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8 Attorneys for Plaintiff
9 KEEZIO GROUP LLC,
10 a California limited liability company

11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 KEEZIO GROUP, LLC, a California limited
16 liability company

17 Plaintiff,

18 v.

19 REGALO INTERNATIONAL, LLC, a
20 Minnesota limited liability company

21 Defendant.

Case No.

**COMPLAINT FOR PATENT
INFRINGEMENT, VIOLATION OF
THE LANHAM ACT (15 U.S.C 1125(a)),
AND VIOLATION OF UNFAIR
COMPETITION LAW
(CAL. BUS. & PROF. CODE § 17200 ET**

DEMAND FOR JURY TRIAL

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1 COMES NOW Plaintiff KEEZIO GROUP LLC, a California limited liability company
2 (hereinafter “Plaintiff” or “KEEZIO”), bringing this action against Defendant REGALO
3 INTERNATIONAL, LLC (hereinafter “Defendant” or “REGALO”), alleging as follows:

4 **PARTIES**

5 1. Plaintiff, KEEZIO GROUP LLC., is, and at all times herein mentioned was, a
6 limited liability company organized and existing under the laws of the State of California, with
7 its principal place of business located within the State of California, County of Contra Costa,
8 City of Alamo. KEEZIO is a company engaged in the business of the design, manufacture,
9 marketing, distribution, and sale of children’s products throughout the United States, including
10 the State of California, County of Contra Costa.

11 2. Plaintiff is informed and believes and based thereon alleges that Defendant
12 REGALO INTERNATIONAL, LLC is and at all times herein mentioned was, a limited
13 liability company organized and existing under the laws of the State of Minnesota, with its
14 principal place of business in Longboat Key, Florida, doing business in the State of California
15 and in this District by, among other things, marketing, distributing and selling children’s
16 products throughout the United States, the State of California and this District.

17 **JURISDICTION**

18 3. The Court has original subject matter jurisdiction over this action pursuant to 28
19 U.S.C. §§ 1331 and 1338(a) because KEEZIO’s claim arises under the Patent Laws of the
20 United States, specifically, 35 U.S.C. §§ 271, 281, 282, 284, 285, and 289. This Court also
21 has original subject matter jurisdiction over this action because KEEZIO’s claim arises under
22 the Federal Trademark Act of 1946, as amended, 15 U.S.C. §§ 1124-1125 (“the Lanham Act”).
23 The Court has supplemental jurisdiction over Plaintiff’s state law claim pursuant to 28 U.S.C.
24 § 1367.

25 4. This Court has personal jurisdiction over Defendant REGALO because
26 Defendant (a) markets, distributes and sells its products throughout the United States,
27 including to customers within this District through Amazon and through prominent retailers,
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1 including Target and Walmart stores, located within this District, (b) has engaged in the
2 wrongful conduct herein alleged, directed to harm residents of this District, including Plaintiff,
3 (c) has purposefully directed its activities to the State of California, and (d) has purposefully
4 availed itself of the privilege of conducting business activities within the State of California,
5 thus invoking the benefits and protections of its laws. Venue is proper in this District under 28
6 U.S.C. Section 1391(b)(2) because, inter alia, a substantial part of the events giving rise to the
7 claims occurred in this District, and because Defendant is subject to personal jurisdiction in
8 this District.

9 **DIVISIONAL ASSIGNMENT**

10 5. Assignment to this division is proper pursuant to Local Rule 3-2 (c) and (e)
11 because this action arises in the County of Contra Costa as a substantial part of the events
12 giving rise to the claims occurred in the County of Contra Costa and throughout this District.

13 **FACTUAL BACKGROUND**

14 6. KEEZIO markets, distributes, and sells its line of products, most notably, its
15 “hiccipop” line of children’s products throughout the United States, including the San
16 Francisco Bay Area, primarily on the Amazon online retail sales platform. Amazon is an
17 online retail outlet that sells consumer products, computing services and digital content,
18 among other products and services. KEEZIO markets its brands as “Amazon-Exclusive”
19 brands because its core management team has a long and valued relationship with Amazon
20 spanning 20 years. KEEZIO strategically utilizes the Amazon platform as the primary sales
21 outlet for its products due to the simplicity and ease of use of the platform for its customers.
22 One product in KEEZIO’s hiccipop line is an inflatable toddler travel bed with safety bumpers
23 [4-sided], known as the “Hiccipop Inflatable Toddler Travel Bed” (“Toddler Travel Bed”),
24 which was designed and manufactured over a multiple-year process and successfully released
25 on the Amazon platform in 2017, with hundreds of thousands of units sold to date.

26 7. On July 2, 2019, U.S. Design Patent No. D852,543 (hereinafter “the ‘543
27 Patent”) entitled “INFLATABLE MATTRESS WITH BUMPER” was duly and legally issued
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1 by the U.S. Patent and Trademark Office which describes and is associated with the Toddler
2 Travel Bed. Plaintiff KEEZIO is the assignee and present owner of all right, title, and interest
3 in and to the ‘543 Patent and is lawfully entitled to bring claims for past and present
4 infringement of same, including the right to recover damages therefor. A true and correct copy
5 of the ‘543 Patent is attached to this Complaint as **Exhibit A** and is incorporated herein by this
6 reference.

7 8. On information and belief, Defendant REGALO markets a line of children’s
8 products, including infant beds and mattresses, on the Amazon platform and through
9 prominent retailers, including Target and Walmart stores, throughout California and within
10 this District. One product in Defendant’s line marketed and sold on Amazon and through
11 these retail outlets includes the “Regalo Inflatable Toddler Travel Bed With 4-Sided Bed
12 Bumpers And Handles” (hereinafter the “Regalo Mattress”), which contains numerous
13 significant similarities that embody patented ornamental features and designs of the ‘543
14 Patent, or a colorable imitation thereof, such that the ordinary observer would accidentally
15 mistake Defendant REGALO’s brand for Plaintiff’s brand because of the similar designs. On
16 January 5, 2024, at KEEZIO’s specific request, KEEZIO’s patent counsel issued an opinion
17 definitively concluding that, in light of the very significant similarities between the Regalo
18 Mattress and the invention of the ‘543 Patent, which describes and is associated with the
19 Toddler Travel Bed, the Regalo Mattress infringes the ‘543 Patent (hereinafter “the
20 Infringement Opinion”). A true and correct copy of the Infringement Opinion is attached to
21 this Complaint as **Exhibit B** and is incorporated herein by this reference.

22 9. After receiving the Infringement Opinion, KEEZIO immediately filed a
23 complaint with Amazon alleging that the Regalo Mattress infringed the ‘543 Patent, with
24 specific reference to, and for the reasons stated in the Infringement Opinion. As a result of
25 KEEZIO’s infringement complaint, Amazon removed the product from the Amazon online
26 retail sales platform, and provided notice to Defendant REGALO of KEEZIO’s claim that the
27 Regalo Mattress infringed the ‘543 Patent. On January 8, 2023, Defendant REGALO’s
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1 president, Mark Flannery, sent an email to KEEZIO (hereinafter “the January 8 Email”)
2 expressly acknowledging that REGALO had received a notice from Amazon concerning the
3 Regalo Mattress, and specifically referencing KEEZIO’s infringement complaint based on the
4 ‘543 Patent. The January 8 Email further acknowledged that REGALO had already “sold
5 2,987 pcs.” of the Regalo Mattress and that it had “another 3,200 pcs on the water.” Finally,
6 the January 8 Email proposed that REGALO would “agree to stop selling the product after we
7 have disposed of the remaining 3,200 pieces which are currently in transit.” A true and correct
8 copy of the January 8 Email is attached to this Complaint as **Exhibit C** and is incorporated
9 herein by this reference.

10 10. Despite its knowledge of (i) the ‘543 Patent on or prior to January 8, 2024, and
11 (ii) Plaintiff’s infringement complaint to Amazon, on information and belief, Defendant
12 REGALO, without authorization or license from Plaintiff, has continued after January 8, 2024,
13 to knowingly and willfully infringe the ‘543 Patent by marketing for sale, and selling the
14 Regalo Mattress, and/or by encouraging or instructing its customers, retailers, and/or
15 distributors to continue to market for sale, and sell, the Regalo Mattress in this Judicial District
16 and throughout the United States.

17
18 **COUNT I: INFRINGEMENT OF THE ‘543 PATENT**

19 11. Plaintiff realleges and incorporates paragraphs 1 through 10, inclusive, as
20 though fully set forth herein.

21 12. U.S. Design Patent No. D852,543 was duly and legally issued by the U.S. Patent
22 and Trademark Office on July 2, 2019, which describes the ornamental features of, and is
23 associated with the Toddler Travel Bed.

24 13. Plaintiff owns all substantial rights, interest, and title in and to the ‘543 Patent,
25 including the sole and exclusive right to prosecute this action and enforce the ‘543 Patent
26 against infringers, and to collect damages for all relevant times herein mentioned.

27 14. The ‘543 Patent relates to and contains novel ornamental features of an
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1 inflatable mattress with bumper for children.

2 15. Defendant REGALO, without authorization or license from Plaintiff, has been
3 and is presently directly infringing, literally or under the doctrine of equivalents, the '543
4 Patent pursuant to 35 U.S.C. § 271(a), including through making, using, selling, offering to
5 sell, and importing in the United States and in this Judicial District the Regalo Mattress.

6 16. Defendant REGALO, without authorization or license from Plaintiff, has been
7 and is presently, further directly infringing, literally or under the doctrine of equivalents, the
8 '543 Patent pursuant to 35 U.S.C. § 289, by (1) applying the patented design of the '543
9 Patent, or a colorable imitation thereof, to the Regalo Mattress for the purpose of sale, and (2)
10 by selling or exposing for sale the Regalo Mattress to which the patented design of the '543
11 Patent, or a colorable imitation thereof, has been applied, in the United States and in this
12 Judicial District.

13 17. Support for the allegations of infringement may be found in the analysis and
14 exemplary tables included in the Infringement Opinion attached to this Complaint as **Exhibit**
15 **B**. These allegations of infringement are preliminary and are therefore subject to change.

16 18. Defendant REGALO has and continues to induce infringement by actively
17 encouraging and instructing others (e.g., its customers, retailers, and/or distributors) to
18 promote, market for sale, and sell the Regalo Mattress with depictions of its ornamental
19 features in such a manner as to cause infringement of the '543 Patent, literally or under the
20 doctrine of equivalents, and is thus liable for inducement of the '543 Patent pursuant to 35
21 U.S.C. § 271(b). Moreover, Defendant REGALO has known of the '543 Patent from at least
22 January 8, 2024.¹ For clarity, direct infringement is previously alleged in this Complaint.

23 19. Defendant REGALO has and continues to contributorily infringe by actively
24 encouraging and instructing others (e.g., its customers, retailers, and/or distributors) to
25 promote, market for sale, and sell the Regalo Mattress with depictions of its ornamental
26 features in such a manner as to cause infringement of the '543 Patent, literally or under the

27 _____
28 ¹ Plaintiff reserves the right to amend this Complaint if discovery reveals an earlier date of knowledge.

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1 doctrine of equivalents, and is thus liable for contributory infringement of the ‘543 Patent
2 pursuant to 35 U.S.C. § 271(c). Moreover, Defendant REGALO has known of the ‘543 Patent
3 from at least January 8, 2024.² For clarity, direct infringement is previously alleged in this
4 Complaint.

5 20. Plaintiff alleges that Defendant REGALO’s infringement of the ‘543 Patent as
6 herein alleged has been and continues to be deliberate and willful and egregious, and,
7 therefore, this is an exceptional case warranting an award of enhanced damages for up to three
8 times the actual damages awarded and attorneys’ fees to Plaintiff pursuant to 35 U.S.C. §§
9 284-285. As set forth above, Defendant has had knowledge of the ‘543 Patent, or was at least
10 willfully blind to its infringement thereof, and yet has deliberately continued to infringe in a
11 wanton, malicious, and egregious manner, with reckless disregard for Plaintiff’s patent rights.
12 Thus, Defendant’s infringing actions have been and continue to be consciously wrongful.

13 21. Defendant REGALO’s actions have caused, and will continue to cause Plaintiff
14 damage by direct and indirect infringement of (including inducing infringement) the ‘543
15 Patent as herein alleged.

17 **COUNT II: VIOLATION OF THE LANHAM ACT – 15 U.S.C. § 1125(a)**

18 22. Plaintiff realleges and incorporates paragraphs 1 through 10, inclusive, as
19 though fully set forth herein.

20 23. As hereinabove alleged, in connection with the marketing, advertising,
21 promotion and sale of the Regalo Mattress, Defendant REGALO has knowingly disseminated
22 and/or caused others to disseminate into interstate commerce, false and misleading statements
23 concerning Plaintiff and its products, including Plaintiff’s Toddler Travel Bed, that are likely
24 to cause confusion, mistake, or deception of consumers as to the affiliation, connection, or
25 association of Defendant REGALO, or its products, including the Regalo Mattress, with
26 Plaintiff, or its products, including the Toddler Travel Bed. Unless immediately enjoined by

27 _____
28 ² Plaintiff reserves the right to amend this Complaint if discovery reveals an earlier date of knowledge.

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1 this Court, Defendant’s malicious and unlawful conduct will continue to confuse, mislead, and
2 deceive as to the nature, characteristics, and qualities of Plaintiff’s products, including the
3 Toddler Travel Bed, and will continue to cause injury to Plaintiff’s brand, business reputation
4 and pecuniary interests.

5 24. As a direct and proximate result of Defendant’s unlawful acts and practices as
6 herein alleged, Defendant’s conduct has caused, and unless immediately enjoined by this
7 Court will continue to cause, irreparable harm to Plaintiff’s business, reputation, and goodwill
8 for which there is no adequate remedy at law, and for which Plaintiff is entitled to injunctive
9 relief. Additionally, Defendant’s unlawful acts and practices described herein are, and unless
10 enjoined by this Court will continue to be in violation of § 43(a) of the Lanham Act.

11 25. As a direct and proximate result of Defendant’s unlawful conduct herein alleged,
12 Plaintiff has suffered, and continues to suffer damages, including lost sales and profits, in a
13 total amount presently unknown and to be determined at trial according to proof.

14 26. Further, by virtue of Defendant’s purposeful and knowing violation of § 43(a) of
15 the Lanham Act (25 U.S.C. § 1125(a)), and in addition to the recovery of Plaintiff’s damages
16 and the injunctive relief requested herein, Plaintiff is entitled to recovery of Defendant’s
17 profits, costs of this action, reasonable attorneys’ fees, as well as all other monetary amounts,
18 including treble damages, as specified in 15 U.S.C. § 1117(a).

19
20 **COUNT III: UNFAIR COMPETITION**

21 27. Plaintiff realleges and incorporates paragraphs 1 through 10, inclusive, as
22 though fully set forth herein.

23 28. By engaging in the wrongful acts hereinabove alleged, to wit, knowingly
24 disseminating and/or causing others to disseminate into interstate commerce, false and
25 misleading statements concerning Plaintiff and its products, including Plaintiff’s Toddler
26 Travel Bed, that are likely to cause confusion, mistake, or deception of consumers as to the
27 affiliation, connection, or association of Defendant REGALO, or its products, with Plaintiff,
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1 Defendant REGALO has engaged in unlawful, fraudulent, and/or unfair business practices in
2 violation of California Business and Professions Code section 17200 et seq., designed to
3 deprive Plaintiff of the economic benefits of its established business relationships with
4 Amazon and with its customers, and which gives Defendant REGALO a competitive
5 advantage in the retail sale of its products, including the Regalo Mattress.

6 29. As a direct and proximate result of Defendant’s unlawful conduct herein alleged,
7 Plaintiff has suffered, and continues to suffer damages, including lost sales and profits, in a
8 total amount presently unknown and to be determined at trial according to proof.

9 30. Pursuant to California Business and Professions Code section 17203, Plaintiff is
10 entitled to preliminary and permanent injunctive relief ordering Defendant to cease this unfair
11 competition, as well as disgorgement of all of Defendant’s profits associated with this
12 unlawful competition.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays that judgment be entered in its favor as follows:

- 15 1. For a judgment that Defendant REGALO has infringed the ‘543 Patent;
- 16 2. For a preliminary and permanent injunction against Defendant REGALO, and
17 its officers, employees, agents, servants, attorneys, instrumentalities, and/or those in privity
18 with them from infringing the ‘543 Patent and for all further and proper injunctive relief
19 pursuant to 35 U.S.C. § 283;
- 20 3. For a judgment awarding Plaintiff such damages in an amount sufficient to
21 compensate it for Defendant’s infringement of the ‘543 Patent, but in an amount no less than a
22 reasonable royalty or lost profits, together with pre-judgment and post-judgment interest at the
23 maximum rate permitted by law, and costs under 35 U.S.C. § 284;
- 24 4. For a judgment awarding Plaintiff an accounting for acts of infringement not
25 presented at trial and an award by the Court of supplemental damages for any such acts of
26 infringement;

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1 5. For a judgment declaring this case to be “exceptional” under 35 U.S.C. § 285,
2 and awarding Plaintiff its costs, disbursements, expert witness fees, and attorneys’ fees
3 incurred in this action, with interest;

4 6. For a judgment declaring that Defendant REGALO’s infringement to be willful,
5 wanton, deliberate, and egregious, and that the damages awarded to Plaintiff be treble the
6 amount of actual damages awarded to Plaintiff;

7 7. For a judgment awarding Plaintiff damages in an amount equal to Defendant
8 REGALO’s total profit from sales of the Regalo Mattress, but not less than \$250 pursuant to
9 pursuant to 35 U.S.C. § 289;

10 8. For a judgment finding that Defendant REGALO has violated § 43(a) of the
11 Lanham Act (25 U.S.C. § 1125(a));

12 9. For preliminary and permanent injunctive relief ordering Defendant REGALO
13 to cease its unlawful acts and practices in violation of § 43(a) of the Lanham Act (25 U.S.C. §
14 1125(a));

15 10. For a judgement ordering the disgorgement of Defendant REGALO’s profits,
16 costs of this action, reasonable attorneys’ fees, and all other monetary amounts, including
17 treble damages, specified in 15 U.S.C. § 1117(a) due to Defendant’s purposeful and knowing
18 violation of § 43(a) of the Lanham Act (25 U.S.C. § 1125(a));

19 11. For a judgment awarding Plaintiff its actual damages against Defendant
20 REGALO in an amount presently unknown to Plaintiff to be established at trial according to
21 proof for Defendant’s violation of the Lanham Act;

22 12. For a judgment finding that Defendant REGALO has violated California’s
23 unfair competition law (*Cal. Bus. & Prof. Code § 17200 et seq.*).

24 13. For preliminary and permanent injunctive relief ordering Defendant REGALO
25 to cease said unfair competition, as well as disgorgement of all of Defendant’s profits
26 associated with this unlawful competition;

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1 14. For a judgement compelling Defendant REGALO to provide an accounting of
2 any profits improperly made as a result of their unlawful conduct as herein alleged, and
3 imposing a constructive trust on any such profits in favor of Plaintiff, as well as compelling
4 Defendant REGALO to disgorge all profits accrued as a result of its unlawful conduct as
5 herein alleged in an amount to be determined at trial according to proof;

6 15. For a judicial declaration as to the parties’ rights and obligations relative to the
7 conflicting claims asserted in this action;

8 16. For reasonable attorneys’ fees under California Code of Civil Procedure
9 § 1021.5;

10 17. For such other and further relief as the Court may deem just and proper.

11 Dated: January 17, 2024

LAW OFFICES
OF CHRISTOPHER W. SWEENEY

/s/ Christopher W. Sweeney

By: _____
Christopher W. Sweeney
Attorney for Plaintiff
KEEZIO GROUP LLC

DEMAND FOR JURY TRIAL

18 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Rule 3-6(a) of the
19 Local Rules of the United States District Court for the Northern District of California, Plaintiff
20 KEEZIO GROUP LLC demands a trial by jury of this action.

21 Dated: January 17, 2024

LAW OFFICES OF
CHRISTOPHER W. SWEENEY

/s/ Christopher W. Sweeney

By: _____
Christopher W. Sweeney
Attorney for Plaintiff
KEEZIO GROUP LLC

Exhibit A



(12) **United States Design Patent** (10) **Patent No.:** **US D852,543 S**
Clute (45) **Date of Patent:** **** Jul. 2, 2019**

(54) **INFLATABLE MATTRESS WITH BUMPER**
 (71) Applicant: **Lorne Jason Clute**, Alamo, CA (US)
 (72) Inventor: **Lorne Jason Clute**, Alamo, CA (US)
 (**) Term: **15 Years**

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(21) Appl. No.: **29/685,495**
 (22) Filed: **Mar. 28, 2019**
 (51) **LOC (11) Cl.** **06-06**
 (52) **U.S. Cl.**
 USPC **D6/604**
 (58) **Field of Classification Search**
 USPC D6/333, 349, 355, 375, 388, 512, 563,
 D6/564, 595, 596, 601, 604, 611, 707,
 D6/715, 716, 716.1; D24/183-185, 234;
 D21/803, 804, 805, 809; 5/401, 420,
 5/600, 630, 631, 632, 633, 635, 636, 638,
 5/639, 646, 652, 652.1, 655, 703, 730;
 297/401, 420, 600, 630, 631, 632, 633,
 297/635, 636, 638, 639, 646, 652, 652.1,
 297/655, 703, 730
 CPC A47G 9/10; A47G 9/1009; A47G 9/1027;
 A47G 9/1045; A47G 9/1063; A47G
 9/1072; A47G 9/00; A47G 9/02; A47G
 9/0207; A47G 9/0215; A47G 9/0223;
 A47G 9/023; A47G 9/0238; A47G
 9/0246; A47G 9/0253; A47G 9/0261;
 A47G 2009/001; A47G 2009/002; A47G
 2009/003; A47G 2009/005; A47G
 2009/006; A47G 9/06; A47G 9/062;
 A47G 9/066; A47G 9/068; A47G 9/08;
 A47G 9/0284; A47G 9/0292; A47G 9/04
 See application file for complete search history.

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Primary Examiner — Michelle E. Wilson
Assistant Examiner — Sanjeev Paul
 (74) *Attorney, Agent, or Firm* — Daniel C. Pierron;
 Widerman Malek PL

(57) **CLAIM**

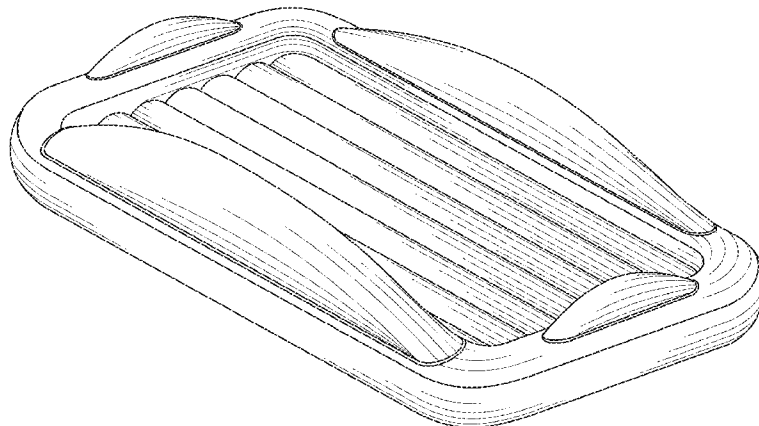
The ornamental design for an inflatable mattress with bumper, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective view of an inflatable mattress with bumper according to the present invention. FIG. 2 is a front view of the inflatable mattress with bumper illustrated in FIG. 1. FIG. 3 is a rear view of the inflatable mattress with bumper illustrated in FIG. 1. FIG. 4 is a right-side view of the inflatable mattress with bumper illustrated in FIG. 1. FIG. 5 is a left-side view of the inflatable mattress with bumper illustrated in FIG. 1. FIG. 6 is a top view of the inflatable mattress with bumper illustrated in FIG. 1; and, FIG. 7 is a bottom view of the inflatable mattress with bumper illustrated in FIG. 1. The broken lines depict environment elements of inflatable mattress with bumper that form no part of the claimed design.

1 Claim, 5 Drawing Sheets

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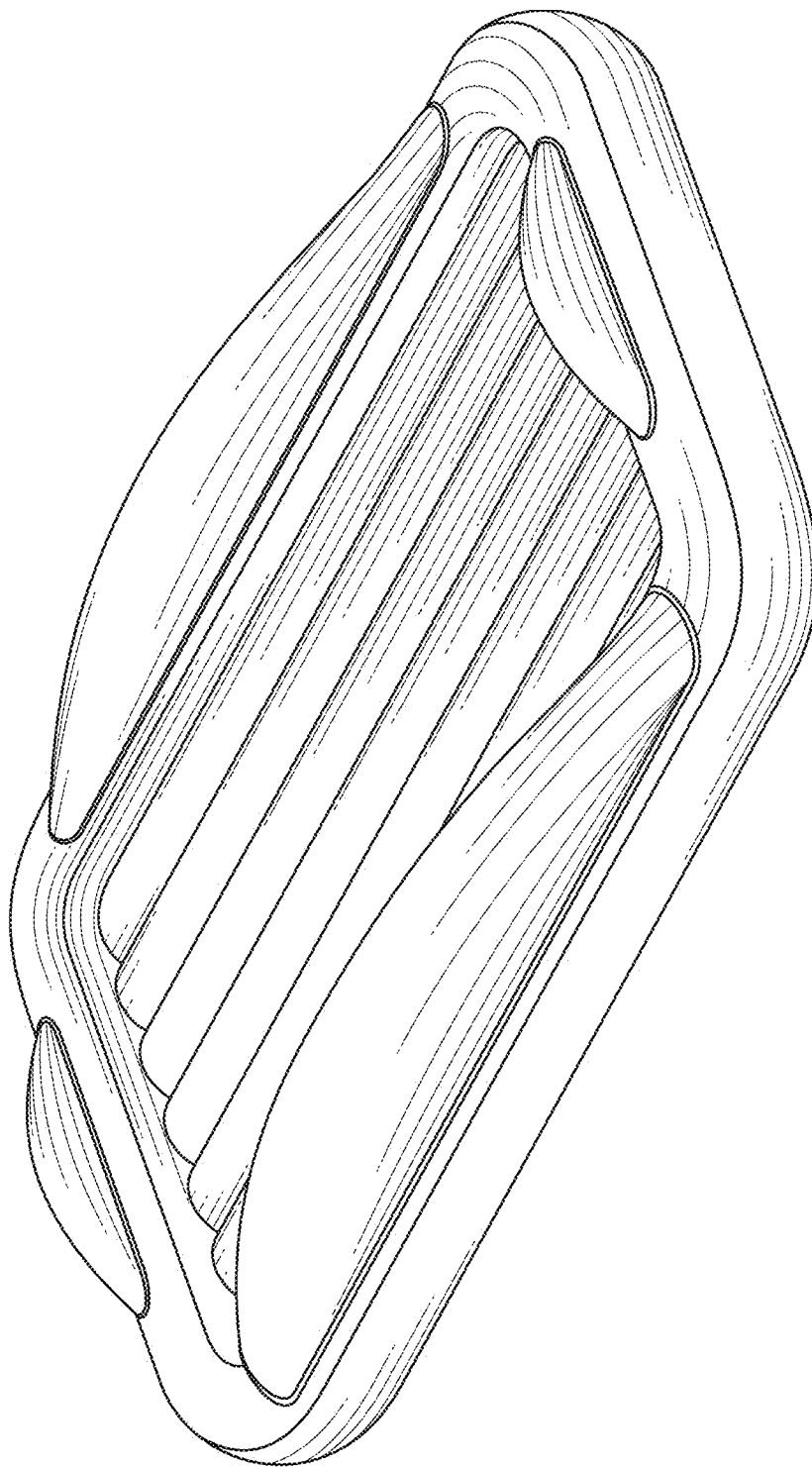


FIG. 1

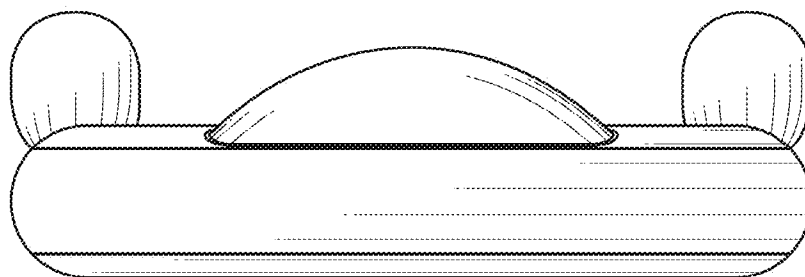


FIG. 2

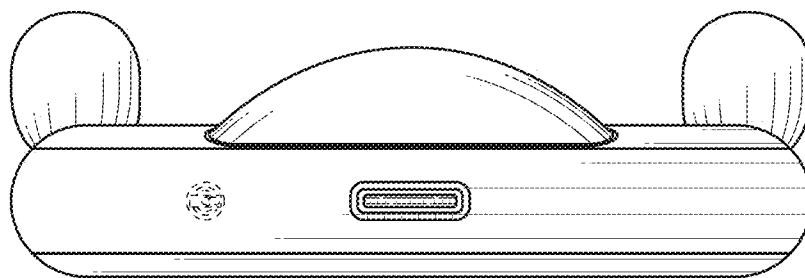


FIG. 3

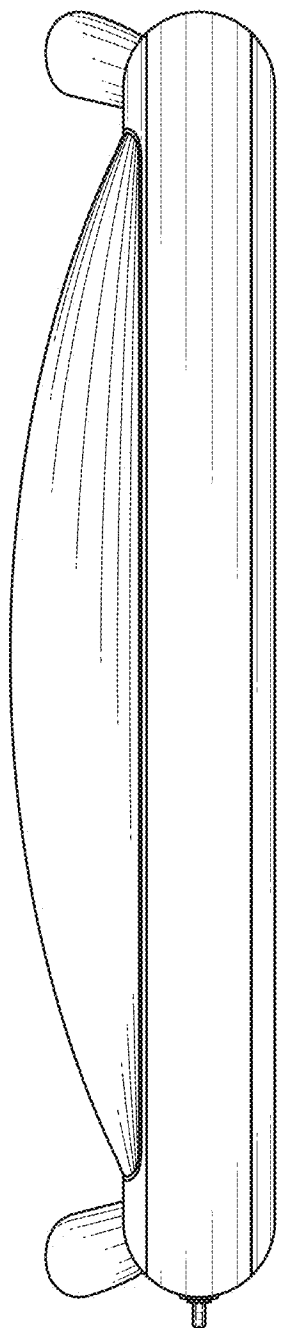


FIG. 4

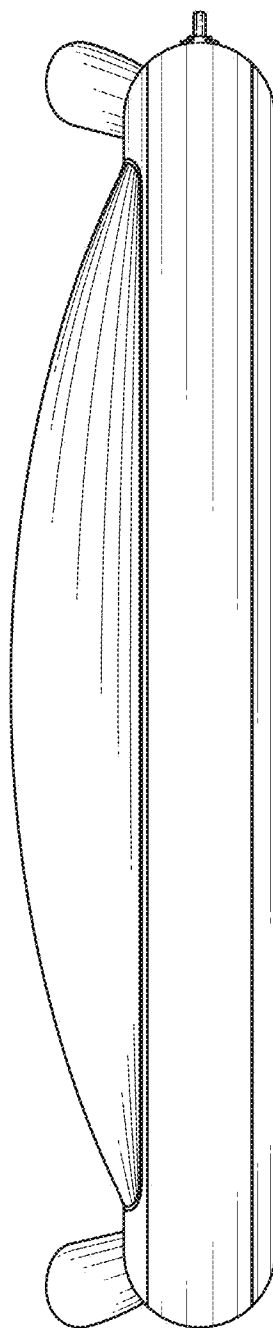


FIG. 5

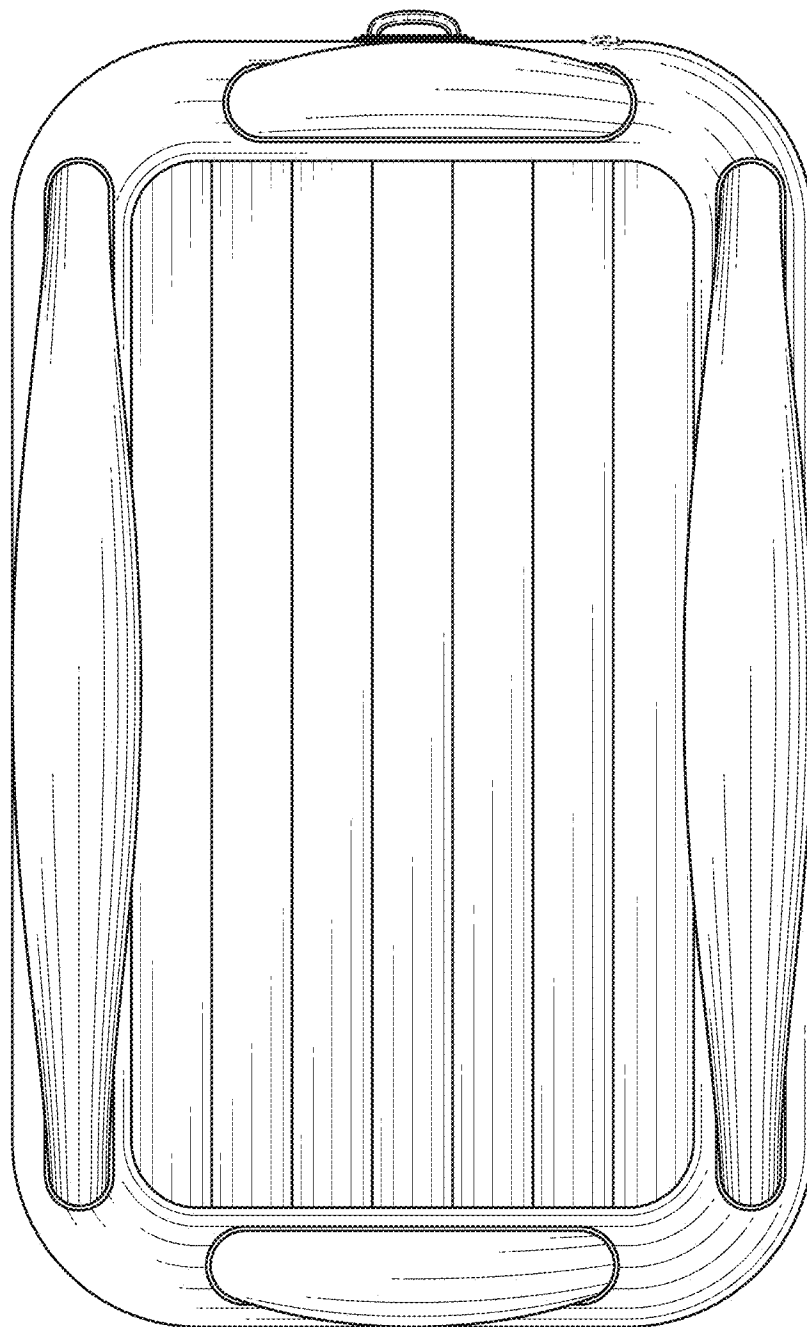


FIG. 6

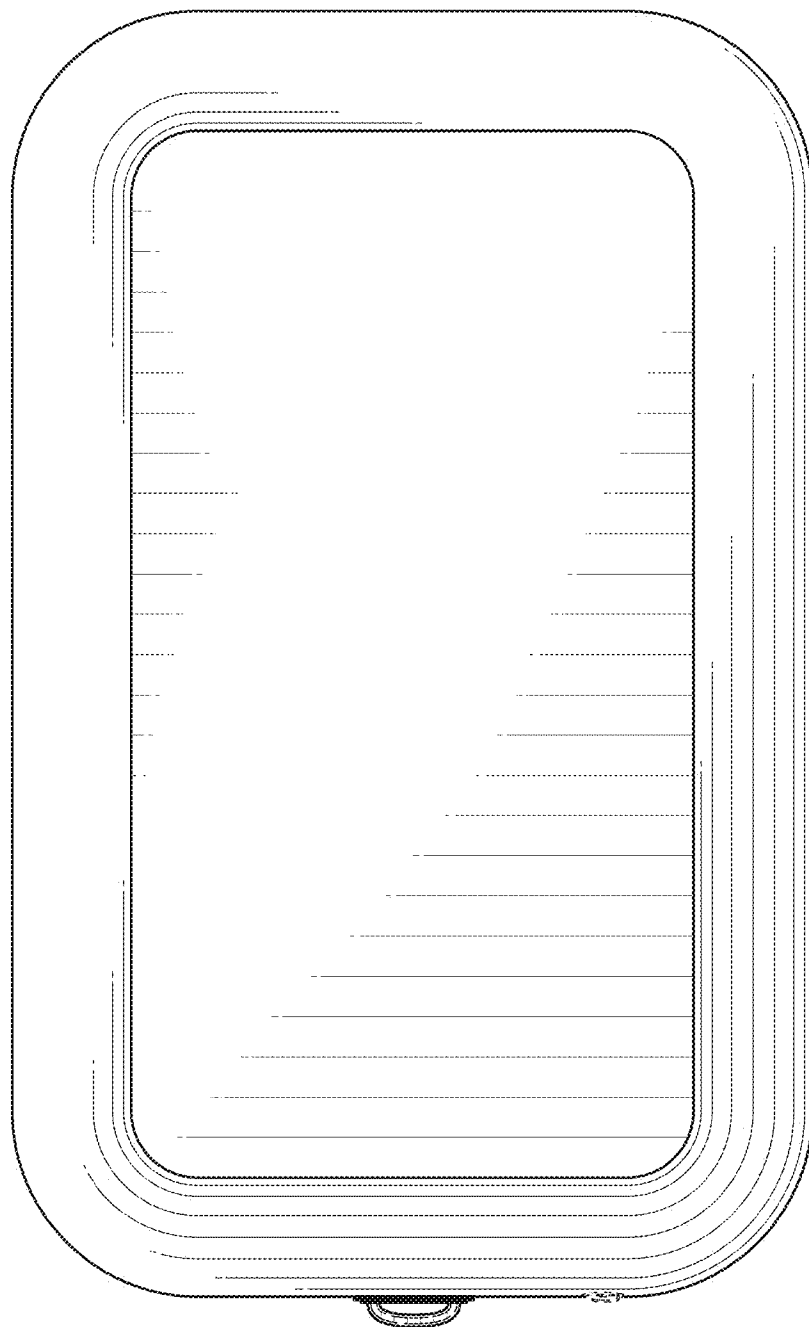


FIG. 7

Exhibit B



January 5, 2024

Sent Via Email Only to: Jasonclute1@gmail.com

Keezio Group, LLC
Mr. Lorne Jason Clute
2375 Roundhill Drive
Alamo, CA 94507

Re: **Infringement Analysis of Regalio Inflatable Air Mattress ASIN
B0CJ9X5M4N**

Patent No.: D852,543

Our File No.: 3454.00012

Dear Mr. Clute:

Per your request, we have evaluated the Regalio Inflatable Air Mattress (ASIN B0CJ9X5M4N) (hereinafter “Regalio mattress”) for which you provided pictures for infringement of U.S. Design Patent No. D852,543 (hereinafter “the ‘543 patent”). As will be described below, it is our opinion that the Regalio mattress infringes the ‘543 patent.

Infringement Analysis

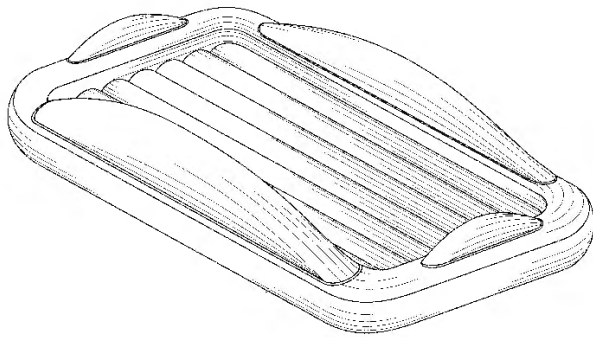
Design patents protect the ornamental features of an invention, as opposed to the functional features of that invention. Design patent infringement occurs when the ornamental features of that invention are present in a product produced by someone other than the owner or assignee of the design patent. To claim infringement, the owner must satisfy the “ordinary observer” test, which requires that an ordinary person would not be able to tell the difference between the invention shown in the design patent and the accused product’s design in a side-to-side comparison.

In the present case, there are very significant similarities between the Regalio mattress and the invention of the ‘543 patent. The below views of each demonstrate these similarities:

Mr. Lorne Jason Clute

January 5, 2024

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'543 patent FIG. 1



Regalio mattress perspective



FIG. 6

'543 patent FIG. 6



Regalio mattress top view

The many similarities between the invention of the '543 patent and the Regalio mattress include the following:



Keezio Group, LLC
Mr. Lorne Jason Clute

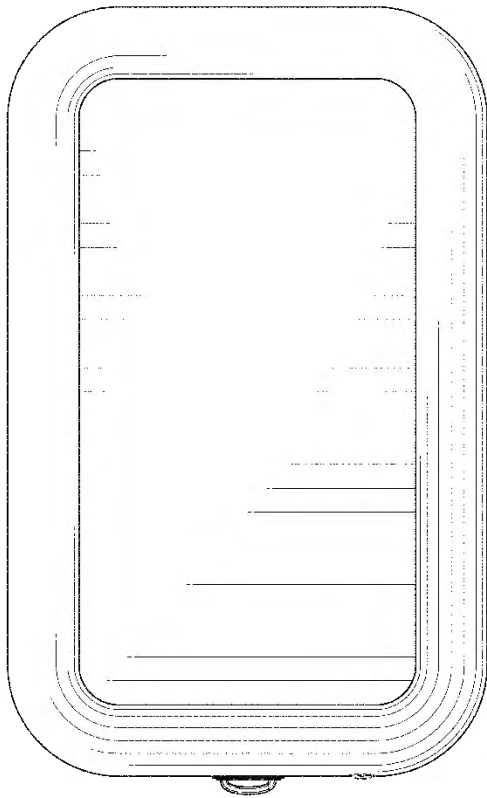
January 5, 2024

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- Rectangular shape with rounded corners;
- Proportions of length and width;
- Arcuate pillow members extending upwards from an upper surface at the two ends of the mattress;
- Arcuate bumper members extending upwards from the upper surface on the sides of the mattress;
- Slight bulging of bumper members over the middle portion of the mattress;
- Elongated raised support sections that are substantially flat along their length and are positioned in a vertically recessed central portion of the mattress

Indeed, viewed from the top, the two are nearly identical. One difference is the absence of a handle from the Regalio mattress, where such a handle is included in the '543 patent. As the handle is primarily functional, only the ornamentality of the handle would be considered. Since the handle included in the '543 patent has extremely limited ornamentation, its exclusion from the Regalio mattress yields an only minimally divergent overall impression as compared to the '543 patent.

A second difference between the '543 patent and the Regalio mattress is the shape of the lower portion, as can be seen below:



'543 patent FIG. 7



Regalio mattress bottom view



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While the invention of the '543 patent depicts a flat central portion of the bottom of the mattress, the bottom of the Regalio mattress has elongated support sections akin to those on the top of the mattress. However, as an ordinary observer would not see this difference when the Regalio mattress is in common use, with the bottom of the mattress being pointed to the ground and obscured by the raised sides of the mattress such that it is not observable by an ordinary observer, this diminishes the significance of this difference. Accordingly, although this difference does weigh against a finding of infringement, it is my opinion that the overall visual design similarities between the '543 patent and the Regalio mattress, particularly as the products will be experience by an ordinary observer in use, favor a finding of infringement.

Conclusion

In light of the above, it is our opinion the Regalio mattress you have identified to us infringes the '543 patent. As always, please feel free to contact us regarding any question or comment you may have on any aspect of this matter.

Sincerely,

WIDERMANN MALEK, PLLC



Daniel C. Pierron

DPierron@USLegalTeam.com

DGP:omc



Exhibit C

cwslaw@comcast.net

From: jasonclute1@gmail.com
Sent: Monday, January 8, 2024 3:15 PM
To: 'Chris Sweeney'
Subject: FW: Jason Clute - Patent # D852543S1

From: Mark Flannery <markf@regalo-baby.com>
Sent: Monday, January 8, 2024 11:37 AM
To: jasonclute1@gmail.com
Subject: Jason Clute - Patent # D852543S1

Hi Jason,

This is Mark Flannery from Regalo. I hope all is well on your end. This morning Regalo received a notice from Amazon concerning an Inflatable Toddler Bed that we produce. Amazon sighted a complaint that you had filed with them based on your US Design Patent No. D 852,543 S1.

By way of background, we had been developing this product since 2018. However, due to COVID and the subsequent supply chain crisis, we never produced or sold this product until late 2023. As a matter of protocol, we do conduct patent searches as we develop new products. In this case, we see that your patent issued in February of 2019. Therefore, it appears that the patent did not exist at the time we were developing the product and going thru our procedures. By the time we actually did start shipping the product late 2023 we were unaware of your patent.

To date we have only sold 2,987 pcs. We do have another 3,200 pcs on the water at this time. In an effort to resolve this matter, we would be willing to agree to stop selling the product after we have disposed of the remaining 3,200 pieces which are currently in transit.

I look forward to your reply and would welcome any discussions concerning this issue.

Thank you,

Mark Flannery



Mark Flannery / President

Regalo International, LLC

Office: 952.698.9656 / Fax: 952.435.1088

<http://regalo-baby.com/>

