

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

MARK VINIELLO AND OVER ACTIVE  
IMAGINATIONS, INC.

Plaintiffs,

v.

TARGET CORPORATION,

Defendant.

Case No:

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

Plaintiffs Mark Viniello (“Viniello”) and Over Active Imaginations, Inc. (“Over Active”), for their complaint against Defendant TARGET CORPORATION (“Defendant” or “Target”), hereby demand a jury trial and allege as follows:

**NATURE OF ACTION**

1. This is an action for patent infringement of United States Design Patent Nos. D743,669 (“the ‘669 Patent”), D751,792 (“the ‘792 Patent”) and D792,055 (“the ‘055 Patent”) (collectively the “Asserted Patents”), arising under the patent laws of the United States of America, Title 35 of the United States Code, and seeking damages and other relief under 35 U.S.C. § 271, *et seq.*

**PARTIES**

2. Plaintiff Viniello is an individual and resident of California.
3. Plaintiff Over Active is a corporation organized and existing under the laws of the state of California, with its principal place of business at 22409 Georgia Lane, Santa Clarita, CA 91350.
4. Viniello is the owner of the ‘669 patent and the ‘792 patent.

5. The inventors of the '055 Patent, Mark Viniello and Tristy Anne Viniello, assigned ownership of the '055 Patent to Over Active on October 29, 2015. The signed assignment contract is attached as Exhibit 1 and is available at <https://legacy-assignments.uspto.gov/assignments/assignment-pat-36927-650.pdf>.

6. Defendant Target Corporation is a corporation organized and existing under the laws of the state of Minnesota, with its principal place of business at 1000 Nicollet Mall, Minneapolis, Minnesota 55403. A screenshot from <https://corporate.target.com/news-features/article/2022/04/future-of-hq-work> is attached as Exhibit 2 showing that Target Plaza is Defendant's corporate headquarters. A screenshot from is attached as Exhibit 3 showing that the address of Target Plaza is 1000 Nicollet Mall, Minneapolis, Minnesota 55403.

7. On information and belief, there may be other corporate affiliates of Defendant who participated in the infringing acts complained of herein. The identities of such affiliates are currently unknown, because publicly available information does not permit the identification of each affiliate who participated in the infringing acts. Plaintiffs expect the identities of such affiliates to be revealed in discovery. Plaintiffs reserve the right to amend this Complaint to name such affiliates, if necessary, once they have been revealed.

8. This is an action for infringement of claims of the '669 Patent, the '792 Patent, and the '055 Patent, which were each duly issued by the United States Patent and Trademark Office. A true and accurate copy of the '669 patent is attached as Exhibit 4 to this Complaint. A true and accurate copy of the '792 patent is attached as Exhibit 5 to this Complaint. A true and accurate copy of the '055 patent is attached as Exhibit 6 to this Complaint.

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

10. This Court has personal jurisdiction over Defendant because Defendant resides in Minnesota. Defendant resides in Minnesota because its principal place of business is in Minnesota, at 1000 Nicollet Mall, Minneapolis, Minnesota 55403.

11. This Court also has specific personal jurisdiction over Defendant because, on information and belief, Defendant has directly infringed the claims of the Asserted Patents by selling Mermaid shaped sleeping bags on <https://www.target.com/p/the-little-mermaid-tail-kids-39-blanket-ariel/-/A-87143855#lnk=sametab> (“the Accused Products”) within Minnesota, including within this judicial district. For the reasons set forth below, such sales directly infringe the claims of the Asserted Patents. Thus, Defendant is subject to specific personal jurisdiction in this district, because it has committed acts of infringement in Minnesota, and because Plaintiffs’ claims arise out of such infringement.

### **VENUE**

12. Venue is proper over the Defendant in this judicial district under 28 U.S.C. §§1391 and/or 1400(b), for at least the following reasons:

13. Venue is proper over Defendant because Defendant resides in this district, because Defendant’s principal place of business is located in this district, at 1000 Nicollet Mall, Minneapolis, Minnesota 55403.

14. Venue is also proper over Defendant because, on information and belief, Defendant has committed direct infringement in this district, including by selling the Accused Products in connection with its provision of services to customers in this district.

15. Thus, venue is proper over Defendant under 28 U.S.C. § 1400(b), because Defendant resides in this district, has committed acts of infringement in this district, and has regular and established places of business in this district.

### **THE ASSERTED PATENTS**

16. Mark Viniello is the sole named inventor of the ‘669 patent and the ‘792 patent.

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

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

19. Defendant has actual knowledge of the ‘669 patent at least as of November 4, 2023 when an email regarding this patent was sent to [Target.Brands@target.com](mailto:Target.Brands@target.com).

20. A copy of this November 4, 2023 email is attached as Exhibit 7 to this Complaint.

21. Defendant requested to be informed of infringement through the email [Target.Brands@target.com](mailto:Target.Brands@target.com) as can be seen in a November 3, 2023 email, attached as Exhibit 8 to this Complaint.

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

23. Viniello is the sole named inventor of the ‘792 patent.

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

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

26. Defendant has actual knowledge of the ‘792 patent at least as of November 4, 2023 when an email regarding this patent was sent to [Target.Brands@target.com](mailto:Target.Brands@target.com).

27. A copy of this November 4, 2023 email is attached as Exhibit 7 to this Complaint.

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

29. Viniello along with his wife Tristy Anne Viniello are the co-inventors of the '055 patent.

30. On October 30, 2015, Mark Viniello and Tristy Anne Viniello filed with the United States Patent and Trademark Office ("USPTO") Patent Application no. 29/544,162 (the '162 application) directed to his inventions. On July 18, 2017, the USPTO issued the '055 patent from the '162 application.

31. The '055 patent is valid and enforceable. The '055 patent claims patent-eligible matter.

32. Defendant has actual knowledge of the '055 patent at least as of November 4, 2023 when an email regarding this patent was sent to [Target.Brands@target.com](mailto:Target.Brands@target.com).

33. A copy of this November 4, 2023 email is attached as Exhibit 7 to this Complaint.

34. The entire right, title, and interest in and to the '055 patent, including all rights to past damages, is assigned to Over Active on October 29, 2015. The signed assignment contract is attached as Exhibit 1 and was found at <https://legacy-assignments.uspto.gov/assignments/assignment-pat-36927-650.pdf>.

### **DEFENDANT'S INFRINGING USE**

35. On information and belief, Defendant and/or its affiliates, have directly infringed claim 1 of the '669 Patent, the '792 Patent, and the '055 Patent, by making, using, selling and offering to sell, and by inducing and contributing to others' infringement through their sales, offers for sale, and use of a "Mermaid shaped sleeping bag", and other products depicted on Defendant's websites and sold on third party websites ("the Accused Products") within the United States, all without authorization or license from Plaintiffs within the United States, less than six years before the filing of this

Complaint, and prior to the November 24, 2029 expiration date of the '669 Patent, the March 22, 2030 expiration date of the '792 Patent, and the July 18, 2032 expiration date of the '055 Patent (the "Relevant Time Period").

36. One example of Defendant's sale of infringing products is "The little mermaid tail kids' blanket Ariel" on <https://www.target.com/p/the-little-mermaid-tail-kids-39-blanket-ariel/-/A-87143855#lnk=sametab>.

37. There are potentially other infringing products being sold by Defendant, which may be uncovered in discovery. Plaintiffs reserve the right to amend this Complaint to name such infringing products, if necessary, once they have been revealed.

### **FIRST CLAIM FOR RELIEF**

#### **(Infringement of the '669 Patent)**

38. Plaintiffs repeat and realleges each and every allegation contained in paragraphs 1-37 above as if fully set forth herein and further alleges:

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

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

41. A screenshot from <https://www.target.com/p/the-little-mermaid-tail-kids-39-blanket-ariel/-/A-87143855#lnk=sametab> providing exemplary evidence of infringement of the '669 patent is attached to this Complaint as Exhibit 9 to this Complaint.

42. A screenshot from <https://www.target.com/p/pixiecrush-mermaid-tail-blanket-for-teenagers-adults-kids-thick-plush-super-comfy-fleece-small-shiny-green/-/A-89492943#lnk=sametab> providing exemplary evidence of infringement of the '669 patent is attached to this Complaint as Exhibit 10 to this Complaint.

43. A chart providing exemplary evidence of infringement of the '669 Patent is attached to this Complaint as Exhibit 11.

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

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

46. Upon information and belief, Defendant knowingly induced customers to use its Accused Products, including, for example, by promoting such products online (e.g., [www.Target.com](http://www.Target.com)).

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

48. Plaintiffs are informed and believe, and on that basis allege, that Defendant has gained profits by virtue of their infringement of the '669 Patent.

49. Defendant's acts of infringement are and have been without Plaintiffs' permission, consent, authorization or license. Defendant's acts of infringement have caused and continue to cause damage to Plaintiffs. Plaintiffs are entitled to recover from

Defendant the damages sustained by Plaintiffs as a result of Defendant's wrongful acts, together with interest and costs as fixed by this Court under 35 U.S.C. §284.

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

**SECOND CLAIM FOR RELIEF**

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

51. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-50 above as if fully set forth herein and further alleges:

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

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

54. A screenshot from <https://www.target.com/p/the-little-mermaid-tail-kids-39-blanket-ariel/-/A-87143855#lnk=sametab> providing exemplary evidence of infringement of the '792 patent is attached to this Complaint as Exhibit 9 to this Complaint.

55. A screenshot from <https://www.target.com/p/pixiecrush-mermaid-tail-blanket-for-teenagers-adults-kids-thick-plush-super-comfy-fleece-small-shiny-green/-/A->



[89492943#lnk=sameta](#)b providing exemplary evidence of infringement of the '669 patent is attached to this Complaint as Exhibit 10 to this Complaint.

56. A chart providing exemplary evidence of infringement of the '669 Patent is attached to this Complaint as Exhibit 11.

57. On information and belief, Plaintiffs allege Defendant has been, and is currently, infringing the '792 patent in violation of 35 U.S.C. § 271. Defendant's acts of infringement include direct infringement and infringement under the Doctrine of Equivalents.

58. Defendant has continued their infringement despite having notice of the '792 Patent. Defendant has committed and is committing willful and deliberate patent infringement. On information and belief Plaintiffs allege Defendant's acts of willful and deliberate infringement will continue after service of this Complaint, rendering this case appropriate for treble damages under 35 U.S.C. §284 and making this an exceptional case under 35 U.S.C. §285.

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

60. Upon information and belief, Defendant knowingly induced customers to use its Accused Products, including, for example, by promoting such products online (e.g., [www.Target.com](http://www.Target.com)).

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

62. Plaintiffs are informed and believe, and on that basis allege, that Defendant has gained profits by virtue of their infringement of the '792 Patent.

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

64. As a direct and proximate result of Defendant's infringement of the '792 Patent, Plaintiffs have, and will suffer, monetary damages and irreparable injury. Plaintiffs' monetary damages include, without limitation, lost profits, or at a minimum, the right to recover a reasonable royalty. Furthermore, unless Defendant is enjoined by this Court from continuing its infringement of the '792 Patent, Plaintiffs have, and will suffer, additional irreparable damages and impairment of the value of its patent rights. Thus, an injunction against further infringement is appropriate.

**THIRD CLAIM FOR RELIEF**

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

65. Plaintiffs repeats and realleges each and every allegation contained in paragraphs 1-64 above as if fully set forth herein and further alleges:

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

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

68. On information and belief, Plaintiffs allege Defendant has been, and is currently, infringing the '055 patent in violation of 35 U.S.C. § 271. Defendant's acts of infringement include direct infringement and infringement under the Doctrine of Equivalents.

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

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

71. Upon information and belief, Defendant knowingly induced customers to use its Accused Products, including, for example, by promoting such products online (e.g., [www.Target.com](http://www.Target.com)).

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

73. Plaintiffs are informed and believe, and on that basis allege, that Defendant has gained profits by virtue of their infringement of the '055 Patent.

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

75. As a direct and proximate result of Defendant's infringement of the '055 Patent, Plaintiffs have, and will suffer, monetary damages and irreparable injury. Plaintiffs' monetary damages include, without limitation, lost profits, or at a minimum, the right to recover a reasonable royalty. Furthermore, unless Defendant is enjoined by



