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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

HUMANGEAR, INC.,
a California corporation,

Plaintiff,

vs.

INDUSTRIAL REVOLUTION, INC.,
a Washington corporation,

Defendant.

NO. 2:23-cv-102

**COMPLAINT FOR PATENT AND
TRADEMARK INFRINGEMENT;
CANCELLATION OF TRADEMARK
REGISTRATION**

JURY TRIAL DEMANDED

Plaintiff humangear, inc. (hereafter, “Plaintiff”) brings this action for patent infringement against Defendant Industrial Revolution, Inc. (hereafter, “Defendant” or “Industrial Revolution”), and alleges as follows:

THE PARTIES

1. Plaintiff is a California corporation, incorporated in the State of California with its principal place of business in the City and County of San Francisco, California.

2. Upon information and belief, Defendant Industrial Revolution is a Washington corporation, having a regular and established place of business in King County, Washington.

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JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction over this case under 28 U.S.C. §§ 1331 & 1338(a).

4. Personal jurisdiction exists generally over Defendant because it has sufficient minimum contacts with the forum as a result of business conducted within the State and, particularly, within this District. Personal jurisdiction also exists specifically over Defendant because, on information and belief, certain of the infringing acts of Defendant complained of herein occurred, at least in part, within the State and within this District.

5. Venue in this judicial district is proper under 28 U.S.C. §§ 1400(b) & 1391(b)(2), because defendant is incorporated in the State of Washington and has its principal place of business in this State. Furthermore, a substantial part of the events or omissions giving rise to the infringement claims occurred in this District.

THE PATENTS IN SUIT

6. On February 11, 2020, U.S. Patent No. 10,555,629 (“the ’629 Patent”) was duly and legally issued and assigned to Plaintiff. On or about September 13, 2022, a Certificate of Correction was issued regarding said patent. A copy of the ’629 Patent and Certificate of Correction is attached hereto as Exhibit A. The ’629 Patent discloses a one-piece combination fork and spoon with a fork at one end and a spoon at the other end.

7. On November 22, 2022, U.S. Patent No. 11,503,933 (“the ’933 Patent”) was duly and legally issued and assigned to Plaintiff. A copy of the ’933 Patent is attached hereto as Exhibit B. The ’933 Patent discloses a combination spoon and fork system capable of serving as an eating utensil and of storing in a nested configuration.

8. On January 3, 2023, U.S. Patent No. 11,540,654 (“the ’654 Patent”) was duly and legally issued and assigned to Plaintiff. A copy of the ’654 Patent is attached hereto as Exhibit C. The ’654 Patent also discloses a one-piece combination fork and spoon with a fork at one end and a spoon at the other end.

1 9. Plaintiff is the owner of all right, title, and interest in and to the '629, '933 and '654
2 Patents, and has rights to sue for infringement of the '629, '933 and '654 Patents, and to collect
3 for past, present, and future damages, including against Defendant.

4 **THE TRADEMARK IN SUIT**

5 10. From at least as early as February 10, 2015, and continuing to date, Plaintiff
6 commenced using in commerce the mark UNO (hereafter, "the Mark") in connection with table
7 cutlery, namely combination forks and spoons.

8 11. Plaintiff acquired trademark rights to use the Mark both at common law and by
9 virtue of federal registrations from and after the foregoing date. On February 16, 2018,
10 Plaintiff filed its application, Serial No. 87,801149, to register the Mark with the United States
11 Patent and Trademark Office for the above goods in class 8, claiming a first use date in
12 commerce of February 10, 2015. On or about October 9, 2018, U.S. Trademark Registration
13 No. 5,579,272 issued for the Mark. A copy of said registration is attached hereto as Exhibit D.

14 12. From 2015, and continuing to date, Plaintiff has done business in the United States,
15 using the Mark in commerce as a trademark in connection with the above services. Plaintiff
16 extensively advertised and promoted the Mark, and invested substantial time, energy and
17 resources to develop the Mark. The Mark is a strong trademark, being inherently arbitrary,
18 fanciful, distinctive or suggestive.

19 **COUNT I**
20 **INFRINGEMENT OF THE '629 PATENT**

21 13. Plaintiff incorporates by reference Paragraphs 1 through 12 in their entirety as if
22 fully set forth herein.

23 14. Without license or authority, Defendant has, on information and belief, used, sold
24 and offered to sell within the United States, and has imported into the United States, products
25 embodying and designed to use the inventions claimed in the '629 Patent (the "Accused
26 Products"). The products include the UCO Utility Spork, UCO Eco Utility Spork and UCO
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1 Titanium Utility Spork and all kits, such as mess kits and nesting meal kits, which include such
2 devices. The UCO Utility Spork is shown in Exhibit AE.

3 15. In doing so, Defendant has infringed, and continues to infringe, the '629 Patent.

4 16. On information and belief, Defendant has known of the '629 Patent and Plaintiff's
5 claims of infringement since at least on or about March 15, 2022. On or about March 15, 2022,
6 Plaintiff sent Defendant's counsel a letter advising of its infringement of the '629 Patent by
7 reason of its Accused Products. On information and belief, Defendant knew earlier of the '629
8 Patent and/or was willfully blind to it. Defendant's infringing actions described above were
9 undertaken with the knowledge and the intent, at least as of March 15, 2022, that those actions
10 would infringe the '629 Patent.

11 17. The Accused Products infringe at least Claim 1 of the '629 Patent. The Accused
12 Products are eating utensils. The utensils comprise a fork head partially defining a plurality of
13 tines, with a concave fork bowl portion in which a chamfer and curved side define the bowl
14 portion and an outer tine. The chamfer is oblique to the curved side surface, which together
15 define a curved splitting feature. The spoon head surfaces partially define a concave spoon
16 bowl, facing the same way as the concave fork bowl portion, with a handle coupling the spoon
17 head to the fork head with the fork, spoon and handle front surfaces collectively defining a
18 single front surface.

19 18. On information and belief, Defendant will continue to infringe the '629 Patent,
20 unless enjoined by this Court.

21 19. Defendant's infringing activities have been objectively reckless and, therefore,
22 willful and in deliberate disregard of Plaintiff's rights in the '629 Patent.

23 20. As a consequence of the acts of infringement by Defendant, Plaintiff has been
24 damaged in an amount not yet determined, and Plaintiff will continue to be irreparably harmed
25 unless and until Defendant is enjoined by an order of this Court from committing further acts of
26 infringement.

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COUNT II
INFRINGEMENT OF THE '933 PATENT

21. Plaintiff incorporates by reference Paragraphs 1 through 12 in their entirety as if fully set forth herein.

22. Without license or authority, Defendant has, on information and belief, used, sold and offered to sell within the United States, and has imported into the United States, products embodying and designed to use the inventions claimed in the '933 Patent (the "Accused Products"). The products include the UCO Switch Spork, and all kits, such as mess kits and nesting meal kits, which include such devices. The UCO Switch Spork is shown in Exhibit F.

23. In doing so, Defendant has infringed, and continues to infringe, the '933 Patent.

24. The Accused Products infringe at least Claim 1 of the '933 Patent. The Accused Products are combination spoon and fork systems capable of serving as an eating utensil and of storing in a nested configuration. The utensils comprise a fork head and handle with a plurality of tines, the handle having a pair of longitudinally spaced fork catch and guide features, and a spoon head and handle including a bowl portion with a spoon catch feature, wherein the spoon handle interlocks with the fork handle in the guide portion, with two different orientations, a nested orientation and an extended orientation. In the nested orientation, the fork head and spoon head nest together, the spoon catch engaging one fork catch. In the extended orientation, the fork head and spoon head extend in opposite directions, with the spoon catch engaging a second fork catch.

25. On information and belief, Defendant will continue to infringe the '933 Patent, unless enjoined by this Court.

26. Defendant has been made aware of the '933 Patent by the filing of this action. On information and belief, Defendant will continue selling the Accused Products with knowledge of the '933 Patent and the intent that those actions, and those of its customers and others which they induced, would infringe the '933 Patent.

1 27. Defendant’s infringing activities have been and will continue to be objectively
2 reckless and, therefore, willful and in deliberate disregard of Plaintiff’s rights in the ’933
3 Patent.

4 28. As a consequence of the acts of infringement by Defendant, Plaintiff has been
5 damaged in an amount not yet determined, and Plaintiff will continue to be irreparably harmed
6 unless and until Defendant is enjoined by an order of this Court from committing further acts of
7 infringement.

8 **COUNT III**
9 **INFRINGEMENT OF THE ’654 PATENT**

10 29. Plaintiff incorporates by reference Paragraphs 1 through 12 in their entirety as if
11 fully set forth herein.

12 30. Without license or authority, Defendant has, on information and belief, used, sold
13 and offered to sell within the United States, and has imported into the United States, products
14 embodying and designed to use the inventions claimed in the ’654 Patent (the “Accused
15 Products”). The products include the UCO Utility Spork, UCO Eco Utility Spork and UCO
16 Titanium Utility Spork and all kits, such as mess kits and nesting meal kits, which include such
17 devices.

18 31. In doing so, Defendant has infringed, and continues to infringe, the ’654 Patent.

19 32. The Accused Products infringe at least Claim 1 of the ’654 Patent. The Accused
20 Products are eating utensils, which comprise a fork head, having a plurality of tines. The fork
21 head includes a concave bowl portion, and the outer tines each have a curved outer edge
22 corresponding to the outer edge of the fork head and a chamfered surface extending laterally
23 inward from the outer edge of each such tine. A handle integrally joins the fork head on one
24 end to a spoon head at the other end, which spoon head has a concave spoon bowl portion. The
25 front surface of the utensil includes a concave surface of each of the concave fork bowl and
26 spoon bowl portions, together with the front surface of the handle. The chamfered surfaces are
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1 on the front surface, each chamfered surface extending along the outer edge of the fork head
2 proximally toward the handle, with the curved outer tine edge serving as a splitting feature.

3 33. Defendant has been made aware of the '654 Patent by the filing of this action. On
4 information and belief, Defendant will continue selling the Accused Products with knowledge
5 of the '654 Patent and the intent that those actions, and those of its customers and others which
6 they induced, would infringe the '654 Patent.

7 34. From and after the filing date of this action, Defendant's infringing activities have
8 been and will continue to be objectively reckless and, therefore, willful and in deliberate
9 disregard of Plaintiff's rights in the '654 Patent.

10 35. As a consequence of the acts of infringement by Defendant, Plaintiff has been
11 damaged in an amount not yet determined, and Plaintiff will continue to be irreparably harmed
12 unless and until Defendant is enjoined by an order of this Court from committing further acts of
13 infringement.

14 **COUNT IV**
15 **INFRINGEMENT OF TRADEMARK**

16 36. Plaintiff incorporates by reference Paragraphs 1 through 12 in their entirety as if
17 fully set forth herein.

18 37. On information and belief, Defendant began use of the mark UCO in or about 2019
19 for eating utensils and table cutlery. Defendant did so with knowledge of Plaintiff's prior rights
20 and use of its UNO trademark ("the Mark") for eating utensils and table cutlery and of the
21 inevitable likelihood of confusion that would result.

22 38. Plaintiff is informed and believes and based thereon alleges that Defendant created
23 a likelihood of confusion with the Mark in the relevant marketplaces as to source, sponsorship,
24 affiliation and authorization, thereby constituting infringement of the Mark.

25 39. As a proximate result of Defendant's above-described conduct, Plaintiff has been
26 damaged in an uncertain amount and that Defendant has wrongfully obtained profits in an
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1 unascertained amount. Plaintiff will seek leave to amend this Complaint when the same have
2 been determined.

3 40. At all material times, Defendant acted in bad faith and willfully, for the purpose of
4 trading upon Plaintiff's goodwill and business reputation, with knowledge of the lack of right
5 to do so and with intent to injure Plaintiff. Plaintiff is entitled thereby to enhanced damages in
6 an uncertain amount. Plaintiff will seek leave to amend this Complaint when the same have
7 been determined.

8 41. The above-described acts of Defendant caused and are continuing to cause
9 irreparable injury to Plaintiff, for which Plaintiff has no adequate remedy at law. Defendant
10 will continue to do so unless enjoined by the Court.

11 **COUNT V**
12 **CANCELLATION OF TRADEMARK REGISTRATION**

13 42. Plaintiff incorporates by reference Paragraphs 1 through 12 and 37 through 41 in
14 their entirety as if fully set forth herein.

15 43. On or about July 9, 2020, Defendant filed an application to register the trademark
16 UCO for a variety of classes and goods. Among them was International Class 8 for "Table
17 cutlery; table spoons; table forks; table knives; combination utensils, namely, combined table
18 spoon and knife, and combined table spoon and fork (spork)." Another class set out in the
19 application was Class 21, in part for "Mess tins; . . . mess kits containing a plate, a bowl, a
20 drinking cup and an eating utensil. . . ." The application alleged first use in commerce of the
21 UCO mark for all of said goods in 2019, after Plaintiff's first use of its UNO mark and
22 registration. On or about February 16, 2021, the United States Patent Trademark Office issued
23 Registration no. 1,579,405 for said mark. A copy of said trademark registration is attached as
24 Exhibit G.

25 44. Plaintiff is informed and believes and based thereon alleges that Defendant's
26 registration creates a likelihood of confusion with Plaintiff's UNO trademark registration ("the
27 Mark") regarding the similarity of goods and marks.

1 45. Pursuant to the Lanham Act, the Court has jurisdiction to order the United States
2 Patent and Trademark Office to make appropriate entries on the Federal Register with respect
3 to the subject mark.

4 **REQUESTED RELIEF**

5 WHEREFORE, Plaintiff respectfully requests that judgment be entered in its favor and
6 against Defendant Industrial Revolution, judgment providing:

- 7 1. That Defendant has infringed the '629, '933 and '654 Patents;
- 8 2. That the infringement by Defendant has been and continues to be willful;
- 9 3. That Plaintiff be awarded its actual damages resulting from the acts of patent
10 infringement complained of herein including, without limitation, a reasonable royalty pursuant
11 to 35 U.S.C. §284, together with interest and costs, and that Plaintiff's damages be trebled
12 pursuant to 35 U.S.C. §284 in view of the willful and deliberate nature of the infringement;
- 13 4. That Plaintiff be awarded its actual damages and Defendant's wrongful profits, and
14 enhanced damages and profits, pursuant to 15 U.S.C. §1117;
- 15 5. That Defendant be preliminarily and permanently enjoined from engaging in the
16 aforementioned acts and from otherwise infringing the claims of the '629, '933 and '654
17 Patents;
- 18 6. That this case be declared exceptional within the meaning of 35 U.S.C. §285, and
19 that Plaintiff be awarded its reasonable attorneys' fees incurred in connection with this case;
- 20 7. That this case be declared exceptional within the meaning of 15 U.S.C. §1117, and
21 that Plaintiff be awarded its reasonable attorneys' fees incurred in connection with this case;
- 22 8. That the United States Patent and Trademark Office be directed to cancel
23 Defendant's registered UCO trademark; and
- 24 9. For such other or further relief as this Court may deem just and proper under the
25 circumstances.

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JURY DEMAND

Plaintiff demands a trial by jury of all issues so triable.

DATED: January 24, 2023

Respectfully submitted,

SAVITT BRUCE & WILLEY LLP

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