

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

BTL INDUSTRIES, INC.,

Plaintiff,

v.

BEAUTY QUEEN BY IRINA, INC
d/b/a BODY SPA BY IRINA and
IRINA KHAIMOV,

Defendants.

CASE NO.

**COMPLAINT FOR
PATENT INFRINGEMENT,
TRADEMARK INFRINGEMENT,
AND UNFAIR COMPETITION**

DEMAND FOR JURY TRIAL

Plaintiff BTL Industries, Inc. (“BTL”) files this Complaint for patent infringement, trademark infringement, and unfair competition against Beauty Queen by Irina, Inc. d/b/a Body Spa by Irina (“Body Spa”), and Irina Khaimov, and alleges as follows:

PARTIES

1. BTL is a Delaware corporation with a principal place of business at 362 Elm Street, Marlborough, Massachusetts 01752.

2. On information and belief, Body Spa is a Domestic Business Corporation with a registered mailing address 66-71 Selfridge Street, Forest Hills, New York 11375. On information and belief, Body Spa has additional locations at

1115 Flatbush Avenue, Brooklyn, New York 11226 and 37 West 26th Street, Suite 332, New York, New York 10010.

3. On information and belief, Irina Khaimov is an individual residing at 159 Whitman Drive, Brooklyn, New York 11234.

JURISDICTION AND VENUE

4. Subject-matter jurisdiction over BTL's claims arising under the patent laws of the United States, 35 U.S.C. § 100, *et seq.*, and the Lanham Act, 15 U.S.C. §§ 1051 and 1121, exist pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a)-(b).

5. Subject-matter jurisdiction for the trademark and unfair competition claims exists with respect to the claims asserted in this Complaint pursuant to 28 U.S.C. §§ 1331 and 1338.

6. This Court has personal jurisdiction over Body Spa and Irina Khaimov because they or their employees have committed acts of patent infringement under 35 U.S.C. § 271(a), (b), or (c), and are subject to this Court's jurisdiction under 28 U.S.C. § 1400(b).

7. This Court has personal jurisdiction over Defendant Body Spa because it is a New York Domestic Business Corporation and has a principal place of business in this District.

8. This Court has personal jurisdiction over Defendant Irina Khaimov because, on information and belief, Ms. Khaimov resides in this District and is the owner and moving, conscious force behind the activities of Defendant Body Spa.

9. Further, the acts complained herein occurred in this District.

10. Similarly, the exercise of personal jurisdiction over Defendants comports with the due process requirements of the United States Constitution because:

(a) Defendants have purposefully established “minimum contacts” with the State of New York and this District; and

(b) the exercise of personal jurisdiction over Defendants will not offend the traditional notions of fair play and substantial justice.

11. Therefore, this Court has specific and general jurisdiction over Defendants.

12. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(1) and 1400(b) at least because Body Spa has its principal place of business in this District, on information and belief, Ms. Khaimov is a resident of this District, upon information and belief, Ms. Khaimov is the active agent behind the actions of Body Spa, and both Body Spa and Ms. Khaimov are subject to personal jurisdiction in this District.

BACKGROUND

13. BTL specializes in the innovation, development, and sale of equipment and treatments for the aesthetics industry in the United States. BTL and its affiliates developed proprietary technology that uses high-intensity, electromagnetic stimulation to tone and strengthen muscles in targeted areas. BTL applied its technology to develop a series of new and innovative FDA-cleared devices and developed protocols for using the technology for aesthetic therapies. BTL denotes its products and services that feature this technology with its HIFEM brand and other trademarks.

14. The first such device that BTL developed was the EMSCULPT[®] device, a standalone, non-invasive, FDA-cleared aesthetic body-contouring device. *See Exhibit 1*, attached hereto (BTL March 2019 Press Release).

15. BTL's EMSCULPT device created a new market in which it quickly became the innovative industry leader. Before BTL launched the EMSCULPT device in 2018, no other product used high-intensity, focused, electromagnetic technology to tone and firm muscle for non-invasive, aesthetic body contouring.

16. The aesthetic industry has recognized BTL's innovation, hailing it as having taken "the aesthetics industry by storm;" praising BTL as being the first to apply high-intensity, focused, electromagnetic energy technology for aesthetics; and

lauding the EMSculpt device as having “transformed treatment protocols.” *See Exhibit 1.*

17. BTL’s EMSculpt NEO device is FDA-cleared and uses high-intensity, electromagnetic energy to induce powerful muscle contractions—unachievable through typical voluntary contractions—to contour an individual’s physique. *See Exhibit 2*, attached hereto (BTL Webpage Printout). The EMSculpt NEO device is currently cleared by the FDA as a non-invasive treatment for the abdomen, buttocks, arms, calves, and thighs. BTL markets and distributes its EMSculpt NEO device to healthcare professionals and licenses these professionals to provide treatment services using the device.

18. The EMSculpt NEO device has been a breakthrough development in the aesthetics industry, receiving plaudits from some of the industry’s largest companies. For example, the EMSculpt NEO device won Dermascope.com’s Aesthetician’s Choice Award in 2022 and Glamour magazine described the device as “revolutionary.” *See Exhibit 3*, attached hereto (Dermascope and Glamour Awards).

A. The Asserted Patent

19. On November 19, 2019, the United States Patent and Trademark Office (the “USPTO”) duly and lawfully issued U.S. Patent No. 10,478,634 (the “’634 Patent”), entitled “Aesthetic Method of Biological Structure Treatment by Magnetic

Field” to BTL Medical Technologies SRO. A true and correct copy of the ’634 Patent is attached to this Complaint as **Exhibit 4**, attached hereto (US10478634). The ’634 Patent was exclusively licensed to BTL, and BTL possesses the exclusive right of recovery for any past, present, or future infringement of the ’634 Patent, including equitable relief and damages.

B. BTL’s Trademarks

20. BTL uses and licenses registered and unregistered trademarks and trade dress to market its aesthetic equipment and treatments in the United States, including the following federally registered trademarks for EM, EMSCULPT, and EMSCULPT NEO (collectively, the “BTL Trademarks”):

(a) Registration No. 5,572,801 for EMSCULPT in Class 10 for, among other services, “medical apparatus and instruments for body toning and body shaping” and “medical apparatus and instruments for the removal of fat;” and

(b) Registration No. 6,069,279 for EMSCULPT in Class 44 for, among other services, “medical services;” and

(c) Registration No. 6,373,947 for EMSCULPT NEO in Class 10 for, among other services, “medical apparatus and instruments for body toning and body shaping” and “medical apparatus and instruments for the removal of fat” and in Class 44 for, among other services, “medical services;” and

(d) Registration No. 6,206,098 for stylized EM in Class 10 for, among other things, “apparatus and instruments for body toning and body shaping, and apparatus and instruments for the removal of fat” and in Class 44 for, among other things, “beauty salon services;” and

(e) Registration No. 5,915,636 for EM in Class 10 for, among other things, “apparatus and instruments for body toning and body shaping, and apparatus and instruments for the removal of fat” and in Class 44 for, among other things, “beauty salon services.”

21. BTL has continuously and exclusively used the BTL Trademarks and has never abandoned them. The BTL Trademarks are validly registered in the United States and are in full force and effect. True and correct status copies of the trademark registrations for each of the above trademarks, obtained from the Trademark Status Document Retrieval (the “TSDR”) database of the United States Patent and Trademark Office, are attached to this Complaint as **Exhibit 5**, attached hereto (TSDR Status Copies). These registrations constitute *prima facie* evidence of validity of the BTL Trademarks and BTL’s exclusive right to use the BTL Trademarks under 15 U.S.C. § 1057(b).

22. The BTL Trademarks, therefore, perform an important source-identifying function for BTL’s aesthetic body-contouring devices like the EMSCULPT and associated treatment services. The BTL Trademarks signify to

purchasers that the body-contouring devices come from BTL, and the body-contouring services are rendered by BTL's devices and administered by BTL-trained and BTL-authorized service providers. The market reputation and consumer goodwill associated with the BTL Trademarks are of significant value to BTL.

NATURE OF THIS ACTION

23. This is a civil action brought by BTL arising out of Defendants' past and present patent infringement in violation of the patent laws of the United States, 35 U.S.C. § 1 *et seq.*; past and present trademark infringement, unfair competition, false designation of origin, and false advertising under the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a); and common law trademark infringement and unfair competition.

24. Upon information and belief, Defendants have since at least May 24, 2022, advertised a service using a device they call EMSCULPT and EMSCULPT NEO. Upon information and belief, Defendants' activity is ongoing, despite attorneys for BTL informing Defendants that their activities violate BTL's rights on at least three (3) occasions. On May 24, 2022, attorneys for BTL sent via email and FedEx an initial notice letter apprising Defendants of their infringing conduct. On September 6, 2022, attorneys for BTL sent via email and FedEx a follow-up letter. On April 17, 2023, attorneys for BTL sent via email and certified mail a final demand

letter. Defendants have not responded to any attempted communications. *See Exhibit 6*, attached hereto (Letters).

25. The images below are representative of Defendants' infringing conduct:





26. Upon information and belief, Defendants promote their services online using a variety of fictitious business names to conceal their infringing activities. These entities use the common address of 66-71 Selfridge Street. For example, multiple Groupon postings offer coupons for services at 66-71 Selfridge Street under the names Royal Beauti Bar (<https://www.groupon.com/deals/royal-beauti-bar-6>), Soft Touch Med Spa (<https://www.groupon.com/deals/soft-touch-med-spa-13#merchant-map-header>), Deluxebodybar (<https://www.groupon.com/deals/deluxebodybar-1>), Rich Bich Medspa (<https://www.groupon.com/deals/rich-bich-medspa>), and Glam Esthetics NY

(<https://www.groupon.com/deals/glam-esthetics-ny-2>). The posting under Royal Beauti Bar advertises “EMSCULPT NEO” and includes the following image:



The posting under Soft Touch Med Spa advertises “EMSCULPT NEO.” The posting under Deluxebodybar advertises “EMSCULPT.”

27. Further, to this day, Defendants advertise “EMSCULPT” treatments on their website, <https://bodyspa.nyc/#services>.

28. Defendants’ use of EMSCULPT and EMSCULPT NEO trademarks is without BTL’s authorization.

29. Upon information and belief, the EMSCULPT and EMSCULPT NEO devices Defendants advertise (collectively, the “Counterfeit Devices”) are not authentic BTL EMSCULPT or EMSCULPT NEO devices, yet are similarly

advertised for toning muscles in a patient. Upon information and belief, Defendants' Counterfeit Devices use time-varying, magnetic fields that are applied to a patient's skin and held there using a flexible belt attached to an applicator that includes a magnetic-field-generating coil. Upon information and belief, the magnetic-field-generating coil generates a time-varying, magnetic field, and the device applies a magnetic flux of 50 T cm² to 1,500 T cm² and causes muscle contraction.

30. Upon information and belief, Defendant Irina Khaimov is the active agent behind the acts of Defendant Body Spa.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 10,478,634

31. BTL repeats and re-alleges paragraphs 1-30 as if fully set forth herein.

32. The '634 Patent is directed towards a method for toning muscles in a patient using time-varying, magnetic fields. Claim 1 of the patent recites:

A method for toning muscles in a patient using time-varying magnetic fields,
the method comprising:

placing a first applicator comprising a magnetic field generating coil in
contact with a patient's skin or clothing at a body region of the patient,

wherein the body region is an abdomen or a buttock;

coupling the first applicator to the patient with an adjustable flexible belt so
that the belt holds the first applicator to the patient's skin or clothing;

providing energy to the magnetic field generating coil in order to generate a time-varying magnetic field; and applying a magnetic fluence of 50 T cm² to 1,500 T cm² to the body region, wherein the time-varying magnetic field is applied to the body region with a magnetic flux density sufficient to cause a muscle contraction in the body region.

33. For the reasons stated in paragraphs 24-30, Defendants' goods meet each and every limitation of at least claim 1 of the '634 Patent.

34. Defendants have induced infringement and continue to induce direct infringement, literally or under the doctrine of equivalents, of at least claim 1 of the '634 Patent by making, using, offering to sell, selling, or importing the Counterfeit Devices in the United States and by encouraging, promoting, and instructing customers to use the Counterfeit Devices in a manner that directly infringes the '634 Patent.

35. Defendants' infringement of the '634 Patent has been, and continues to be, willful and malicious. On information and belief, Defendants have been aware of the '634 Patent since before the filing of this Complaint and have infringed the '634 Patent willfully and deliberately and with knowledge that such conduct violates 35 U.S.C. § 271. Defendants were aware of BTL's products for the reasons stated in paragraphs 24-30, and BTL marked its products with a reference to its online patent

listing at www.btl.net.com/patents. Moreover, BTL informed defendants of their patent infringement by letter on May 24, 2022.

COUNT II: TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114

36. BTL repeats and re-alleges paragraphs 1-30 as if fully set forth herein.

37. By using EMSCULPT and EMSCULPT NEO, Defendants are creating confusion among the consuming public as to the source, origin, sponsorship, and/or affiliation of the Counterfeit Devices and services with BTL.

38. Defendants' conduct relating to the BTL Trademarks is without authorization.

39. Defendants are thus in violation of 15 U.S.C. § 1114 regarding the BTL Trademarks and 15 U.S.C. § 1125(a) regarding the use of EMSCULPT and EMSCULPT NEO or other confusingly similar terms.

40. Upon information and belief, Irina Khaimov is the active agent behind the actions of the other Defendant.

41. Defendants' actions have caused BTL irreparable harm for which BTL is entitled to a permanent injunction under 15 U.S.C. § 1116.

42. Such acts further cause harm to BTL for which BTL is entitled to recover actual damages as well as the costs of any necessary corrective advertising.

43. Because Defendants' conduct is willful, malicious, and exceptional, BTL is entitled to an accounting of profits, attorneys' fees, and multiplied damages.

COUNT III: FEDERAL UNFAIR COMPETITION, FALSE DESIGNATION OF ORIGIN, AND FALSE ADVERTISING UNDER 15 U.S.C. § 1125

44. BTL repeats and re-alleges paragraphs 1-30 as if fully set forth herein.

45. Defendants have no right to use the BTL Trademarks in connection with their goods and/or services, yet Defendants have passed off their goods and/or services to the public as if they were BTL's goods.

46. Defendants have falsely held themselves out to customers and potential customers as being connected with BTL.

47. Defendants have acted with intent to confuse or deceive the public as to the source and origin of their goods and services.

48. The public has in fact been confused or deceived by the source and origin of Defendants' goods and services.

49. Upon information and belief, Irina Khaimov is the active agent behind the conduct of the other Defendants.

50. Defendants' false designation of origins and false representations constitute unfair competition under 15 U.S.C. § 1125.

COUNT IV: COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION

51. BTL repeats and re-alleges paragraphs 1-30 as if fully set forth herein.

52. Defendants have without authorization, intentionally, willfully, and maliciously used the BTL Trademarks, confusingly similar variations of these

trademarks, and research findings from the BTL Studies to promote, market, offer for sale, and sell their goods and services.

53. By the acts described herein, Defendants have intentionally infringed BTL Trademarks and engaged in unfair competition with respect to BTL in violation of the common law of the State of New York.

54. Defendants' actions have caused and will continue to cause BTL to sustain actual damages and lost profits in this District.

55. BTL has no adequate remedy at law and will continue to suffer irreparable harm unless Defendants are enjoined.

56.

PRAYER FOR RELIEF

WHEREFORE BTL requests entry of judgment against Defendants as follows:

A. A judgment that Defendants have infringed one or more claims of U.S. Patent No. 10,478,634 in violation of 35 U.S.C. § 271(b);

B. An award of damages for infringement of the '634 Patent, with said damages to be trebled because of the intentional, willful, and malicious nature of Defendants' infringement, as provided by 35 U.S.C. § 284;

C. A judgment that Defendants have willfully and maliciously infringed one or more claims of the '634 Patent;

D. A determination that this case is “exceptional” under 35 U.S.C § 285 and an award of BTL’s reasonable attorneys’ fees;

E. An order permanently enjoining Defendants, their officers, directors, employees, agents, and all persons acting in concert with them, from infringing the ’634 Patent;

F. A judgment that Defendants have violated the Lanham Act, 15 U.S.C. § 1114, by committing acts of trademark infringement;

G. A judgment that Defendants’ use of the EMSCULPT mark, as alleged in the Complaint, infringes BTL’s EMSCULPT trademark;

H. A judgment that Defendants’ use of the EMSCULPT NEO mark, as alleged in this Complaint, infringes BTL’s EMSCULPT NEO trademark;

I. A judgment that Defendant Irina Khaimov’s conduct in violating BTL’s Trademarks was willful and malicious;

J. A judgment that Defendants have violated the Lanham Act, 15 U.S.C. § 1125(a), by committing acts of federal unfair competition, false designation of origin, and false advertising;

K. An award of damages for Defendants’ infringement of the BTL trademarks, including Defendants’ profits, any damages sustained by BTL, and the costs of the action as provided by 15 U.S.C. § 1117(a), with said damages to be trebled because of the intentional, willful, and malicious nature of Defendants’

infringement, as provided by 15 U.S.C. § 1117(b);

L. A judgment that this case is “exceptional” under 15 U.S.C. § 1117(a) and an award of reasonable attorneys’ fees;

M. An award of damages against Defendants as a result of their wrongful acts against BTL in an amount to be proved at trial;

N. An award of any and all of Defendants’ profits arising from the foregoing acts;

O. An award of pre-and post-judgment interest of any monetary damages at the highest rate allowed by law;

P. Permanent injunctive relief enjoining Defendants from:

- i. using the BTL Trademarks or any confusingly similar marks, in any manner in connection with the promotion, marketing, advertising, offering for sale, or sale of any good or service that is not a good or service offered by a genuine BTL product, or is not authorized by BTL to be offered in connection with the BTL trademarks;
- ii. passing off, inducing, or enabling others to sell or pass off any good or service as a good or service offered by a genuine BTL product, or any other good or service offered by BTL, that is not BTL’s or not offered under the authorization, control, or supervision of BTL and approved by BTL for sale under the BTL Trademarks;

- iii. committing any acts calculated to cause consumers to believe that Defendants' goods or services are those sold under the authorization, control or supervision of BTL, or are sponsored by, approved by, or otherwise connected with BTL; and
 - iv. further infringing BTL's Trademarks and damaging BTL's goodwill.
- Q. An award of BTL's costs and expenses in this action; and
- R. For such other relief as the Court may deem just and proper.

June 13, 2023

Respectfully Submitted,

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JURY DEMAND

Under Rule 38 of the Federal Rules of Civil Procedure, Plaintiff BTL Industries, Inc. respectfully demands a trial by jury of any issues triable of right by a jury.

June 13, 2023

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