

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Shenzhen Lanxi Technology Co. Ltd.,

Plaintiff,

v.

Pingjiang Fangao E-commerce Co., Ltd,

Defendant.

CASE NO.

Jury Demand

AMENDED COMPLAINT

This is an action brought under the Declaratory Judgment Act by Plaintiff Shenzhen Lanxi Technology Co. Ltd., d/b/a as LANXI LLC (“Plaintiff”), against Defendant Pingjiang Fangao E-commerce Co., Ltd (“Defendant”). Upon actual knowledge with respect to itself and its acts, and upon information and belief as to all other matters, Plaintiff alleges as follows:

NATURE OF THE ACTION

1. This court has original jurisdiction over the subject matter of this action pursuant to the Patent Act, 35 U.S.C. §§ 101, 102, 103 et seq., pursuant to 28 U.S.C. §§ 1331, 1332(a) and (c), 1338(a), and pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.
2. This is an action under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking a declaratory judgment that Plaintiff has not infringed any alleged Patent of Defendant (including any of Defendants’ predecessors and/or successors in interest), directly, contributorily, or vicariously.

3. This is an action under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking a declaratory judgment that Defendant's Patent U.S. Patent No. D935,246 ("Defendant's Patent") is invalid under at least 35 U.S.C. §§ 102 and 103.

4. This action arises from Defendant's filing of fraudulent Patent infringement complaint to Walmart, causing Walmart to de-list Plaintiff's top selling product from the market, which could lead to the total annihilation of Plaintiff's business.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 2201, 2202, 1331, 1338(a), because this action arises under the laws of the United States, in particular the Patent Act of the United States, 35 U.S.C. § 100 et seq.

6. An actual case or controversy exists between the parties to this action. Defendant filed the patent infringement complaint to Walmart which resulted in the removal of Plaintiff's Walmart product listings. Product delisting from Walmart has stopped Plaintiff's product sales on Walmart and caused significant financial loss. Defendant's actions thereby give rise to an actual controversy under 28 U.S.C. §§ 2201 et. seq.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this Court may properly exercise personal jurisdiction over Defendant since the Defendant directly targets business activities toward consumers in the United States, including Illinois, through at least the fully interactive, e-commerce Walmart store. Specifically, Defendant has targeted sales to Illinois residents by setting up and operating e-commerce stores that target United States consumers using one or more Seller Aliases, offers shipping to the United States, including Illinois, accepts payment in U.S. dollar and, on information and belief, has sold products to residents of Illinois. Defendant is engaging in interstate commerce, and has wrongfully caused Plaintiff substantial injury in the State of Illinois.

THE PARTIES

THE PLAINTIFF

8. Plaintiff is a limited liability company organized and existing under the laws of the People's Republic of China, having its principal place of business located at Room 312, No.6 Factory Building, A Building, 3rd Floor Dream Lily Garden Industrial Zone, Fukang Community, Longhua Street, Longhua District, Shenzhen City, China.

THE DEFENDANT

9. Defendant Pingjiang Fangao E-commerce Co., Ltd is a limited liability company organized and existing under the laws of the People's Republic of China. Defendant's contact information is as follows: Yan Peng, py21652020@outlook.com, 13316534684.

FACTUAL BACKGROUND

10. Plaintiff owns and operates Walmart store LANXI LLC.
11. Plaintiff sells small electronic devices and Makeup Organizer in its Walmart store.
12. Plaintiff's Makeup Organizer is popular due to its distinguish design of the diamond-shaped contour. Plaintiff's Markup Organizer has the appearance of the following:



13. On April 26, 2023, Plaintiff's store received an Email from Walmart. *See* Exhibit 1. This Email informed the Plaintiff that Defendant "has made a design patent claim to Walmart alleging that certain product(s) infringe rights and/or registrations owned by them." *Id.* In that Email, Walmart provided Plaintiff with the Rights Owner's contact details: Yan Peng, py21652020@outlook.com, 13316534684. Plaintiff's Markup Organizer product was taken down by Walmart on the same day.

14. Defendant's design patent, U.S. Patent, No. D935,246 ("246 Patent") is attached hereto as Exhibit 3. The '246 Patent's filing date is April 14, 2021. The Date of Publication is November 9, 2021. The perspective view of the '246 Patent is shown as below:

U.S. Patent Nov. 9, 2021 Sheet 1 of 9 US D935,246 S

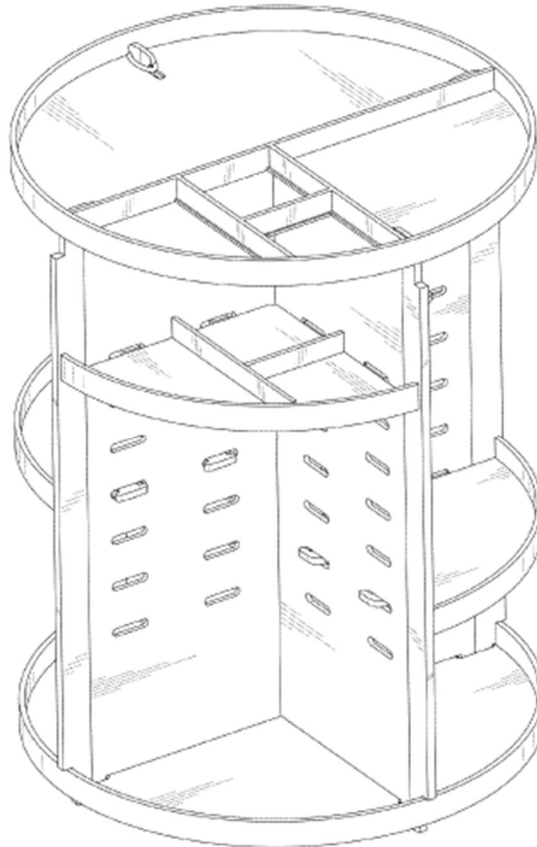
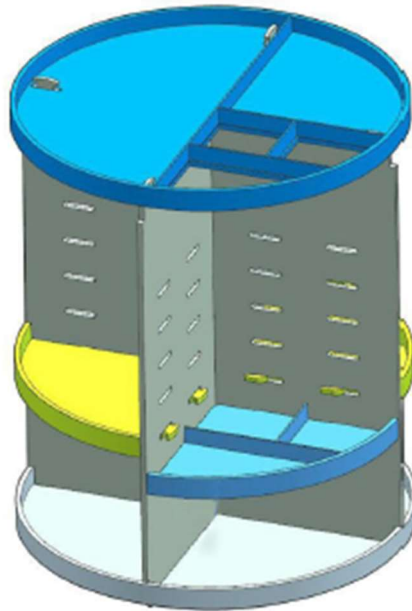


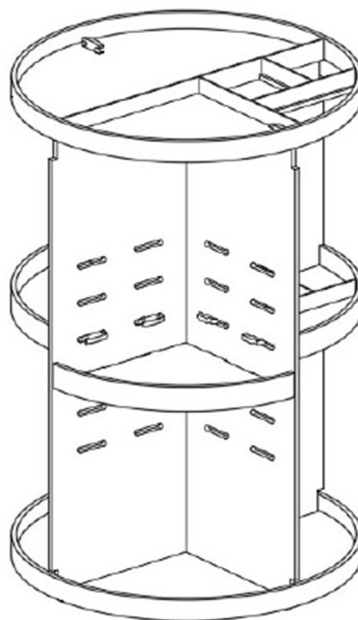
FIG. 1

15. However, the '246 Patent was already patented, in public use, on sale or otherwise available to the public before the '246 Patent's filing date.

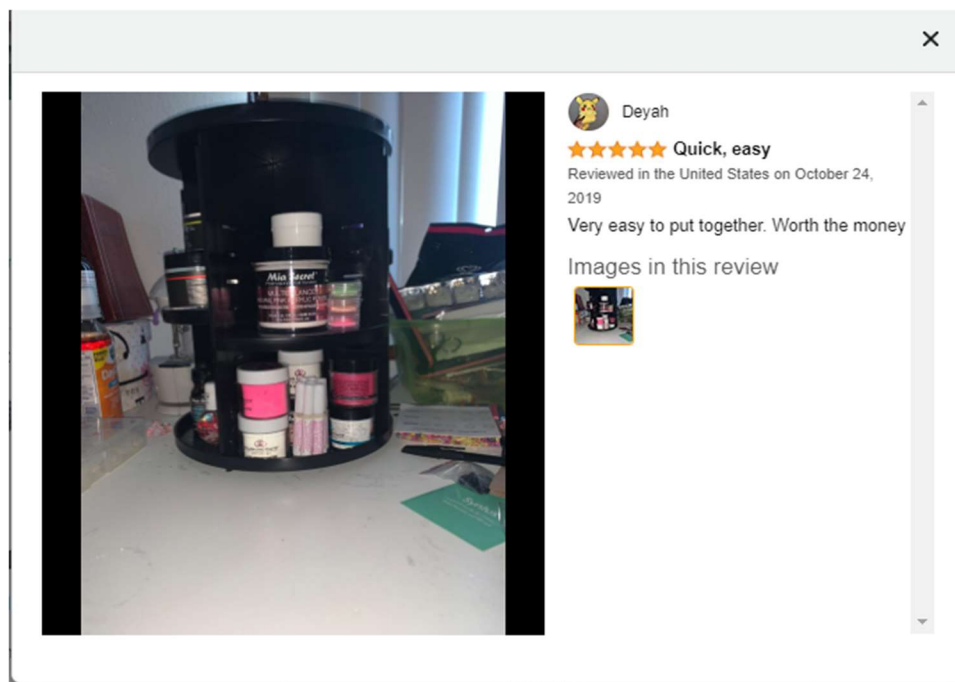
16. A Chinese Patent, No. CN 303516094 ("094 Patent"), issued on December 23, 2015 has disclosed all the claimed design of the '246 Patent. A true and correct copy of the Chinese Patent and translation of the patent is attached hereto as Exhibit 3. The perspective view of the '094 Patent is shown as below:



17. A Chinese Patent, No. CN 304610684 ("684 Patent"), issued on May 4, 2018 has also disclosed all the claimed design of the '246 Patent. A true and correct copy of the Chinese Patent and translation of the patent is attached hereto as Exhibit 4.



18. A screenshot of a customer review can clearly show the Makeup Organizer which is exactly same to the design of '246 Patent was sold on Amazon.com as early as October 24, 2019¹:



¹ The Customer review is available in https://www.amazon.com/gp/customer-reviews/R2MPZPD5HA04K4?ref=pf_vv_at_pdctrvw_srp; a true and correct copy of the website and the website of the product is attached hereto as Exhibit 5.

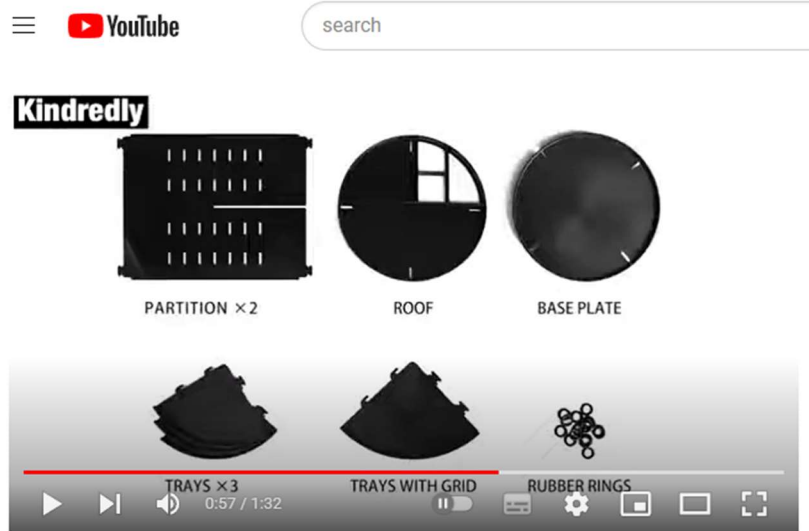
19. A screenshot of a YouTube video can clearly show the Makeup Organizer which is exactly same to the design of '246 Patent was available to the public as early as January 5, 2019²:



The 360 Rotating Makeup Organizer How To Video

Kindredly 3 subscribers **subscription** 0 likes 0 comments share ...

12 views January 5, 2019



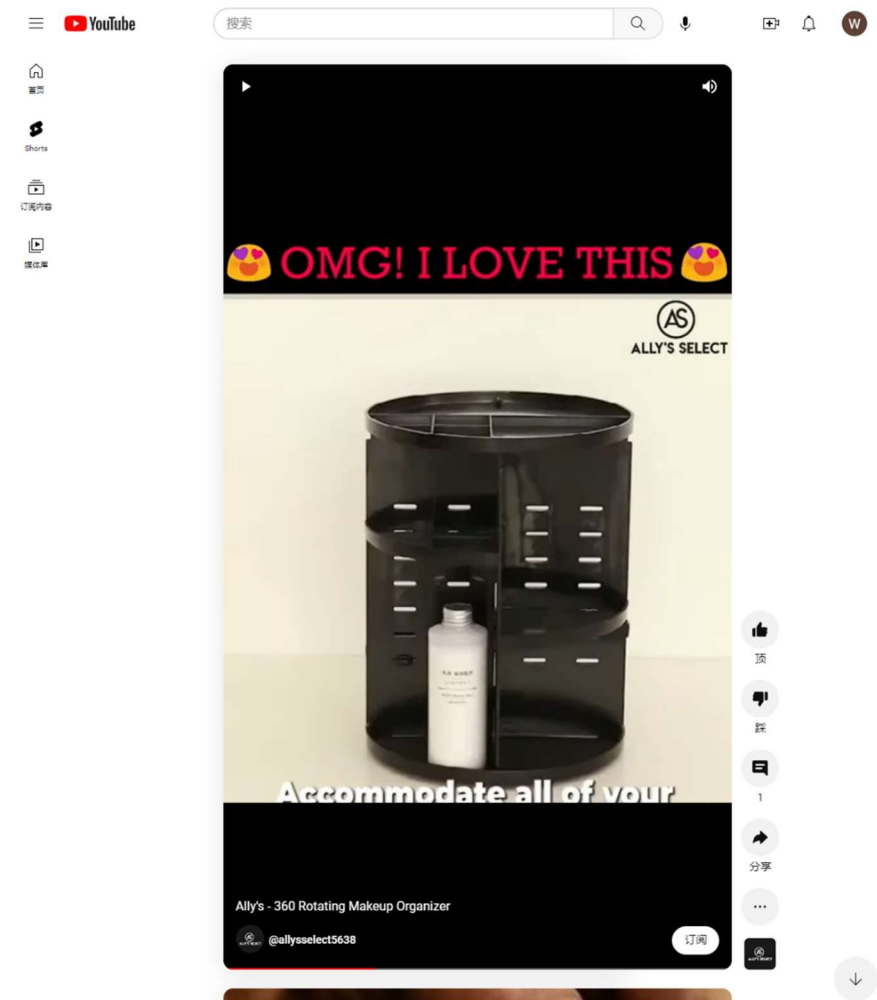
The 360 Rotating Makeup Organizer How To Video

Kindredly 3 subscribers **subscription** 0 likes 0 comments share ...

12 views January 5, 2019

² The YouTube video is available in https://www.youtube.com/watch?v=tEmbnNd06_s.

20. A screenshot of a YouTube video can clearly show the Makeup Organizer which is exactly same to the design of '246 Patent was available to the public as early as January 19, 2019³:



21. Therefore, the '246 Patent is invalid. Further, it is impossible for Plaintiff to infringe the '246 Patent because Plaintiff's Makeup Organizer incorporates its own diamond-shaped contour design.

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³ The YouTube video is available in <https://www.youtube.com/shorts/zJD3S8cMw0U>.

COUNT I
(Declaration of Invalidity of U.S. Patent, No. D935,246)

22. Plaintiff incorporates by reference the allegations set forth above in this Complaint as if fully set forth herein.

23. This claim arises under the patent laws of the United States, Title 35 United States Code, and the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, et seq.

24. There exists an actual and justiciable controversy between Plaintiff and Defendant with respect to the alleged validity of the '246 Patent due to the assertion of the '246 Patent against the Accused Products.

25. As shown above, the '246 Patent is anticipated by the '094 Patent and the '684 Patent. The claimed design of '246 Patent was also available to the public and on sale at least in 2019.

26. In the view of the foregoing, Plaintiff is entitled to a judgment declaring that the '246 Patent is invalid under at least 35 U.S.C. §§ 102 and 103.

COUNT II
(Declaration of Non-infringement of U.S. Patent, No. D935,246)

27. Plaintiff incorporates by reference the allegations set forth above in this Complaint as if fully set forth herein.

28. As described previously, Defendant alleges that Plaintiff's Makeup Organizer infringes the '246 Patent.

29. The circumstances show that there is an actual, present, substantial, and justiciable controversy between Plaintiff and Defendant, which have adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

30. Plaintiff's Makeup Organizer incorporates its own distinguish design of diamond-shaped contour.

31. Plaintiff seeks a declaratory judgment that Plaintiff is not infringing, has not infringed and is not liable for infringing the '246 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

1. For judgment in favor of Plaintiff against Defendant on all claims.
2. Declaring that Plaintiff's Makeup Organizer does not infringe the '246 Patent.
3. Declaring that Defendant's '246 Patent registration is invalid.
4. Judgment that this case is exceptional and that the Defendant be ordered to pay all Plaintiff's costs and attorneys' fees associated with this action pursuant to 35 U.S.C. § 285.
5. Order by this Court that Defendant must immediately revoke any complaints of infringement of the '246 Patent made to Walmart with respect to Plaintiff's Makeup Organizer.
6. Enjoining Defendant temporarily, preliminarily, and permanently from making any future complaint regarding the '246 Patent against Plaintiff's reseller and Plaintiff's Makeup Organizer.
7. Ordering Defendant to return to the Court with proof of compliance of this Order within seven (7) days of entry thereof, with a copy served on Plaintiff's attorney.
8. Awarding to Plaintiff damages due to Defendant's improper acts, doubled and/or trebled due to the willful and exceptional nature of the case.
9. Awarding to Plaintiff compensatory, general and special, consequential and incidental damages in an amount to be determined at trial.
10. Awarding to Plaintiff exemplary, punitive, statutory, and enhanced damages.
11. Awarding pre- and post- judgment interest.
12. Awarding Plaintiff such other and further relief as this Court deems is just and proper.

Jury Trial Demand

Plaintiff hereby demands a jury trial on all issues so triable.

Date: May 12, 2023

/s/ Wei Wang

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Attorney for Plaintiff