

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION**

**GOCLIPS LLC, and Z KEEPERS LLC,**  
Florida limited liability companies,

Plaintiffs,

Case No. 0:24-cv-60482

v.

**AGM TOOLS OF SOUTH FLORIDA,  
INC., AGM TOOLS SAN ANTONIO,  
INC., d/b/a AGM TOOLS AUSTIN, AGM  
AUSTIN TOOLS, INC., AGM TOOLS OF  
RALEIGH, INC., AGM TOOLS OF  
MCALLEN LLC, AGM TOOLS, INC.,  
AGM TOOLS HOLDINGS LLC, AGM  
TOOLS HOUSTON LLC, AGM TOOLS  
OF CHARLOTTE LLC, AGM TOOLS  
DALLAS LLC,**

JURY TRIAL DEMANDED

Defendants.

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**COMPLAINT**

Plaintiffs, GOCLIPS LLC (GoClips) and Z KEEPERS LLC (Z Keepers), for their Complaint against Defendants AGM TOOLS OF SOUTH FLORIDA, INC., AGM TOOLS SAN ANTONIO, INC., d/b/a AGM TOOLS AUSTIN, AGM AUSTIN TOOLS, INC., AGM TOOLS OF RALEIGH, INC., AGM TOOLS OF MCALLEN LLC, AGM TOOLS, INC., AGM TOOLS HOLDINGS LLC, AGM TOOLS HOUSTON LLC, AGM TOOLS OF CHARLOTTE LLC, AGM TOOLS DALLAS LLC, AGM TOOLS, INC. (collectively hereafter referred to as “AGM affiliates”) and ALEJANDRO ERIC GARCIA-MARTINES a/k/a “Alejandro Garcia”, and allege as follows:

## NATURE OF THE ACTION

1. Plaintiffs manufacture, market and sell patented devices used in anchoring sinks to the underside of hard countertop surfaces. Plaintiffs seek recovery against Defendants for counterfeiting, importing, marketing, selling, and distributing knockoffs that are substantially the same as Plaintiffs' devices and for Defendants' infringement and dilution of Plaintiff's trademark, *GoClips*® and trade dress consisting in part of the inherently distinctive shape of Plaintiff's undermount sink anchors, and Plaintiff's trade slogan "5 Second Anchors":



In addition, Plaintiffs seek recovery from Defendants and to enjoin Defendants' further use of Plaintiff's mark and trade dress, which Defendants have misappropriated so that it could better sell knockoff sink anchors, and profit from Plaintiffs' good will and reputation in the kitchen and bathroom construction and home improvement marketplace.

2. Plaintiff made Defendants aware of Plaintiff's intellectual property rights, and received assurances that Defendants' unlawful infringing conduct would cease, only to learn that the infringing, deceptive and unfair trade practices had resumed.

3. Plaintiffs seek damages from Defendant for the infringement of Plaintiffs' intellectual property rights, and for Defendant's unfair and deceptive trade practices. In addition to recovery from Defendants, Plaintiffs seek to permanently enjoin Defendants from engaging in such unlawful conduct in the future.

### **THE PARTIES**

4. Plaintiff, Z Keepers, is Florida limited liability company. Z Keepers provides manufacturing services for sink-anchoring products for the granite countertop industry, including *GoClips*® products. Z Keepers and GoClips are collectively referred to herein as “Plaintiffs.”

5. Plaintiff, GoClips, is a Florida limited liability company. GoClips is a distributor for sink-anchoring products for the granite countertop industry manufactured through Plaintiff, Z Keepers.

6. Defendant AGM TOOLS OF SOUTH FLORIDA, INC., is a Florida corporation operating and doing business in Florida, which has its principal place of business in Pompano Beach, Florida, and is believed to be owned and operated by Defendant Alejandro Eric Garcia-Martinez.

7. Defendant AGM TOOLS SAN ANTONIO, INC., is a Texas corporation which is affiliated with AGM TOOLS OF SOUTH FLORIDA, INC., and is believed to be owned and operated by Defendant Alejandro Eric Garcia-Martinez.

8. Defendant AGM AUSTIN TOOLS, INC., is a Texas corporation which is affiliated with AGM TOOLS OF SOUTH FLORIDA, INC., and is believed to be owned and operated by Defendant Alejandro Eric Garcia-Martinez.

9. Defendant AGM TOOLS OF RALEIGH, INC., is a North Carolina corporation which is affiliated with AGM TOOLS OF SOUTH FLORIDA, INC., and is believed to be owned and operated by Defendant Alejandro Eric Garcia-Martinez.

10. Defendant AGM TOOLS OF MCALLEN LLC, is a Texas limited liability company which is affiliated with AGM TOOLS OF SOUTH FLORIDA, INC., and is believed to be owned and operated by Defendant Alejandro Eric Garcia-Martinez.

11. Defendant AGM TOOLS, INC., is a Texas corporation which is affiliated with AGM TOOLS OF SOUTH FLORIDA, INC., and is believed to be owned and operated by Defendant Alejandro Eric Garcia-Martinez.

12. Defendant AGM TOOLS HOLDINGS LLC is a Texas limited liability company which is affiliated with AGM TOOLS OF SOUTH FLORIDA, INC., and is believed to be owned and operated by Defendant Alejandro Eric Garcia-Martinez.

13. Defendant AGM TOOLS HOUSTON LLC is a Texas limited liability company which is affiliated with AGM TOOLS OF SOUTH FLORIDA, INC., and is believed to be owned and operated by Defendant Alejandro Eric Garcia-Martinez.

14. Defendant AGM TOOLS OF CHARLOTTE LLC is a North Carolina limited liability company which is affiliated with AGM TOOLS OF SOUTH FLORIDA, INC., and is believed to be owned and operated by Defendant Alejandro Eric Garcia-Martinez.

15. Defendant AGM TOOLS DALLAS LLC is a Texas limited liability company which is affiliated with AGM TOOLS OF SOUTH FLORIDA, INC., and is believed to be owned and operated by Defendant Alejandro Eric Garcia-Martinez.

16. Defendant ALEJANDRO ERIC GARCIA-MARTINES a/k/a Alejandro Garcia (“Garcia”) is the owner and operator of the above-described AGM corporations and AGM limited liability companies (the “AGM affiliates”). Upon information and belief, Garcia is the sole or controlling shareholder of the corporate AGM affiliates and the sole or controlling managing member of the limited liability company AGM affiliates. In addition, upon information and belief,

Garcia dominates and controls the AGM affiliates listed above to such an extent that the AGM affiliates have failed to maintain independent existences, such that Garcia and the AGM affiliates are the alter ego of each other. In addition, Garcia has used the AGM affiliates listed above for the improper purpose of infringing Plaintiffs patents and trademark and committing the unfair and deceptive trade practices described in further detail below in order to cause injury to Plaintiffs.

### **JURISDICTION AND VENUE**

17. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) insofar as this is a civil action for patent infringement arising under the *Patent Act*, 35 U.S.C. §§ 271 *et seq.*, and for trademark infringement and false designation of origin under sections 32 and 43 of the *Lanham Act*, 15 U.S.C. §§ 1051 *et seq.*

18. This Court has personal jurisdiction over the AGM affiliates and Garcia because Defendants formed a corporation under Florida law, which is domiciled in Florida, and Defendants have engaged in substantial and not isolated activity within Florida consisting of the marketing, sale and distribution of devices infringing the patents at issue in this Complaint and by infringing Plaintiff's registered trademark in Florida both directly through its distribution network in Florida and also through its ecommerce websites described above. Defendants Garcia and the AGM affiliates engaged in the following acts:

- (a) Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.
- (b) Committing tortious acts within this state.
- (c) Causing injury to persons or property within this state arising out of an act or omission by the Defendants outside this state.

(d) Engaging in continuous and not isolated activity within this state including the continuous solicitation of customers or performance of service activities within this state, and conducting business within this state through their ecommerce websites, which are created and serviced by Defendants, and are used within this state in the ordinary course of their commerce, trade and use in this state.

19. Venue is proper in the Fort Lauderdale Division of the Southern District of Florida pursuant to 28 U.S.C. §§ 1391(b)(1, 2) and 1400 insofar as (i) Defendants regularly conduct business at its principle place of business in Pompano Beach in this District, (iii) a substantial part of the events giving rise to this action occurred in this District, and (iv) this case arises out of acts of infringement that Defendants committed within this District, including, but not necessarily limited to, the patent, trademark and trade dress infringement as alleged herein.

#### **FACTS COMMON TO THE CLAIMS PLED**

##### **The ‘754 Patent**

20. David Smith (“Smith”) filed the application for his invention, described as “Sink Clamp and Methods,” on or about December 10, 2014.

21. On November 28, 2017, U.S. Patent No. 9,828,754 (the “‘754 patent”), was issued by the United States Patent and Trademark Office (“USPTO”) in the name of David Smith, entitled “Sink Clamp and Methods.” A true copy of the ‘754 patent is attached as *EXHIBIT A*.

22. The ‘754 Patent describes and claims, among other things, a clamp and clamping method for undermounting a sink to a hard surface. All right title and interest in the ‘754 patent have been assigned to Z Keepers as recorded with the USPTO.

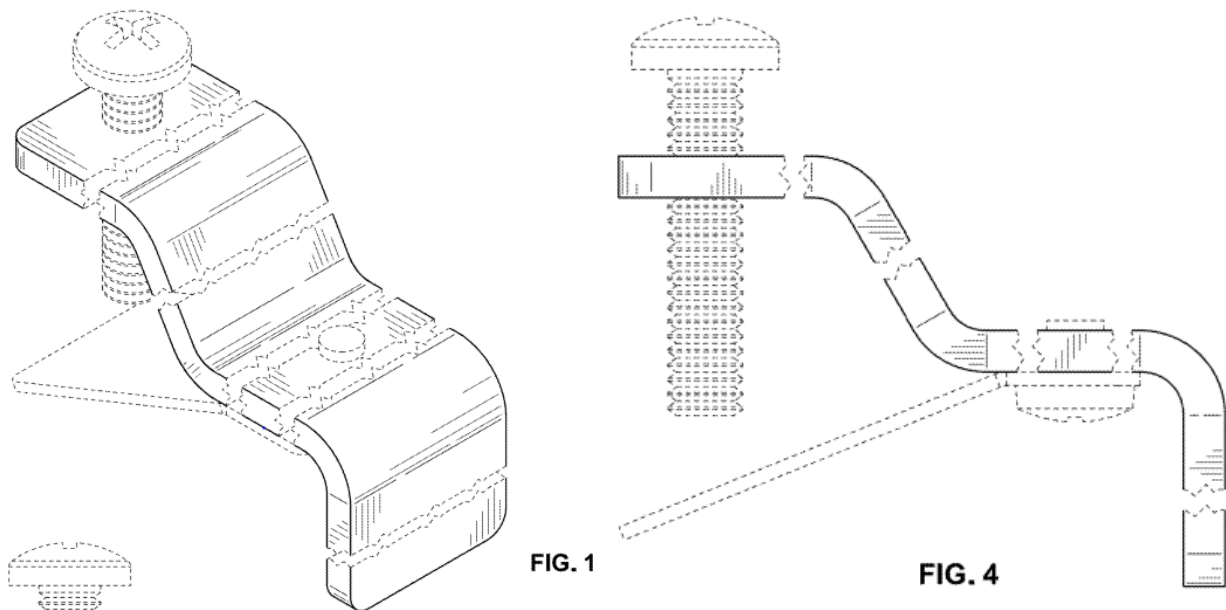
23. Plaintiff, GoClips has been granted marketing, sale and distribution rights for the invention claimed in the ‘754 patent.

24. Plaintiffs manufacture, market, sell and distribute *GoClips*® devices, which duly embody the claims of the '754 patent.

**Design Patent D855,447**

25. In connection with the invention claimed in the '754 patent, Smith filed an application with the USPTO to protect the design elements of his embodiment of the sink clamp. On August 6, 2019, the USPTO issued Smith the design patent numbered D855,447 (the "'D447 patent") entitled "Sink Clamp". A true copy of the 'D477 patent is attached as **EXHIBIT B**.

26. The 'D447 Patent describes and claims, among other things, a unique ornamental design for the body of a sink clamp embodying an elegant, nonfunctional, uniform sloping transition from a horizontal to a vertical plane, which in part is depicted in the following figures:



27. These aesthetic qualities make Plaintiffs' product design distinctive in the marketplace.

28. All right title and interest in the 'D447 design patent has been assigned to Z Keepers as recorded with the USPTO.

29. Plaintiff, GoClips has been granted marketing, sale and distribution rights for the design claimed and described in the 'D447 patent.

30. Plaintiffs manufacture, market, sell and distribute *GoClips*® devices, which duly embody the design claimed and described in the 'D447 patent.

**Plaintiff's *GoClips*® Trademark and Trade Dress**

31. On May 19, 2015, Plaintiff Z Keepers obtained registration with the USPTO of the trademark "*GoClips*". See USPTO registration number 4,739,200, a copy of which is attached hereto as **EXHIBIT D**. Plaintiff GoClips has been granted rights to this mark to facilitate the promotion, marketing, and sale of the *GoClips*® devices for Plaintiff Z Keepers.

32. Prior to December 13, 2014, no market participant had used the mark "*GoClips*" in connection with undermount sink clamping devices. Since as early as December 13, 2014, Plaintiffs have exclusively and continuously used the *GoClips* mark in connection with their promotion, marketing, sale, and distribution of the *GoClips* devices.

33. Plaintiffs have advertised, marketed, and otherwise promoted the *GoClips*® mark in print media, on the internet (see e.g. <https://www.youtube.com/watch?v=lxJU5LH8MkQ> <http://www.goclips.us/>, and [https://www.amazon.com/GoClips-5-Second-Anchors-Undermount-Sinks/dp/B00YT822FU/ref=sr\\_1\\_2?crd=NCCDZ3GVOLE2&keywords=goclips&qid=1692206302&srefix=goclips%2Caps%2C119&sr=8-2](https://www.amazon.com/GoClips-5-Second-Anchors-Undermount-Sinks/dp/B00YT822FU/ref=sr_1_2?crd=NCCDZ3GVOLE2&keywords=goclips&qid=1692206302&srefix=goclips%2Caps%2C119&sr=8-2)), as well as at tradeshow and through their distribution network. By virtue of Plaintiffs' promotion of the *GoClips*® trademark, the mark has become well known in the industry as associated with Plaintiffs, earning Plaintiffs valuable and residual goodwill and reputation in the minds of industry participants for being the source for *GoClips*® devices.



34. Plaintiffs have established a distinctive trade dress for *GoClips*® products which consists of a combination of the unique, elegant, low profile product designs, as well as images showing these *GoClips*® devices in use in different installation settings, employing the advertising slogan “5 second anchors”, and certain distinctive advertising verbiage on their ease of use. Examples are:



- Stainless Steel Rims and Tight Spaces
  - No Special Tools, Hammers, or Drills
  - Use a Standard Grinder & Blade to Make 1/2" Deep Slots
  - Self-Locking/Hands-Free
  - Quick Easy Professional
- Sink Rims up to 7/8"
  - No Special Tools, Hammers, or Drills
  - Use a Standard Grinder & Blade to Make 1/2" Deep Slots
  - Self-Locking/Hands-Free
  - Quick Easy Professional





## GoClips 5-Second Anchors for Undermount Sinks(Pack of 4)

Brand: Z Keepers LLC

4.7 ★★★★★ 38 ratings

\$5<sup>80</sup>

Get \$50 off instantly: Pay \$0.00 ~~\$5.80~~ upon approval for Amazon Visa. No annual fee.

Roll over image to zoom in



**Brand** Z Keepers LLC

**Color** Silver

**Material** Diamond

**Installation** Undermount

**Type**

**Finish Type** Brushed

### About this item

- Slot-Based Anchors that are Quick and Easy to Install
- Sink Rims Up To 3/4"
- Create 1/2" Deep Slots with 4"-6" Diamond Turbo Blade and Angle Grinder
- No Special Tools or Additional Parts Required-NO Drilling
- Used by Professionals-Easy Enough for non-Professionals

[▶ See more product details](#)

### General Allegations

35. *GoClips*® devices are slot-based, sink anchors, which provide granite manufacturers and installers, home improvement companies, plumbers, and do-it-yourself (DIY) consumers with a novel way to securely undermount sinks to granite and other hard countertop surfaces, quickly and inexpensively, and without interfering with under cabinet storage space. Because of their reliability, ease of use, strength, nominal profile, and low cost, *GoClips*® devices quickly gained a foothold among countertop manufacturers and installers, plumbers, sink installers, and DIY consumers as a secure, efficient, and low-cost way to undermount sinks to countertop surfaces.

36. Upon their launch, *GoClips* devices have been continuously sold in packages which were marked with the “*GoClips*” trademark. In addition, upon the USPTO granting the *GoClips* mark registration, the product packaging was updated to reflect the ® symbol following the *GoClips*® trademark.

37. Prior to patent grant, GoClips’ product packaging was marked “Patent Pending” to notify buyers of the pending patent application. Following the USPTO’s issuance of the ‘754 patent and the ‘D447 patent, respectively, *GoClips*’ product packaging was modified to reflect the patent numbers issued by the USPTO and have been so marked ever since.

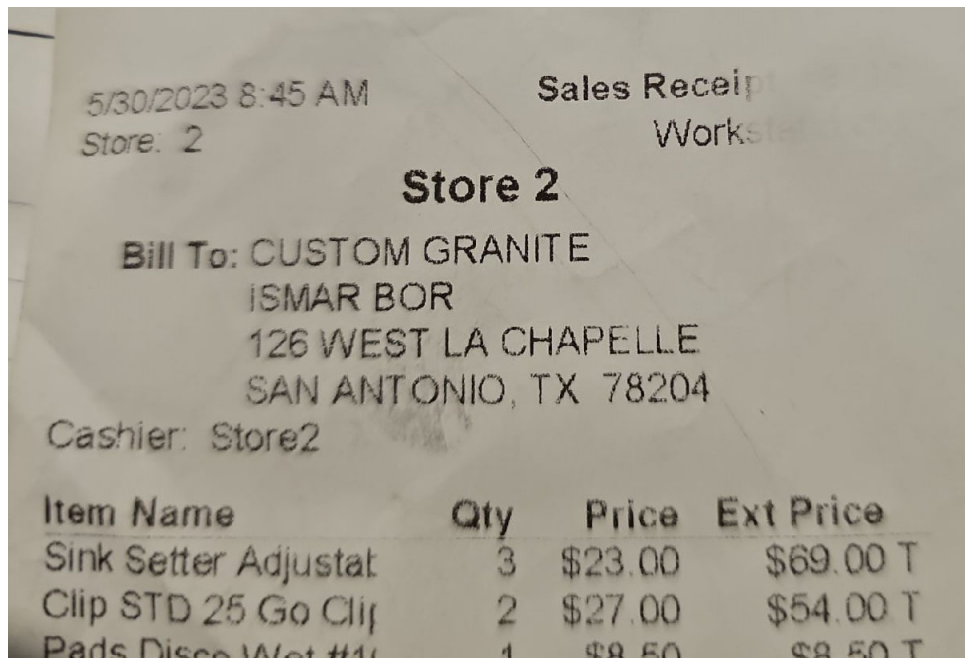
38. Defendant Garcia uses the Defendant AGM affiliates to import, market, sell, and distribute products used in the granite countertop manufacture and installation industry, including devices used to clamp undermounted sinks to countertop surfaces.

39. Defendants Garcia and the AGM affiliates operate through ecommerce websites such as [www.agmtools.com](http://www.agmtools.com) to market, sell and distribute the products infringing Plaintiffs’ patents and trademark. In addition, Defendants Gracia and the AGM affiliates appear at national tradeshow to market, sell, and distribute the products infringing Plaintiffs’ patents and trademark.

40. Defendants are believed to have directly or indirectly manufactured, imported, and to have marketed, sold, and distributed knockoff devices which embody the claims of the ‘754 patent, as further described in the Claim Chart attached as **EXHIBIT E**. Depicted in the claim chart are the knockoff devices which Defendant Garcia cause the AGM affiliates to advertise, sell and distribute in this District and elsewhere. In addition, Defendants have counterfeited Plaintiff’s D447 design patent in one of their device offerings.

41. Upon information and belief, when marketing, selling and delivering, knockoff devices, Defendants identified the knockoff devices as “GoClips” in sales receipts, and in its store

displays, yet when delivering devices to its customers, Defendants identified the knockoff devices as “Quick Clips” on the packaging for the knockoff devices adding to consumer confusion, and diluting Plaintiffs’ *GoClips*® trademark as depicted below:



42. In size, shape, and appearance, the knockoff devices, which AGM sells and distributes under the names “Go Clip” and “QUICK CLIP,” are nearly identical in appearance to authentic *GoClips*® devices.

43. After Plaintiffs' launch of authentic *GoClips*® devices, Defendants failed to contact Plaintiffs to obtain licenses under the '754 or D447 patents, nor did Defendants request a license under the *GoClips*® trademark when Defendants began marketing, selling, and distributing knockoffs of *GoClips*® products.

44. On November 29, 2017, Plaintiff sent a Notice of Patent along with a copy of the '754 patent to Defendants. A copy of the Notice of Patent that Plaintiff sent to Defendant AGM is attached as **EXHIBIT F**. In the Notice of Patent, Plaintiff GoClips informed Defendants of Plaintiff's '754 patent, that AGM was infringing the patent, and in lieu of litigation, invited Defendant AGM to become a licensed distributor of the *GoClips*® devices.

45. Garcia promised Plaintiffs that the AGM affiliates would cease any sales or marketing of the knockoff devices. AGM affiliates then entered into a distribution relationship with Plaintiff, which consisted of Defendants purchasing authentic *GoClips*® products from Plaintiffs, displaying them at the AGM affiliate sales locations, and selling and distributing Plaintiffs' *GoClips*® products from the AGM affiliates' sales locations, supply trucks and vans.

46. Garcia and the AGM affiliates' promises to Plaintiffs were false when made and were made with the intention of inducing Plaintiffs to refrain from filing suit.

47. Plaintiffs reasonably relied upon Defendants promises.

48. Notwithstanding Defendants' promises, upon information and belief Garcia used the AGM affiliates to willfully and deliberately resume their conduct of directing the Chinese manufacture, importing, marketing, sale and distribution of counterfeit knockoff products that infringe the '754 patent as described in **EXHIBIT E**, and that infringe the D447 design patent as more specifically described below.

49. Defendants have been so brazen in their infringing activities as to contact Plaintiffs' customers to offer their counterfeits of the *GoClips*® products at reduced prices, in order to undercut Plaintiffs in an effort to take unfair advantage of the goodwill that Plaintiffs have established with *GoClips*® products in the marketplace, and in order to trade upon the trust consumers and market participants possess in the strength, speed and efficacy of the *GoClips*® products.

50. Upon information and belief, Defendants continue to violate Plaintiffs' rights with respect to the '754 and D447 patents and continue to damage Plaintiffs by importing, marketing, selling, and distributing knockoff products under the tradename *GoClips*, using GoClips' trade dress, and by diluting GoClips mark by delivering knockoff devices labeled "QUICK CLIPS". Upon information and belief, Defendant's conduct will continue if not enjoined.

51. As a result of Defendant's intentionally deceptive, willful, and wanton misconduct, this case is "exceptional" within the meaning of 35 U.S.C. § 285 and within the meaning of the Lanham Act, 15 U.S.C. § 1117(a). Moreover, Plaintiffs have been irreparably harmed by Defendants' misconduct.

52. Plaintiffs have retained the undersigned counsel to represent them in this action and have agreed to pay said counsel a reasonable fee.

53. All requisite conditions to the filing of this action have occurred or been waived by Defendant.

#### **COUNT I – INFRINGEMENT OF THE '754 PATENT BY DEFENDANTS**

54. Plaintiffs adopt by reference paragraphs 1 through 53 of this Complaint as though more fully set forth herein.

55. This is an action for contributory patent infringement by Garcia and patent infringement by the AGM affiliates pursuant to 35 U.S.C. §§ 271 *et seq.*

56. Defendants Garcia has caused the AGM affiliates to willfully, deliberately, and intentionally infringed the ‘754 patent as more specifically described above and in the claim chart attached as **EXHIBIT E**. Defendants infringing conduct constitutes literal infringement of the ‘754 patent and/or infringement under the doctrine of equivalents.

57. On information and belief, Defendants Garcia and the AGM affiliates intend to continue their infringing activities described herein.

58. Defendants counterfeit products are near identical copies of Plaintiffs’ *GoClips*® devices, and Defendants’ counterfeit products have no alternate, non-infringing use.

59. Defendants have been placed on notice of the ‘754 patent and on notice of their unlawful counterfeiting of Plaintiffs’ *GoClips*® products, and yet Defendant Garcia and the AGM affiliates continued to infringe the ‘754 patent.

60. Defendant’s’ acts as described above have been without right, license, or permission from Plaintiffs.

61. Defendants’ willful, deliberate, and intentional infringement of the ‘754 patent has caused the Plaintiff irreparable harm and damages, including lost sales, lost profits, lost sales opportunities, and loss of goodwill, in an amount to be determined at trial.

62. Defendants’ willful, deliberate, and intentional infringement of the ‘754 patent entitles the Plaintiffs to recover, among other things, their treble damages, reasonable attorneys’ fees, and costs under 35 U.S.C. §§ 284 and 285.

63. Plaintiffs have no adequate remedy at law without the intervention of this Court and monetary damages alone are insufficient to compensate Plaintiffs. Accordingly, in addition to damages, Plaintiffs are entitled to preliminary and/or permanent injunctive relief.

**COUNT II – INFRINGEMENT OF THE ‘D447 PATENT BY DEFENDANTS**

64. Plaintiffs adopt by reference paragraphs 1 through 53 of this Complaint as though more fully set forth herein.

65. This is an action for patent infringement against Defendant AGM pursuant to 35 U.S.C. §§ 271 *et seq.*

66. Defendant AGM has willfully, deliberately, and intentionally infringed the ‘D447 patent as more specifically described above, by manufacturing or importing, and thereafter, advertising, marketing and selling counterfeit knockoff devices that embody the design elements described in the ‘D447 patent, such that Defendant’s knockoff products are near identical copies of Plaintiffs’ *GoClips*® devices.

67. On information and belief, Defendant AGM intends to continue its infringing activities described herein.

68. Defendant’s acts as described above have been without right, license, or permission from Plaintiffs.

69. Defendant’s willful, deliberate, and intentional infringement of the ‘D447 patent has caused the Plaintiff irreparable harm and damages, including lost sales, lost profits, lost sales opportunities, and loss of goodwill, in an amount to be determined at trial.

70. Defendant’s willful, deliberate, and intentional infringement of the ‘D447 patent entitles the Plaintiffs to recover, among other things, their treble damages, reasonable attorneys’ fees, and costs under 35 U.S.C. §§ 284 and 285.



71. Plaintiffs have no adequate remedy at law without the intervention of this Court and monetary damages alone are insufficient to compensate Plaintiffs. Accordingly, in addition to damages, Plaintiffs are entitled to preliminary and/or permanent injunctive relief.

**COUNT III – TRADEMARK INFRINGEMENT AND  
LANHAM ACT VIOLATIONS AGAINST AGM**

72. Plaintiffs adopt by reference paragraphs 1 through 53 of this Complaint as though more fully set forth herein.

73. This is an action against Defendant AGM for trademark and trade dress infringement, dilution, and false designation of origin under the *Lanham Act*.

74. *GoClips*® has gained a reputation as offering a robust, secure, quick, easy, and low cost means of undermounting sinks in the kitchen and bathroom construction, improvement, and remodeling marketplace. Through their advertising, marketing, product images, and elegant product designs, Plaintiffs have created a unique trade dress for selling *GoClips*® products to the consuming public.

75. Defendant AGM willfully, deliberately, and intentionally imported, marketed, sold and distributed counterfeits of the *GoClips*® device, copying Plaintiff's trade dress, and thereafter marketed, sold and distributed these counterfeit devices that were nearly identical to authentic *GoClips* using Plaintiffs' registered trademark *GoClips*®, using Plaintiffs' trade dress consisting of Plaintiffs' product designs in an effort to cloak Defendant's knockoff devices as authentic *GoClips*® devices.

76. By marketing, selling and distributing counterfeit *GoClips*® devices with identical designs, using Plaintiff's *GoClips*® trademark and then placing these knockoff products into the stream of commerce using another product name, "Quick Clips", Defendant has caused and is likely to continue to cause confusion, mistake, deception, or misunderstanding as to the source,

origin, sponsorship, affiliation, or approval of Defendant's goods, and unfair competition in violation of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a).

77. By later delivering Defendant's counterfeit devices under the name "Quick Clips," Defendant has diluted Plaintiff's *GoClips*® trademark under 15 U.S.C. § 1125(c).

78. Defendant AGM's acts described above constitute materially false representations of fact that are likely to cause confusion, mistake, or deception as to the source, origin, sponsorship, affiliation, or approval of Defendant's goods in violation of the Lanham Act.

79. Defendant is willfully offering for sale and selling counterfeit *GoClips*® devices that infringe Plaintiff's trademark and trade dress in order to benefit from Plaintiffs' goodwill and reputation. Defendant is also falsely creating an association between Defendant's counterfeit devices and Plaintiffs' authentic *GoClips*® devices.

80. Defendant AGM's acts as described above have been without right, license, or permission from Plaintiffs.

81. Defendant's willful, deliberate, and intentional infringement of Plaintiff's *GoClips*® trademark and trade dress has caused the Plaintiffs irreparable harm and damages, including lost sales, lost profits, lost sales opportunities, and loss of goodwill, in an amount to be determined at trial.

82. On information and belief, Defendant intends to continue its infringing activities described herein.

83. Because of Defendant's infringement of Plaintiffs' trademark and counterfeiting, Plaintiffs are entitled to recover, among other things, their treble damages, reasonable attorneys' fees, and costs under 15 U.S.C. §§ 1114 and 1117.

84. Pursuant to 15 U.S.C. § 1118, Plaintiffs are entitled to a judgment seizing and mandating the destruction of Defendant's infringing articles.

85. Plaintiffs have no adequate remedy without the intervention of this Court and monetary damages are insufficient to compensate Plaintiffs. Accordingly, Plaintiffs are entitled to preliminary and/or permanent injunctive relief pursuant to 15 U.S.C. § 1116.

#### **COUNT IV – VIOLATION OF FLORIDA UDTPA BY DEFENDANTS**

86. Plaintiffs adopt by reference paragraphs 1 through 53 of this Complaint as though more fully set forth herein.

87. This is an action for violation of Florida's Unfair and Deceptive Trade Practices Act § 501.201 *et seq.*

88. Defendants Garcia and the AGM affiliates willfully, deliberately, and intentionally directed the Chinese manufacture and then imported counterfeit products that are substantially the same as authentic *GoClips*® devices, and thereafter advertised, marketed, sold, and distributed these counterfeit devices.

89. Defendants' counterfeit devices are nearly identical to authentic *GoClips* devices, Defendants have misled the consuming public that they were purchasing authentic *GoClips*® devices by adopting Plaintiffs' trade dress as described above.

90. Defendants' acts described above constitute materially false representations of fact that have caused confusion, mistake, or deception as to the source, origin, sponsorship, and affiliation of Defendant's goods in violation of Florida's Unfair and Deceptive Trade Practices Act by (i) passing off counterfeit goods as authentic *GoClips* devices (ii) causing confusion or misunderstanding as to the source of goods, (iii) causing confusion or misunderstanding as to affiliation, connection, or association of the counterfeit devices with *GoClips*®.

91. By placing these knockoff products into the stream of commerce using a false designation of origin, and palming off the counterfeit devices as *GoClips*® devices, Defendants have caused and are likely to continue to cause confusion, mistake, deception, or misunderstanding as to the source, origin, sponsorship, and affiliation of Defendants' counterfeit devices, and constitutes unfair and deceptive competition in violation of Florida law.

92. Defendants continue to willfully offer for sale and are selling nearly identical counterfeit devices, misleading the consuming public that Defendants know are counterfeit *GoClips*® devices in order to improperly benefit from Plaintiffs' goodwill and reputation.

93. Defendant Garcia and the AGM affiliate's acts as described above have been without right, license, or permission from Plaintiffs.

94. Defendants' conduct as described above has caused the Plaintiffs irreparable harm and actual damages in an amount to be determined at trial.

95. On information and belief, Defendants intend to continue their deceptive and unfair trade practices described herein.

96. Plaintiffs have no adequate remedy without the intervention of this Court and monetary damages are insufficient to compensate Plaintiffs. Accordingly, Plaintiffs are entitled to preliminary and/or permanent injunctive relief under Florida statute section 501.211.

97. Because of Defendant Garcia and the AGM affiliates' actions were knowing, willful, deliberate, and intentional, Plaintiffs are entitled to recover their damages and reasonable attorneys' fees, and costs under Florida statute sections 501.211 and 501.2105.

**COUNT V – VIOLATION OF TEXAS DTPA BY THE DEFENDANT AGM  
AFFILIATES**

98. Plaintiffs adopt by reference paragraphs 1 through 53 of this Complaint as though more fully set forth herein.

99. This is an action for violation of Texas's Deceptive and Unfair Trade Practices Act. Texas Stat. § 17.46 *et seq.*

100. Defendants willfully, deliberately, and intentionally directed the Chinese manufacture and imported counterfeits of the *GoClips*® device, and thereafter Defendants advertised, marketed, sold and distributed these counterfeit devices, which are nearly identical to authentic GoClips devices, misleading the consuming public that they were purchasing authentic *GoClips*® devices by adopting Plaintiffs' trade dress as described above.

101. Defendants' acts described above constitute materially false representations of fact that have caused confusion, mistake, or deception as to the source, origin, sponsorship, and affiliation of Defendants' goods in violation of Texas statute section 17.46(b), including (1) passing off goods as those of another, (2) causing confusion or misunderstanding as to the source of goods, (3) causing confusion or misunderstanding as to affiliation, connection, or association with another.

102. By placing the counterfeit products into the stream of commerce using a false designation of origin, and palming off the counterfeit devices as *GoClips*® devices, Defendants have caused and are likely to continue to cause confusion, mistake, deception, or misunderstanding as to the source, origin, sponsorship, and affiliation of Defendants' goods, and Defendants' unlawful conduct constitutes unfair competition in violation of Texas law.

103. Defendants continue to willfully offer for sale and are selling nearly identical counterfeit devices, misleading the consuming public that Defendants know are counterfeit *GoClips*® devices in order to improperly benefit from Plaintiffs' goodwill and reputation.

104. Defendants' acts as described above have been without right, license, or permission from Plaintiffs.

105. Defendants' misconduct as described above has caused Plaintiffs irreparable harm and actual damages in an amount to be determined at trial.

106. On information and belief, Defendants intend to continue their deceptive and unfair trade practices described herein.

107. Plaintiffs have no adequate remedy without the intervention of this Court and monetary damages are insufficient to compensate Plaintiffs. Accordingly, Plaintiffs are entitled to preliminary and/or permanent injunctive relief under Texas statute section 17.50(b)(2).

108. Because of Defendants' actions were knowing, willful, deliberate, and intentional, Plaintiffs are entitled to recover, treble damages, reasonable attorneys' fees, and costs under Texas statute section 17.50(b)(1).

#### **COUNT VI – VIOLATION OF NORTH CAROLINA'S UDTPA BY DEFENDANTS**

109. Plaintiffs adopt by reference paragraphs 1 through 53 of this Complaint as though more fully set forth herein.

110. This is an action for violation of North Carolina's Unfair and Deceptive Trade Practices Act, North Carolina General Statute § 75-1.1 *et seq.*

111. Defendants Garcia and the AGM affiliates willfully, deliberately, and intentionally directed the Chinese manufacture and then imported counterfeit products that are substantially the same as authentic *GoClips*® devices, and thereafter advertised, marketed, sold, and distributed these counterfeit devices.

112. Defendants' counterfeit devices are nearly identical to authentic *GoClips* devices, Defendants have misled the consuming public that they were purchasing authentic *GoClips*® devices by adopting Plaintiffs' trade dress as described above.

113. Defendants' acts described above constitute materially false representations of fact that have caused confusion, mistake, or deception as to the source, origin, sponsorship, and affiliation of Defendants' goods in violation of Florida's Unfair and Deceptive Trade Practices Act by (i) passing off counterfeit goods as authentic GoClips devices (ii) causing confusion or misunderstanding as to the source of goods, (iii) causing confusion or misunderstanding as to affiliation, connection, or association of the counterfeit devices with *GoClips*®.

114. By placing these knockoff products into the stream of commerce using a false designation of origin, and palming off the counterfeit devices as *GoClips*® devices, Defendants have caused and are likely to continue to cause confusion, mistake, deception, or misunderstanding as to the source, origin, sponsorship, and affiliation of Defendants' counterfeit devices, and constitutes unfair and deceptive competition in violation of Florida law.

115. Defendants continue to willfully offer for sale and are selling nearly identical counterfeit devices, misleading the consuming public that Defendants know are counterfeit *GoClips*® devices in order to improperly benefit from Plaintiffs' goodwill and reputation.

116. Defendant Garcia and the AGM affiliate's acts as described above have been without right, license, or permission from Plaintiffs.

117. Defendants' conduct as described above has caused the Plaintiffs irreparable harm and actual damages in an amount to be determined at trial.

118. On information and belief, Defendants intend to continue their deceptive and unfair trade practices described herein.

119. Plaintiffs have no adequate remedy without the intervention of this Court and monetary damages are insufficient to compensate Plaintiffs. Accordingly, Plaintiffs are entitled to

preliminary and/or permanent injunctive relief for Defendants' violation of North Carolina's Deceptive and Unfair Trade Practices Act.

120. Because of Defendant Garcia and the AGM affiliates' actions were knowing, willful, deliberate, and intentional, Plaintiffs are entitled to recover treble their damages and reasonable attorneys' fees, and costs under North Carolina General Statute § 75-16.

**PRAYER FOR RELIEF AS TO ALL COUNTS**

WHEREFORE, Plaintiffs respectfully request that this Court:

(i) Enter judgment in favor of Plaintiffs and against Defendants for their infringement of the '754 and 'D447 patents.

(ii) Enter judgment in favor of Plaintiffs and against Defendants for willfully infringing the '754 and 'D447 patents.

(iii) Enter judgment in favor of Plaintiffs and against Defendants for damages for patent infringement under 35 U.S.C. § 284, pre and post judgment interest, and awarding Plaintiff recovery of their costs.

(iv) Award Plaintiffs enhanced damages under 35 U.S.C. § 284 for Defendants' willful infringement of the '754 and 'D447 patents.

(v) Award Plaintiffs recovery of their costs for bringing this lawsuit, including litigation expenses, and expert witness fees as the prevailing party.

(vi) Enter an order declaring this case exceptional under 35 U.S.C. § 285 and a judgment in favor of Plaintiffs requiring Defendants to pay Plaintiffs reasonable attorneys' fees, litigation expenses, expert witness fees, and costs.

(vii) Enter judgment in favor of Plaintiffs and against Defendants for their infringement of Plaintiffs' trademark *GoClips*®.



(viii) Enter judgment in favor of Plaintiffs and against Defendants for counterfeiting Plaintiffs' devices under Plaintiff's trademark *GoClips*®.

(ix) Enter judgment in favor of Plaintiffs and against Defendants for damages for trademark infringement and unfair competition under 15 U.S.C. § 1117(a), lost profits, pre and post judgment interest, and awarding Plaintiff recovery of their costs.

(x) Award Plaintiffs treble damages under 15 U.S.C. § 1117(b) for Defendants' violation of 15 U.S.C. § 1114(1)(a) for counterfeiting.

(xi) Enter an order declaring this case exceptional under 15 U.S.C. § 1117 and a judgment in favor of Plaintiffs requiring Defendants to pay Plaintiffs reasonable attorneys' fees, litigation expenses, expert witness fees, and costs.

(xii) Enter an order preliminarily enjoining and a judgment permanently enjoining Defendants Garcia and the AGM affiliates, as well as Defendants' employees, affiliates, subsidiaries, franchisees, distributors and all persons and entities acting in concert with the Defendants, or on behalf of the Defendants, from making, importing, marketing, using, offering for sale, selling and distributing the counterfeit products and any other product that infringes any claim of the '754 and 'D447 patents;

(xiii) Enter an order preliminarily enjoining and a judgment permanently enjoining Defendants, Defendants' officers, agents, employees, affiliates, subsidiaries, franchisees, distributors and all persons and entities acting in concert with the Defendants, or on behalf of the Defendants from using Plaintiff's registered trademark *GoClips*®, from false designation of origin and palming off counterfeit devices on the consuming public, and engaging in the deceptive and unfair trade practices described above, and mandating the destruction of infringing articles pursuant to 15 U.S.C. §§ 1117-1118 and Texas statute section 17.50;

(xiv) Enter an order declaring that Defendants' acts and practices violate Florida State section 501.204 and enjoining such conduct in keeping with Florida statute section 501.211.

(xv) Awarding Plaintiffs damages and recovery of their reasonable attorney's fees and costs under Florida Statute sections 501.211 and 501.2105.

(xvi) Enter an order declaring that Defendants' acts and practices violate Texas Statute section 17.46.

(xvii) Award Plaintiffs their treble damages pursuant to Texas statute section 17.50.

(xviii) Award Plaintiffs their reasonable attorneys' fees and costs pursuant to Texas statute section 17.50.

(xix) Award Plaintiffs any other and further relief that the Court deems just and appropriate under the law.

### **JURY TRIAL DEMAND**

Plaintiffs demand trial by jury on all issues so triable.

#### **PIERSON FERDINAND, LLP**

*/s/ Charles G. Geitner*

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