and induced infringement of Claims 1, 6, 3, and 8 of the '036 Patent is willful and deliberate because it knows of the '036 Patent and the infringement thereof at least as early as August 29, 2022, and in no event later than the filing of this lawsuit.

55. As the direct and proximate result of Tracksmith's conduct, SherryWear has suffered—and if Tracksmith's conduct is not stopped, will continue to suffer—economic harm, irreparable injury, and damages in an amount to be proven at trial. Because SherryWear's remedy at law is inadequate, SherryWear seeks permanent injunctive relief in addition to damages.

56. SherryWear is also entitled to enhanced damages and reasonable attorney fees adequate to compensate for Tracksmith's willful infringement and other conduct.

DEMAND FOR JURY TRIAL

SherryWear demands a trial by jury of all matters to which it is so entitled under Fed. R. Civ. P. 38 and otherwise.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, SherryWear LLC prays for judgment against Defendant Tracksmith Corporation as follows:

1. Adjudging that Tracksmith Corporation has infringed and actively induced infringement of the patents-in-suit in violation of 35 U.S.C. § 271;
2. Granting an injunction temporarily and preliminarily during the pendency of this action, and permanently thereafter, enjoining Tracksmith Corporation and any subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in participation therewith from infringing, contributing to the infringement of, and/or inducing infringement of the patents-in-suit.
3. Ordering Tracksmith Corporation to account and pay damage adequate to compensate SherryWear for Tracksmith Corporation's infringement of the patents-in-suit, including pre-judgment and post-judgment interests and costs, pursuant to 35 U.S.C. § 284;
4. Ordering an accounting for any infringing sales not presented at trial and an award by the Court of additional damages for any such infringing sales;
5. Ordering that the damages award be enhanced up to three-fold in accordance with 35 U.S.C. § 284;
6. Declaring this case exceptional and awarding SherryWear its reasonable attorney fees and costs in accordance with 35 U.S.C. § 285; and
7. Awarding SherryWear any such other and further relief as this Court deems just and proper under the circumstances.

Dated: December 13, 2022

Respectfully submitted,

CALDWELL IP LAW

/s/ Andrew P. Alexander

Andrew P. Alexander

andrew@caldwellip.com

Caldwell Intellectual Property Law

200 Clarendon St., 59th Floor,

Boston, MA 02116

(857) 496-8913

Attorneys for Plaintiff

TABLE OF EXHIBITS

Exhibit 1 - U.S. Patent No. 10,219,550

Exhibit 2 – U.S. Patent No. 9,808,036

Exhibit 3 – Claim Chart for the ‘550 Patent

Exhibit 4 – Claim Chart for the ‘036 Patent

Exhibit 5 – Tracksmith’s “Allston Bra” Marketing Webpage

Exhibit 6 – Runner’s World online review featuring Allston Bra

Exhibit 7 – Images of a Physical Example of Defendant’s Allston Bra