

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

BTL INDUSTRIES, INC.,

Plaintiff,

v.

MUNECA CURVES, LLC,

Defendant.

CASE NO. 2:24-cv-1659

**COMPLAINT FOR
PATENT INFRINGEMENT,
TRADEMARK INFRINGEMENT,
AND UNFAIR COMPETITION**

DEMAND FOR JURY TRIAL

Plaintiff BTL Industries, Inc. (“BTL”) files this Complaint for patent infringement, trademark infringement, and unfair competition against Defendant Muneca Curves, LLC (“Defendant” or “Muneca Curves”), and alleges as follows:

PARTIES

1. BTL is a Delaware corporation with a principal place of business at 362 Elm Street, Marlborough, Massachusetts 01752.

2. On information and belief, Muneca Curves is a New York Domestic Limited Liability Company with a registered address of 365 Broadway, #3, Amityville, New York 11701. On information and belief, Muneca Curves also may be located at 365 Broadway, Suite 2D, Amityville, New York 11701.

JURISDICTION AND VENUE

3. Subject-matter jurisdiction over BTL's claims arising under the patent laws of the United States, 35 U.S.C. § 100, *et seq.*, and the Lanham Act, 15 U.S.C. §§ 1051 and 1121, exists pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a)-(b).

4. Subject-matter jurisdiction for the trademark and unfair competition claims exists with respect to the claims asserted in this Complaint pursuant to 28 U.S.C. §§ 1331 and 1338.

5. This Court has personal jurisdiction over Muneca Curves because it or its employees have committed acts of patent infringement under 35 U.S.C. § 271(a), (b), or (c), and are subject to this Court's jurisdiction under 28 U.S.C. § 1400(b).

6. This Court has personal jurisdiction over Muneca Curves because it is a New York Domestic Limited Liability Company and has a principal place of business in this District.

7. Further, the acts complained of herein occurred in this District.

8. Similarly, the exercise of personal jurisdiction over Defendant comports with the due process requirements of the United States Constitution because:

(a) Defendant has purposefully established "minimum contacts" with the State of New York and this District; and

(b) the exercise of personal jurisdiction over Defendant will not offend the traditional notions of fair play and substantial justice.

9. Therefore, this Court has specific and general jurisdiction over Defendant.

10. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(1) and 1400(b) at least because Defendant has its principal place of business in this District and the acts complained of herein occurred in this District.

BACKGROUND

11. BTL specializes in the innovation, development, and sale of equipment and treatments for the aesthetics industry in the United States. BTL and their affiliates developed proprietary technology that uses high-intensity, electromagnetic stimulation to tone and strengthen muscles in targeted areas. BTL applied their technology to develop a series of new and innovative FDA-cleared devices and developed protocols for using the technology for aesthetic therapies. BTL denotes their products and services that feature this technology with their HIFEM[®] brand and other trademarks.

12. The first such device that BTL developed was the EMSCULPT[®] device, a standalone, non-invasive, FDA-cleared aesthetic body-contouring device. *See Exhibit 1*, attached hereto (BTL Webpage Printout).

13. BTL's EMSCULPT[®] device created a new market in which it quickly became the innovative industry leader. Before BTL launched the EMSCULPT[®] device in 2018, no other product used high-intensity, focused, electromagnetic technology to tone and firm muscle for non-invasive, aesthetic body contouring.

14. The aesthetic industry has recognized BTL's innovation, hailing it as having taken "the aesthetics industry by storm;" praising BTL as being the first to apply high-intensity, focused, electromagnetic energy technology for aesthetics; and lauding the EMSCULPT[®] device as having "transformed treatment protocols." *See Exhibit 2*, attached hereto (BTL 2019 Press Release).

15. BTL's EMSCULPT[®] device is FDA-cleared and uses high-intensity, electromagnetic energy to induce powerful muscle contractions—unachievable through typical voluntary contractions—to contour an individual's physique. *See Exhibit 1*. The EMSCULPT[®] device is currently cleared by the FDA as a non-invasive treatment for the abdomen, buttocks, arms, calves, and thighs. BTL markets and distributes their EMSCULPT[®] device to healthcare professionals and licenses these professionals to provide treatment services using the device.

16. The EMSCULPT NEO[®] device has been a breakthrough development in the aesthetics industry, receiving plaudits from some of the industry's largest companies. For example, the EMSCULPT NEO[®] device won Dermascope.com's Aesthetician's Choice Award in 2022 and Glamour magazine described the device

as “revolutionary.” See **Exhibit 3**, attached hereto (Dermascope and Glamour Awards).

A. The Asserted Patent

17. On November 19, 2019, the United States Patent and Trademark Office (the “USPTO”) duly and lawfully issued U.S. Patent No. 10,478,634 (the “’634 Patent”), entitled “Aesthetic Method of Biological Structure Treatment by Magnetic Field” to BTL Medical Technologies S.R.O. A true and correct copy of the ’634 patent is attached to this Complaint as **Exhibit 4**, attached hereto (US10478634). The ’634 patent was exclusively licensed to BTL, and BTL possesses the exclusive right of recovery for any past, present, or future infringement of the ’634 patent, including equitable relief and damages.

B. BTL’s Trademarks

18. BTL uses and licenses (for the sole purpose of advertising the equipment and related services) registered and unregistered trademarks and trade dress to market their aesthetic equipment and treatments in the United States, including the following federally registered trademarks for EMSCULPT[®], EM[®], EMSCULPT NEO[®], and BTL[®] (collectively, the “BTL Trademarks”):

(a) Registration No. 5,572,801 for EMSCULPT[®] in Class 10 for, among other goods, “medical apparatus and instruments for body toning and body shaping” and “medical apparatus and instruments for the removal of fat;”

(b) Registration No. 6,069,279 for EMSCULPT® in Class 44 for, among other services, “medical services;”

(c) Registration No. 6,373,947 for EMSCULPT NEO® in Class 10 for, among other goods, “medical apparatus and instruments for body toning and body shaping” and “medical apparatus and instruments for the removal of fat” and in Class 44 for, among other services, “medical services;”

(d) Registration No. 5,915,636 for EM® in Class 44 for, among other services, “medical services;”

(e) Registration No. 6,206,098 for EM® in Class 44 for, among other services, “medical services;” and

(f) Registration No. 4,750,101 for the BTL Logo in Class 10 for, among other services, “medical devices for body toning and body shaping” and “fat removal.”

19. BTL has continuously and exclusively used the BTL Trademarks and has never abandoned them. The BTL Trademarks are validly registered in the United States and are in full force and effect. True and correct copies of the registration certificates for each of the above trademarks, obtained from the USPTO, are attached to this Complaint as **Exhibit 5**, attached hereto (TM Registration Certificates). These registrations constitute *prima facie* evidence of validity of the BTL Trademarks and BTL’s exclusive right to use the BTL Trademarks under 15 U.S.C. § 1057(b).

20. The BTL Trademarks, therefore, perform an important source-identifying function for BTL's aesthetic body-contouring devices like the EMSCULPT[®] and associated treatment services. The BTL Trademarks signify to purchasers that the body-contouring devices come from BTL, and the body-contouring services are rendered by BTL's devices and administered by BTL-trained and BTL-authorized service providers. The market reputation and consumer goodwill associated with the BTL Trademarks are of significant value to BTL.

NATURE OF THIS ACTION

21. This is a civil action brought by BTL arising out of Defendant's past and present patent infringement in violation of the patent laws of the United States, past and present trademark infringement, unfair competition, false designation of origin, and false advertising under the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a); and common law trademark infringement and unfair competition.

22. Upon information and belief, Defendant has since at least March 2023 advertised a service using a device it calls "EMSCULPT" as part of its advertising. Upon information and belief, Defendant's "EMSCULPT" device is not an authentic BTL EMSCULPT[®] device. Upon information and belief, Defendant's activity is ongoing, despite attorneys for BTL informing Defendant that its activities violate BTL's rights on numerous occasions. On June 22, 2023, attorneys for BTL sent Defendant a letter informing it of its infringing activities. BTL followed up with a

letter on July 6, 2023, email communications, and at least one phone call in which BTL's attorneys explained Defendant's infringing activities and attempted to reach a mutually agreeable resolution. BTL's outreach was rebuffed. On October 13, 2023, a voicemail was left at the number which was previously used by Defendant, and a follow-up email was sent. No response was received by the deadline indicated in the voicemail and follow-up email. On November 13, 2023, attorneys for BTL sent Defendant a final email reiterating Defendant's infringing conduct. *See Exhibit 6*, attached hereto (Letters and Emails). No response was received by the indicated deadline, and no response has been received to date.

23. The images below are representative of Defendant's infringing conduct:





Munecca Curves Medi Spa
St. Patrick's Day

BODY GOALS

6 SESSIONS PACKAGE \$25 OFF	6 CAVITATION \$300
12 SESSIONS PACKAGE 10% OFF	6 LASER LIPO \$250
EMSCULPT 6 SESSIONS \$550	+ 1 FREE SESSION

FRI MARCH 17TH - FRI MARCH 31ST
@munecacurvesny (631)-608-4844

365 BROADWAY ST2D AMITYVILLE NY 11701

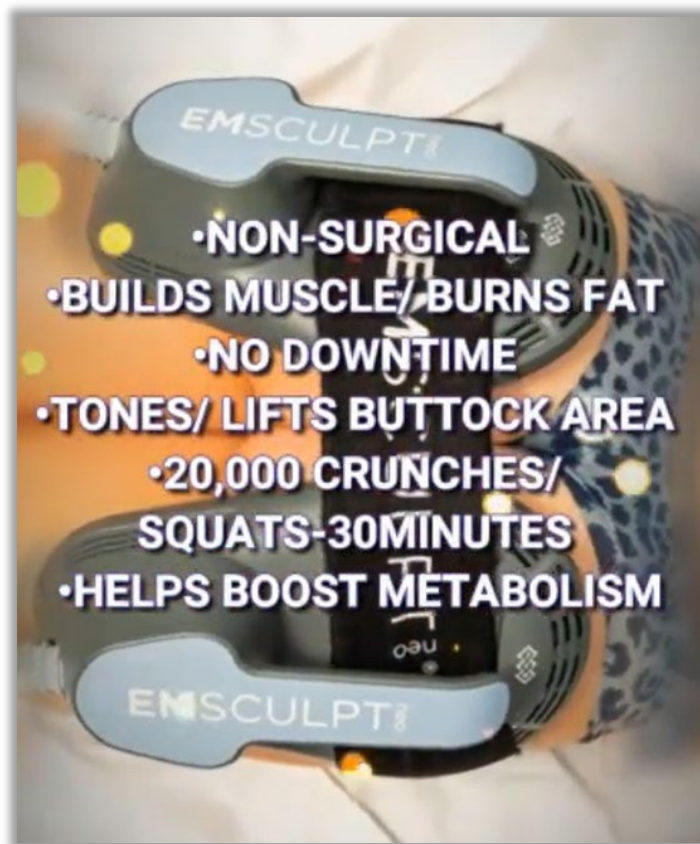
munecacurvesny • Follow
Muñeca Curves

munecacurvesny 🍀 ITS YOUR LUCKY DAY 🍀
Muñecas St. Patty,s Sale

- ➕ Sale starts TODAY Fri.17th-Fri.31st
- 🎁 Gift Certificates Available 🍀 🎁
- 📞 (631)-608-4844 / (631)-608-0005
- 📍 365 Broadway Amityville NY ,11701 St2D
- 💚 10%Off all packages of 12 Sessions
- ❑ \$250 deposit required
- 💚 \$25all packages of 6 Sessions
- 🍀 170 deposit required
- 💚 Teeth Whitening/Facials Prices have being Lowered 🍀 !
- 🌟 We offer personalized packages to fit your body and your needs!
- 💚 Services Include 💚
- ➕ Lymphatic Massage 🍀
- ❑ Body Contouring + (Maderoterapia) 🍀

35 likes
MARCH 17

Add a comment... Post



EMSCULPT®

- NON-SURGICAL
- BUILDS MUSCLE/BURNS FAT
- NO DOWNTIME
- TONES/ LIFTS BUTTOCK AREA
- 20,000 CRUNCHES/
SQUATS-30MINUTES
- HELPS BOOST METABOLISM

EMSCULPT®

24. Defendant's use of the EMSCULPT[®], BTL Logo, and EMSCULPT NEO[®] trademarks is without BTL's authorization.

25. Upon information and belief, the "EMSCULPT" device Defendant advertises (the "Counterfeit Device") is not an authentic BTL EMSCULPT[®] device yet is similarly advertised for toning muscles in a patient. Upon information and belief, Defendant's Counterfeit Device uses time-varying, magnetic fields that are applied to a patient's skin and held there using a flexible belt attached to an applicator that includes a magnetic-field-generating coil. Upon information and belief, the magnetic-field-generating coil generates a time-varying, magnetic field, and the device applies a magnetic flux of 50 T cm² to 1,500 T cm² and causes muscle contraction.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 10,478,634

26. BTL repeats and re-alleges paragraphs 1-25 as if fully set forth herein.

27. The '634 patent is directed towards a method for toning muscles in a patient using time-varying, magnetic fields. Claim 1 of the patent recites:

A method for toning muscles in a patient using time-varying magnetic fields,

the method comprising:

placing a first applicator comprising a magnetic field generating coil in contact with a patient's skin or clothing at a body region of the patient, wherein the body region is an abdomen or a buttock;

coupling the first applicator to the patient with an adjustable flexible belt so that the belt holds the first applicator to the patient's skin or clothing; providing energy to the magnetic field generating coil in order to generate a time-varying magnetic field; and applying a magnetic fluence of 50 T cm^2 to $1,500 \text{ T cm}^2$ to the body region, wherein the time-varying magnetic field is applied to the body region with a magnetic flux density sufficient to cause a muscle contraction in the body region.

28. For the reasons stated in paragraphs 23-25, Defendant's use of the Counterfeit Device meets each and every limitation of at least claim 1 of the '634 patent.

29. Defendant directly infringes and has induced infringement and continues to directly infringe and induce infringement, literally or under the doctrine of equivalents, of at least claim 1 of the '634 patent by making, using, offering to sell, selling, or importing the Counterfeit Device in the United States and by encouraging, promoting, and instructing customers to use the Counterfeit Device in a manner that directly infringes the '634 patent.

30. Defendant's infringement of the '634 patent has been, and continues to be, willful and malicious. On information and belief, Defendant has been aware of the '634 patent since before the filing of this Complaint and has infringed the '634

patent willfully and deliberately and with knowledge that such conduct violates 35 U.S.C. § 271. Defendant was aware of BTL's products for the reasons stated in paragraphs 23-26, and BTL marked their products with a reference to their online patent listing at www.btl.net.com/patents. Moreover, BTL informed Defendant of its patent infringement by letter on June 22, 2023.

COUNT II: TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114

31. BTL repeats and re-alleges paragraphs 1-25 as if fully set forth herein.

32. By using "EMSCULPT," "EMSCULPT NEO," and the BTL Logo, Defendant is creating confusion among the consuming public as to the source, origin, sponsorship, and/or affiliation of the Counterfeit Device and services with BTL.

33. Defendant's conduct relating to the BTL Trademarks is without authorization.

34. Defendant is thus in violation of 15 U.S.C. § 1114 regarding the BTL Trademarks and 15 U.S.C. § 1125(a) regarding the use of "EMSCULPT," "EMSCULPT NEO," the BTL Logo, and/or other confusingly similar terms.

35. Defendant's actions have caused BTL irreparable harm for which BTL is entitled to a permanent injunction under 15 U.S.C. § 1116.

36. Such acts further cause harm to BTL including but not limited to BTL's reputation and goodwill, for which BTL is entitled to recover actual damages as well as the costs of any necessary corrective advertising.

37. Because Defendant's conduct is willful, malicious, and exceptional, BTL is entitled to an accounting of profits, attorneys' fees, and multiplied damages.

COUNT III: FEDERAL UNFAIR COMPETITION, FALSE DESIGNATION OF ORIGIN, AND FALSE ADVERTISING UNDER 15 U.S.C. § 1125

38. BTL repeats and re-alleges paragraphs 1-25 as if fully set forth herein.

39. Defendant has no right to use the BTL Trademarks in connection with its goods and/or services, yet Defendant has passed off its goods and/or services to the public as if they were BTL's goods.

40. Defendant has falsely held itself out to customers and potential customers as being connected with BTL.

41. Defendant has acted with intent to confuse or deceive the public as to the source and origin of its goods and services.

42. Defendant's false designation of origins and false representations constitute unfair competition under 15 U.S.C. § 1125.

COUNT IV: COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION

43. BTL repeats and re-alleges paragraphs 1-25 as if fully set forth herein.

44. Defendant has without authorization, intentionally, willfully, and maliciously used the BTL Trademarks and confusingly similar variations of these trademarks to promote, market, offer for sale, and sell its goods and services.

45. By the acts described herein, Defendant has intentionally infringed the BTL Trademarks and engaged in unfair competition with respect to BTL in violation of the common law of the State of New York.

46. Defendant's actions have caused and will continue to cause BTL to sustain actual damages and lost profits in this District.

47. BTL has no adequate remedy at law and will continue to suffer irreparable harm unless Defendant is enjoined.

COUNT V: FEDERAL TRADEMARK COUNTERFEITING UNDER 15
U.S.C. § 1114

48. BTL repeats and re-alleges paragraphs 1-25 as if fully set forth herein.

49. Defendant has used marks identical to BTL's EMSCULPT[®], EMSCULPT NEO[®], and BTL Logo registered trademarks.

50. Defendant has used the identical marks in commerce in connection with the advertising and promotion of its services using the Counterfeit Device.

51. BTL has not authorized Defendant's use of the BTL Trademarks to advertise and promote its services using the Counterfeit Device.

52. Defendant's unauthorized use of the BTL Trademarks is likely to (a) cause the public and consumers to believe that Defendant's services and Counterfeit Device are authorized by and/or affiliated with BTL; and (b) result in Defendant unfairly benefitting from the reputation of BTL and the BTL Trademarks to the

substantial and irreparable injury of consumers, BTL, and the BTL trademarks, and the substantial goodwill represented thereby.

53. Defendant's acts as set forth herein constitute trademark counterfeiting in violation of 15 U.S.C. § 1117(b)(1) and reflect Defendant's intent to exploit the goodwill and strong brand recognition associated with the BTL Trademarks.

PRAYER FOR RELIEF

WHEREFORE BTL requests entry of judgment against Defendant as follows:

A. A judgment that Defendant has infringed one or more claims of U.S. Patent No. 10,478,634 in violation of 35 U.S.C. § 271(a)-(b);

B. An award of damages for infringement of the '634 patent in the amount of not less than \$125,000, with said damages to be trebled because of the intentional, willful, and malicious nature of Defendant's infringement, as provided by 35 U.S.C. § 284;

C. A judgment that Defendant has willfully and maliciously infringed one or more claims of the '634 patent;

D. A determination that this case is "exceptional" under 35 U.S.C § 285 and an award of BTL's reasonable attorneys' fees;

E. An order permanently enjoining Defendant, its officers, directors, employees, agents, and all persons acting in concert with it, from infringing the '634 patent;

F. A judgment that Defendant has violated the Lanham Act, 15 U.S.C. § 1114, by committing acts of trademark infringement;

G. A judgment that Defendant's use of the "EMSCULPT" mark, as alleged in this Complaint, infringes BTL's EMSCULPT[®] trademarks;

H. A judgment that Defendant's use of the "EMSCUPLT NEO" mark, as alleged in this Complaint, infringes BTL's EMSCULPT NEO[®] trademark;

I. A judgment that Defendant's use of the BTL logo mark, as alleged in this Complaint, infringes BTL's BTL Logo trademark;

J. A judgment that Defendant's "EMSCULPT" mark is confusingly similar to BTL's EM[®] trademarks and that Defendant's use of that mark, as alleged in this Complaint, infringes BTL's EM[®] trademarks;

K. A judgment that Defendant's "EMSCULPT NEO" mark is confusingly similar to BTL's EM[®] trademarks and that Defendant's use of that mark, as alleged in this Complaint, infringes BTL's EM[®] trademarks;

L. A judgment that Defendant's conduct in violating BTL's trademarks was willful and malicious;

M. A judgment that Defendant has violated the Lanham Act, 15 U.S.C. § 1125(a), by committing acts of federal unfair competition, false designation of origin, and false advertising;

N. An award of damages for Defendant's infringement of the BTL

Trademarks, including Defendant's profits, any damages sustained by BTL, and the costs of the action as provided by 15 U.S.C. § 1117(a), with said damages to be trebled because of the intentional, willful, and malicious nature of Defendant's infringement, as provided by 15 U.S.C. § 1117(b);

O. Alternatively, an award of statutory damages for Defendant's infringement of BTL's Trademarks in an amount of \$200,000 per counterfeit mark, totaling \$600,000 for three (3) counterfeit marks. That amount to be heightened to \$2,000,000 per counterfeit mark in accordance with 15 U.S.C. § 1117(c)(2) for Defendant's willfulness.

P. A judgment that this case is "exceptional" under 15 U.S.C. § 1117(a) and an award of reasonable attorneys' fees;

Q. An award of damages against Defendant as a result of its wrongful acts against BTL in an amount to be proved at trial;

R. An award of pre-and post-judgment interest of any monetary damages at the highest rate allowed by law;

S. Permanent injunctive relief enjoining Defendant from:

- i. using the BTL Trademarks or any confusingly similar marks, in any manner in connection with the promotion, marketing, advertising, offering for sale, or sale of any good or service that is not a good or service offered by a genuine BTL product, or is not authorized by

- BTL to be offered in connection with the BTL Trademarks;
- ii. passing off, inducing, or enabling others to sell or pass off any good or service as a good or service offered by a genuine BTL product, or any other good or service offered by BTL, that is not BTL's or not offered under the authorization, control, or supervision of BTL and approved by BTL for sale under the BTL Trademarks;
 - iii. committing any acts calculated to cause consumers to believe that Defendant's goods or services are those sold under the authorization, control, or supervision of BTL, or are sponsored by, approved by, or otherwise connected with BTL; and
 - iv. further infringing BTL's Trademarks and damaging BTL's goodwill.
- T. An award of BTL's costs and expenses in this action; and
- U. For such other relief as the Court may deem just and proper.

DATED: March 5, 2024

Respectfully Submitted,

By: /s/ Padmaja Chinta

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