

Jeffrey A. Lindenbaum
jlindenbaum@rothwellfigg.com
Rothwell, Figg, Ernst & Manbeck, P.C.
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562
Telephone: (914) 941-5668
Attorneys for Plaintiff Flocast, LLC

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

Flocast, LLC,

Plaintiff,

v.

Movi Family LLC,

Defendant.

Civil Action No. 6:23-cv-1174 (MAD/TWD)

COMPLAINT

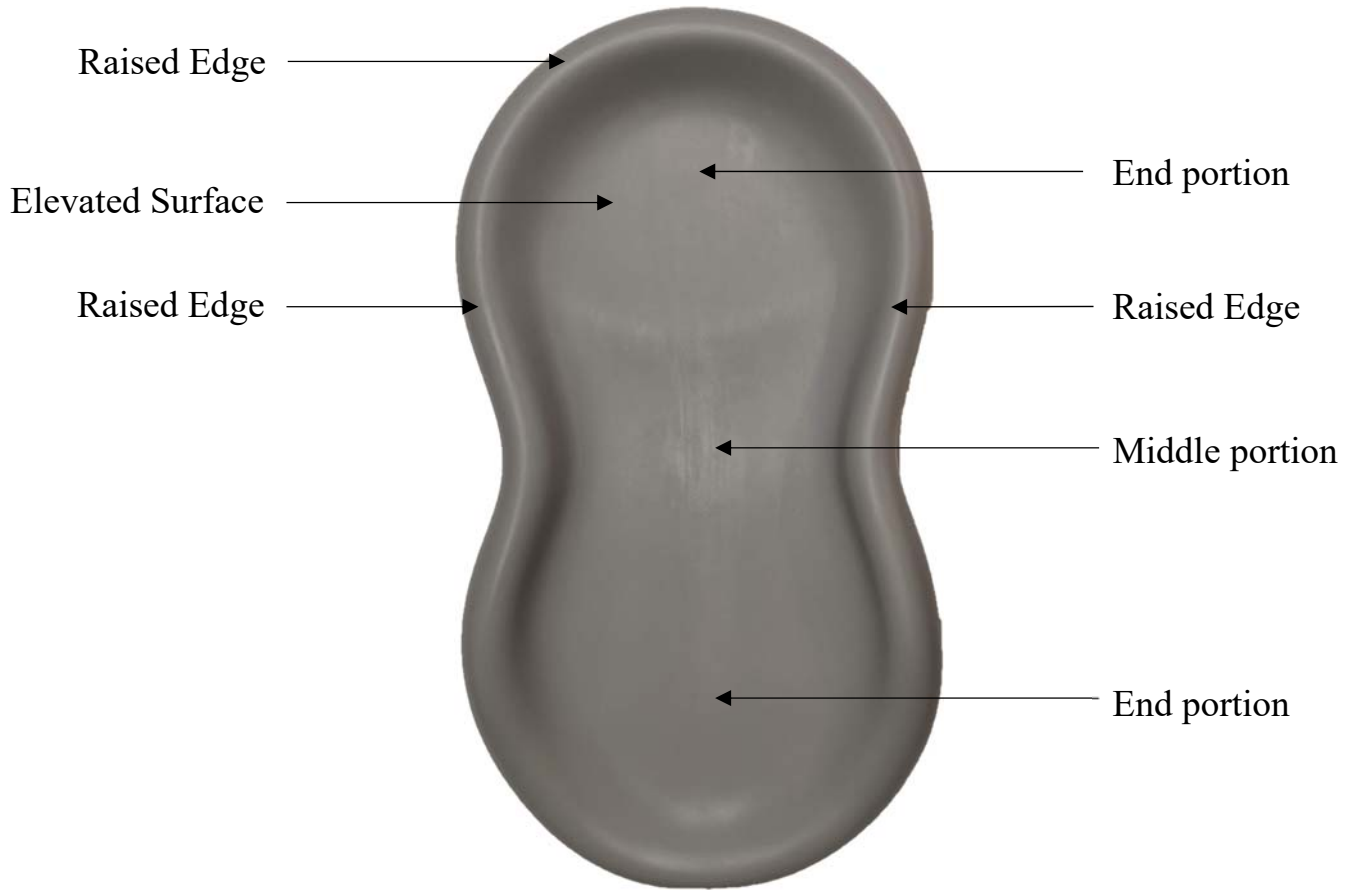
DEMAND FOR JURY TRIAL

Plaintiff Flocast, LLC (“Plaintiff” or “Flocast”) as its complaint against Defendant Movi Family LLC (“Defendant” or “Movi”) asserts as follows:


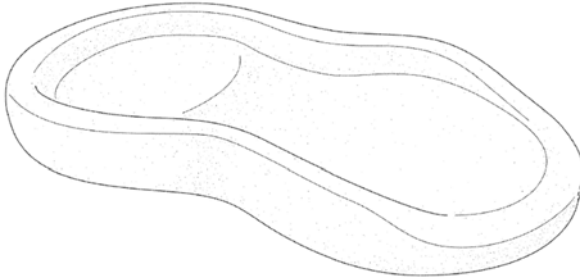

NATURE OF THE ACTION

1. Plaintiff brings this action following Defendant’s infringement of U.S. Design Patent No. D714,072 (hereinafter the “’072 Patent) in violation of the Patent Laws of the United States, 35 U.S.C. §§ 271, 281-285, and 289.
2. Plaintiff also brings this action to enforce its rights in the trade dress of its Keekaroo Peanut changing pad (the “PEANUT Trade Dress”) under 15 U.S.C. § 1125(a), and for substantial and related claims under the statutory and common laws of the State of New York, all arising from the unauthorized use of Plaintiff’s PEANUT Trade Dress. The PEANUT Trade Dress comprises, among other things:
 - a. a middle portion indented on both sides of the diaper changing pad such that the middle portion is narrower than the end portions of the changing pad;
 - b. rounded end portions on opposite sides of the indented middle portion;
 - c. an elevated top surface at one end portion relative to the top surface of the opposite end portion;
 - d. raised edges along the sides and one end portion of the changing pad; and

e. a grey or vanilla color throughout.



3. The PEANUT Trade Dress has come to be associated exclusively with Plaintiff. Plaintiff's PEANUT Trade Dress has acquired distinctiveness and secondary meaning because of Plaintiff's extensive advertising and sales as well as media attention and thousands of five-star reviews.
4. This action centers on Defendant's blatant infringement and copying of Plaintiff's patented Diaper Changing Pad design and distinctive PEANUT Trade Dress through sales and marketing of a product known as the Movi Cocoon Changing Pad (hereinafter INFRINGING MOVI COCOON), as shown below:

INFRINGING MOVI COCOON	
USD714,072	 <p data-bbox="854 1024 915 1052">FIG. 1</p>
Keekaroo Peanut Changing Pad	

5. Defendant has willfully and blatantly designed the INFRINGING MOVI COCOON to unfairly capitalize on the goodwill and reputation of Plaintiff's changing pad and unabashedly profit from its bad faith infringement. Accordingly, Plaintiff seeks injunctive relief and monetary damages.

PARTIES

6. Plaintiff Flocast is a limited liability company organized in the State of New York, with its principle place of business at 15 South Second Street, Dolgeville, New York 13329.
7. On information and belief, Defendant Movi Family LLC is a domestic company having an address of 1689 N. Lake Ave., Apt. 4, Pasadena, California 91104.
8. On information and belief, Defendant uses the following website to transact its business: <https://www.movifamily.com/>.
9. On information and belief, Defendant uses at least the following email address to transact business: support@movifamily.com.

JURISDICTION AND VENUE

10. This Court has subject-matter jurisdiction over Plaintiff's federal claims under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b). This Court has jurisdiction over the state claims under 28 U.S.C. §§ 1338(b) and further pursuant to its supplemental jurisdiction under 28 U.S.C. § 1367. The state claims asserted herein are so related to the federal claims as to form part of the same case or controversy.
11. This Court has personal jurisdiction over Defendant at least because, upon information and belief, Defendant has purposefully sold the INFRINGING MOVI COCOON in this District, made the product available for sale through an established distribution chain, and Plaintiff's cause of action arises out of those activities. Defendant has committed acts of intellectual property infringement in New York, including this District, and has delivered the INFRINGING MOVI COCOON into the stream of commerce with the expectation that they will be purchased by consumers in the State of New York, including this District.

12. Venue is proper as to the Patent Act claim in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b).
13. Venue is proper as to the trade dress and common law claims in this District under 28 U.S.C. § 1391 because Defendant has committed acts of infringement in this district.

FACTUAL BACKGROUND

The '072 Patent

14. The design in the '072 Patent, invented by Ross Richard Nadeau and Andrew Adolph Reimer, was duly assigned to Plaintiff. The USPTO issued the '072 Patent to Plaintiff on September 9, 2014. A copy of the '072 Patent is attached as Exhibit A.

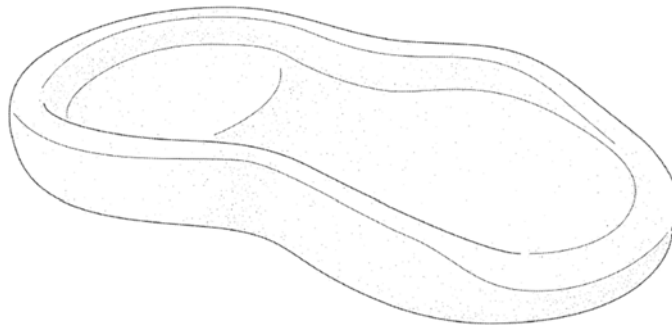


FIG. 1

15. The design in the '072 Patent is notable for its rounded indents in a middle portion such that the middle portion of the diaper changing pad is narrower than the end portions of the changing pad and for its rounded end portions on opposite side of the indented middle portion. The top surface of one end portion of the '072 Patent is elevated relative to the top surface of the opposite end portion, while the edges along the sides and one end portion of the changing pad are raised.
16. The '072 Patent, embodied by the Keekaroo Peanut changing pad can be purchased through online distributors such as, for example, Walmart.com (<https://www.walmart.com/ip/Keekaroo-Peanut-Changer->

[Vanilla/52051315?athbdg=L1600&from=/search](#), last visited August 25, 2023), Amazon.com (https://www.amazon.com/stores/Keekaroo/page/B7BBA1AD-51F5-4B18-97B6-D8B74D11E1F7?ref_=ast_bln, last visited August 25, 2023), and Babylist.com (<https://www.babylist.com/gp/keekaroo-peanut-wipeable-changing-pad/1850/15060>, last visited August 25, 2023).

17. The '072 Patent is associated with extremely high-quality diaper changing pad products and obtained incredible recognition in the market, including the highest level of JMPA Certification and Babylist Best.

The Renown and Reputation of the PEANUT Trade Dress

18. Plaintiff promotes its PEANUT Trade Dress prominently in connection with the sales of its Keekaroo Peanut changing pad.
19. Plaintiff's PEANUT Trade Dress has achieved renown in the market by virtue of its unique features and commercial success of the Keekaroo Peanut changing pad.
20. As a result of the long and continued use of the PEANUT Trade Dress, and as evidenced by its commercial success, Plaintiff is one of the premier manufacturers of changing pads, and the PEANUT Trade Dress has come to represent high quality, integrity, authenticity, and good will in the United States and is associated exclusively with Plaintiff.
21. The PEANUT Trade Dress is renowned in the relevant market as a result of the extensive advertising, promotion, and sales over the past decade.
22. Plaintiff has advertised its PEANUT Trade Dress through, among other things, promotions and advertising on streaming platforms; digital marketing on numerous channels, including search and social media platforms; and its own website (<https://www.keekaroo.com>); and social media channels.

23. Plaintiff prominently features the PEANUT Trade Dress on its Facebook page and Instagram page (@Keekaroo) where it has more than 10,000 followers combined.
24. In the past decade, Plaintiff has spent a considerable sum on promoting the PEANUT Trade Dress.
25. As further evidence of Plaintiff's market reputation and brand recognition as a result of the PEANUT Trade Dress, Plaintiff regularly receives unsolicited coverage in various media sources and exceedingly positive reviews.
26. As a result of Plaintiff's expenditure of significant sums to promote its PEANUT Trade Dress and the success it has enjoyed as evidenced by the extensive sales of the Keekaroo Peanut changing pad in the United States, the PEANUT Trade Dress is distinctive and has established substantial goodwill such that the public associates and identifies the PEANUT Trade Dress with a single source of origin.
27. Plaintiff's PEANUT Trade Dress is distinctive since it has acquired secondary meaning among the relevant public and audience for diaper changing pads, as seen by the volume of Plaintiff's sales and advertising, as well as the length of time Plaintiff has been the exclusive seller of products featuring the PEANUT Trade Dress. The PEANUT Trade Dress acquired secondary meaning prior to Defendant's production, sale and marketing of the INFRINGING MOVI COCOON.
28. The PEANUT Trade Dress includes features that are not functional; and are not essential to the purpose, cost or quality of the article. There are numerous alternative means to perform the function of a changing diaper pad, without using the PEANUT Trade Dress.

Defendant's Wrongful Conduct: Patent Infringement

29. On information and belief, Defendant designed the INFRINGING MOVI COCOON for manufacture and subsequently transported, distributed, advertised, marketed, offered for sale, and/or sold the INFRINGING MOVI COCOON.
30. On information and belief, Defendant knew or deliberately disregarded the risk that the INFRINGING MOVI COCOON was a copy of the Keekaroo Peanut changing pad, which is patent protected in the United States by the '072 Patent.
31. On information and belief, Defendant manufactured, used, and/or transported the INFRINGING MOVI COCOON into the United States with knowledge or with willful blindness of the '072 Patent.
32. On information and belief, Defendant knew or had reason to know that the INFRINGING MOVI COCOON directly infringed on the '072 Patent and, by manufacturing, selling, and/or importing the INFRINGING MOVI COCOON into the United States, intentionally induced third-party sellers and/or distributors to perpetuate the infringing conduct by placing an instrument of consumer deception in the hands of U.S. consumers.
33. On information and belief, Defendant has taken no action to discourage any third-party distributors and/or sellers from offering for sale, advertising, promoting, distributing, or selling the INFRINGING MOVI COCOON.
34. Since at least June 2023, Defendant has imported, distributed, advertised, marketed, offered for sale, and/or sold the INFRINGING MOVI COCOON.
35. On information and belief, Defendant disregarded Plaintiff's rights in the '072 Patent and forged ahead with marketing, sale, and distribution of the INFRINGING MOVI COCOON.

36. The '072 Patent and the INFRINGING MOVI COCOON are so similar that they are nearly indistinguishable, as shown below in a side-by-side comparison:



37. The overall design of Defendant's is a colorable imitation of the claimed design of the '072 Patent. Specifically, the INFRINGING MOVI COCOON has the following features which result in the INFRINGING MOVI COCOON having the same overall appearance as the '072 Patent:

- a middle portion that is indented on both sides such that the middle portion is narrower than the end portions of the changing pad designs;
- rounded end portions on opposite side of the indented middle portion;
- an elevated top surface at one end portion relative to the top surface of the opposite end portion; and
- raised edges along the sides and one end portion of the changing pad.

38. While the INFRINGING MOVI COCOON lacks a smooth, flat bottom surface as shown in Fig. 8 of the '072 Patent, the designs are substantially the same nonetheless because (i) Defendant has merely added their name to the bottom surface of the INFRINGING MOVI

COCOON, (ii) the bottom surface of the INFRINGING MOVI COCOON is not visible at the time of purchase, and/or (iii) the bottom surface is functional and not part of the design of the '072 Patent. The INFRINGING MOVI COCOON incorporates the ornamental features shown in FIGS. 1-7 of the '072 Patent

39. Upon information and belief, there is no prior art that has the same overall appearance as the '072 Patent.

Defendant's Wrongful Conduct: Trade Dress Infringement

40. Defendant is not licensed by Plaintiff and is not authorized by Plaintiff to use the PEANUT Trade Dress for any of Defendant's goods.
41. Defendant's use of the INFRINGING MOVI COCOON commenced long after Plaintiff's use and extensive advertising of the PEANUT Trade Dress and well after the PEANUT Trade Dress achieved secondary meaning in the marketplace.
42. Despite Defendant's wrongful conduct, prior to bringing this action, in an effort to promote settlement, Plaintiff sent a cease and desist letter on March 23, 2023, informing Defendant that the INFRINGING MOVI COCOON was infringing the '072 Patent. Defendant rejected Plaintiff's position and continued every commercial activity connected to the infringing product.
43. Plaintiff brought this action when it became clear that Defendant's infringement would not be resolved in any other way.
44. In a clear attempt to trade off the goodwill and reputation established by Plaintiff with its PEANUT Trade Dress, Defendant's INFRINGING MOVI COCOON creates a likelihood of confusion in the marketplace. This confusion is not simply likely, but inevitable: as shown below, the similarities in the overall appearance of the product are undeniable.

Plaintiff's Keekaroo Peanut changing pad is on the right and the INFRINGING MOVI COCOON on the left:

INFRINGING MOVI COCOON	Keekaroo Peanut Changing Pad
	
	
	
	
	



45. The INFRINGING MOVI COCOON blatantly copies numerous elements of the PEANUT Trade Dress, including:

- a. a middle portion indented on both sides of the diaper changing pad such that the middle portion is narrower than the end portions of the changing pad;
 - b. rounded end portions on opposite sides of the indented middle portion;
 - c. an elevated top surface at one end portion relative to the top surface of the opposite end portion;
 - d. raised edges along the sides and one end portion of the changing pad; and
 - e. a grey or vanilla color throughout.
46. For the reasons alleged herein, likelihood of confusion between the parties' changing pads is inevitable, and so is the inapposite association of the INFRINGING MOVI COCOON with Plaintiff. As explained above, no other changing pad in U.S. commerce features the characteristics typical of the PEANUT Trade Dress, the INFRINGING MOVI COCOON is nearly identical, the two products serve the same purpose and clearly compete with each other, the material and quality of Defendant's product is inferior and changing pads – based on the circumstances of their purchase – do not require a particular degree of care and attention. The lesser quality of the INFRINGING MOVI COCOON further damages Plaintiff and the reputation and goodwill associated with its PEANUT Trade Dress. In addition, upon information and belief, purchasers have already raised safety concerns with INFRINGING MOVI COCOON that further adds to the damage to Plaintiff as a result of Defendant's unlawful acts.
47. other authorization to Defendant to make use, offer for sale, sell, or import changing pads encompassed by the '072 Patent.
48. Plaintiff has been damaged by the foregoing infringing and wrongful acts of the Defendant, including, without limitation, suffering actual damages.

49. Defendant's unlawful offering for sale and selling of the INFRINGING MOVI COCOON was not discovered by Plaintiff until March 2023, less than one year from the filing of this complaint.
50. Defendant's wrongful conduct and infringing activities will continue unless enjoined by this Court.

CAUSES OF ACTION

COUNT I

Direct Infringement of the '072 Patent

51. Plaintiff repeats and incorporates by reference each of the preceding paragraphs as if fully set forth herein.
52. The '072 Patent was duly assigned to Plaintiff, which is the owner of all right, title, and interest in and to the '072 Patent and possesses the exclusive right of recovery for past, present, and future infringement. The sole claim of the '072 Patent is valid and enforceable.
53. Defendant has been, and presently is, infringing the claim of the '072 Patent literally and/or under the doctrine of equivalents by using, making, selling, offering to sell, and/or importing into the United States, including the State of New York and within this District, products identified in this Complaint infringing the ornamental design covered by the '072 Patent in violation of 35 U.S.C. §§ 271(a) and 289, including but not limited to Defendant's INFRINGING MOVI COCOON.
54. Defendant infringes the '072 Patent literally and under the doctrine of equivalents because, *inter alia*, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, the '072 Patent and the INFRINGING MOVI COCOON are each substantially the same changing pads having (1) a middle portion indented on both sides such that the

middle portion is narrower than the end portions of the changing pad designs; (2) rounded end portions on opposite sides of the indented middle portion; (3) an elevated top surface of the one end portion relative to the top surface of the opposite end portion; and (4) raised edges along only the sides and one end portion of the changing pad. The resemblance of the claim of the '072 Patent in the INFRINGING MOVI COCOON is so substantially similar that it deceives the ordinary observer, inducing him to purchase one supposing it to be the other.

55. To the extent there are any differences between individual features of the claimed design of the '072 Patent and the INFRINGING MOVI COCOON in isolation, those differences involve features of the INFRINGING MOVI COCOON that are insignificant when compared to the similarities in the overall designs, substantially similar ornamental equivalents of the comparable features of the design claimed in the '072 Patent, and/or functional features not covered by the claim of the '072 Patent.
56. Defendant's acts of infringement of the '072 Patent were undertaken without authority, permission, or license from Plaintiff. Defendant's infringing activities violate 35 U.S.C. § 271.
57. Defendant has engaged in a pattern of conduct demonstrating: Defendant's willful blindness of the '072 Patent; the objectively high likelihood that Defendant's actions constitute infringement of the '072 Patent and that the '072 Patent is valid and enforceable; and that this objectively defined risk was so obvious that Defendant knew or should have known that its pattern of conduct would infringe or induce others to infringe the '072 Patent.

58. Defendant's infringement has damaged and continues to damage and injure Plaintiff. The injury to Plaintiff is irreparable and will continue unless and until Defendant is enjoined from further infringement.
59. Plaintiff is entitled to a complete accounting of all revenue and profits derived by Defendant from the unlawful conduct alleged herein, including without limitation, Defendant's total profit from the manufacture, use, sale, and offer to sell the INFRINGING MOVI COCOON pursuant to 35 U.S.C. § 289.
60. Defendant has engaged and is engaged in willful and deliberate infringement of the '072 Patent. Defendant has knowledge of the infringing nature of its activities, or at least a willful blindness regarding the infringing nature of its activities, with respect to the '072 Patent since at least April 6, 2023, when Defendant responded to Plaintiff's March 23, 2023 Letter informing Defendant of the '072 Patent and Plaintiff's infringement. Such willful and deliberate infringement justifies an increase of three times the damages to be assessed pursuant to 35 U.S.C. § 284 and further qualifies this action as an exceptional case supporting an award of reasonable attorney's fees pursuant to 35 U.S.C. § 285. A true and correct copy of Plaintiff's Infringement Letter sent March 23, 2023 is attached as Exhibit B, and a true and correct copy of Defendant's Response Letter sent April 6, 2023 is attached as Exhibit C.
61. Plaintiff is entitled to a permanent injunction preventing Defendant from further infringing the '072 Patent.

COUNT II:

Indirect Infringement of the '072 Patent

62. Plaintiff repeats and incorporates by reference each of the preceding paragraphs as if fully set forth herein.
63. In addition to directly infringing the '072 Patent in New York, Defendant indirectly infringe the '072 Patent in New York pursuant to 35 U.S.C. § 271(b).
64. Defendant knowingly and actively aided and abetted the direct infringement of the '072 Patent by instructing and encourage customers, purchasers, users, and manufacturers, to make and use the INFRINGING MOVI COCOON. Such instructions and encouragement included, but are not limited to, advising one or more third parties to use the INFRINGING MOVI COCOON in an infringing manner, providing a mechanism through which one or more third parties may infringe the '072 Patent, and by advertising and promoting the use of the INFRINGING MOVI COCOON in an infringing manner.
65. Defendant knew or was willfully blind to the fact that they were inducing others, including customers, purchasers, users, and manufacturers to infringe by making and/or using either themselves or in conjunction with Defendant, embodiments of the '072 Patent claim.
66. Defendant's acts of infringement of the '072 Patent were undertaken without authority, permission, or license from Plaintiff. These infringing acts of Defendant's infringing activities violate 35 U.S.C. § 271(a) and (b). Those infringing activities have damaged and continue to damage and injure Plaintiff. The injury to Plaintiff is irreparable and will continue unless and until Defendant is enjoined from further infringement.
67. Plaintiff is entitled to a complete accounting of all revenue and profits derived by Defendant and its customers, purchasers, users, and manufacturers from the unlawful

conduct alleged herein, including without limitation, Defendant's total profit from the manufacture, use, sale, and offer to sell the INFRINGING MOVI COCOON pursuant to 35 U.S.C. § 289.

68. Defendant has engaged and are engaged in willful and deliberate infringement of the '072 Patent. Defendant has knowledge of the infringing nature of its activities, or at least a willful blindness regarding the infringing nature of its activities, with respect to the '072 Patent since at least April 6, 2023, when Defendant responded to Plaintiff's March 23, 2023 Letter informing Defendant of the '072 Patent and Plaintiff's infringement. Such willful and deliberate infringement justifies an increase of three times the damages to be assessed pursuant to 35 U.S.C. § 284 and further qualifies this action as an exceptional case supporting an award of reasonable attorney's fees pursuant to 35 U.S.C. § 285.
69. Plaintiff is entitled to a permanent injunction preventing Defendant from further infringing the '072 Patent.

COUNT III

Violation of Section 43(a) of the Lanham Act (Trade Dress)

70. Plaintiff repeats and incorporates by reference each of the preceding paragraphs as if fully set forth herein.
71. The INFRINGING MOVI COCOON blatantly copies and is confusingly similar to the PEANUT Trade Dress because it features:
- a. a middle portion indented on both sides such that the middle portion is narrower than the end portions of the changing pad;
 - b. rounded end portions on the opposite side of the indented middle portion;

- c. an elevated top surface of one end portion relative to the top surface of the opposite end portion;
- d. raised edges along the sides and one end portion of the changing pad; and
- e. a grey or vanilla color throughout.

72. Section 43(a) of the federal Lanham Trademark Act provides:

Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact or false or misleading representation of fact, which — (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or — (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act. 15 U.S.C.A. § 1125(a).

73. Defendant's distribution, advertisement, offering for sale, and sale of the INFRINGING MOVI COCOON constitutes false designation of origin, which is likely to cause confusion, mistake or deceive as to the affiliation, connection, or association of Defendant's INFRINGING MOVI COCOON with the PEANUT Trade Dress of Plaintiff, or as to the origin, sponsorship, or approval of Defendant's INFRINGING MOVI COCOON by Plaintiff, in violation of Section 43((a) of the Lanham Act (15 U.S.C. §1125(a)).

74. Upon information and belief, the activities of Defendant in selling such infringing products have been done with the express intention of confusion, misleading, and deceiving purchasers and members of the public into believing they are purchasing Plaintiff's products.

75. Defendant's actions have continued in spite of Defendant's knowledge that the use of the PEANUT Trade Dress, or any reproductions, counterfeits, copies or colorable imitations of the same, is in violation of Plaintiff's rights.
76. Plaintiff has no adequate remedy at law. Defendant's conduct has caused, and will continue to cause, immediate and irreparable damage to Plaintiff, if not enjoined. The damage to Plaintiff's trademark rights, reputation, and goodwill cannot be adequately calculated or compensated in money damages alone.
77. Due to Defendant's violation of Section 43(a) of the Lanham Act, Plaintiff is entitled to injunctive relief, actual, compensatory and punitive damages in an amount to be determined at trial, including attorney's fees and costs.

COUNT IV

Common Law Trademark Infringement and Unfair Competition under New York Law (Trade Dress)

78. Plaintiff repeats and incorporates by reference each of the preceding paragraphs as if fully set forth herein.
79. THE INFRINGING MOVI COCOON blatantly copies numerous elements of the PEANUT Trade Dress, including:
 - a. a middle portion indented on both sides such that the middle portion is narrower than the end portions of the changing pad;
 - b. rounded end portions on the opposite side of the indented middle portion;
 - c. an elevated top surface of one end portion relative to the top surface of the opposite end portion;
 - d. raised edges along the sides and one end portion of the changing pad; and

e. a grey or vanilla color throughout.

80. Plaintiff's PEANUT Trade Dress is a valid and legally protectable mark and is used in commerce in connection with its diaper changing pads.
81. There is a likelihood of confusion arising from Defendant's use of the INFRINGING MOVI COCOON for changing pads.
82. Defendant's use of the INFRINGING MOVI COCOON constitutes common law trademark infringement and unfair competition, in violation of New York law.
83. Defendant's actions were committed willfully, knowingly, maliciously and in conscious disregard of Plaintiff's legal rights.
84. Plaintiff has no adequate remedy at law. Defendant's conduct has caused, and unless enjoined will continue to cause, immediate and irreparable harm to Plaintiff and its trademark rights, business, reputation and goodwill. This harm cannot be adequately calculated or compensated in money damages alone.

COUNT V

Injury to Business Reputation under N.Y. Gen. Bus. Law § 360-1

85. Plaintiff repeats and incorporates by reference each of the preceding paragraphs as if fully set forth herein.
86. THE INFRINGING MOVI COCOON blatantly copies numerous elements of the PEANUT Trade Dress, including:
 - a. a middle portion indented on both sides such that the middle portion is narrower than the end portions of the changing pad;
 - b. rounded end portions on the opposite side of the indented middle portion;

- c. an elevated top surface of one end portion relative to the top surface of the opposite end portion;
 - d. raised edges along the sides and one end portion of the changing pad; and
 - e. a grey or vanilla color throughout.
87. Defendant's manufacturing, marketing and sale of the INFRINGING MOVI COCOON constitutes misuse and misappropriation of Plaintiff's PEANUT Trade Dress.
88. Defendant's misuse and misappropriation of Plaintiff's PEANUT Trade Dress creates confusion as to the source and origin of Defendant's INFRINGING MOVI COCOON and trades off Plaintiff's PEANUT Trade Dress distinctiveness.
89. Defendant's imitation, copy, and reproduction of Plaintiff's PEANUT Trade Dress has injured Plaintiff's business reputation in violation of Section 360-1 of the New York General Business Law.
90. Plaintiff has no adequate remedy at law. Defendant's conduct has caused, and unless enjoined will continue to cause, immediate and irreparable harm to Plaintiff and its trademark rights, business, reputation and goodwill. This harm cannot be adequately calculated or compensated in money damages alone.
91. Based on Defendant's violation of New York law, Plaintiff is entitled to injunctive and equitable relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests entry of judgment against the Defendant as follows:

- A. A judgment that Defendant has infringed the '072 Patent;

- B. A judgment that Defendant has infringed and diluted Plaintiff's PEANUT Trade Dress;
- C. A permanent injunction restraining Defendant from:
- i. manufacturing, importing, using, selling or offering to sell infringing products practicing the '072 Patent and from otherwise infringing, contributing to infringement of, and actively inducing infringement of the '072 Patent;
 - ii. directly or indirectly infringing Plaintiff's statutory or common-law trademarks for the PEANUT Trade Dress in any manner, including by not limited to, manufacturing, distributing, advertising, selling, or offering for sale any products that infringe the PEANUT Trade Dress; and
 - iii. using the PEANUT Trade Dress or any reproduction, counterfeit, copy, or colorable imitation of such mark in connection with the manufacture, distribution, advertising, display, marketing, sale, offering for sale, or other use of any product; and
 - iv. using a trade dress, labeling, or changing pad design that is a reproduction, counterfeit, copy, or colorable imitation of the PEANUT Trade Dress for its products in connection with the manufacture, distribution, advertising, display, marketing, sale, offering for sale, or other use of any product;
- D. An Order that Plaintiff be authorized to seize any other products that reproduce, copy, counterfeit, or imitate the PEANUT Trade Dress, including the INFRINGING MOVI COCOON, which are in Defendant's possession, custody, or control;

- E. A judgment and order that Defendant make an accounting to Plaintiff and pay over to plaintiff:
- i. the extent of Defendant's total profits and revenues realized and derived from its infringement of the '072 Patent and Plaintiff's PEANUT Trade Dress, and actual damages to Plaintiff in an amount not less than a reasonable royalty for Defendant's infringements;
 - ii. exemplary, compensatory punitive, and/or treble damages pursuant to 35 U.S.C. § 284 by reason of the intentional and willful nature of Defendant's infringement, and as permitted under other applicable laws;
- F. An order finding this case to be exceptional under 35 U.S.C. § 285 and 15 U.S.C. § 1117, and that Defendant be deemed liable for and be ordered to pay Plaintiff, in addition to the aforesaid damages, an award of Plaintiff's costs and reasonable attorneys' fees, and that the amount of the actual damages be trebled; and
- G. Such other relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff respectfully demands a trial by jury of all issues so triable.

Date: September 13, 2023

Respectfully submitted,

By: s/ Jeffrey A. Lindenbaum

Jeffrey A. Lindenbaum (302758)
jlindenbaum@rothwellfigg.com
Rothwell, Figg, Ernst & Manbeck, P.C.
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562
Telephone: (914) 941-5668

Attorneys for Plaintiff Flocast, LLC