

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Crave Innovations, Inc.

Plaintiff,

v.

COTR, Inc.

Defendant

Civil Action No. 22-cv-10837

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Crave Innovations, Inc. (“Crave”) files this Complaint against Defendant COTR, Inc. (“COTR”), and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for patent infringement, trade dress infringement, and unfair competition under the laws of the United States (35 U.S.C. § 1 et seq. and 15 U.S.C. § 1051 et seq.) and under the common law of trade dress infringement and unfair competition.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this controversy under 35 U.S.C. § 1338, 15 U.S.C. §§ 1121 and 1125(a), and 28 U.S.C. §§ 1331 and 1338.

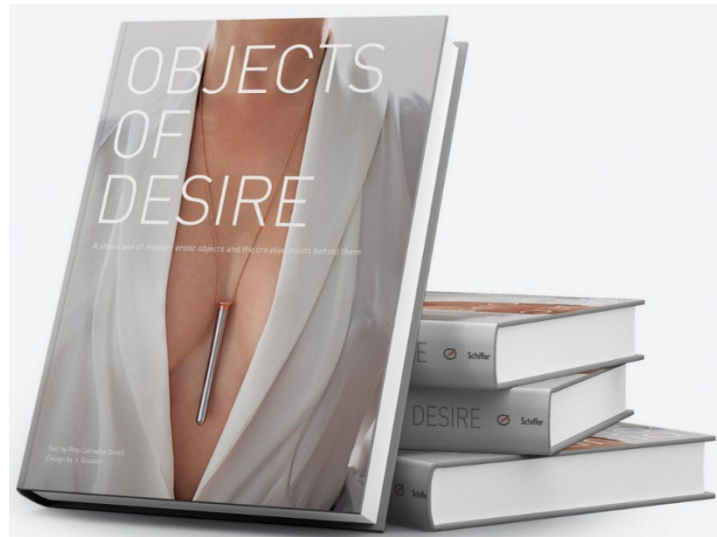
3. This Court has supplemental jurisdiction over the claims in this Complaint arising under state statutory and common law of the State of New York pursuant to 28 U.S.C. § 1367(a), because the state law claims are so related to the federal claims that they *form* part of the same case or controversy and derive from a common nucleus of operative facts.

4. This Court has personal jurisdiction because the Defendant’s headquarters is located within this District and, on information and belief, Defendant commits acts of infringement in this District through its headquarters, including but not limited to selling and offering to sell its infringing devices.

5. Venue is proper in this District under 28 U.S.C. § 1391 (b) and (c).

SUMMARY

6. Pop star Madonna was asked: “If you can only wear one thing for the rest of your life, what would that be?” Her answer was “My 24 karat gold vibrator necklace.”¹ Pleasure as jewelry, that is the innovation of Crave. Crave’s Vesper vibrator is an elegant pendant allowing women to wear their pleasure. The Crave Vesper vibrator necklace has become an iconic item blending fashion and pleasure, as depicted below on the cover of the book, “Objects of Desire”, and as worn:



¹ <https://www.youtube.com/watch?v=YDgDMC4orNw> at timestamp 1:58 to 2:05; see also <https://pagesix.com/2022/10/24/madonnas-necklaces-double-as-vibrators-dont-repress-yourself/>

7. “When I started designing pleasure jewelry, I honestly did not know if anyone would ever wear it,” admitted Crave Co-Founder Ti Chang.² Crave’s Vesper has since developed a cult following, including being spotted with celebrities such as Madonna, Janet Jackson, and Gwyneth Paltrow.³ And beyond the celebrity nods, Chang notes that her greatest achievement in design is the ability to help all women start important conversations and advocate for their pleasure proudly.

8. Crave’s success has spawned imitators. COTR, via its brand, Le Wand, has brazenly copied Crave’s patented designs. Shown below are Crave’s Vesper (left), next to the Le Wand vibrator (right):



Crave Vesper



COTR’s Le Wand Necklace Vibrator

9. When viewed from the perspective of an ordinary observer, the two necklaces are essentially identical. Any differences in dimensions and style would be indistinguishable from the perspective of the ordinary observer viewing the necklaces.

10. Crave’s Vesper is protected by the design patents at issue in this case, which COTR infringes.

11. COTR’s copying does not stop with the Vesper necklace vibrator jewelry.

² <https://www.core77.com/posts/117383/CRAVEs-Vibrator-Necklace-with-a-Cult-Following-Gets-An-Update-in-the-Vesper-2>

³ <https://www.instagram.com/p/Bsy7C98oe6K/?hl=en>

Rather, COTR has mimicked the entire line of Crave's vibrators. COTR copied Crave's two-prong vibrator, the "Duet," launching its own look-alike that COTR calls the "Duex." COTR's Duex product infringes Crave's issued utility patent, as described below.

12. Indeed, Crave's distinctive designs are sufficiently unique that consumers associate these designs as being sourced from Crave. Trade dress protection applies to these source-identifying designs, which COTR has misappropriated.

13. Crave brings this action to enjoin COTR from its brazen copying, and for monetary damages and other relief that the Court may award.

THE PARTIES

14. Plaintiff Crave Innovations, Inc. is a Delaware corporation having its principal place of business at 1234 Folsom St, San Francisco, CA 94103.

15. On information and belief, Defendant COTR, Inc., is a Delaware corporation having its principal place of business at 37 W 39th St Ste 601, New York, New York, 10018, and may be given notice of this Complaint via service on its registered agent for service of process: Registered Agent Solutions, Inc. at 838 Walker Road Suite 21-2, Dover, Delaware 19904.

FACTS GIVING RISE TO ACTION

A. Crave is an innovator in vibrator design and pleasure jewelry

16. Crave is a luxury vibrator and jewelry design company elevating pleasure through aesthetics and innovation.

17. The roots of Crave trace back to 2008, when industrial designer Ti Chang founded INCOQNITO, a line of intimate accessories that double as fashionable jewelry, thus pioneering the category of sex jewelry. Soon after, Michael Topolovac, a serial entrepreneur, was in the early stages of founding Crave, working to bring modern products and an improved buying experience to the category. Ms. Chang and Mr. Topolovac met in 2009, and joined forces to bring Crave to life and to mainstream the category of female pleasure.

18. In 2011, Crave launched the Duet, the world's first crowd-funded vibrator:



Crave's Duet vibrators, launched in 2011

19. The Duet was celebrated from the start for its women-first, design-focused approach to sex toys, and the company has become a leader in the market ever since.

20. Furthering its goal of mainstreaming pleasure, in 2018 Crave retrofitted an Airstream trailer for launching its Build-a-Vibe design factory, which it rolls into street fairs from San Francisco to New York and elsewhere, so that women can design their own pleasure experiences.



Crave retrofitted an Airstream trailer for its Build-a-Vibe design factory

21. In 2014, Crave launched its Vesper vibrator, which is designed for beautiful experiences in public and in private, serving both as elegant jewelry and a strong, slim vibrator, which has caught on as an iconic work of art and pleasure, including as depicted above on the

cover of the book, “Objects of Desire.”

22. The multi-speed Vesper vibrator, contained in a solid slim device, can be adjusted manually to varying speeds and frequencies and charged via USB. The ornamental pendant and matching chain are both made from highly polished stainless steel, and are separable, allowing the user to decide whether to use as jewelry or separately as a vibrator. The Vesper won the reddot design award in 2015, with the reddot award jury emphasizing the product’s “inventive combination of an erotic toy and a piece of jewelry,” its “minimalist design,” and “high quality appeal.”

23. In 2015, Crave launched its Flex series of vibrators, having a flexible tip that fits the body’s contours, along with vibration patterns that Crave generated through a crowd-sourcing program.



Crave’s Flex Series of vibrators with flexible tips

24. In 2016, Crave launched its Bullet design, using superior materials and design

choices to bring a sleek look to this bullet-shaped vibrator.



Crave's Bullet design, launched in 2016

25. With this product lineup, Crave has become a leading brand for women's pleasure and has sold its vibrators in mainstream retail stores such as Nordstrom, Goop, Ulta, Violet Grey, and Uncommon Goods. Crave has collaborated with Yves St. Laurent on a special edition Vesper.⁴

26. Crave has invested heavily to build its brand around these innovative designs, including the following promotions. It has featured its Build-a-Vibe design factory at festivals including South by Southwest (SXSW) in Austin, Texas⁵ and CES (Consumer Electronics Show).⁶

27. Crave has been featured in two HBO show launches, for Minx and Mrs. Fletcher.

28. Founder Ti Chang and Crave have been featured in publications including The New York Times, Fast Company, Refinery 29, Playboy, Fortune, Huffington Post, Forbes, and Cosmopolitan, among others.

29. Crave's Vesper vibrator has garnered national attention on television and documentaries, including the Ellen DeGeneres Show, Late Show with Stephen Colbert, Samantha Bee, and the Dilemma of Desire.

⁴ <https://www.ysl.com/en-it/gifts/crave-vesper-vibrator-necklace-635248Y16078106.html>

⁵ <https://www.engadget.com/2018-03-12-build-a-vibe-vibrator-crave-duet-sxsw.html?guccounter=1>

⁶ <https://mashable.com/article/ces-2020-crave-build-vibrator-vesper-touch-ease>

30. The Vesper necklace vibrator has become a hit with celebrities, who are frequently photographed with or wearing Vespers, including Madonna, Carole Radziwill, and Gwyenth Paltrow.

31. And beyond the celebrity glitz, Crave’s Vesper has caught on with ordinary people who have been inspired to wear their pleasure. Shown below is a collage of Crave’s customers posting on social media, demonstrating the many ways in which the Vesper is worn as ornamental jewelry.



32. Crave’s distinctive products have fostered a loyal and deep fan base.

B. COTR has misappropriated Crave’s protected designs and functions

33. COTR has knocked off nearly the entirety of Crave’s line of products, selling a

line of vibrators under the Le Wand brand name. These vibrators are plainly a copy of Crave's own innovative designs.

34. Most recently, for example, COTR has launched a necklace vibrator under its Le Wand brand ("Le Wand Necklace") that is a copycat version of Crave's Vesper vibrator, as shown by the side-by-side images above, *supra* ¶8. When COTR released this product, the reaction from Crave's consumer base was immediate and scornful. These comments on COTR's own Instagram page included:⁷

- a. "Definitely a copy of the Crave necklace"
- b. "Have you considered making something that isn't a knockoff"
- c. "What's the difference between this and @lovecrave"
- d. "Not even trying to change up the shape? This is a blatant rip-off and didn't have to be. Where's the creativity??"
- e. "Disappointed that you didn't event TRY to make it look like it's not a direct rip off of the Vesper by @lovecrave"
- f. "Oh look, Le Wand is ripping off existing products once again!"

35. COTR is actively offering for sale, and is selling, its Le Wand Necklace in the United States at least through the website of its brand, Le Wand, including at the following URL: <https://www.lewandmassager.com/le-wand-necklace-vibe.html?irelickid=Wq-2jx1-JxyNRAoXC%3AXed2OvUkA0NQxxTzduxg0&irgwc=1>

36. When worn in public as jewelry, the Le Wand Necklace is essentially indistinguishable from the Crave Vesper, either across the room or as close as a few feet away. As confirmed by the reaction from consumers noted above, the outward appearance of the Le Wand Necklace dangling from woman's neckline has the same visual effect as Crave's Vesper necklace vibrator. COTR has seized upon the iconic impact of women wearing a Crave Vesper necklace vibrator, and mimicked that experience, which is virtually identical to the look and style

⁷ See <https://www.instagram.com/p/Ck01q0jOGZa/?hl=en> and <https://www.instagram.com/p/CkvlwTzDQbf/?hl=en>.

that Crave has innovated. As the collage of Crave's customers shown above confirms, *see* paragraph 31, from this point of view any minuscule differences between Crave's and COTR's necklace vibrators would be beyond notice. Rather, COTR is trading off the ornamental designs that Crave has invented and cultivated into an iconic statement of pleasure.

37. COTR's commercialization of its Le Wand Necklace and its other products misappropriates Crave's protected designs and functions, as explained below.

1. COTR's infringement of Crave's design patents (US D723,709 and US D759,260)

38. The United States Patent and Trademark Office has recognized the novelty, originality, and ornamental design of Crave's necklace vibrator.

39. On March 3, 2015, United States Design Patent No. D723,709 ("the D'709 patent") was duly and legally issued by the United States Patent and Trademark Office. The D'709 patent names Michael Topolovac and Tian Yi Chang as inventors. The D'709 patent has remained in force since that time and continues to be in force. A true and correct copy of the D'709 patent is attached hereto as Exhibit A.

40. Crave is the assignee of the D'709 patent. Crave is the owner of all right, title, and interest in and to the D'709 patent with the full and exclusive right to bring suit to enforce this patent, including the right to recover for past infringement.

41. The D'709 patent claims an ornamental design, including as pictured below (center). Crave has practiced the D'709 patent in connection with the commercialization of its Vesper vibrator (pictured below, left).



Crave Vesper

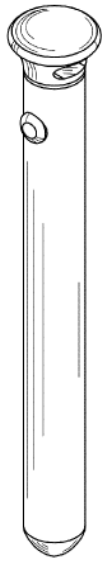


FIG. 1

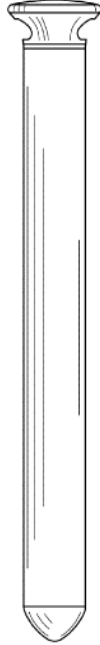


FIG. 2

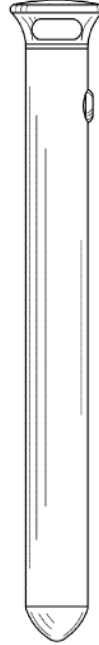


FIG. 3

US D723,709



Le Wand Necklace

42. On June 14, 2016, United States Design Patent No. D759,260 (“the D’260 patent”) was duly and legally issued by the United States Patent and Trademark Office. The D’260 patent names Michael Topolovac and Tian Yi Chang as inventors. The D’260 patent has remained in force since that time and continues to be in force. A true and correct copy of the D’260 patent is attached hereto as Exhibit B.

43. Crave is the assignee of the D’260 patent. Crave is the owner of all right, title, and interest in and to the D’260 patent with the full and exclusive right to bring suit to enforce this patent, including the right to recover for past infringement.

44. The D’260 patent claims an ornamental design, including as pictured below (center). Crave has practiced the D’260 patent in connection with the commercialization of its Vesper vibrator (pictured below, left).

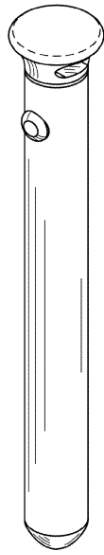


FIG. 1

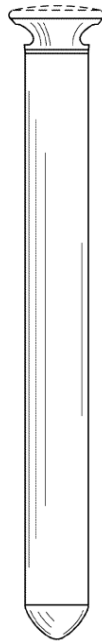


FIG. 2

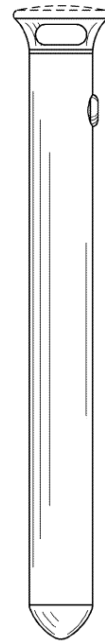


FIG. 3



Crave Vesper

US D759,260

Le Wand Necklace

45. The Crave Vesper vibrator has been a commercially successful product with its distinctive design providing differentiation to other competitors' vibrator products, and is associated with Crave as a distinctive and proprietary vibrator design.

46. COTR has copied the design elements of Crave's Vesper vibrator. The reaction of the people that COTR reached through its own advertising campaign is that the Le Wand Necklace is a "rip-off" of Crave's design, *see* ¶133, *supra*.

47. As shown in the three-way comparisons above of the Crave Vesper, Crave's design patents, and the Le Wand Necklace, COTR has copied and is infringing Crave's patented designs in the accused Le Wand Necklace. All colors offered by COTR have the same design. An ordinary observer viewing the Le Wand Necklace in the purchasing context would be deceived by its similarity to the D'709 and D'260 patent designs – as seen from any distance away, the designs are essentially identical. This jewelry is meant to be seen from several feet away, and from that perspective, an observer would find the Crave and COTR designs indistinguishable. Such an ordinary observer would be induced to purchase the Le Wand

Necklace believing it was the same design as the design in Crave's D'709 patent and/or D'260 patent.

48. COTR had many design options for its vibrator which would not likely embody the same combination of elements of the D'709, the D'260, or the Vesper Trade Dress. Instead, COTR chose to infringe Crave's patents and trade dress through the design and promotion of its Le Wand Necklace, and it did so willfully to trade upon the goodwill that Crave has developed in connection with Crave's line of vibrators.

2. COTR's infringement of Crave's Vesper Trade Dress

49. As a result of Crave's substantial advertising and promotional efforts, as well as the high quality of Crave's Vesper product, this design has earned valuable and residual goodwill and reputation for Crave, which was the original source for such vibrators in the United States. Accordingly, through the extensive and consistent advertising, promotion, and publicity of the Crave Vesper vibrator, Crave has obtained and holds trade dress protection in the design and appearance of this device ("Vesper Trade Dress").

50. The following non-functional elements of the design of the Crave Vesper vibrator comprise at least some, or all, of the elements of the Vesper Trade Dress at issue in this case:

- A pendant-sized vibrator, comprising a polished cylindrical and elongated metallic body, with a crown-shaped cap having an aperture on one end, and a rounded and tapered tip on the other end;
- the body having a rounded button switch located near the cap; and
- a metallic chain threaded through the aperture of the crown.

51. These elements of the Crave Vesper are distinctive and serve to identify Crave as the source of the Vesper vibrator. Crave has made substantial sales in the United States of Vesper vibrators having this Vesper Trade Dress. Crave has spent substantial money and resources to advertise, market, and promote its vibrators with the Vesper Trade Dress through a wide variety of digital, broadcast, online, and print media in the United States. The Crave Vesper vibrator has also received significant unsolicited coverage in digital, broadcast, online,

and print media around the United States. As a result of longstanding and widespread advertising, publicity, and promotion, the public has come to recognize the shape and design of the Vesper Trade Dress, which is nonfunctional and distinctive, and to associate it with a single source, name, Crave.

52. The Le Wand Necklace embodies a combination of several elements of the Vesper Trade Dress identified above, namely, a vibrator necklace product comprising:

- A pendant-sized vibrator, comprising a polished cylindrical and elongated metallic body, with a crown-shaped cap having an aperture on one end, and a rounded and tapered tip on the other end;
- the body having a rounded button switch located near the cap; and
- a metallic chain threaded through the aperture of the crown.

53. The Le Wand Necklace has caused and is likely to continue to cause confusion, mistake, and deception as to the source of origin of COTR's products and is likely to falsely suggest a sponsorship, connection, or association between COTR, its products, and/or its commercial activities with Crave. From the perspective of an ordinary observer, who sees the product as jewelry being worn around a woman's neckline from across the room to as close as just a few feet away, the COTR necklace vibrator is virtually indistinguishable from Crave's. The public is likely to mistakenly believe that Crave makes the Le Wand Necklace, that Crave has authorized COTR to use its vibrator design, or that there is some kind of relationship between Crave and COTR. In addition, the Le Wand Necklace is likely to reduce the value of Crave's Vesper Trade Dress. The immediate reaction from the consuming public confirms this harm, *see supra* ¶33.

54. One of Crave's most significant distinctions in the marketplace is the design of its Vesper vibrator, which stands out from all the other vibrators on the market due to its elegant pendant design, encouraging women to wear their pleasure. COTR's copying of Crave's intellectual property rights not only allows COTR to trade on benefits from Crave's investment, it threatens to substantially diminish the goodwill that Crave has developed with consumers.

55. COTR's vibrators have been marketed as a way to obtain the advantages of Crave's designs while supplanting Crave within its customer base. On information and belief, COTR has deliberately set out to copy the Vesper Trade Dress in order to trade off the goodwill that Crave has engendered through its innovation.

56. COTR's infringement of Crave's design patents and its infringement of the Vesper Trade Dress have damaged and irreparably harmed Crave, and unless COTR is enjoined, COTR will further damage and irreparably injure Crave and the goodwill it has built.

57. COTR's infringement of Crave's design patents and its infringement of the Vesper Trade Dress has irreparably injured the public, and, unless enjoined, will further irreparably injure the public, which has an interest in being free from deception, confusion and/or mistake in the marketplace.

3. COTR's infringement of Crave's utility patents (US Patent Nos. 9,144,531 and 10,357,424)

58. The United States Patent and Trademark Office has recognized the novelty of Crave's invention of its USB-connected vibrators.

59. On March 3, 2015, United States Patent No. 9,144,531 ("the '531 patent") was duly and legally issued by the United States Patent and Trademark Office. The inventors of the '424 patent are Michael Topolovac, Edwin Wood, Andrew Murphy, Tian Yi Chang, and Kristrun Hjartar. The '531 patent has remained in force since that time and continues to be in force. A true and correct copy of the '531 patent is attached hereto as Exhibit C.

60. Crave is the assignee of the '531 patent. Crave is the owner of all right, title, and interest in and to the '531 patent with the full and exclusive right to bring suit to enforce this patent, including the right to recover for past infringement.

61. Claim 1 of the '531 patent recites as follows:

1. A device for sexual stimulation, comprising:
an interaction module comprising
a first port comprising a power pin and a first ground pin and
a haptic stimulation unit electrically coupled to the power pin and to the first
ground pin; and

a control module comprising

- a second port comprising an input pin, an output pin, and a second ground pin, configured to transiently engage a standardized powered data port of an external device in a first configuration, and configured to transiently engage the first port in a second configuration,
- a rechargeable battery,
- a charging circuit electrically coupled to the second port and configured to control current sourced from an external device over the input pin and the second ground pin to charge the rechargeable battery in the first configuration,
- an input region, and
- an actuator driver configured to control power transmission from the rechargeable battery to the haptic stimulation unit, in the second configuration, via the output pin and the second ground pin, wherein the output pin is electrically coupled to the power pin and the second ground pin is electrically coupled to the first ground pin in response to an input on the input region wherein the actuator driver comprises at least one power transistor and a processor, the at least one power transistor electrically coupled to the rechargeable battery, to the output pin, and to the second ground pin, the processor configured to set a current vibratory pattern setting in response to an input on the input region and to control the at least one power transistor according to the current vibratory pattern setting.

62. COTR sells its “Duex” model vibrator, which is a knock-off of Crave’s two-pronged “Duet” vibrator. On information and belief, COTR offers to sell, and sells, its Duex vibrator in and to the United States, including through its website for the Le Wand brand.⁸

63. Below are shown Crave’s Duet (left), side-by-side with COTR’s Duex (right):

⁸ https://www.lewandmassager.com/mini-vibes/le-wand-deux.html?gclid=Cj0KCQiA-JacBhC0ARIsAIxybyM6i_jZyb34TwTHDS2qv-EWoaO1uU47mCb9IYgh3_nUNd7qhLXaj-4aAjt9EALw_wcB



Crave Duet Vibrator



COTR Duex Vibrator

64. Like Crave’s Duet vibrator, the COTR Duex vibrator de-couples to reveal a USB port. The bottom half of the device (“controller module”) comprises a battery and controller circuitry, and this can be plugged into a standard USB port of a computer to charge the device (a “first configuration”). Once charged, the controller module can be plugged into the top half of the vibrator (“interaction module”), which has a two-pronged tip (“haptic stimulation module”) that can be used for bodily stimulation. As so assembled, this is a “second configuration.”

Haptic Stimulation Unit



First Port

Second Port

Interaction Module

Control Module

65. In the lexicon of the ’531 patent, the interaction module of the COTR Duex

vibrator contains a “first port,” which has a power pin and a ground pin. The two-pronged tip of the Duex (“haptic stimulation unit”) is electrically coupled to these pins.

66. Likewise the control module of the Duex has a “second port,” which is a standard USB port that comprises a corresponding input pin, output pin, and a ground pin. In a first configuration, this USB port can be plugged into a computer for charging the rechargeable battery contained therein, using a charging circuit coupled to the USB port.

67. The control module has buttons for inputting the user’s commands. It also contains an actuator driver to control the transmission of power from the battery to the haptic stimulation unit, through the power and ground pins, when the control module and the interaction module are coupled together (*i.e.*, in a second configuration). The buttons on the control module control this flow of power. The processor is configured to set a vibratory pattern in response to the user’s use of the control buttons.

68. A claim chart attached hereto as Exhibit D confirms that the Le Wand Duex vibrator infringes at least Claim 1 of the ’531 patent on an element-by-element basis.

69. On March 3, 2015, United States Patent No. 10,357,424 (“the ’424 patent”) was duly and legally issued by the United States Patent and Trademark Office. The inventors of the ’424 patent are Michael Topolovac, Edwin Wood, Andrew Murphy, Tian Yi Chang, and Kristrun Hjartar. The ’424 patent has remained in force since that time and continues to be in force. A true and correct copy of the ’424 patent is attached hereto as Exhibit E.

70. Crave is the assignee of the ’424 patent. Crave is the owner of all right, title, and interest in and to the ’424 patent with the full and exclusive right to bring suit to enforce this patent, including the right to recover for past infringement.

71. Claim 1 of the ’424 patent recites as follows:

1. A device for sexual stimulation, comprising:
 - an interaction module comprising:
 - a first unitary housing comprising a first electrical port; and
 - a haptic stimulation unit enclosed by the first unitary housing, the haptic stimulation unit electrically coupled to the first electrical port;
 - a power module comprising:

a second unitary housing comprising a second electrical port, the second unitary housing removably mechanically coupled to the first unitary housing by the first and second electrical ports, the second electrical port removably electrically coupled to the first electrical port;
a rechargeable battery enclosed by the second unitary housing, the rechargeable battery electrically coupled to the second electrical port; and
an input mechanism; and
a stimulation unit driver electrically coupled to the rechargeable battery, the haptic stimulation unit, and the input mechanism, wherein the stimulation unit driver is enclosed by the second unitary housing.

72. COTR infringes the '424 patent through the sale of the Duex vibrator substantially for the same reasons stated above with respect to the '531 patent. A claim chart attached hereto as Exhibit F confirms that the Le Wand Duex vibrator infringes at least Claim 1 of the '424 patent on an element-by-element basis.

73. COTR continues to sell the Duex vibrator despite specific notice of its infringement of the '531 and '424 patents. COTR has had notice of these patents at least as of October 8, 2019, when Crave sent COTR a cease and desist letter, detailing COTR's infringement of these two patents. Crave's letter included claims charts specifying COTR's infringement on an element-by-element basis.

74. COTR did not respond to Crave's letter.

75. The willfulness of COTR's conduct is manifest in their overall product line, which mimics the product family of Crave. Following is a depiction of Crave's products, followed by COTR's products. COTR has unabashedly copied Crave's product line:



Crave Product Family



COTR Knock-Off Vibrators

76. COTR's copying of Crave's intellectual property rights not only allows COTR to trade on benefits from Crave's investment, it threatens to substantially diminish the goodwill that Crave has developed with consumers.

77. COTR has caused and is likely to continue to cause confusion, mistake, and deception as to the source of origin of its products and is likely to falsely suggest a sponsorship, connection, or association between COTR, its products, and/or its commercial activities with Crave.

78. COTR's vibrators have been marketed as a way to obtain the advantages of

Crave's designs while supplanting Crave within its customer base. On information and belief, COTR has deliberately set out to copy Crave's products in order to trade off the goodwill that Crave has engendered through its innovation.

79. COTR's infringement of Crave's design and utility patents and its infringement and dilution of the Vesper Trade Dress have damaged and irreparably harmed Crave, and unless COTR is enjoined, COTR will further damage and irreparably injure Crave and the goodwill it has built.

80. COTR's infringement of Crave's design and utility patents and its infringement and dilution of the Vesper Trade Dress has irreparably injured the public, and, unless enjoined, will further irreparably injure the public, which has an interest in being free from deception, confusion and/or mistake in the marketplace.

FIRST CAUSE OF ACTION
COTR's Infringement of US D723,709

81. Crave realleges and incorporates by reference each and every allegation set forth above.

82. The D'709 patent claims a non-functional ornamental design, specifically a pendant necklace having the characteristics depicted above.

83. COTR's Le Wand Necklace is a pendant having an ornamental design that infringes the D'709 patent. As shown in the illustrations above, the Le Wand Necklace has appropriated the ornamental design as claimed in the D'709 patent.

84. In the eye of an ordinary observer, giving such attention as a purchaser usually gives, the non-functional ornamental design claimed in the D'709 patent and the Le Wand Necklace is substantially the same, with resemblance such as to deceive an ordinary observer, inducing him or her to purchase the Le Wand Necklace supposing it to be the design claimed in the D'709 patent.

85. On information and belief, COTR, without authority, has directly infringed and continues to directly infringe the D'709 patent, under 35 U.S.C. § 271(a), at least by manufacturing, importing, distributing, selling, offering for sale, and/or using within the United

States at least the Le Wand Necklace.

86. As a result of COTR's infringement of the D'709 patent, Crave has suffered and will continue to suffer damages. Crave is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty, as permitted by 35 U.S.C. § 284, as well as all remedies for design patent infringement permitted under 35 U.S.C. § 289.

87. COTR's infringement of the D'709 patent is willful, making this an exceptional case and entitling Crave to enhanced damages and attorneys' fees.

88. On information and belief, COTR copied the design of Crave's Vesper Vibrator, which embodies the design claimed in the D'709 patent, to arrive at the design of the Le Wand Necklace.

89. On information and belief, COTR has been aware of Crave's patent portfolio including the D'709 patent because it has been in receipt of Crave cease-and-desist letter as of October 8, 2019, and had either direct knowledge of Crave's D'709 patent or has been willfully blind to this intellectual property. On information and belief, COTR has knowingly and willfully infringed the D'709 patent by manufacturing, importing, using, selling, and offering to sell the Le Wand Necklace.

90. Despite COTR's knowledge of its imminent and actual infringement of the D'709 patent, COTR has continued to manufacture, import, use, sell, and offer to sell the Le Wand Necklace.

91. Crave has been irreparably harmed by COTR's infringement of the D'709 patent and will continue to be harmed unless COTR's infringing conduct is restrained and enjoined by order of this Court.

SECOND CAUSE OF ACTION
COTR's Infringement of US D759,260

92. Crave realleges and incorporates by reference each and every allegation set forth above.

93. The D'260 patent claims a non-functional ornamental design, specifically a pendant necklace having the characteristics depicted above.

94. COTR's Le Wand Necklace is a pendant having an ornamental design that infringes the D'260 patent. As shown in the illustrations above, the Le Wand Necklace has appropriated the ornamental design as claimed in the D'260 patent.

95. In the eye of an ordinary observer, giving such attention as a purchaser usually gives, the non-functional ornamental design claimed in the D'260 patent and the Le Wand Necklace is substantially the same, with resemblance such as to deceive an ordinary observer, inducing him or her to purchase Le Wand Necklace supposing it to be the design claimed in the D'260 patent.

96. On information and belief, COTR, without authority, has directly infringed and continues to directly infringe the D'260 patent, under 35 U.S.C. § 271(a), at least by manufacturing, importing, distributing, selling, offering for sale, and/or using within the United States at least the Le Wand Necklace.

97. As a result of COTR's infringement of the D'260 patent, Crave has suffered and will continue to suffer damages. Crave is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty, as permitted by 35 U.S.C. § 284, as well as all remedies for design patent infringement permitted under 35 U.S.C. § 289.

98. COTR's infringement of the D'260 patent is willful, making this an exceptional case and entitling Crave to enhanced damages and attorneys' fees.

99. On information and belief, COTR copied the design of Crave's Vesper Vibrator, which embodies the design claimed in the D'260 patent, to arrive at the design of the Le Wand Necklace.

100. On information and belief, COTR has been aware of Crave's patent portfolio including the D'260 patent because it has been in receipt of Crave cease-and-desist letter as of October 8, 2019, and had either direct knowledge of Crave's D'260 patent or has been willfully blind to this intellectual property. On information and belief, COTR has knowingly and willfully infringed the D'709 patent by manufacturing, importing, using, selling, and offering to sell the Le Wand Necklace.

101. Despite COTR's knowledge of its imminent and actual infringement of the D'260 patent, COTR has continued to manufacture, import, use, sell, and offer to sell the Le Wand Necklace.

102. Crave has been irreparably harmed by COTR's infringement of the D'260 patent and will continue to be harmed unless COTR's infringing conduct is restrained and enjoined by order of this Court.

**THIRD CAUSE OF ACTION
COTR's Infringement of US Patent No. 9,144,531**

103. Crave realleges and incorporates by reference each and every allegation set forth above.

104. The '531 patent discloses and claims a Vibratory Actuator and Device for Sexual Stimulation.

105. Crave is the owner of all right, title, and interest in the '531 patent.

106. COTR has directly infringed, and contributes to and induces infringement by others, one or more claims of the '531 patent, in violation of 35 U.S.C. § 271(a), (b), and/or (c).

107. On information and belief, COTR has and continues to make, use, offer to sell, or sell its Duex vibrators practicing one or more claims (including but not limited to Claim 1) of the '531 patent within the United States or imports into the United States for at least, but not limited to, testing, demonstration, and sales purposes a directly infringing device, *i.e.*, the Duex Vibrator.

108. Furthermore, COTR contributes to the infringement by others, and induces others to infringe, by instructing its consumers how to use the Duex vibrator, and to configure the Duex vibrator for recharging and for haptic stimulation.

109. The infringement by COTR of the '531 patent has been willful because it has continued since Crave sent COTR a cease and desist letter on October 8, 2019 and because COTR continued its commercialization of the Duex vibrator after it knew or should have known that it was infringing the '531 patent.

110. As a direct result of COTR's unlawful and willful infringement of the '531 patent, Crave has suffered and will continue to suffer damages in an amount to be proven at trial. Crave

is entitled to recover from COTR the damages adequate to compensate for such infringement, in an amount no less than a reasonable royalty pursuant to 35 U.S.C. § 284, which have yet to be determined. The full measure of damages sustained as a result of COTR's wrongful acts will be proven at trial.

111. As a direct result of COTR's infringement as alleged herein, Crave has suffered an irreparable injury such that remedies available at law are inadequate to compensate for that injury.

112. Considering the balancing of hardships between Crave and COTR, a remedy in equity is warranted.

**FOURTH CAUSE OF ACTION
COTR's Infringement of US Patent No. 10,357,424**

113. Crave realleges and incorporates by reference each and every allegation set forth above.

114. The '424 patent discloses and claims a Vibratory Actuator and Device for Sexual Stimulation.

115. Crave is the owner of all right, title, and interest in the '424 patent.

116. COTR has directly infringed, and contributes to and induces infringement by others, one or more claims of the '424 patent, in violation of 35 U.S.C. § 271(a), (b), and/or (c).

117. On information and belief, COTR has and continues to make, use, offer to sell, or sell its Duex vibrators practicing one or more claims (including but not limited to Claim 1) of the '424 patent within the United States or imports into the United States for at least, but not limited to, testing, demonstration, and sales purposes a directly infringing device, i.e., the Duex Vibrator.

118. Furthermore, COTR contributes to the infringement by others, and induces others to infringe, by instructing its consumers how to use the Duex vibrator, and to configure the Duex vibrator for recharging and for haptic stimulation.

119. The infringement by COTR of the '424 patent has been willful because it has continued since Crave sent COTR a cease and desist letter on October 8, 2019 and because COTR continued its commercialization of the Duex vibrator after it knew or should have known

that it was infringing the '424 patent.

120. As a direct result of COTR's unlawful and willful infringement of the '424 patent, Crave has suffered and will continue to suffer damages in an amount to be proven at trial. Crave is entitled to recover from COTR the damages adequate to compensate for such infringement, in an amount no less than a reasonable royalty pursuant to 35 U.S.C. § 284, which have yet to be determined. The full measure of damages sustained as a result of COTR's wrongful acts will be proven at trial.

121. As a direct result of COTR's infringement as alleged herein, Crave has suffered an irreparable injury such that remedies available at law are inadequate to compensate for that injury.

122. Considering the balancing of hardships between Crave and COTR, a remedy in equity is warranted.

FIFTH CAUSE OF ACTION
COTR's Infringement of Vesper Trade Dress (15 U.S.C. § 1125(a))

123. Crave realleges and incorporates by reference each and every allegation set forth above.

124. As alleged, the Vesper Trade Dress is non-functional and has acquired distinctiveness in the minds of consumers and functions as a source identifier, namely Crave.

125. COTR has used the distinctive Vesper Trade Dress in interstate commerce, in a manner that is confusingly similar to and/or is likely to cause confusion or mistake, or to deceive consumers regarding the source, sponsorship and/or affiliation of the goods imported, offered, and sold by COTR.

126. On information and belief, COTR knew of the Vesper Trade Dress when it designed its Le Wand Necklace. Accordingly, COTR's acts of infringement have been and continue to be intentional, willful, and without regard to the Vesper Trade Dress.

127. Crave has been and will continue to be irreparably harmed and damaged by COTR's conduct, and Crave lacks an adequate remedy at law to compensate for this harm and damage.

128. Crave has sustained damages as a direct and proximate result of COTR's infringement of the Vesper Trade Dress in an amount to be proven at trial, including COTR's profits and/or gains of any kind resulting from its acts of infringement.

129. Because COTR's actions have been willful, COTR is entitled to enhanced and exemplary damages, including treble its actual damages, to an award of costs, and this being an exceptional case, reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

SIXTH CAUSE OF ACTION
COTR's Infringement of Vesper Trade Dress
New York Common Law Trademark Infringement

130. Crave realleges and incorporates by reference each and every allegation set forth above.

131. As alleged, the Vesper Trade Dress is non-functional and has acquired distinctiveness in the minds of consumers and functions as a source identifier, namely Crave. Therefore, Crave has acquired a property interest in the State of New York in the Trade Dress in connection with its goods.

132. COTR has not been granted any right to use the Trade Dress in the State of New York or any other state in the United States.

133. COTR has used the distinctive Vesper Trade Dress, in New York commerce, in a manner that is confusingly similar to and/or is likely to cause confusion or mistake, or to deceive consumers regarding the source, sponsorship and/or affiliation of the goods imported, offered and sold by COTR.

134. On information and belief, COTR knew of the Vesper Trade Dress when it designed its Le Wand Necklace. Accordingly, COTR's acts of infringement have been and continue to be intentional, willful, and without regard to the Vesper Trade Dress.

135. Crave has been and will continue to be irreparably harmed and damaged by COTR's conduct and Crave lacks an adequate remedy at law to compensate for this harm and damage.

136. Crave has sustained damages as a direct and proximate result of COTR's

infringement of the Vesper Trade Dress in an amount to be proven at trial, including COTR's profits and/or gains of any kind resulting from its acts of infringement.

137. Because COTR's actions have been willful, Crave is entitled to enhanced and exemplary damages, including treble its actual damages, to an award of costs, and this being an exceptional case, reasonable attorneys' fees.

138. COTR's acts constitute trade dress infringement in violation of the common law of the state of New York.

SEVENTH CAUSE OF ACTION
Common Law Unfair Competition

139. Crave realleges and incorporates by reference each and every allegation set forth above.

140. COTR has used the distinctive Vesper Trade Dress, in New York commerce, in a manner that is confusingly similar to and/or is likely to cause confusion or mistake, or to deceive consumers regarding the source, sponsorship and/or affiliation of the goods imported, offered and sold by COTR.

141. On information and belief, COTR knew of the Vesper Trade Dress when it designed its Le Wand Necklace. Accordingly, COTR unjustly enriched themselves and damaged Crave, thereby violating the common law of unfair competition in New York.

PRAYER FOR RELIEF

WHEREFORE, Crave requests that the Court render judgment in its favor and award the following relief:

- a. A judgment that COTR has infringed one or more claims of one or more of the D'709, D'260, '531, and '424 patents;
- b. An order and judgement enjoining COTR and its officers, agents, affiliates, employees, and attorneys, and all those persons active or attempting to act in concert or participation with them, from further acts of infringement of one

or more of the D'709, D'260, '531, and '424 patents;

c. A judgment awarding Crave all damages adequate to compensate Crave for COTR's infringement of the D'709, D'260, '531, and '424 patents, including all pre-judgment and post-judgment interest at the maximum rate permitted by law, including compensation for COTR's willful infringement;

d. A judgment awarding Crave its reasonable attorney fees as provided for in 35 U.S.C. § 285 to the extent the Court finds this case exceptional;

e. A judgment awarding Crave all of COTR's profits as provided for in 35 U.S.C. § 289, including prejudgment interest;

f. An order enjoining COTR and its officers, agents, affiliates, employees, and attorneys, and all those persons acting or attempting to act in concert or participation with them, from: directly or indirectly infringing the Vesper Trade Dress; using any false designation of origin or false description, including the appearance of its vibrator products, that can, or are likely to, lead the consuming public, or individual members thereof, to believe that any goods produced, advertised, promoted, marketed, provided or sold by COTR are in any manner associated with or connected with Crave or are advertised, promoted, marketed, sold, licensed, sponsored, approved or authorized by Crave; committing any other unfair business practices directed toward obtaining for COTR the business and customers of Crave; and committing any other unfair business practices directed toward devaluing or diminishing Crave's brand or business;

g. Actual damages suffered by Crave as a result of COTR's unlawful conduct, in an amount to be proven at trial, as well as prejudgment interest as authorized by law;

h. Reasonable compensation for corrective advertising;

i. An accounting of COTR's profits as provided for in 15 U.S.C. §

1117 and under New York Law;

j. A judgment trebling any damages award as provided for in 15 U.S.C. § 1117 and under New York Law;

k. A judgment awarding Crave its reasonable attorney's fees as provided for in 15 U.S.C. § 1117 and any applicable state law;

l. An order pursuant to 15 U.S.C. § 1118 requiring that all materials bearing the infringing Vesper Trade Dress to be delivered up and destroyed, and requiring COTR to withdraw from the market all infringing products and advertising and promotional material displaying the infringing products;

m. An order directing COTR to file with the Court and serve upon Crave's counsel within thirty (30) days after entry of the order of injunction, a report setting forth the manner and form in which COTR has complied with the injunction, including the provision relating to destruction and recall of infringing products and materials;

n. Restitutionary relief against COTR and in favor of Crave, including disgorgement of wrongfully obtained profits and other appropriate relief;

o. Costs of suit and reasonable attorneys fees;

p. Such other and further relief to which Crave may show itself to be entitled, including but not limited to all remedies provided for in 35 U.S.C. §§284, 285 & 289 and 15 U.S.C. § 1117, and under any other applicable state law; and

q. Any and all actual damages suffered in an amount within the jurisdictional limits of the Court.

JURY DEMAND

Crave demands a trial by jury on all issues triable to a jury.

Dated: December 22, 2022

Respectfully submitted,

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