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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SHERRYWEAR, LLC,

Plaintiff,

v.

SMOOTH LANDING, INC. dba OISELLE
aka OISELLE RUNNING,

Defendant.

Civil Action No. 23-cv-595

COMPLAINT FOR PATENT
INFRINGEMENT

JURY DEMAND

Plaintiff, SherryWear, LLC (“SherryWear”), in its Complaint against Defendant Smooth Landing, Inc. dba Oiselle aka Oiselle Running (“Oiselle”), alleges as follows:

I. NATURE OF THE ACTION

1. This is an action for willful direct and indirect infringement of Plaintiff SherryWear’s U.S. Patent Nos. 10,869,510 (“the ‘510 Patent”), 10,244,800 (“the ‘800 Patent), 9,289,016 (“the ‘016 Patent”), and 9,723,878 (“the ‘878 Patent) (collectively, “the patents-in-suit”) in violation of the Patent Act, 35 U.S.C. § 271, based on Defendant Oiselle’s unauthorized commercial manufacture, use, importation, offer for sale, sale, and marketing of the “Flyout Bra”, the “Flyout Zip Bra”, the “Tangent Bra”, and the “Pockito Bra” (collectively, the “Infringing Products”) in the United States.

1 2. SherryWear seeks injunctive relief to prevent Oiselle from continuing to infringe
2 the patents-in-suit. Additionally, SherryWear seeks to recover monetary damages resulting from
3 Oiselle's past and ongoing infringement of the patent-in-suit.

4 **II. PARTIES**

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

7 4. Oiselle is a Washington for-profit corporation with its principal place of business
8 at 7821 62nd Ave NE, Suite 201, Seattle, Washington 98115. Oiselle's registered agent in the
9 Washington Corporations database is identified as Northwest Registered Agent, LLC, 522 W.
10 Riverside Ave, Ste N, Spokane, WA 99201-0580.

11 **III. JURISDICTION AND VENUE**

12 5. The Court has subject matter jurisdiction over this action pursuant to
13 28 U.S.C. §§ 1331 and 1338(a).

14 6. The Court has personal jurisdiction over Oiselle because Oiselle is incorporated in
15 Washington and Oiselle's principal place of business is in Washington. The Court further has
16 personal jurisdiction over Oiselle because Oiselle has purposefully directed its infringing
17 activities (direct and induced infringement) into Washington by marketing and selling the
18 Infringing Products at its "Flagship" brick and mortar retail store in Seattle, Washington.
19 SherryWear's claims arise out of and relate to activities—marketing, offering, and selling the
20 Infringing Products—that Oiselle purposefully directs at the State of Washington.

21 7. Venue lies in this district pursuant to 28 U.S.C. §§ 1391 and 1400 because Oiselle
22 resides in this district, and Oiselle has committed acts of infringement and has a regular and
23 established place of business in this district.
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IV. PATENTS-IN-SUIT

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8. On December 22, 2020, the United States Patent and Trademark Office (the “USPTO”) duly and legally issued U.S. Patent No. 10,869,510 (“the ‘510 Patent”), entitled “Bra Pocket System.” A true and accurate copy of the ‘510 Patent is attached hereto as **Exhibit 1** and incorporated herein by reference. The ‘510 Patent relates to pockets positioned on the back of bras.

9. On April 2, 2019, the USPTO duly and legally issued U.S. Patent No. 10,244,800 (“the ‘800 Patent”), also entitled “Bra Pocket System.” A true and accurate copy of the ‘800 Patent is attached hereto as **Exhibit 2** and incorporated herein by reference. The ‘800 Patent also relates to pockets positioned on the back of bras.

10. On March 22, 2016, the USPTO duly and legally issued U.S. Patent No. 9,289,016 (“the ‘016 Patent”), entitled “Pocket Bra System.” A true and accurate copy of the ‘016 Patent is attached hereto as **Exhibit 3** and incorporated herein by reference. The ‘016 Patent relates to pockets positioned on the side of bras.

11. On August 8, 2017, the USPTO duly and legally issued U.S. Patent No. 9,723,878 (“the ‘878 Patent”), also entitled “Pocket Bra System.” A true and accurate copy of the ‘878 Patent is attached hereto as **Exhibit 4** and incorporated herein by reference. The ‘878 Patent also relates to pockets positioned on the side of bras.

V. DEFENDANT’S ACTS INFRINGE THE PATENTS-IN-SUIT

12. Oiselle makes the Infringing Products, which it offers and sells online—both directly to consumers and, on information and belief, through resellers.

13. On information and belief, Oiselle imports the Infringing Products into the United States.

14. Oiselle directly sells the Infringing Products on its website as “Sports Bras”: <https://www.oiselle.com/collections/sports-bras>. A true and accurate above the-fold copy of

1 Oiselle's Sports Bra collection webpage/online store is attached hereto as **Exhibit 5** and
2 incorporated herein by reference.

3 15. Oiselle has and continues to directly market each of the Infringing Products on a
4 unique webpage, true and accurate copies of which are attached hereto as **Exhibits 6¹, 7², 8³, and**
5 **9⁴** and are incorporated herein by reference.

6 16. The Infringing Products are each sports bras comprised of chest and shoulder strap
7 assemblies designed to hold the left and right cup to the wearer.

8 17. The Flyout Bra and the Flyout Zip Bra comprise features that match each element
9 of claims 1, 2, 4, 7, and 11 of the '510 Patent literally or by the doctrine of equivalents, as further
10 illustrated by the claim charts attached hereto as **Exhibits 10 and 11**, which are incorporated
11 herein by reference.

12 18. Oiselle's online marketing materials feature images of a wearer either inserting or
13 removing an object into or out of the infringing back pockets of both the Flyout Bra and the Flyout
14 Zip Bra. *See* **Exhibits 6 and 7**.

15 19. When an item is positioned within the back pocket of the Flyout Bra or the Flyout
16 Zip Bra, each element of claim 9 of the '510 Patent and claims 1, 2, 4, 5, 7, and 10 of the '800
17 Patent are met literally or by the doctrine of equivalents, as further shown by the claim charts
18 attached as **Exhibits 10, 11, 12, and 13**, which are incorporated herein by reference.

19 20. The Pockito Bra and the Tangent Bra comprise features that match each element of
20 claim 1 of the '016 Patent and claim 15 of the '878 Patent literally or by the doctrine of
21 equivalents, as further illustrated by the claim charts attached hereto as **Exhibits 14, 15, 16, and**
22 **17**, which are incorporated herein by reference.

23
24 ¹ **Ex. 6** is the Flyout Bra webpage at <https://www.oiselle.com/collections/sports-bras/products/flyout-bra>.

25 ² **Ex. 7** is the Flyout Zip Bra webpage at [https://www.oiselle.com/collections/sports-bras/products/flyout-zip-](https://www.oiselle.com/collections/sports-bras/products/flyout-zip-bra)
[bra](https://www.oiselle.com/collections/sports-bras/products/flyout-zip-bra).

26 ³ **Ex. 8** is the Pockito Bra webpage <https://www.oiselle.com/collections/sports-bras/products/pockito-bra>.

⁴ **Ex. 9** is the Tangent Bra webpage at <https://www.oiselle.com/collections/sports-bras/products/tangent-bra>.

1 21. Oiselle’s online marketing materials feature images of a wearer either inserting or
2 removing an object into or out of the infringing side pockets of both the Tangent Bra and the
3 Pockito Bra. *See Exhibits 8 and 9.*

4 22. When a handheld electronic device is inserted into one of the side pockets of the
5 Tangent Bra or the Pockito Bra, every element of claim 4 of the ‘016 Patent and claims 1 and 2
6 of the ‘878 Patent are met literally or by the doctrine of equivalents. *See Exhibits 14, 15, 16, and*
7 *17.*

8 23. When any item is removably positioned within the pockets of the Tangent Bra or
9 the Pockito Bra, every element of claim 1 of the ‘878 Patent is met literally or by the doctrine of
10 equivalents, as further illustrated in the claim charts attached as **Exhibits 16 and 17**, which are
11 incorporated here by reference.

12 24. The Pockito Bra further comprises a front central patch that forms a front pocket
13 that meets every element of claim 14 of the ‘878 Patent literally or by the doctrine of equivalents.
14 *See Exhibit 17.*

15 25. Oiselle has never had authority to sell any product or assembly covered by the
16 patents-in-suit or induce others to do so.

17 26. On or about March 7, 2023, Oiselle received, at its principal place of business, a
18 notice letter from SherryWear identifying the Infringing Products and specifying that they
19 infringe the patents-in-suit. The notice letter included detailed claim charts.

20 27. On or about March 7, 2023, Oiselle’s registered agent in Washington received a
21 notice letter from SherryWear identifying the Infringing Products and specifying that they
22 infringe the patents-in-suit.

23 28. Oiselle did not respond to either March 7, 2023, notice letter.

24 29. By continuing to engage in commercial activities described in this Complaint,
25 Oiselle is knowingly and willfully infringing SherryWear’s patents-in-suit.
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VI. CAUSES OF ACTION

Count I: Direct and Indirect Infringement of the ‘510 Patent, 35 U.S.C. § 271

30. SherryWear hereby incorporates by reference paragraphs 1 through 30 as if fully stated herein.

31. SherryWear is the lawful owner of and continues to maintain all rights, title, and interest in and to the ‘510 Patent including, but not limited to, the right to sue thereon and the right to recover for infringement thereof.

32. Oiselle’s Flyout Bra and the Flyout Zip Bra both feature all elements of claims 1, 2, 4, 7, and 11 of the ‘510 Patent literally or by the doctrine of equivalents; Oiselle directly infringes those claims by making, using, offering, selling, or importing the Flyout Bra and Flyout Zip Bra.

33. By inserting objects into the back pockets of the Flyout Bra and Flyout Zip Bra, Oiselle directly infringes claim 9 of the ‘510 Patent literally or by the doctrine of equivalents.

34. Oiselle learned that it directly infringes the ‘510 Patent with the Flyout Bra and Flyout Zip Bra at least as early as its receipt of SherryWear’s notice letter on March 7, 2023.

35. Oiselle has and continues to deliberately infringe the ‘510 Patent.

36. Oiselle knows and has known that every person who uses, offers, or sells the Flyout Bra or Flyout Zip Bra directly infringes claims 1, 2, 4, 7, and 11 of the ‘510 Patent—and that every person who inserts an item into those bras’ back pockets directly infringes claim 9 of the ‘510 Patent literally or by the doctrine of equivalents.

37. Oiselle intentionally and knowingly induces its customers and resellers to directly infringe claims 1, 2, 4, 7, 9, and 11 of the ‘510 Patent—including by its marketing, direction to users, and those products’ inherent designs (when used as designed, each of these claims is directly infringed).

1 38. As a result of Oiselle’s past and ongoing inducement, users and resellers of the
2 Flyout Bra and Flyout Zip bra have and continue to directly infringe claims 1, 2, 4, 7, 9 and 11
3 the ‘510 Patent.

4 39. Oiselle’s wrongful conduct has caused SherryWear to suffer irreparable harm
5 resulting from the loss of its lawful patent rights to exclude others from making, using, selling,
6 offering to sell and/or importing at least one product that infringes the ‘510 Patent.

7 40. SherryWear has been and continues to be damaged by Oiselle’s direct and indirect
8 infringement and is entitled to recover damages adequate to compensate for that infringement and
9 is also entitled to injunctive relief enjoining Oiselle from committing further acts of infringement.

10 41. SherryWear is also entitled to enhanced damages and reasonable attorney fees
11 adequate to compensate for Oiselle’s willful infringement and other conduct.

12 **Count II: Direct and Indirect Infringement of the ‘800 Patent, 35 U.S.C. § 271**

13 42. SherryWear hereby incorporates paragraphs 1 through 30 as if fully restated herein.

14 43. SherryWear is the lawful owner of and continues to maintain all rights, title, and
15 interest in and to the ‘800 Patent including, but not limited to, the right to sue thereon and the
16 right to recover for infringement thereof.

17 44. Oiselle’s Flyout Bra and the Flyout Zip Bra both feature all elements of claims 1,
18 2, 4, 5, 7, and 10 of the ‘800 Patent literally or by the doctrine of equivalents whenever an item is
19 inserted into either bra’s back pocket.

20 45. Oiselle directly infringes those claims by inserting objects into the back pockets of
21 the Flyout Bra and the Flyout Zip Bra.

22 46. Oiselle learned that it directly infringes the ‘800 Patent with the Flyout Bra and
23 Flyout Zip Bra at least as early as its receipt of SherryWear’s notice letter on March 7, 2023.

24 47. Oiselle has and continues to deliberately infringe the ‘800 Patent.



1 48. Every person who uses, offers, or sells the Flyout Bra or Flyout Zip Bra with an
2 item in either bra’s respective back pocket directly infringes claims 1, 2, 4, 5, 7, and 10 of the
3 ‘800 Patent literally or by the doctrine of equivalents.

4 49. Oiselle intentionally and knowingly induces its customers and resellers to directly
5 infringe claims 1, 2, 4, 5, 7, and 10 of the ‘800 Patent—including by its marketing, instruction to
6 users, and those products’ inherent designs (when used as designed, each of these claims is
7 directly infringed).

8 50. Oiselle has known and knows that every person or entity who uses, offers, or sells
9 the Flyout Bra or Flyout Zip Bra as described above directly infringes Claims 1, 2, 4, 5, 7, and 10
10 of the ‘800 Patent.

11 51. As a result of Oiselle’s past and ongoing inducement, users and resellers of the
12 Flyout Bra and Flyout Zip Bra have and continue to directly infringe claims 1, 2, 4, 5, 7, and 10
13 of the ‘800 Patent.

14 52. Oiselle’s wrongful conduct has caused SherryWear to suffer irreparable harm
15 resulting from the loss of its lawful patent rights to exclude others from making, using, selling,
16 offering to sell and/or importing at least one product that infringes the ‘800 Patent.

17 53. SherryWear has been and continues to be damaged by Oiselle’s direct and indirect
18 infringement and is entitled to recover damages adequate to compensate for that infringement and
19 is also entitled to injunctive relief enjoining Oiselle from committing further acts of infringement.

20 54. SherryWear is also entitled to enhanced damages and reasonable attorney fees
21 adequate to compensate for Oiselle’s willful infringement and other conduct.

22 **Count III: Direct and Indirect Infringement of the ‘016 Patent, 35 U.S.C. § 271**

23 55. SherryWear hereby incorporates by reference paragraphs 1 through 30 as if fully
24 restated herein.

1 56. SherryWear is the lawful owner of and continues to maintain all rights, title, and
2 interest in and to the '016 Patent including, but not limited to, the right to sue thereon and the
3 right to recover for infringement thereof.

4 57. Oiselle's Pockito Bra and Tangent Bra both feature all elements of claim 1 of the
5 '016 Patent literally or by the doctrine of equivalents; Oiselle directly infringes that claim by
6 making, using, offering, selling, or importing the Pockito Bra and Tangent Bra.

7 58. Oiselle learned that it directly infringes the '016 Patent with the Pockito Bra and
8 the Tangent Bra at least as early as its receipt of SherryWear's notice letter on March 7, 2023.

9 59. Oiselle has and continues to deliberately infringe the '016 Patent.

10 60. Every person who uses, offers, or sells the Pockito Bra and the Tangent Bra directly
11 infringes Claim 1 '016 Patent.

12 61. When a handheld electronic device is inserted into a side pocket of the Pockito Bra
13 or the Tangent Bra, every requirement of claim 4 of the '016 Patent is met literally or by the
14 doctrine of equivalents.

15 62. Oiselle has and, on information and belief continues to, insert handheld electronic
16 devices into a Pockito Bra or Tangent Bra side pocket, directly infringing claim 4 of the '016
17 Patent.

18 63. On information and belief, Oiselle intentionally and knowingly induces users and
19 resellers of the Pockito Bra and Tangent Bra to directly infringe claims 1 and 4 of the '016
20 Patent—including by its marketing, direction to users, and sale of the Pockito Bra and Tangent
21 Bra. As a result of Oiselle's past and ongoing inducement, and on information and belief, users
22 and resellers of the Pockito Bra and Tangent bra use, offer, or sell those products and use them
23 with a handheld electronic device in their side pocket, directly infringing claims 1 and 4 of the
24 '016 Patent.

1 64. Oiselle’s wrongful conduct has caused SherryWear to suffer irreparable harm
2 resulting from the loss of its lawful patent rights to exclude others from making, using, selling,
3 offering to sell and/or importing at least one product that infringes the ‘016 Patent.

4 65. SherryWear has been and continues to be damaged by Oiselle’s direct and indirect
5 infringement and is entitled to recover damages adequate to compensate for that infringement and
6 is also entitled to injunctive relief enjoining Oiselle from committing further acts of infringement.

7 66. SherryWear is also entitled to enhanced damages and reasonable attorney fees
8 adequate to compensate for Oiselle’s willful infringement and other conduct.

9 **Count IV: Direct and Induced Infringement of the ‘878 Patent, 35 U.S.C. § 271**

10 67. SherryWear hereby incorporates by reference paragraphs 1 through 30 as if fully
11 restated herein.

12 68. SherryWear is the lawful owner of and continues to maintain all right, title, and
13 interest in and to the ‘878 Patent, including the right to sue thereon and the right to recover for
14 infringement thereof.

15 69. Oiselle’s Pockito Bra and Tangent Bra each feature every element of claim 15 of
16 the ‘878 Patent literally or by the doctrine of equivalents; Oiselle directly infringes that claim by
17 making, using, offering, selling, or importing the Pockito Bra and Tangent Bra.

18 70. The Pockito Bra and Tangent Bra also feature every element of claim 1 of the ‘878
19 Patent, literally or by the doctrine of equivalents, when an item is positioned in one of the Pockito
20 Bra or Tangent Bra pockets—which Oiselle does, directly infringing that claim.

21 71. The Pockito Bra and Tangent Bra further feature every element of claim 2 of the
22 ‘878 Patent, literally or by the doctrine of equivalents, when a handheld electronic device is
23 positioned in one of their pockets—which, on information and belief, Oiselle does, directly
24 infringing claim 2 of the ‘878 Patent.



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72. Oiselle learned that it directly infringes the ‘878 Patent with the Pockito Bra and the Tangent Bra at least as early as its receipt of SherryWear’s notice letter on March 7, 2023.

73. Oiselle has and continues to deliberately infringe the ‘878 Patent.

74. Oiselle intentionally and knowingly induces its customers and resellers to infringe claims 1, 2, and 15 of the ‘878 Patent—including by its marketing, direction to users, and the products’ inherent design.

75. As a result of Oiselle’s past and ongoing inducement, users and resellers have and continue to directly infringe claims 1, 2, and 15 of the ‘878 Patent by using, offering, or selling those products or using them with an item in the pocket or a handheld electronic device in the pocket.

76. Oiselle’s wrongful conduct has caused SherryWear to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering to sell and/or importing at least one product that infringes the ‘878 Patent.

77. SherryWear has been and continues to be damaged by Oiselle’s direct and indirect infringement and is entitled to recover damages adequate to compensate for that infringement and is also entitled to injunctive relief enjoining Oiselle from committing further acts of infringement.

78. SherryWear is also entitled to enhanced damages and reasonable attorney fees adequate to compensate for Oiselle’s willful infringement and other conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, SherryWear LLC prays for judgement against Defendant Oiselle as follows:

- 1. Adjudging that Defendant Oiselle 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 Oiselle and any subsidiaries, affiliates, parents,

1 successors, assigns, directors, officers, agents, servants, employees, attorneys, and all persons
2 and/or entities acting in concert with, on behalf of, or in participation therewith from infringing,
3 contributing to the infringement of, and/or inducing infringement of the patents-in-suit;

4 3. Ordering Oiselle to account and pay damages adequate to compensate SherryWear
5 for Oiselle's infringement of the patents-in-suit, including pre-judgment and post-judgment
6 interests and costs, pursuant to 35 U.S.C. § 284;

7 4. Ordering an accounting for any infringing sales not presented at trial and an award
8 by the Court of additional damages for any such infringing sales;

9 5. Ordering that the damages award be enhanced up to three-fold in accordance with
10 35 U.S.C. § 284;

11 6. Declaring this case exceptional and awarding SherryWear its reasonable attorney
12 fees in accordance with 35 U.S.C. § 285; and

13 7. Awarding SherryWear any such other and further relief as this Court deems just
14 and proper under the circumstances.

15 **JURY TRIAL DEMANDED**

16 Pursuant to FED. R. CIV. P. 38, SherryWear hereby demands a trial by jury on all issues so
17 triable.

1 RESPECTFULLY SUBMITTED: April 19, 2023.

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17 *Attorneys for Plaintiff SherryWear, LLC*

TABLE OF EXHIBITS

- Exhibit 1—U.S. Patent No. 10,869,510
- Exhibit 2—U.S. Patent No. 10,244,800
- Exhibit 3—U.S. Patent No. 9,289,016
- Exhibit 4—U.S. Patent No. 9,723,878
- Exhibit 5—Defendant Oiselle’s Sports Bra Marketing Page
- Exhibit 6—Oiselle’s “Flyout Bra” Marketing Webpage
- Exhibit 7—Oiselle’s “Flyout Zip Bra” Marketing Webpage
- Exhibit 8—Oiselle’s “Pockito Bra” Marketing Webpage
- Exhibit 9—Oiselle’s “Tangent Bra” Marketing Webpage
- Exhibit 10—‘510 Patent claim Charts for Flyout Bra
- Exhibit 11—‘510 Patent claim Charts for Flyout Zip Bra
- Exhibit 12—‘800 Patent claim Charts for Flyout Bra
- Exhibit 13—‘800 Patent claim Charts for Flyout Zip Bra
- Exhibit 14—‘016 Patent claim Charts for Tangent Bra
- Exhibit 15—‘016 Patent claim Charts for Pockito Bra
- Exhibit 16—‘878 Patent claim Charts for Tangent Bra
- Exhibit 17—‘878 Patent claim Charts for Pockito

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