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10 Attorneys for Plaintiff
CHUBBY GORILLA, INC.

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CHUBBY GORILLA, INC., a
California corporation,
Plaintiff,
v.
FH PACKAGING LLC, a California
company, and WOLFGANG
ENTERPRISE, INC., a California
corporation
Defendants.

Civil Action No. 8:24-cv-340
**COMPLAINT FOR PATENT
INFRINGEMENT, TRADEMARK
INFRINGEMENT, AND TRADE
DRESS INFRINGEMENT**
DEMAND FOR JURY TRIAL

1 Plaintiff, CHUBBY GORILLA, INC. (“Chubby Gorilla”), sues
2 Defendants, FH PACKAGING LLC (“FH Packaging”) and WOLFGANG
3 ENTERPRISE, INC. (“Wolfgang Enterprise”) (collectively, “Defendants”), and
4 alleges:

5 **JURISDICTION AND VENUE**

6 1. This is an action for patent infringement arising under the Patent
7 Laws of the United States, 35 U.S.C. § 1 *et seq.*

8 2. This is also an action for trademark and trade dress infringement
9 that arises under the trademark laws of the United States, namely, the Lanham
10 Act, 15 U.S.C. § 1051 *et seq.*

11 3. Venue is proper in this judicial district for Chubby Gorilla’s patent
12 claims under 28 U.S.C. § 1400(b) because Defendants have committed acts of
13 infringement in this judicial district and have a regular and establish place of
14 business in this judicial district. Venue is proper in this judicial district as to
15 Chubby Gorilla’s non-patent claims under 28 U.S.C. §§ 1391(b)(1) and (b)(2).

16 4. This Court has subject matter jurisdiction over each of Chubby
17 Gorilla’s claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

18 5. The Court has personal jurisdiction over Defendants because
19 Defendants have a continuous, systematic, and substantial presence within this
20 judicial district. For example, Defendants have a regular and established place
21 of business in this judicial district, Defendants regularly do or solicit business,
22 engage in other persistent courses of conduct, and/or derive substantial revenue
23 from goods and services provided to individuals in the State of California.
24 Chubby Gorilla is informed and believes, and based thereon, alleges that
25 Defendants have been selling and/or offering for sale infringing products
26 directly to consumers and/or retailers in this district and selling products into the
27 stream of commerce knowing such products would be sold in California and this
28 district. These acts form a substantial part of the events giving rise to Chubby

1 Gorilla’s claims.

2 **THE PARTIES**

3 6. Chubby Gorilla is a corporation organized and existing under the
4 laws of the State of California, having a principal place of business at 4320 N.
5 Harbor Blvd., Fullerton, CA 92835.

6 7. Chubby Gorilla is informed and believes and, based thereon,
7 alleges that FH Packaging is a company organized and existing under the laws
8 of the State of California, having a principal place of business at 13977 The
9 Merge Street, Unit B, Eastvale, CA 92880. Chubby Gorilla is informed and
10 believes and, based thereon, alleges that Wolfgang Enterprise is a corporation
11 organized and existing under the laws of the State of California, having a
12 principal place of business at 13977 The Merge Street, Unit B, Eastvale, CA
13 92880.

14 **GENERAL ALLEGATIONS**

15 8. Chubby Gorilla is one of the nation’s leading manufacturers of
16 bottles used to house liquid for electronic cigarettes. Chubby Gorilla protects its
17 innovative designs with its intellectual property rights.

18 9. On September 17, 2019, the USPTO duly and lawfully issued
19 United States Design Patent No. D860,004 (“the D004 Patent”), titled
20 “Dispensing Bottle Cap.” Chubby Gorilla is the owner by assignment of all
21 right, title, and interest in the D004 Patent. A true and correct copy of the D004
22 Patent is attached hereto as **Exhibit 1**.

23 10. On February 23, 2021, the USPTO duly and lawfully issued United
24 States Design Patent No. D911,172 (“the D172 Patent”), titled “Dispensing
25 Bottle Cap.” Chubby Gorilla is the owner by assignment of all right, title, and
26 interest in the D172 Patent. A true and correct copy of the D172 Patent is
27 attached hereto as **Exhibit 2**.

28 11. On February 23, 2021, the USPTO duly and lawfully issued United

1 States Design Patent No. D911,173 (“the D173 Patent”), titled “Dispensing
2 Bottle Cap.” Chubby Gorilla is the owner by assignment of all right, title, and
3 interest in the D173 Patent. A true and correct copy of the D173 Patent is
4 attached hereto as **Exhibit 3**.

5 12. On February 23, 2021, the USPTO duly and lawfully issued United
6 States Design Patent No. D911,188 (“the D188 Patent”), titled “Dispensing
7 Bottle.” Chubby Gorilla is the owner by assignment of all right, title, and
8 interest in the D188 Patent. A true and correct copy of the D188 Patent is
9 attached hereto as **Exhibit 4**.

10 13. On March 28, 2023, the USPTO duly and lawfully issued United
11 States Design Patent No. D981,850 (“the D850 Patent”), titled “Dispensing
12 Bottle.” Chubby Gorilla is the owner by assignment of all right, title, and
13 interest in the D850 Patent. A true and correct copy of the D850 Patent is
14 attached hereto as **Exhibit 5**.

15 14. On January 12, 2021, the USPTO duly and lawfully issued United
16 States Design Patent No. D907,500 (“the D500 Patent”), titled “Bottle.”
17 Chubby Gorilla is the owner by assignment of all right, title, and interest in the
18 D500 Patent. A true and correct copy of the D500 Patent is attached hereto as
19 **Exhibit 6**.

20 15. On September 26, 2023, the USPTO duly and lawfully issued
21 United States Design Patent No. D999,637 (“the D637 Patent”), titled “Bottle.”
22 Chubby Gorilla is the owner by assignment of all right, title, and interest in the
23 D637 Patent. A true and correct copy of the D637 Patent is attached hereto as
24 **Exhibit 7**.

25 16. On July 4, 2023, the USPTO duly and lawfully issued United
26 States Design Patent No. D991,037 (“the D037 Patent”), titled “Bottle.”
27 Chubby Gorilla is the owner by assignment of all right, title, and interest in the
28 D037 Patent. A true and correct copy of the D037 Patent is attached hereto as

1 **Exhibit 8.**

2 17. On January 30, 2024, the USPTO duly and lawfully issued United
3 States Design Patent No. D1,012,703 (“the D703 Patent”), titled “Bottle.”
4 Chubby Gorilla is the owner by assignment of all right, title, and interest in the
5 D703 Patent. A true and correct copy of the D703 Patent is attached hereto as

6 **Exhibit 9.**

7 18. On January 30, 2024, the USPTO duly and lawfully issued United
8 States Design Patent No. D1,012,704 (“the D704 Patent”), titled “Bottle.”
9 Chubby Gorilla is the owner by assignment of all right, title, and interest in the
10 D704 Patent. A true and correct copy of the D704 Patent is attached hereto as

11 **Exhibit 10.**


12 19. The D004, D172, D173, D188, D850, D500, D637, D037, D703,
13 and D704 Patents are referred to collectively herein as the “Asserted Patents.”

14 20. Defendants manufacture, use, sell, offer for sale, and/or import into
15 the United States products that infringe Chubby Gorilla’s Asserted Patents,
16 including products that Defendants have advertised on the FH Packaging
17 website, www.fhpkg.com. For example, as shown below, the FH Packaging
18 website advertises the 30ML PET BOTTLE WITH CRC/TE 24-NECK CLEAR
19 UNICORN CAP WITH PRE-INSERTED CLEAR TIP (“the Accused
20 Products”):

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CONTACT US +1 (951) 848-7680 TRACK MY ORDER




FH PACKAGING
A DIVISION OF POLYFANGI SINCE 1988

LOGIN / REGISTER
CART / \$0.00

[Plastic](#) [Glass](#) [Metal](#) [Closures](#) [Accessories](#) [New Arrivals](#)

[About Us](#) [Industries](#) [Services](#) [Resources](#)



Home / Closures / Non-Dispensing Caps / Tamper Evident Caps

30 ml PET Bottle with CRC/TE 24-Neck Clear Unicorn Cap with Pre-Inserted Clear Tip

\$21.00

- Clear PET Bottle
- Clear/Natural Flat Cap & Pre-Inserted Tip
- 24mm Neck Size

Review our [Backorder Information](#) before purchasing here in our [FAQ](#)

For Pallet Pricing, Please Call (951) 848-7680

\$21.00

REQUEST A SAMPLE

In stock

QUANTITY	PRICE
100 - 5199	\$0.21
5200+	\$0.20

Pack:

100 per pack.

Case:

1000 per case.

- 100 +

\$0.21 / Unit

ADD TO CART

A minimum purchase of 100 is required

SKU: FH57243001

Categories: PET Signature Wolf Bottles, Cannabis Packaging, Essential Oils Packaging, Hand Sanitizer Packaging, New Arrivals, Plastic, Plastic Bottles, Tamper Evident Caps

Tags: 1 oz, 1oz, 30 ml, 30ml, clear, Flat Cap, PET, plastic, Pre-Inserted, Short 30ml

DESCRIPTION

PRODUCT PROPERTIES AND SPECIFICATIONS

REVIEWS

Q&A

30 ml PET Bottle with CRC/TE 24-neck Clear Unicorn Cap with Pre-Inserted Clear Tip

Introducing our 30ml PET (Polyethylene Terephthalate) Bottle with a Clear Unicorn Cap featuring a secure CRC-TE Closure and a pre-inserted clear/natural tip for spill-free dispensing. Ideal for CBD and E-Liquid, this bottle boasts a Child-Resistant and Tamper-Evident flat-style cap, ensuring product safety.

To open the Child Resistant Cap, press down firmly while twisting counter-clockwise. The Tamper-Evident ring guarantees an unopened product. Plus, our bottle's enhanced thickness on the top and bottom, with a soft

Document title: 30 MI PET Bottle W/ Clear Unicorn Cap Secure CRC-TE Closure

Capture URL: <https://www.fhpkg.com/product/30-ml-pet-bottle-w-clear-unicorn-cap-secure-crc-te-closure/>

21. Infringement of a design patent is determined under the Ordinary Observer Test: “[I]f, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the

1 resemblance is such as to deceive such an observer inducing him to purchase
2 one supposing it to be the other, the first one patented is infringed by the other.”
3 *Egyptian Goddess, Inc. v. Swissa, Inc.*, 543 F.3d 665, 670 (Fed. Cir. 2008) (en
4 banc) (quoting *Graham Co. v. White*, 81 U.S. 511, 528 (1871)). Application of
5 the Ordinary Observer Test focuses on the overall appearance of the design,
6 rather than particular elements, and often undertakes a side-by-side visual
7 comparison.

8 22. Defendants had actual knowledge of Chubby Gorilla and its
9 products. In fact, Defendants used the name “Unicorn Cap” on the FH
10 Packaging website to drive internet traffic. Chubby Gorilla is informed and
11 believes, and based thereon, alleges that, Defendants had actual knowledge of
12 the Asserted Patents because Chubby Gorilla sent Defendants a cease-and-desist
13 letter that identified both the Accused Products and a subset of the Asserted
14 Patents.

15 23. Chubby Gorilla has obtained and owns numerous trademarks in
16 connection with the marketing of its goods. This includes U.S. Trademark
17 Registration No. 5,175,220 (“the ’220 Registration”) for the mark UNICORN
18 BOTTLE® (“Unicorn Mark”).

19 24. Chubby Gorilla is the owner of the ’220 Registration, which was
20 registered with the USPTO on April 4, 2017 on the Principal Register for the
21 mark UNICORN BOTTLE®. A true and correct copy of the certificate of
22 registration of the ’220 Registration is attached hereto as **Exhibit 11**. The
23 Unicorn Mark has become incontestable pursuant to 15 U.S.C. § 1065.

24 25. The Unicorn Mark has not been abandoned, cancelled, or revoked.
25 The Unicorn Mark constitutes an enforceable trademark that uniquely identifies
26 products as emanating from, sponsored by, and/or authorized by Chubby
27 Gorilla.

28 26. As a result of the widespread use and display of the Unicorn Mark

1 as a distinctive trademark identifying Chubby Gorilla’s products, (a) the public
2 has come to recognize and identify products bearing the Unicorn Mark as
3 emanating from Chubby Gorilla, (b) the public recognizes that products bearing
4 the Unicorn Mark constitute high quality products that conform to the
5 specifications created by Chubby Gorilla, and (c) that the Unicorn Mark has
6 established extensive goodwill.

7 27. The products sold by Chubby Gorilla under the Unicorn Mark have
8 been widely advertised, promoted, and distributed to the purchasing public
9 throughout the United States and the world.

10 28. Products sold under the Unicorn Mark, by reason of the style and
11 design and quality of workmanship, have come to be known to the purchasing
12 public throughout the United States as representing products of high quality,
13 which are sold under good merchandising and customer service conditions. As
14 a result, the Unicorn Mark, and the goodwill associated therewith, is of great
15 value to Chubby Gorilla.

16 29. Chubby Gorilla sells bottles and caps that bear a unique and
17 distinctive trade dress in the overall design of the bottle and cap (“CG Trade
18 Dress”). Examples of these uniquely shaped bottles and caps are pictured
19 below:



28 30. Due to the overwhelming number of sales of bottles and caps

1 bearing the CG Trade Dress, with millions of units sold to date, the consuming
2 public has come to associate the CG Trade Dress exclusively with Chubby
3 Gorilla.

4 31. The public's association of the CG Trade Dress with Chubby
5 Gorilla has been enhanced by Chubby Gorilla's advertising. This advertising,
6 including advertising on the Chubby Gorilla website, prominently features
7 pictures of the uniquely shaped Chubby Gorilla bottle and cap, further
8 cementing the public's association of this shape with Chubby Gorilla.

9 32. As a result of Chubby Gorilla's widespread use and display of the
10 CG Trade Dress in association with its bottles and caps, (a) the public has come
11 to recognize and identify the products bearing the CG Trade Dress as emanating
12 from Chubby Gorilla, (b) the public recognizes that products bearing the CG
13 Trade Dress constitute high quality products that conform to the specifications
14 created by Chubby Gorilla, and (c) the CG Trade Dress has established strong
15 secondary meaning and extensive goodwill.

16 33. The CG Trade Dress is not functional. The design features
17 embodied by the CG Trade Dress are not essential to the function of the bottle,
18 do not make the bottle cheaper or easier to manufacture, and do not affect the
19 quality of the bottle. The design embodied by the CG Trade Dress is not a
20 competitive necessity.

21 34. The shape of the CG Trade Dress serves to identify Chubby Gorilla
22 as the source of the bottles.

23 35. Defendants advertise their products on the FH Packaging website,
24 www.fhpkg.com. On this website, Defendants advertise their bottles as "Bottle
25 with a Clear Unicorn Cap."

26 36. In addition, Defendants' bottles are nearly identical in appearance
27 to Chubby Gorilla's bottles. This falsely represents to consumers that
28 Defendants' products are manufactured or endorsed by Chubby Gorilla.

1 37. Chubby Gorilla is informed and believes, and based thereon,
2 alleges that Defendants' use of the words "Unicorn Cap" on their website is
3 likely to cause confusion and mistake among consumers and the public, and to
4 deceive the public into believing that Defendants' products are associate with,
5 sponsored by, originate from, or are approved by Chubby Gorilla, when they are
6 not.

7 38. Chubby Gorilla is informed and believes, and on that basis alleges,
8 that Defendants' acts complained of here are willful and deliberate.

9 39. Defendants' acts complained of herein have caused Chubby Gorilla
10 to suffer actual damages and irreparable injury to its business. Chubby Gorilla
11 will continue to suffer substantial loss and irreparable injury unless and until
12 Defendants are enjoined from their wrongful actions complained of here.

13 **FIRST CLAIM FOR RELIEF**





14 **(Infringement of U.S. Design Patent No. D860,004)**

15 40. Chubby Gorilla hereby repeats, realleges, and incorporates by
16 reference Paragraphs 1-39 of this Complaint as if fully set forth herein.

17 41. This is a claim for patent infringement under 35 U.S.C. § 271.

18 42. Defendants, through their agents, employees, and/or servants have,
19 and continue to, knowingly, intentionally, and willfully infringe the D004 Patent
20 by making, using, selling, offering for sale, and/or importing products having a
21 design that infringes that D004 Patent. For example, the side-by-side visual
22 comparisons shown below of Chubby Gorilla's patented design and the Accused
23 Products establishes that in the eye of the ordinary observer, giving such
24 attention as a purchaser usually gives, the design of the Accused Products is
25 substantially the same as the claimed design of the D004 Patent, because the
26 resemblance is such to deceive such an observer inducing him to purchase one
27 supposing it to be the other and, as a result, Defendants infringe the D004
28 Patent.

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DEFENDANTS' BOTTLE WITH A UNICORN CAP	Fig. 2 of the D004 Patent
	 <p style="text-align: center;">FIG. 2</p>
	 <p style="text-align: center;">FIG. 2</p>

43. Defendants' acts of infringement of the D004 Patent were undertaken without permission or license from Chubby Gorilla. Chubby Gorilla is informed and believes, and based thereon, alleges that Defendants had actual knowledge of Chubby Gorilla's rights in the D004 Patent. For example, Chubby Gorilla sent Defendants a cease-and-desist letter identifying the D004 Patent and the infringement by the Accused Products on December 27, 2023. The design of Chubby Gorilla's products is well-known throughout the industry, and Defendants' Accused Products are a nearly identical copy of Chubby

1 Gorilla's patented design. Accordingly, Defendants' actions constitute willful
2 and intentional infringement of the D004 Patent. Defendants infringed the
3 D004 Patent with reckless disregard of Chubby Gorilla's patent rights.
4 Defendants knew, or it was so obvious that Defendants should have known, that
5 their actions constitute infringement of the D004 Patent. Defendants' acts of
6 infringement of the D004 Patent were not consistent with the standards of
7 commerce for their industry.

8 44. As a direct and proximate result of Defendants' acts of
9 infringement, Defendants have derived and received gains, profits, and
10 advantages in an amount that is not presently known to Chubby Gorilla.

11 45. Pursuant to 35 U.S.C. § 284, Chubby Gorilla is entitled to damages
12 for Defendants' infringing acts and treble damages together with interest and
13 costs as fixed by this Court.

14 46. Pursuant to 35 U.S.C. § 285, Chubby Gorilla is entitled to
15 reasonable attorneys' fees for the necessity of bringing this claim.

16 47. Pursuant to 35 U.S.C. § 289, Chubby Gorilla is entitled to
17 Defendants' total profits from Defendants' infringement of the D004 Patent.

18 48. Due to the aforesaid infringing acts, Chubby Gorilla has suffered
19 great and irreparable injury, for which Chubby Gorilla has no adequate remedy
20 at law.

21 49. Defendants will continue to infringe Chubby Gorilla's patent rights
22 to the great and irreparable injury of Chubby Gorilla, unless enjoined by this
23 Court.


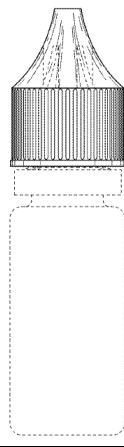


24 **SECOND CLAIM FOR RELIEF**

25 **(Infringement of U.S. Design Patent No. D911,172)**

26 50. Chubby Gorilla hereby repeats, realleges, and incorporates by
27 reference Paragraphs 1-49 of this Complaint as if fully set forth herein.

28 51. This is a claim for patent infringement under 35 U.S.C. § 271.

1 52. Defendants, through their agents, employees, and/or servants have,
 2 and continue to, knowingly, intentionally, and willfully infringe the D172 Patent
 3 by making, using, selling, offering for sale, and/or importing products having a
 4 design that infringes that D172 Patent. For example, the side-by-side visual
 5 comparisons shown below of Chubby Gorilla’s patented design and the Accused
 6 Products establishes that in the eye of the ordinary observer, giving such
 7 attention as a purchaser usually gives, the design of the Accused Products is
 8 substantially the same as the claimed design of the D172 Patent, because the
 9 resemblance is such to deceive such an observer inducing him to purchase one
 10 supposing it to be the other and, as a result, Defendants infringe the D172
 11 Patent.

DEFENDANTS’ BOTTLE WITH A UNICORN CAP	Fig. 6 of the D172 Patent
	<p data-bbox="1096 976 1177 1018"><i>Fig. 6</i></p> 
	<p data-bbox="1096 1472 1177 1514"><i>Fig. 6</i></p> 

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2 53. Defendants' acts of infringement of the D172 Patent were
3 undertaken without permission or license from Chubby Gorilla. Chubby Gorilla
4 is informed and believes, and based thereon, alleges that Defendants had actual
5 knowledge of Chubby Gorilla's rights in the D172 Patent. For example,
6 Chubby Gorilla sent Defendants a cease-and-desist letter identifying the D172
7 Patent and the infringement by the Accused Products on December 27, 2023.
8 The design of Chubby Gorilla's products is well-known throughout the industry,
9 and Defendants' products are each a nearly identical copy of Chubby Gorilla's
10 patented design. Accordingly, Defendants' actions constitute willful and
11 intentional infringement of the D172 Patent. Defendants infringed the D172
12 Patent with reckless disregard of Chubby Gorilla's patent rights. Defendants
13 knew, or it was so obvious that Defendants should have known, that their
14 actions constitute infringement of the D172 Patent. Defendants' acts of
15 infringement of the D172 Patent were not consistent with the standards of
16 commerce for their industry.

17 54. As a direct and proximate result of Defendants' acts of
18 infringement, Defendants have derived and received gains, profits, and
19 advantages in an amount that is not presently known to Chubby Gorilla.

20 55. Pursuant to 35 U.S.C. § 284, Chubby Gorilla is entitled to damages
21 for Defendants' infringing acts and treble damages together with interest and
22 costs as fixed by this Court.

23 56. Pursuant to 35 U.S.C. § 285, Chubby Gorilla is entitled to
24 reasonable attorneys' fees for the necessity of bringing this claim.

25 57. Pursuant to 35 U.S.C. § 289, Chubby Gorilla is entitled to
26 Defendants' total profits from Defendants' infringement of the D172 Patent.

27 58. Due to the aforesaid infringing acts, Chubby Gorilla has suffered
28 great and irreparable injury, for which Chubby Gorilla has no adequate remedy

1 at law.

2 59. Defendants will continue to infringe Chubby Gorilla’s patent rights
3 to the great and irreparable injury of Chubby Gorilla, unless enjoined by this
4 Court.

5 **THIRD CLAIM FOR RELIEF**





6 **(Infringement of U.S. Design Patent No. D911,173)**

7 60. Chubby Gorilla hereby repeats, realleges, and incorporates by
8 reference Paragraphs 1-59 of this Complaint as if fully set forth herein.

9 61. This is a claim for patent infringement under 35 U.S.C. § 271.

10 62. Defendants, through their agents, employees, and/or servants have,
11 and continue to, knowingly, intentionally, and willfully infringe the D173 Patent
12 by making, using, selling, offering for sale, and/or importing products having a
13 design that infringes that D173 Patent. For example, the side-by-side visual
14 comparisons shown below of Chubby Gorilla’s patented design and the Accused
15 Products establishes that in the eye of the ordinary observer, giving such
16 attention as a purchaser usually gives, the design of the Accused Products is
17 substantially the same as the claimed design of the D173 Patent, because the
18 resemblance is such to deceive such an observer inducing him to purchase one
19 supposing it to be the other and, as a result, Defendants infringe the D173
20 Patent.

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DEFENDANTS' BOTTLE WITH A UNICORN CAP	Fig. 2 of the D173 Patent
	<p data-bbox="1166 281 1224 302"><i>Fig. 2</i></p> 
	<p data-bbox="1166 777 1224 798"><i>Fig. 2</i></p> 

63. Defendants' acts of infringement of the D173 Patent were undertaken without permission or license from Chubby Gorilla. Chubby Gorilla is informed and believes, and based thereon, alleges that Defendants had actual knowledge of Chubby Gorilla's rights in the D173 Patent. For example, Chubby Gorilla sent Defendants a cease-and-desist letter identifying the D173 Patent and the infringement by the Accused Products on December 27, 2023. The design of Chubby Gorilla's products is well-known throughout the industry, and Defendants' products are each a nearly identical copy of Chubby Gorilla's patented design. Accordingly, Defendants' actions constitute willful and intentional infringement of the D173 Patent. Defendants infringed the D173 Patent with reckless disregard of Chubby Gorilla's patent rights. Defendants

1 knew, or it was so obvious that Defendants should have known, that their
2 actions constitute infringement of the D173 Patent. Defendants' acts of
3 infringement of the D173 Patent were not consistent with the standards of
4 commerce for their industry.

5 64. As a direct and proximate result of Defendants' acts of
6 infringement, Defendants have derived and received gains, profits, and
7 advantages in an amount that is not presently known to Chubby Gorilla.

8 65. Pursuant to 35 U.S.C. § 284, Chubby Gorilla is entitled to damages
9 for Defendants' infringing acts and treble damages together with interest and
10 costs as fixed by this Court.

11 66. Pursuant to 35 U.S.C. § 285, Chubby Gorilla is entitled to
12 reasonable attorneys' fees for the necessity of bringing this claim.

13 67. Pursuant to 35 U.S.C. § 289, Chubby Gorilla is entitled to
14 Defendants' total profits from Defendants' infringement of the D173 Patent.

15 68. Due to the aforesaid infringing acts, Chubby Gorilla has suffered
16 great and irreparable injury, for which Chubby Gorilla has no adequate remedy
17 at law.

18 69. Defendants will continue to infringe Chubby Gorilla's patent rights
19 to the great and irreparable injury of Chubby Gorilla, unless enjoined by this
20 Court.

21 **FOURTH CLAIM FOR RELIEF**

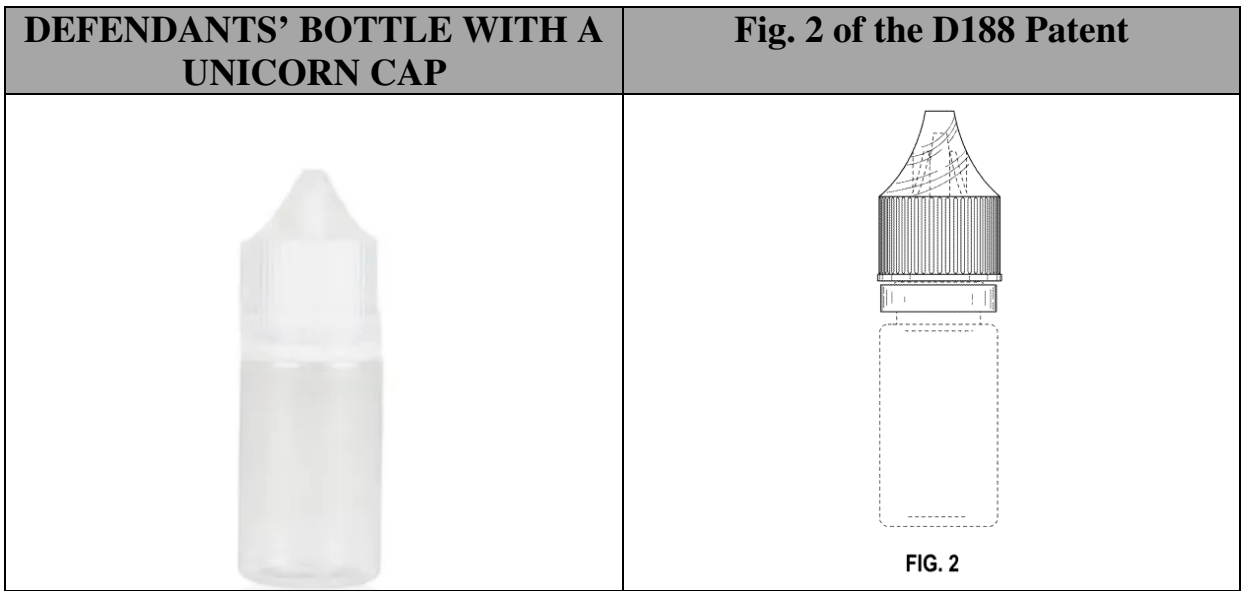
22 **(Infringement of U.S. Design Patent No. D911,188)**

23 70. Chubby Gorilla hereby repeats, realleges, and incorporates by
24 reference Paragraphs 1-69 of this Complaint as if fully set forth herein.

25 71. This is a claim for patent infringement under 35 U.S.C. § 271.

26 72. Defendants, through their agents, employees, and/or servants have,
27 and continue to, knowingly, intentionally, and willfully infringe the D188 Patent
28 by making, using, selling, offering for sale, and/or importing products having a

1 design that infringes that D188 Patent. For example, the side-by-side visual
 2 comparisons shown below of Chubby Gorilla’s patented design and the Accused
 3 Products establishes that in the eye of the ordinary observer, giving such
 4 attention as a purchaser usually gives, the design of the Accused Products is
 5 substantially the same as the claimed design of the D188 Patent, because the
 6 resemblance is such to deceive such an observer inducing him to purchase one
 7 supposing it to be the other and, as a result, Defendants infringe the D188
 8 Patent.



19 73. Defendants’ acts of infringement of the D188 Patent were
 20 undertaken without permission or license from Chubby Gorilla. Chubby Gorilla
 21 is informed and believes, and based thereon, alleges that Defendants had actual
 22 knowledge of Chubby Gorilla’s rights in the D188 Patent. For example,
 23 Chubby Gorilla sent Defendants a cease-and-desist letter identifying the D188
 24 Patent and the infringement by the Accused Products on December 27, 2023.
 25 The design of Chubby Gorilla’s products is well-known throughout the industry,
 26 and Defendants’ products are each a nearly identical copy of Chubby Gorilla’s
 27 patented design. Accordingly, Defendants’ actions constitute willful and
 28 intentional infringement of the D188 Patent. Defendants infringed the D188

1 Patent with reckless disregard of Chubby Gorilla's patent rights. Defendants
2 knew, or it was so obvious that Defendants should have known, that their
3 actions constitute infringement of the D188 Patent. Defendants' acts of
4 infringement of the D188 Patent were not consistent with the standards of
5 commerce for their industry.

6 74. As a direct and proximate result of Defendants' acts of
7 infringement, Defendants have derived and received gains, profits, and
8 advantages in an amount that is not presently known to Chubby Gorilla.

9 75. Pursuant to 35 U.S.C. § 284, Chubby Gorilla is entitled to damages
10 for Defendants' infringing acts and treble damages together with interest and
11 costs as fixed by this Court.

12 76. Pursuant to 35 U.S.C. § 285, Chubby Gorilla is entitled to
13 reasonable attorneys' fees for the necessity of bringing this claim.

14 77. Pursuant to 35 U.S.C. § 289, Chubby Gorilla is entitled to
15 Defendants' total profits from Defendants' infringement of the D188 Patent.

16 78. Due to the aforesaid infringing acts, Chubby Gorilla has suffered
17 great and irreparable injury, for which Chubby Gorilla has no adequate remedy
18 at law.

19 79. Defendants will continue to infringe Chubby Gorilla's patent rights
20 to the great and irreparable injury of Chubby Gorilla, unless enjoined by this
21 Court.

22 **FIFTH CLAIM FOR RELIEF**


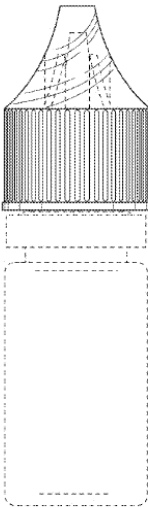
23 **(Infringement of U.S. Design Patent No. D981,850)**

24 80. Chubby Gorilla hereby repeats, realleges, and incorporates by
25 reference Paragraphs 1-79 of this Complaint as if fully set forth herein.

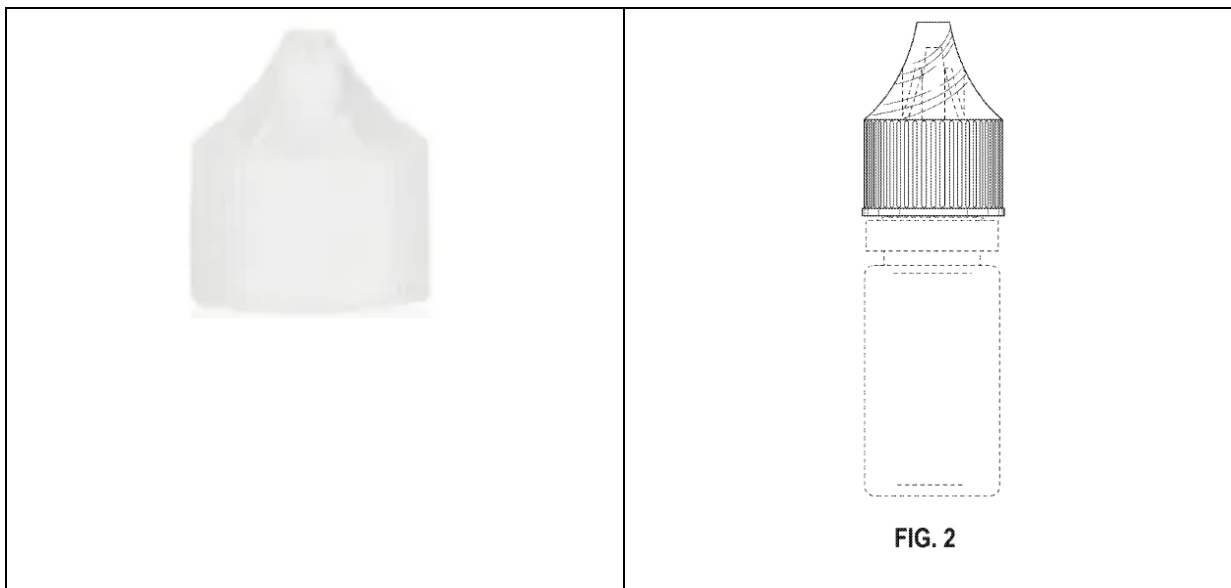
26 81. This is a claim for patent infringement under 35 U.S.C. § 271.

27 82. Defendants, through their agents, employees, and/or servants have,
28 and continue to, knowingly, intentionally, and willfully infringe the D850 Patent

1 by making, using, selling, offering for sale, and/or importing products having a
2 design that infringes that D850 Patent. For example, the side-by-side visual
3 comparisons shown below of Chubby Gorilla’s patented design and the Accused
4 Products establishes that in the eye of the ordinary observer, giving such
5 attention as a purchaser usually gives, the design of the Accused Products is
6 substantially the same as the claimed design of the D850 Patent, because the
7 resemblance is such to deceive such an observer inducing him to purchase one
8 supposing it to be the other and, as a result, Defendants infringe the D850
9 Patent.

DEFENDANTS’ BOTTLE WITH A UNICORN CAP	Fig. 2 of the D850 Patent
	 <p data-bbox="1161 1386 1242 1417">FIG. 2</p>

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83. Defendants' acts of infringement of the D850 Patent were undertaken without permission or license from Chubby Gorilla. Chubby Gorilla is informed and believes, and based thereon, alleges that Defendants had actual knowledge of Chubby Gorilla's rights in the D850 Patent. For example, Chubby Gorilla sent Defendants a cease-and-desist letter identifying the D850 Patent and the infringement by the Accused Products on December 27, 2023. The design of Chubby Gorilla's products is well-known throughout the industry, and Defendants' products are each a nearly identical copy of Chubby Gorilla's patented design. Accordingly, Defendants' actions constitute willful and intentional infringement of the D850 Patent. Defendants infringed the D850 Patent with reckless disregard of Chubby Gorilla's patent rights. Defendants knew, or it was so obvious that Defendants should have known, that their actions constitute infringement of the D850 Patent. Defendants' acts of infringement of the D850 Patent were not consistent with the standards of commerce for their industry.

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84. As a direct and proximate result of Defendants' acts of infringement, Defendants have derived and received gains, profits, and

1 advantages in an amount that is not presently known to Chubby Gorilla.

2 85. Pursuant to 35 U.S.C. § 284, Chubby Gorilla is entitled to damages
3 for Defendants' infringing acts and treble damages together with interest and
4 costs as fixed by this Court.

5 86. Pursuant to 35 U.S.C. § 285, Chubby Gorilla is entitled to
6 reasonable attorneys' fees for the necessity of bringing this claim.

7 87. Pursuant to 35 U.S.C. § 289, Chubby Gorilla is entitled to
8 Defendants' total profits from Defendants' infringement of the D850 Patent.

9 88. Due to the aforesaid infringing acts, Chubby Gorilla has suffered
10 great and irreparable injury, for which Chubby Gorilla has no adequate remedy
11 at law.

12 89. Defendants will continue to infringe Chubby Gorilla's patent rights
13 to the great and irreparable injury of Chubby Gorilla, unless enjoined by this
14 Court.

15 **SIXTH CLAIM FOR RELIEF**


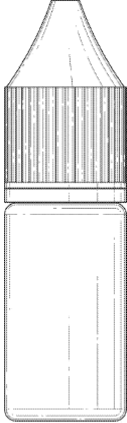

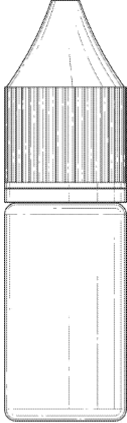
16 **(Infringement of U.S. Design Patent No. D907,500)**

17 90. Chubby Gorilla hereby repeats, realleges, and incorporates by
18 reference Paragraphs 1-89 of this Complaint as if fully set forth herein.

19 91. This is a claim for patent infringement under 35 U.S.C. § 271.

20 92. Defendants, through their agents, employees, and/or servants have,
21 and continue to, knowingly, intentionally, and willfully infringe the D500 Patent
22 by making, using, selling, offering for sale, and/or importing products having a
23 design that infringes that D500 Patent. For example, the side-by-side visual
24 comparisons shown below of Chubby Gorilla's patented design and the Accused
25 Products establishes that in the eye of the ordinary observer, giving such
26 attention as a purchaser usually gives, the design of the Accused Products is
27 substantially the same as the claimed design of the D500 Patent, because the
28 resemblance is such to deceive such an observer inducing him to purchase one

1 supposing it to be the other and, as a result, Defendants infringe the D500
 2 Patent.

3 DEFENDANTS' BOTTLE 4 WITH A UNICORN CAP	Fig. 2 of the D500 Patent
5  6 7 8 9 10 11 12	5  6 7 8 9 10 11 12 13 <i>FIG. 2</i>
14  15 16 17 18 19 20 21 22	14  15 16 17 18 19 20 21 22 23 <i>FIG. 2</i>

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 24 93. Defendants' acts of infringement of the D500 Patent were
 25 undertaken without permission or license from Chubby Gorilla. Chubby Gorilla
 26 is informed and believes, and based thereon, alleges that Defendants had actual
 27 knowledge of Chubby Gorilla's rights in the D500 Patent. The design of
 28 Chubby Gorilla's products is well-known throughout the industry, and

1 Defendants' products are each a nearly identical copy of Chubby Gorilla's
2 patented design. Accordingly, Defendants' actions constitute willful and
3 intentional infringement of the D500 Patent. Defendants infringed the D500
4 Patent with reckless disregard of Chubby Gorilla's patent rights. Defendants
5 knew, or it was so obvious that Defendants should have known, that their
6 actions constitute infringement of the D500 Patent. Defendants' acts of
7 infringement of the D500 Patent were not consistent with the standards of
8 commerce for their industry.

9 94. As a direct and proximate result of Defendants' acts of
10 infringement, Defendants have derived and received gains, profits, and
11 advantages in an amount that is not presently known to Chubby Gorilla.

12 95. Pursuant to 35 U.S.C. § 284, Chubby Gorilla is entitled to damages
13 for Defendants' infringing acts and treble damages together with interest and
14 costs as fixed by this Court.

15 96. Pursuant to 35 U.S.C. § 285, Chubby Gorilla is entitled to
16 reasonable attorneys' fees for the necessity of bringing this claim.

17 97. Pursuant to 35 U.S.C. § 289, Chubby Gorilla is entitled to
18 Defendants' total profits from Defendants' infringement of the D500 Patent.

19 98. Due to the aforesaid infringing acts, Chubby Gorilla has suffered
20 great and irreparable injury, for which Chubby Gorilla has no adequate remedy
21 at law.

22 99. Defendants will continue to infringe Chubby Gorilla's patent rights
23 to the great and irreparable injury of Chubby Gorilla, unless enjoined by this
24 Court.


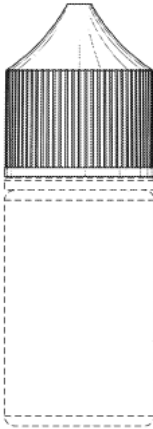
25 **SEVENTH CLAIM FOR RELIEF**

26 **(Infringement of U.S. Design Patent No. D999,637)**

27 100. Chubby Gorilla hereby repeats, realleges, and incorporates by
28 reference Paragraphs 1-99 of this Complaint as if fully set forth herein.

1 101. This is a claim for patent infringement under 35 U.S.C. § 271.

2 102. Defendants, through their agents, employees, and/or servants have,
3 and continue to, knowingly, intentionally, and willfully infringe the D637 Patent
4 by making, using, selling, offering for sale, and/or importing products having a
5 design that infringes that D637 Patent. For example, the side-by-side visual
6 comparisons shown below of Chubby Gorilla’s patented design and the Accused
7 Products establishes that in the eye of the ordinary observer, giving such
8 attention as a purchaser usually gives, the design of the Accused Products is
9 substantially the same as the claimed design of the D637 Patent, because the
10 resemblance is such to deceive such an observer inducing him to purchase one
11 supposing it to be the other and, as a result, Defendants infringe the D637
12 Patent.

DEFENDANTS’ BOTTLE WITH A UNICORN CAP	Fig. 25 of the D637 Patent
	 <p data-bbox="1203 1541 1305 1577"><i>FIG. 25</i></p>

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103. Defendants’ acts of infringement of the D637 Patent were undertaken without permission or license from Chubby Gorilla. Chubby Gorilla is informed and believes, and based thereon, alleges that Defendants had actual knowledge of Chubby Gorilla’s rights in the D637 Patent. The design of Chubby Gorilla’s products is well-known throughout the industry, and Defendants’ products are each a nearly identical copy of Chubby Gorilla’s patented design. Accordingly, Defendants’ actions constitute willful and intentional infringement of the D637 Patent. Defendants infringed the D637 Patent with reckless disregard of Chubby Gorilla’s patent rights. Defendants knew, or it was so obvious that Defendants should have known, that their actions constitute infringement of the D637 Patent. Defendants’ acts of infringement of the D637 Patent were not consistent with the standards of commerce for their industry.

104. As a direct and proximate result of Defendants’ acts of infringement, Defendants have derived and received gains, profits, and advantages in an amount that is not presently known to Chubby Gorilla.

105. Pursuant to 35 U.S.C. § 284, Chubby Gorilla is entitled to damages for Defendants’ infringing acts and treble damages together with interest and

1 costs as fixed by this Court.

2 106. Pursuant to 35 U.S.C. § 285, Chubby Gorilla is entitled to
3 reasonable attorneys' fees for the necessity of bringing this claim.

4 107. Pursuant to 35 U.S.C. § 289, Chubby Gorilla is entitled to
5 Defendants' total profits from Defendants' infringement of the D637 Patent.

6 108. Due to the aforesaid infringing acts, Chubby Gorilla has suffered
7 great and irreparable injury, for which Chubby Gorilla has no adequate remedy
8 at law.

9 109. Defendants will continue to infringe Chubby Gorilla's patent rights
10 to the great and irreparable injury of Chubby Gorilla, unless enjoined by this
11 Court.

12 **EIGHTH CLAIM FOR RELIEF**

13 **(Infringement of U.S. Design Patent No. D991,037)**

14 110. Chubby Gorilla hereby repeats, realleges, and incorporates by
15 reference Paragraphs 1-109 of this Complaint as if fully set forth herein.


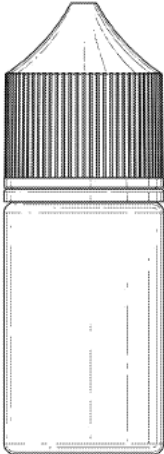

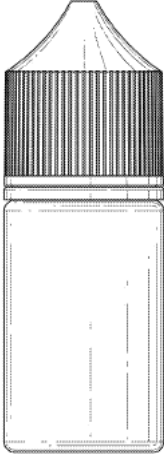
16 111. This is a claim for patent infringement under 35 U.S.C. § 271.

17 112. Defendants, through their agents, employees, and/or servants have,
18 and continue to, knowingly, intentionally, and willfully infringe the D037 Patent
19 by making, using, selling, offering for sale, and/or importing products having a
20 design that infringes that D037 Patent. For example, the side-by-side visual
21 comparisons shown below of Chubby Gorilla's patented design and Accused
22 Products establishes that in the eye of the ordinary observer, giving such
23 attention as a purchaser usually gives, the design of the Accused Products is
24 substantially the same as the claimed design of the D037 Patent, because the
25 resemblance is such to deceive such an observer inducing him to purchase one
26 supposing it to be the other and, as a result, Defendants infringe the D037
27 Patent.

28 **DEFENDANTS' BOTTLE**

Fig. 25 of the D037 Patent

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WITH A UNICORN CAP	
	 <i>FIG. 25</i>
	 <i>FIG. 25</i>

113. Defendants’ acts of infringement of the D037 Patent were undertaken without permission or license from Chubby Gorilla. Chubby Gorilla is informed and believes, and based thereon, alleges that Defendants had actual knowledge of Chubby Gorilla’s rights in the D037 Patent. The design of Chubby Gorilla’s products is well-known throughout the industry, and Defendants’ products are each a nearly identical copy of Chubby Gorilla’s patented design. Accordingly, Defendants’ actions constitute willful and

1 intentional infringement of the D037 Patent. Defendants infringed the D037
2 Patent with reckless disregard of Chubby Gorilla's patent rights. Defendants
3 knew, or it was so obvious that Defendants should have known, that their
4 actions constitute infringement of the D037 Patent. Defendants' acts of
5 infringement of the D037 Patent were not consistent with the standards of
6 commerce for their industry.

7 114. As a direct and proximate result of Defendants' acts of
8 infringement, Defendants have derived and received gains, profits, and
9 advantages in an amount that is not presently known to Chubby Gorilla.

10 115. Pursuant to 35 U.S.C. § 284, Chubby Gorilla is entitled to damages
11 for Defendants' infringing acts and treble damages together with interest and
12 costs as fixed by this Court.

13 116. Pursuant to 35 U.S.C. § 285, Chubby Gorilla is entitled to
14 reasonable attorneys' fees for the necessity of bringing this claim.

15 117. Pursuant to 35 U.S.C. § 289, Chubby Gorilla is entitled to
16 Defendants' total profits from Defendants' infringement of the D037 Patent.

17 118. Due to the aforesaid infringing acts, Chubby Gorilla has suffered
18 great and irreparable injury, for which Chubby Gorilla has no adequate remedy
19 at law.

20 119. Defendants will continue to infringe Chubby Gorilla's patent rights
21 to the great and irreparable injury of Chubby Gorilla, unless enjoined by this
22 Court.

23 **NINTH CLAIM FOR RELIEF**


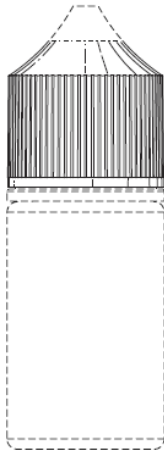
24 **(Infringement of U.S. Design Patent No. D1,012,703)**

25 120. Chubby Gorilla hereby repeats, realleges, and incorporates by
26 reference Paragraphs 1-119 of this Complaint as if fully set forth herein.

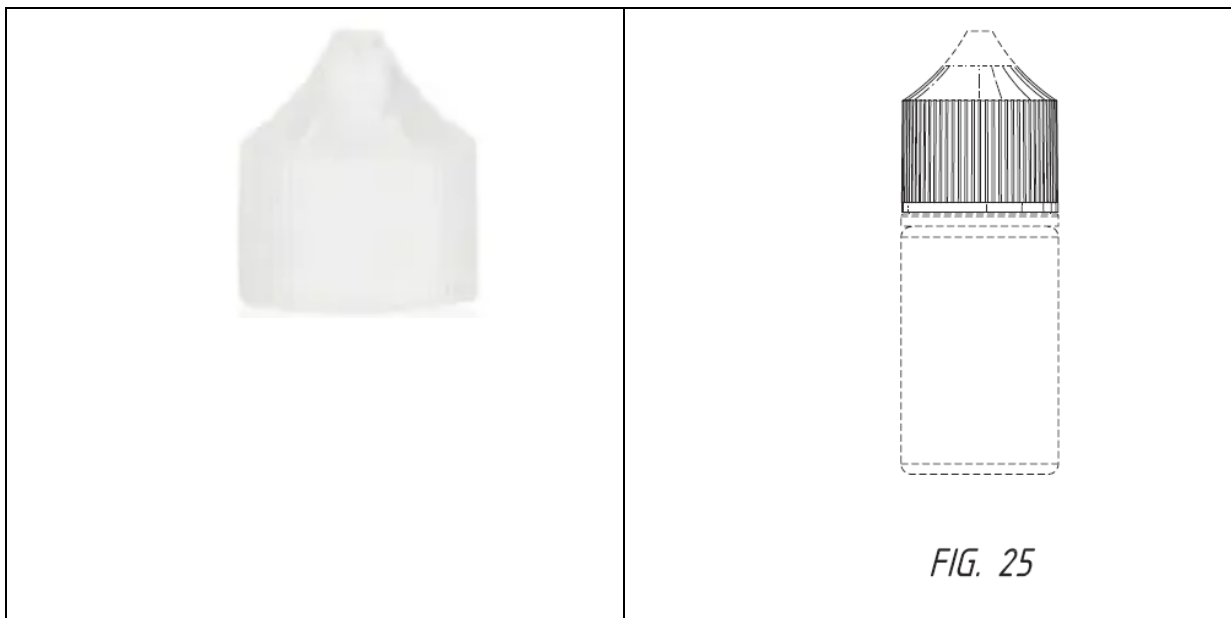
27 121. This is a claim for patent infringement under 35 U.S.C. § 271.

28 122. Defendants, through their agents, employees, and/or servants have,

1 and continue to, knowingly, intentionally, and willfully infringe the D703 Patent
2 by making, using, selling, offering for sale, and/or importing products having a
3 design that infringes that D703 Patent. For example, the side-by-side visual
4 comparisons shown below of Chubby Gorilla’s patented design and the Accused
5 Products establishes that in the eye of the ordinary observer, giving such
6 attention as a purchaser usually gives, the design of the Accused Products is
7 substantially the same as the claimed design of the D703 Patent, because the
8 resemblance is such to deceive such an observer inducing him to purchase one
9 supposing it to be the other and, as a result, Defendants infringe the D703
10 Patent.

DEFENDANTS’ BOTTLE WITH A UNICORN CAP	Fig. 25 of the D703 Patent
	 <p data-bbox="1198 1444 1305 1486"><i>FIG. 25</i></p>

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123. Defendants' acts of infringement of the D703 Patent were undertaken without permission or license from Chubby Gorilla. Chubby Gorilla is informed and believes, and based thereon, alleges that Defendants had actual knowledge of Chubby Gorilla's rights in the D703 Patent. The design of Chubby Gorilla's products is well-known throughout the industry, and Defendants' products are each a nearly identical copy of Chubby Gorilla's patented design. Accordingly, Defendants' actions constitute willful and intentional infringement of the D703 Patent. Defendants infringed the D703 Patent with reckless disregard of Chubby Gorilla's patent rights. Defendants knew, or it was so obvious that Defendants should have known, that their actions constitute infringement of the D703 Patent. Defendants' acts of infringement of the D703 Patent were not consistent with the standards of commerce for their industry.

124. As a direct and proximate result of Defendants' acts of infringement, Defendants have derived and received gains, profits, and advantages in an amount that is not presently known to Chubby Gorilla.

125. Pursuant to 35 U.S.C. § 284, Chubby Gorilla is entitled to damages

1 for Defendants' infringing acts and treble damages together with interest and
2 costs as fixed by this Court.

3 126. Pursuant to 35 U.S.C. § 285, Chubby Gorilla is entitled to
4 reasonable attorneys' fees for the necessity of bringing this claim.

5 127. Pursuant to 35 U.S.C. § 289, Chubby Gorilla is entitled to
6 Defendants' total profits from Defendants' infringement of the D703 Patent.

7 128. Due to the aforesaid infringing acts, Chubby Gorilla has suffered
8 great and irreparable injury, for which Chubby Gorilla has no adequate remedy
9 at law.

10 129. Defendants will continue to infringe Chubby Gorilla's patent rights
11 to the great and irreparable injury of Chubby Gorilla, unless enjoined by this
12 Court.

13 **TENTH CLAIM FOR RELIEF**


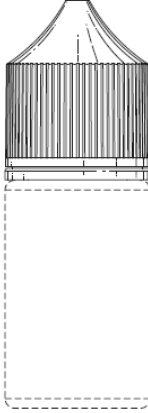

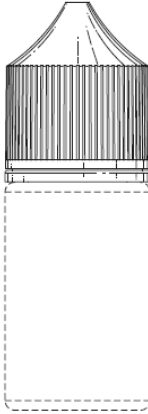
14 **(Infringement of U.S. Design Patent No. D1,012,704)**

15 130. Chubby Gorilla hereby repeats, realleges, and incorporates by
16 reference Paragraphs 1-129 of this Complaint as if fully set forth herein.

17 131. This is a claim for patent infringement under 35 U.S.C. § 271.

18 132. Defendants, through their agents, employees, and/or servants have,
19 and continue to, knowingly, intentionally, and willfully infringe the D704 Patent
20 by making, using, selling, offering for sale, and/or importing products having a
21 design that infringes that D704 Patent. For example, the side-by-side visual
22 comparisons shown below of Chubby Gorilla's patented design and the Accused
23 Products establishes that in the eye of the ordinary observer, giving such
24 attention as a purchaser usually gives, the design of the Accused Products is
25 substantially the same as the claimed design of the D704 Patent, because the
26 resemblance is such to deceive such an observer inducing him to purchase one
27 supposing it to be the other and, as a result, Defendants infringe the D704
28 Patent.

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DEFENDANTS' BOTTLE WITH A UNICORN CAP	Fig. 25 of the D704 Patent
	 <p style="text-align: center;"><i>FIG. 25</i></p>
	 <p style="text-align: center;"><i>FIG. 25</i></p>

133. Defendants' acts of infringement of the D704 Patent were undertaken without permission or license from Chubby Gorilla. Chubby Gorilla is informed and believes, and based thereon, alleges that Defendants had actual knowledge of Chubby Gorilla's rights in the D704 Patent. The design of Chubby Gorilla's products is well-known throughout the industry, and Defendants' products are each a nearly identical copy of Chubby Gorilla's patented design. Accordingly, Defendants' actions constitute willful and intentional infringement of the D704 Patent. Defendants infringed the D704

1 Patent with reckless disregard of Chubby Gorilla’s patent rights. Defendants
2 knew, or it was so obvious that Defendants should have known, that their
3 actions constitute infringement of the D704 Patent. Defendants’ acts of
4 infringement of the D704 Patent were not consistent with the standards of
5 commerce for their industry.

6 134. As a direct and proximate result of Defendants’ acts of
7 infringement, Defendants have derived and received gains, profits, and
8 advantages in an amount that is not presently known to Chubby Gorilla.

9 135. Pursuant to 35 U.S.C. § 284, Chubby Gorilla is entitled to damages
10 for Defendants’ infringing acts and treble damages together with interest and
11 costs as fixed by this Court.

12 136. Pursuant to 35 U.S.C. § 285, Chubby Gorilla is entitled to
13 reasonable attorneys’ fees for the necessity of bringing this claim.

14 137. Pursuant to 35 U.S.C. § 289, Chubby Gorilla is entitled to
15 Defendants’ total profits from Defendants’ infringement of the D704 Patent.

16 138. Due to the aforesaid infringing acts, Chubby Gorilla has suffered
17 great and irreparable injury, for which Chubby Gorilla has no adequate remedy
18 at law.

19 139. Defendants will continue to infringe Chubby Gorilla’s patent rights
20 to the great and irreparable injury of Chubby Gorilla, unless enjoined by this
21 Court.

22 **ELEVENTH CLAIM FOR RELIEF**

23 **(Trademark Infringement)**

24 140. Chubby Gorilla hereby repeats, realleges, and incorporates by
25 reference Paragraphs 1-139 of this Complaint as if fully set forth herein.

26 141. This is a claim for infringement of federally registered trademarks
27 arising under 15 U.S.C. § 1114.

28 142. By advertising their products as “Unicorn Caps,” Defendants have

1 infringed Chubby Gorilla's '220 Registration.

2 143. In particular, by using the identical term "Unicorn" in connection
3 with the sale of goods that are essentially identical to those of Chubby Gorilla,
4 Defendants are very likely to cause consumer confusion as to the source of
5 Defendants' bottles.

6 144. Defendants infringed the '220 Registration with the intent to
7 unfairly compete with Chubby Gorilla, to trade upon Chubby Gorilla's
8 reputation and goodwill by causing confusion and mistake among customers
9 and the public, and to deceive the public into believing that Defendants'
10 products are associated with, sponsored by, originate from, or are approved by
11 Chubby Gorilla, when they are not.

12 145. Defendants' activities constitute willful and intentional
13 infringement of the '220 Registration in total disregard of Chubby Gorilla's
14 proprietary rights. Defendants infringed the '220 Registration despite having
15 knowledge that the use of the '220 Registration was, and is, in direct
16 contravention of Chubby Gorilla's rights.

17 146. Chubby Gorilla is informed and believes and thereon alleges that
18 Defendants have derived and received gains, profits, and advantages from their
19 trademark infringement in an amount that is not currently known to Chubby
20 Gorilla. Moreover, Defendants' actions have damaged Chubby Gorilla in an
21 amount to be determined at trial.

22 147. Further, Defendants' trademark infringement has caused Chubby
23 Gorilla to suffer, and continue to suffer, great and irreparable injury for which
24 Chubby Gorilla has no adequate remedy at law.

25 148. Pursuant to 15 U.S.C. § 1117, Chubby Gorilla is entitled to
26 damages for Defendants' infringing acts, up to three times actual damages as
27 fixed by this Court, and its reasonable attorneys' fees for the necessity of
28 bringing this claim.

1 **TWELFTH CLAIM FOR RELIEF**

2 **(Trade Dress Infringement)**

3 149. Chubby Gorilla hereby repeats, realleges, and incorporates by
4 reference Paragraphs 1-148 of this Complaint as if fully set forth herein.

5 150. This is a claim for infringement of trade dress infringement arising
6 under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

7 151. Chubby Gorilla has valid trade dress rights in the CG Trade Dress,
8 which are protected by Section 43(a) of the Lanham Act.

9 152. Defendants' use and sale of an essentially identical bottle and cap
10 is likely to cause consumer confusion as to the source of Defendants' bottles.

11 153. Accordingly, Defendants' sale of an essentially identical bottle and
12 cap infringes Chubby Gorilla's trade dress rights.

13 154. Chubby Gorilla is informed and believes and thereon, alleges that
14 Defendants' acts of trade dress infringement were willfully undertaken with the
15 express purpose of causing consumer confusion as to the source of Defendants'
16 bottles so that Defendants could take unfair advantage of Chubby Gorilla's
17 reputation and goodwill by causing confusion and mistake among customers
18 and the public to deceive the public into believing that Defendants' products are
19 associated with, sponsored by, originated from, or are approved by Chubby
20 Gorilla, when they are not, resulting in a loss of reputation in, and
21 mischaracterization of, Chubby Gorilla's products and its brand, damaging its
22 marketability and saleability.

23 155. Defendants' activities constitute willful and intentional
24 infringement of the CG Trade Dress rights in total disregard of Chubby
25 Gorilla's proprietary rights and were done despite Defendants' explicit
26 knowledge that the use and sale of the CG Trade Dress was and is in direct
27 contravention of Chubby Gorilla's rights.

28 156. Chubby Gorilla is informed and believes and thereon, alleges that

1 Defendants have derived and received gains, profits, and advantages from their
2 trade dress infringement in an amount that is not currently known to Chubby
3 Gorilla. Moreover, Defendants' actions have damaged Chubby Gorilla in an
4 amount to be determined at trial.

5 157. Further, Defendants' trade dress infringement has caused Chubby
6 Gorilla to suffer, and continue to suffer, great and irreparable injury for which
7 Chubby Gorilla has no adequate remedy at law.

8 **THIRTEENTH CLAIM FOR RELIEF**

9 **(False Designation of Origin and Federal Unfair Competition)**

10 158. Chubby Gorilla hereby repeats, realleges, and incorporates by
11 reference Paragraphs 1-157 of this Complaint as if fully set forth herein.

12 159. This is a claim for unfair competition and false designation of
13 origin under 15 U.S.C. § 1125(a).

14 160. Defendants' use of each of the '220 Registration and the CG Trade
15 Dress without Chubby Gorilla's consent, each constitutes a false designation of
16 origin, false or misleading description of fact, or false or misleading
17 representation of fact, which (1) is likely to cause confusion or to cause mistake,
18 or to deceive as to the affiliation, connection, or association of Defendants with
19 Chubby Gorilla, or as to the origin, sponsorship, or approval of Defendants'
20 goods or commercial activities by Chubby Gorilla, and (2) in commercial
21 advertising or promotion, misrepresents the nature, characteristics, qualities, or
22 geographic origin of Defendants' goods or commercial activities, in violation of
23 15 U.S.C. § 1125(a).

24 161. In particular, by using the '220 Registration in connection with the
25 sale of goods that infringe the CG Trade Dress, Defendants are very likely to
26 cause consumer confusion as to the source of Defendants' bottles.

27 162. Such conduct by Defendants is likely to confuse, mislead, and
28 deceive Defendants' customers, purchasers, and members of the public as to the

1 origin of Defendants' product, the origin of the '220 Registration and CG Trade
2 dress, and cause said persons to mistakenly believe that Defendants and/or their
3 products have been sponsored, approved, authorized, or licensed by Chubby
4 Gorilla or are in some way affiliated or connected with Chubby Gorilla, all in
5 violation of 15 U.S.C. § 1125, and constitutes false designation of origin and
6 unfair competition with Chubby Gorilla.

7 163. Chubby Gorilla is informed and believes and thereon, alleges that
8 Defendants' actions were undertaken willfully with full knowledge of the falsity
9 of such designation or origin and false descriptions or representations.

10 164. Chubby Gorilla is informed and believes and thereon, alleges that
11 Defendants have derived and received, and will continue to derive and receive,
12 gains, profits, and advantages from Defendants' false designation of origin, false
13 or misleading statements, descriptions of fact, false or misleading
14 representations of fact, and unfair competition in an amount that is not presently
15 known to Chubby Gorilla. By reason of Defendants' actions constituting false
16 designation of origin, false or misleading statements, false or misleading
17 descriptions of fact, false or misleading representations of fact, and unfair
18 competition, Chubby Gorilla has been damaged and is entitled to monetary
19 relief in an amount to be determined at trial.

20 165. Due to Defendants' actions constituting false designation or origin,
21 false or misleading statements, false or misleading descriptions of fact, false or
22 misleading representations of fact, and unfair competition, Chubby Gorilla has
23 suffered and continues to suffer great and irreparable injury for which Chubby
24 Gorilla has no adequate remedy at law.

25 **FOURTEENTH CLAIM FOR RELIEF**

26 **(California State Unfair Competition)**

27 166. Chubby Gorilla hereby repeats, realleges, and incorporates by
28 reference Paragraphs 1-165 of this Complaint as if fully set forth herein.

1 167. This is a claim for unfair competition arising under California
2 Business & Professions Code § 17200 et seq.

3 168. Defendants’ acts described above, including Defendants’ trademark
4 infringement, trade dress infringement, and false designation of origin constitute
5 unfair competition in violation of California Business & Professions Code §
6 17200 et seq.

7 169. Chubby Gorilla is informed and believes and, based thereon,
8 alleges that Defendants have derived and received gains, profits, and advantages
9 from its unfair competition in an amount that is not currently known to Chubby
10 Gorilla. Moreover, Defendants’ actions have damaged Chubby Gorilla in an
11 amount to be determined at trial.

12 170. Further, Defendants’ unfair competition has caused Chubby Gorilla
13 to suffer, and to continue to suffer, great and irreparable injury for which
14 Chubby Gorilla has no adequate remedy at law.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Chubby Gorilla prays for judgment against Defendants as
17 follows:

18 A. That the Court render a final judgment in favor of Chubby Gorilla
19 and against Defendants on all claims for relief alleged herein;

20 B. An Order adjudging Defendants to have infringed the D004, D172,
21 D173, D188, D850, D500, D637, D037, D703, and D704 Patents under 35
22 U.S.C. § 271.

23 C. An Order adjudging Defendants’ patent infringement to be willful;

24 D. A preliminary and permanent injunction enjoining Defendants,
25 their respective officers, directors, agents, servants, employees, customers, and
26 attorneys, and those persons in active concert or participation with Defendants,
27 from infringing the D004, D172, D173, D188, D850, D500, D637, D037, D703,
28 and D704 Patents in violation of 35 U.S.C. § 271, including, for example,

1 through the manufacture, use, sale, offer for sale, and/or importation into the
2 United States of any of the Accused Products or any products that are not
3 colorably different from such products.

4 E. That Defendants account for all gains, profits, and advantages
5 derived through Defendants' infringement of the D004, D172, D173, D188,
6 D850, D500, D637, D037, D703, and D704 Patents in violation of 35 U.S.C. §
7 271, and that Defendants pay to Chubby Gorilla all damages suffered by
8 Chubby Gorilla and/or Defendants' total profit from such infringement pursuant
9 35 U.S.C. §§ 284 and 289.

10 F. That the Court find for Chubby Gorilla and against Defendants on
11 Chubby Gorilla's claims of trademark infringement under 15 U.S.C. § 1114,
12 and adjudge that Defendants have infringed the '220 Registration;

13 G. That the Court find for Chubby Gorilla and against Defendants on
14 Chubby Gorilla's claim of trade dress infringement under 15 U.S.C. § 1125(a),
15 and adjudge that Defendants have infringed the CG Trade Dress;

16 H. That the Court find for Chubby Gorilla and against Defendants on
17 Chubby Gorilla's claim of false designation of origin and unfair competition
18 under 15 U.S.C. § 1125;

19 I. That the Court find for Chubby Gorilla and against Defendants on
20 Chubby Gorilla's claim of unfair competition under California Business &
21 Professions Code § 17200 et seq;

22 J. That the court issue a preliminary and permanent injunction against
23 Defendants, their respective officers, directors, agents, servants, employees,
24 customers, and attorneys, and those persons in active concert or participation
25 with Defendants, enjoining them from engaging in the following activities and
26 from assisting or inducing, directly or indirect, others to engage in the following
27 activities:

28 a. Using the '220 Registration or any mark confusingly similar

- 1 thereto;
- 2 b. Using the CG Trade Dress or any trade dress that is
- 3 confusingly similar thereto;
- 4 c. Falsely designating the origin of Defendants' goods;
- 5 d. Unfairly competing with Chubby Gorilla in any manner
- 6 whatsoever;
- 7 e. Causing a likelihood of confusion or injuries to Chubby
- 8 Gorilla's business reputation;
- 9 f. Manufacturing, using, displaying, distributing, marketing,
- 10 advertising, and/or selling any goods bearing the '220
- 11 Registration or any mark confusingly similar thereto;

12 K. That an accounting be ordered to determine Defendants' profits
13 resulting from their trademark infringement, trade dress infringement, false
14 designation of origin, and unfair competition;

15 L. That Chubby Gorilla be awarded monetary relief in an amount to
16 be fixed by the Court in its discretion as it finds just as an equitable remedy and
17 as a remedy under 15 U.S.C. § 1117, including:

- 18 a. All profits received by Defendants from sales and revenues
- 19 of any kind made as a result of their infringing actions, said
- 20 amount to be trebled;
- 21 b. All damages sustained by Chubby Gorilla as a result of
- 22 Defendants' acts of trademark infringement, false
- 23 designation of origin, and unfair competition, and that such
- 24 damages be trebled; and,
- 25 c. The costs of this action;

26 M. That such damages and profits be trebled and awarded to Chubby
27 Gorilla pursuant to 15 U.S.C. § 1117;

28 N. An Order adjudging that this is an exceptional case;

1 O. An Order for trebling of damages and/or exemplary damages
2 because of Defendants’ willful conduct pursuant to 35 U.S.C. § 284 and/or 15
3 U.S.C. § 1117.

4 P. An award to Chubby Gorilla of the attorneys fees, expenses, and
5 costs incurred by Chubby Gorilla in connection with this action pursuant to 35
6 U.S.C. § 285 and/or 15 U.S.C. § 1117.

7 Q. An award of pre-judgment and post-judgment interest and costs of
8 this action against Defendants; and

9 R. Such other and further relief as this Court may deem just and
10 proper.

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Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: February 16, 2024

By: /s/Benjamin B. Anger
Ali S. Razai
Matthew S. Bellinger
Benjamin B. Anger

Attorneys for Plaintiff CHUBBY GORILLA, INC.

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DEMAND FOR JURY TRIAL

Plaintiff Chubby Gorilla, Inc. hereby demands a trial by jury on all issues so triable.

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: February 16, 2024 By: /s/ Benjamin B. Anger
Ali S. Razai
Matthew S. Bellinger
Benjamin B. Anger

Attorneys for Plaintiff CHUBBY GORILLA, INC.