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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

MARK VINIELLO AND OVER ACTIVE
IMAGINATIONS, INC.

Plaintiffs,

v.

AMAZON.COM, INC.

Defendants.

Case No:

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

1 Plaintiff Mark Viniello (“Plaintiff” or “Viniello”), through his attorneys, complains of
2 Defendant AMAZON.COM, INC. (“Defendant” or “Amazon”), hereby demands a jury trial and
3 alleges as follows:

4 **PARTIES**

5 1. Plaintiff Mark Viniello is an individual and resident of California.

6 2. Plaintiff Over Active Imaginations, Inc. is a corporation organized and existing under
7 the laws of the state of California, with its principal place of business at 22409 Georgia Lane,
8 Santa Clarita, CA 91350.

9 3. Plaintiff Mark Viniello is the owner of the ‘669 patent and the ‘792 patent.

10 4. The inventors of the ‘055 Patent, Mark Viniello and Tristy Anne Viniello, assigned
11 ownership of the ‘055 Patent to Over Active Imaginations, Inc. on October 29, 2015.

12 5. On information and belief, Defendant is a corporation organized and existing under the
13 laws of the state of Delaware, with its principal place of business at 2021 7th Ave, Seattle, WA 98121.

14 6. On information and belief, there may be other corporate affiliates of Defendant who
15 participated in the infringing acts complained of herein. The identities of such affiliates are currently
16 unknown, because publicly available information does not permit the identification of each affiliate
17 who participated in the infringing acts. Plaintiff expects the identities of such affiliates to be revealed
18 in discovery. Plaintiff reserves the right to amend this Complaint to name such affiliates, if necessary,
19 once they have been revealed.

20 **JURISDICTION**

21 7. This is an action for infringement of claims of the ‘669 Patent, the ‘792 Patent, and the
22 ‘055 Patent, which were each duly issued by the United States Patent and Trademark Office. A true
23 and accurate copy of the ‘669 patent is attached as Exhibit 1 to this Complaint. A true and accurate
24 copy of the ‘792 patent is attached as Exhibit 2 to this Complaint. A true and accurate copy of the
25 ‘055 patent is attached as Exhibit 3 to this Complaint.

26 8. This Court has subject matter jurisdiction over the parties pursuant to 28 U.S.C. §§1331
27 and 1338(a), because the claims arise under the patent laws of the United States, 35 U.S.C. §§1, *et*
28 *seq.*

1 16. On February 25, 2013, Mark Viniello filed with the United States Patent and Trademark
2 Office (“USPTO”) Patent Application no. 29/446,520 (the ‘520 application) directed to his
3 inventions. On November 24, 2015, the USPTO issued the ’669 patent from the ‘520
4 application.

5 17. The ‘669 patent is valid and enforceable. The ‘669 patent claims patent-eligible matter.

6 18. The entire right, title, and interest in and to the ’669 patent, including all rights to past
7 damages, is assigned to Mark Viniello. No assignment needs to be recorded with the USPTO,
8 because without an assignment, title rests with the inventor.

9 19. Mark Viniello is the sole named inventor of the ‘792 patent.

10 20. On March 25, 2015, Mark Viniello filed with the United States Patent and Trademark
11 Office (“USPTO”) Patent Application no. 29/521,696 (the ‘696 application) directed to his
12 inventions. On March 22, 2016, the USPTO issued the ’792 patent from the ‘696 application.

13 21. The ‘792 patent is valid and enforceable. The ‘792 patent claims patent-eligible matter.

14 22. The entire right, title, and interest in and to the ’792 patent, including all rights to past
15 damages, is assigned to Mark Viniello. No assignment needs to be recorded with the USPTO,
16 because without an assignment, title rests with the inventor.

17 23. Mark Viniello along with his wife Tristy Anne Viniello are the co-inventors of the ‘055
18 patent.

19 24. On October 30, 2015, Mark Viniello and Tristy Anne Viniello filed with the United
20 States Patent and Trademark Office (“USPTO”) Patent Application no. 29/544,162 (the ‘162
21 application) directed to his inventions. On July 18, 2017, the USPTO issued the ’055 patent
22 from the ‘162 application.

23 25. The ‘055 patent is valid and enforceable. The ‘055 patent claims patent-eligible matter.

24 26. The entire right, title, and interest in and to the ’055 patent, including all rights to past
25 damages, is assigned to Over Active Imaginations, Inc. on October 29, 2015. The signed
26 assignment contract is attached as Exhibit 5 and was found at [https://legacy-
27 assignments.uspto.gov/assignments/assignment-pat-36927-650.pdf](https://legacy-assignments.uspto.gov/assignments/assignment-pat-36927-650.pdf).

1 27. On November 11 and November 28, 2023, Amazon was informed of the infringement
2 of the Asserted Patents through Amazon’s reporting tool at
3 <https://www.amazon.com/report/infringement>. Receipts from these reports are attached to this
4 Complaint as Exhibits 6-11. Exhibits 6-8 are receipts of reports submitted to Amazon on
5 November 11, 2023. Exhibits 9-11 are receipts of reports submitted to Amazon on November
6 28, 2023. Exhibits 6 and 9 are in regards to the infringement of the ‘669 Patent. Exhibits 7
7 and 10 are in regards to the infringement of the ‘792 Patent. Exhibits 8 and 11 are in regards to
8 the infringement of the ‘055 Patent. However, the reports did not result in Amazon removing
9 any Accused Products.

10
11 **DEFENDANT’S INFRINGING USE**

12 28. On information and belief, Defendant and/or their affiliates, have directly infringed
13 claim 1 of the ‘669 Patent, the ’792 Patent, and the ‘055 Patent, by making, using, selling and
14 offering to sell, and by inducing and contributing to others’ infringement through their sales,
15 offers for sale, and use of a “Mermaid shaped sleeping bag”, and other products depicted on
16 Defendant’s websites and sold on third party websites within the United States, listed in Exhibit
17 4 as the Accused Products, all without authorization or license from Plaintiff within the United
18 States, less than six years before the filing of this Complaint, and prior to the November 24,
19 2029 expiration date of the ‘669 Patent, the March 22, 2030 expiration date of the ’792 Patent,
20 and the July 18, 2032 expiration date of the ‘055 Patent (the “Relevant Time Period”).

21 29. Examples of Defendant’s sale of infringing products are shown in Exhibit 4, which lists
22 all the websites that are part of Amazon.com that sell products matching the shape of the design
23 patents.

24 30. There are potentially other infringing products being sold by Defendant, which may be
25 uncovered in discovery. Plaintiff reserves the right to amend this Complaint to name such
26 infringing products, if necessary, once they have been revealed.

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28 **FIRST CLAIM FOR RELIEF**

(Infringement of the '669 Patent)

1
2 31. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-38
3 above as if fully set forth herein and further alleges:

4 32. Defendant has committed, and is continuing to commit, direct infringement of the claim
5 of the '669 patent, in violation of 35 U.S.C. § 271(a), by selling products that are described by
6 the claim in the U.S., during the Relevant Time Period. Defendant's acts of infringement
7 include direct infringement and infringement under the Doctrine of Equivalents.

8 33. Defendant has infringed and continues to infringe the claim of the '669 Patent by
9 making, using, selling and offering to sell, and by inducing and contributing to others'
10 infringement through their sales, offers for sale, and use of the Accused Products, all without
11 authorization or license from Plaintiff.

12 34. Defendant has continued their infringement despite having notice of the '669 Patent.
13 Defendant has committed and is committing willful and deliberate patent infringement. On
14 information and belief Plaintiff alleges Defendant's acts of willful and deliberate infringement
15 will continue after service of this Complaint, rendering this case appropriate for treble damages
16 under 35 U.S.C. §284 and making this an exceptional case under 35 U.S.C. §285.

17 35. Defendant has indirectly infringed and continues to infringe the '669 patent by
18 inducement under 35 U.S.C. 271(b). Defendant has induced and continues to induce users and
19 retailers of the Accused Products to directly infringe the '669 patent.

20 36. Upon information and belief, Defendant knowingly induced customers to use its
21 Accused Products, including, for example, by promoting such products online (e.g.,
22 www.PotteryBarn.com).

23 37. On information and belief, Defendant has contributed to the infringement of the '669
24 patent by the use and/or importation of the Accused Products in violation of 35 U.S.C. §
25 271(c). The Accused Products are not a staple article or commodity of commerce suitable for
26 substantial noninfringing use.

27 38. Plaintiff is informed and believes, and on that basis alleges, that Defendant has gained
28 profits by virtue of their infringement of the '669 Patent.

1 39. Defendant's acts of infringement are and have been without Plaintiff's permission,
2 consent, authorization or license. Defendant's acts of infringement have caused and continue
3 to cause damage to Plaintiff. Plaintiff is entitled to recover from Defendant the damages
4 sustained by Plaintiff as a result of Defendant's wrongful acts, together with interest and costs
5 as fixed by this Court under 35 U.S.C. §284.

6 40. As a direct and proximate result of Defendant's infringement of the '669 Patent,
7 Plaintiff has, and will suffer, monetary damages and irreparable injury. Plaintiff's monetary
8 damages include, without limitation, lost profits, or at a minimum, the right to recover a
9 reasonable royalty. Furthermore, unless Defendant is enjoined by this Court from continuing its
10 infringement of the '669 Patent, Plaintiff has, and will suffer, additional irreparable damages
11 and impairment of the value of its patent rights. Thus, an injunction against further
12 infringement is appropriate.

13
14 **SECOND CLAIM FOR RELIEF**

15 **(Infringement of the '792 Patent)**

16 41. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-49
17 above as if fully set forth herein and further alleges:

18 42. Defendant has committed direct infringement of each claim of the '792 patent, in
19 violation of 35 U.S.C. § 271(a), by performing all the steps of each claim in the U.S., during
20 the Relevant Time Period.

21 43. Defendant has infringed and continue to infringe one or more of the claims of the '792
22 Patent by making, using, selling and offering to sell, and by inducing and contributing to
23 others' infringement through their sales, offers for sale, and use of the Accused Products, all
24 without authorization or license from Plaintiff.

25 44. On information and belief, Plaintiff alleges Defendant has been, and is currently,
26 infringing the '792 patent in violation of 35 U.S.C. § 271. Defendant's acts of infringement
27 include direct infringement and infringement under the Doctrine of Equivalents.
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1 45. Defendant has continued their infringement despite having notice of the ‘792 Patent.
2 Defendant has committed and is committing willful and deliberate patent infringement. On
3 information and belief Plaintiff alleges Defendant’s acts of willful and deliberate infringement
4 will continue after service of this Complaint, rendering this case appropriate for treble damages
5 under 35 U.S.C. §284 and making this an exceptional case under 35 U.S.C. §285.

6 46. Defendant has indirectly infringed and continues to infringe the ‘792 patent by
7 inducement under 35 U.S.C. 271(b). Defendant has induced and continues to induce users and
8 retailers of the Accused Products to directly infringe the ‘792 patent.

9 47. Upon information and belief, Defendant knowingly induced customers to use its
10 Accused Products, including, for example, by promoting such products online (e.g.,
11 www.PotteryBarn.com).

12 48. On information and belief, Defendant has contributed to the infringement of the ‘792
13 patent by the use and/or importation of the Accused Products in violation of 35 U.S.C. §
14 271(c). The Accused Products are not a staple article or commodity of commerce suitable for
15 substantial noninfringing use.

16 49. Plaintiff is informed and believes, and on that basis alleges, that Defendant has gained
17 profits by virtue of their infringement of the ‘792 Patent.

18 50. Defendant’s acts of infringement are and have been without Plaintiff’s permission,
19 consent, authorization or license. Defendant’s acts of infringement have caused and continue
20 to cause damage to Plaintiff. Plaintiff is entitled to recover from Defendant the damages
21 sustained by Plaintiff as a result of Defendant’s wrongful acts, together with interest and costs
22 as fixed by this Court under 35 U.S.C. §284.

23 51. As a direct and proximate result of Defendant’s infringement of the ‘792 Patent,
24 Plaintiff has, and will suffer, monetary damages and irreparable injury. Plaintiff’s monetary
25 damages include, without limitation, lost profits, or at a minimum, the right to recover a
26 reasonable royalty. Furthermore, unless Defendant is enjoined by this Court from continuing its
27 infringement of the ‘792 Patent, Plaintiff has, and will suffer, additional irreparable damages
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1 and impairment of the value of its patent rights. Thus, an injunction against further
2 infringement is appropriate.

3
4 **THIRD CLAIM FOR RELIEF**

5 **(Infringement of the '055 Patent)**

6 52. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-60
7 above as if fully set forth herein and further alleges:

8 53. Defendant has committed direct infringement of each claim of the '055 patent, in
9 violation of 35 U.S.C. § 271(a), by performing all the steps of each claim in the U.S., during
10 the Relevant Time Period.

11 54. Defendant has infringed and continue to infringe one or more of the claims of the '055
12 Patent by making, using, selling and offering to sell, and by inducing and contributing to
13 others' infringement through their sales, offers for sale, and use of the Accused Products, all
14 without authorization or license from Plaintiff.

15 55. On information and belief, Plaintiff alleges Defendant has been, and is currently,
16 infringing the '055 patent in violation of 35 U.S.C. § 271. Defendant's acts of infringement
17 include direct infringement and infringement under the Doctrine of Equivalents.

18 56. Defendant has continued their infringement despite having notice of the '055 Patent.
19 Defendant has committed and is committing willful and deliberate patent infringement. On
20 information and belief Plaintiff alleges Defendant's acts of willful and deliberate infringement
21 will continue after service of this Complaint, rendering this case appropriate for treble damages
22 under 35 U.S.C. §284 and making this an exceptional case under 35 U.S.C. §285.

23 57. Defendant has indirectly infringed and continues to infringe the '055 patent by
24 inducement under 35 U.S.C. 271(b). Defendant has induced and continues to induce users and
25 retailers of the Accused Products to directly infringe the '055 patent.

26 58. Upon information and belief, Defendant knowingly induced customers to use its
27 Accused Products, including, for example, by promoting such products online (e.g.,
28 www.PotteryBarn.com).

1 59. On information and belief, Defendant has contributed to the infringement of the '055
2 patent by the use and/or importation of the Accused Products in violation of 35 U.S.C. §
3 271(c). The Accused Products are not a staple article or commodity of commerce suitable for
4 substantial noninfringing use.

5 60. Plaintiff is informed and believes, and on that basis alleges, that Defendant has gained
6 profits by virtue of their infringement of the '055 Patent.

7 61. Defendant's acts of infringement are and have been without Plaintiff's permission,
8 consent, authorization or license. Defendant's acts of infringement have caused and continue
9 to cause damage to Plaintiff. Plaintiff is entitled to recover from Defendant the damages
10 sustained by Plaintiff as a result of Defendant's wrongful acts, together with interest and costs
11 as fixed by this Court under 35 U.S.C. §284.

12 62. As a direct and proximate result of Defendant's infringement of the '055 Patent,
13 Plaintiff has, and will suffer, monetary damages and irreparable injury. Plaintiff's monetary
14 damages include, without limitation, lost profits, or at a minimum, the right to recover a
15 reasonable royalty. Furthermore, unless Defendant is enjoined by this Court from continuing its
16 infringement of the '055 Patent, Plaintiff has, and will suffer, additional irreparable damages
17 and impairment of the value of its patent rights. Thus, an injunction against further
18 infringement is appropriate.

19
20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays judgment against each Defendant as follows:

- 22 A. That each Defendant has infringed and is infringing the '669 Patent, the '792 patent,
23 and the '055 patent;
- 24 B. That such infringement is willful;
- 25 C. That defendant be ordered to pay Plaintiff damages caused by said Defendant's
26 infringement of the '669 Patent, the '792 patent, and the '055 patent, and that such
27 damages be trebled in accord with 35 U.S.C. § 284, together with interest thereon;
- 28

- 1 D. That this case be declared exceptional pursuant to 35 U.S.C. § 285 and that Plaintiff be
2 awarded reasonable attorney's fees and costs; and
3 E. That Plaintiff shall have such other and further relief as this Honorable Court may deem
4 just and proper.
5

6 **DEMAND FOR JURY TRIAL**

7 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff, Safety Direct LLC,
8 hereby demands a jury trial on *all* of his claims, causes of action and issues that are triable by jury.
9

10 Dated: December 5, 2023

MURTHY PATENT LAW INC.

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