

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

HIT NOTION LLC,
a Michigan limited liability company,

Plaintiff,

v.

Case No.
Honorable

DIGITALPRINTS USA CORP. d/b/a
Cheer Collection,
a New York Corporation

Defendant.

**COMPLAINT FOR PATENT INFRINGEMENT AND TRADEMARK
INFRINGEMENT AND JURY DEMAND**

NOW COMES Plaintiff Hit Notion, LLC (“Hit Notion” or “Plaintiff”), and for its claims against DigitalPrints USA Corp. d/b/a Cheer Collection (“Defendant” or “Cheer Collection”) state as follows:

NATURE AND SUBSTANCE OF THE ACTION

1. This is a lawsuit for patent and trademark infringement.

JURISDICTION AND VENUE

2. This is an action for design patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 101 and 35 U.S.C. § 271. It is also an action for trademark infringement and unfair competition under the Lanham Act, 15 U.S.C. §§ 1114(1) and 1125(a).

3. The subject matter jurisdiction for this Court is founded upon 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338 (action arising under the Patent Act and the Lanham Act).

4. The Court has personal jurisdiction over Cheer Collection, at least because Cheer Collection purposefully avails itself of the benefits of doing business in Michigan, and because Cheer Collection infringes Hit Notion's trademark in Michigan. Cheer Collection also commits acts of patent infringement in Michigan by selling pillows here that have Hit Notion's patented designs.

5. Cheer Collection advertises pillows using Hit Notion's HUSBAND PILLOW brand on internet ads that are available in Michigan, and Hit Notion maintains an interactive website to fill orders for such pillows sold under the infringing brand in Michigan.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400 because Cheer Collection advertises pillows using Hit Notion's HUSBAND PILLOW brand on internet ads that are available in Michigan, and Hit Notion maintains an interactive website to fill orders for such pillows sold under the infringing brand in Michigan.

7. Cheer Collection offers for sale and sells infringing goods to the 48 continental United States, including Michigan, through its activities in operating at

virtual storefronts on Amazon, Walmart, eBay and cheercollection.com among others.

PARTIES

8. Plaintiff Hit Notion LLC (hereinafter “Hit Notion”), is a limited liability company, organized and existing under the laws of the State of Michigan, with its headquarters and principal place of business at 3333 East Jefferson Avenue, Detroit, Michigan 48207 US.

9. Upon information and belief, Defendant is a New York corporation having its headquarters at 601 W. Linden Ave. 2nd Floor, Linden, N.J. 07036.

10. On information and belief, Defendant is doing business as Cheer Collection (hereinafter “Cheer Collection”)

11. On information and belief, Cheer Collection operates virtual storefronts on the Amazon, Walmart, eBay and cheercollection.com websites under the names Cheer Collection and Cheer Collection storefront.

FACTUAL ALLEGATIONS

A. Hit Notion & Its Design Patents

12. Hit Notion is an innovator, manufacturer and seller, *inter alia*, of pillows and novelty pillows.

13. The United States Patent and Trademark Office (“USPTO”) duly and legally issued to Hit Notion U.S. Design Patent D875,432 S on February 18, 2020 (**EXHIBIT A**) (hereinafter “the ‘432 patent”).

14. The USPTO also duly and legally issued to Hit Notion U.S. Design Patent D949,600 S on April 26, 2022 (**EXHIBIT B**)(hereinafter “the ‘600 patent”).

15. Plaintiff Hit Notion had applied for the ‘432 patent on Oct 19, 2017, and for the ‘600 patent on Dec. 13, 2019.

16. The Design Patents owned by Hit Notion are valid, subsisting and in full force and effect.

17. Hit Notion is the owner of all rights, title, and interest in the ‘432 and ‘600 Design Patents, including the right to recover for any and all past infringement thereof.

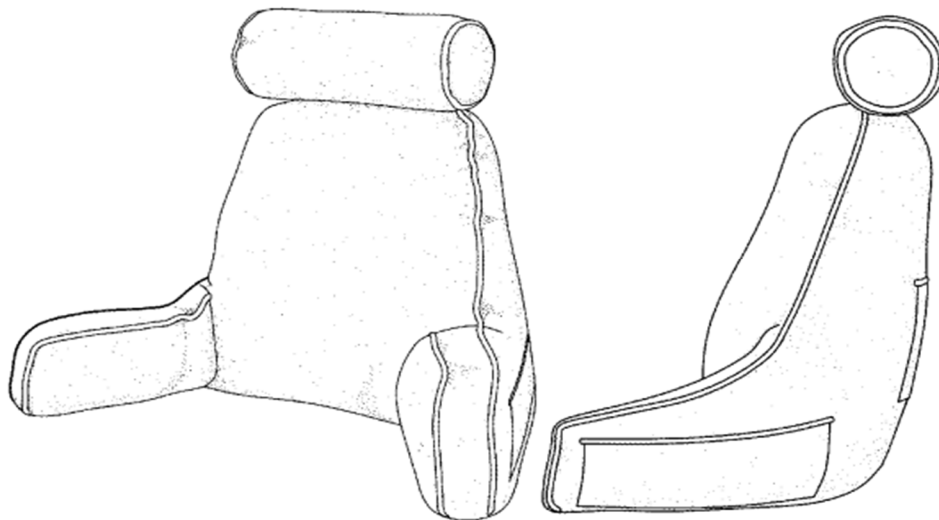
18. Hit Notion actively uses and applies the design covered by the ‘432 and ‘600 patents on its popular product called the Husband Pillow.

19. Hit Notion devotes a significant amount of time, energy, and resources toward protecting the value of its brand, product design, name, and reputation.

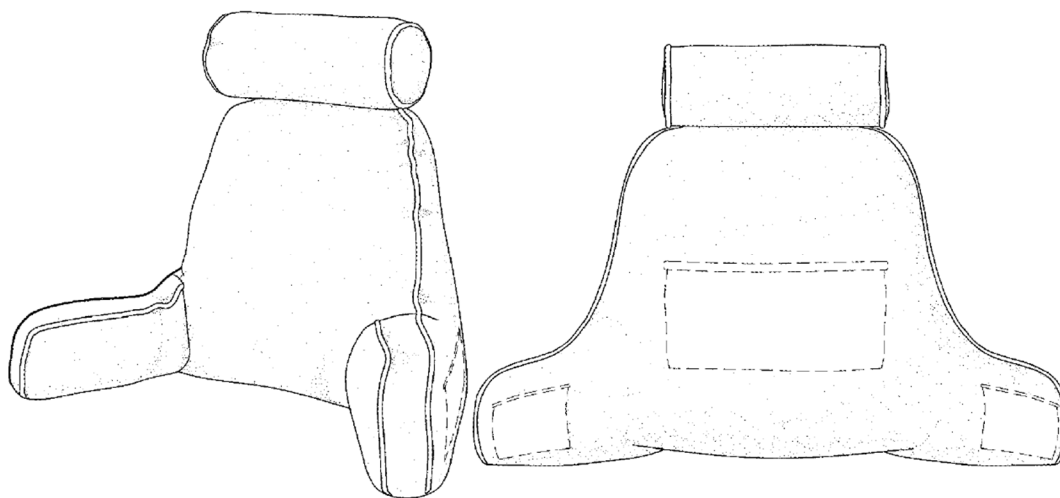
B. Cheer Collection’s Design Patent Infringement

20. Defendant, without any authorization from Hit Notion, copied the design covered by the ‘432 and ‘600 patents, and it sold, offered for sale, advertised and imported into the United States and in this State and judicial district, products

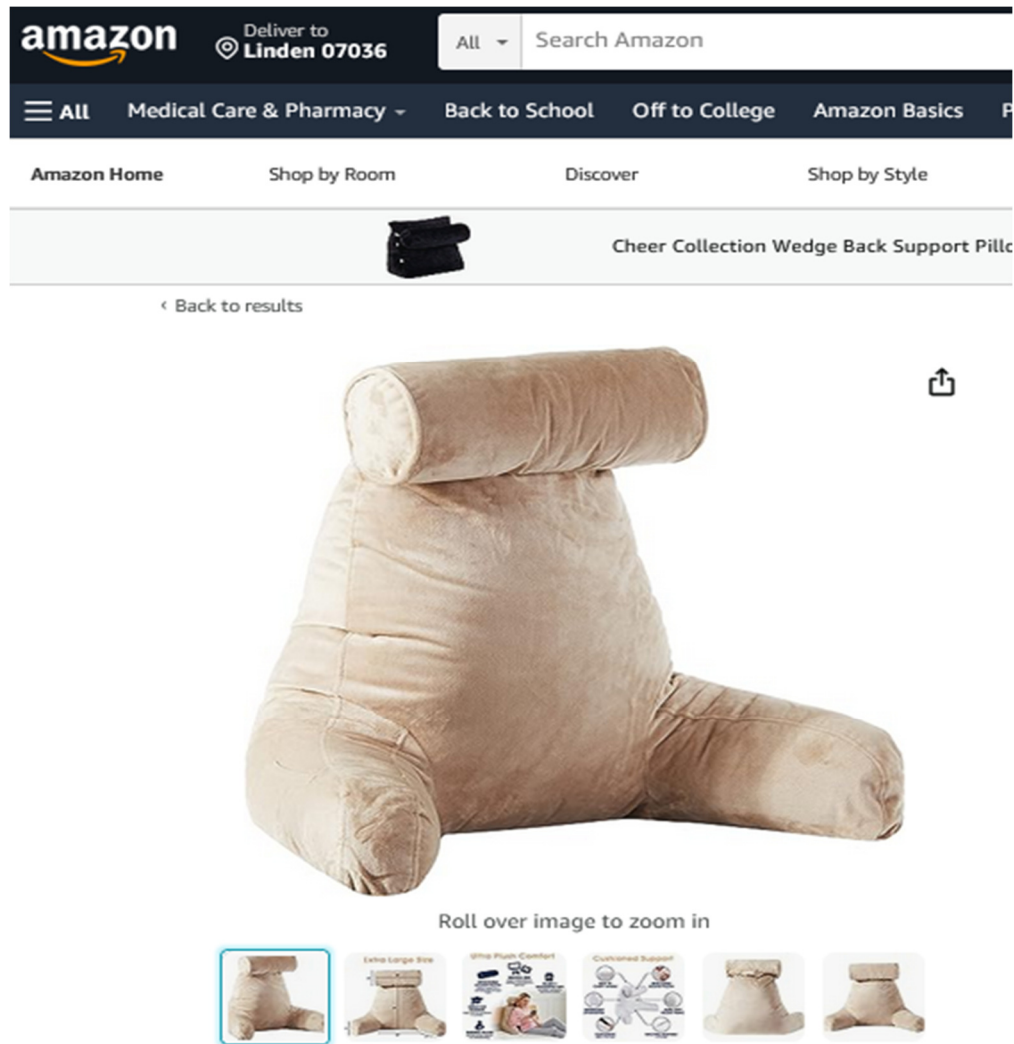
bearing a design substantially similar to Hit Notion's '432 design patent and its '600 design patent on and through Amazon.com, Walmart.com, ebay.com and cheercollection.com in violation of 35 U.S.C. § 271.



'432 Patent



'600 Patent



Defendant's infringing product

21. The design of Cheer Collection's Pillows is the same or substantially the same as Plaintiff's registered design under the '432 and '600 patents. The Defendant's product design is so substantially similar, as to be nearly identical, such that an ordinary observer, giving such attention as an ordinary online purchaser usually gives, will be so deceived by the substantial similarity between the designs

so as to be induced to purchase Defendant's product believing them to be bearing the same design as the one protected by Hit Notion's '432 and '600 patents.

22. Hit Notion has not granted any license or any other authorization to the Defendant to make, use, offer for sale, sell or import into the United States pillows that embody the designs identical or substantially similar to the ones patented in the '432 and '600 patents which are proprietary to Hit Notion.

23. Hit Notion has been damaged by the foregoing willful infringing and wrongful acts of Defendant, including, without limitation, suffering actual damage including lost sales.

24. Hit Notion, due to being aggrieved by Cheer Collection's infringing activities in relation to '432 patent, decided to avail IP infringement redressal mechanism of various e-commerce platforms where Cheer Collection is selling or offering for sale infringing products and initiated IP infringement complaint at Walmart.com using Walmart's IP claim form against Cheer Collection's infringing listings on May 11, 2023.

25. Walmart initiated an investigation against Cheer Collection's reported listings, and in due course unpublished them from its platform.

26. Hit Notion is indisputably the first filer and the first inventor of the design inventions comprised in the '432 and '600 patents.

C. Cheer Collection’s Trademark Infringement and Unfair Competition

27. Hit Notion owns trademark rights in the brand HUSBAND PILLOW as used in connection with novelty pillows like the ones shown below because it has been using HUSBAND PILLOW as a brand for such pillows since 2017.

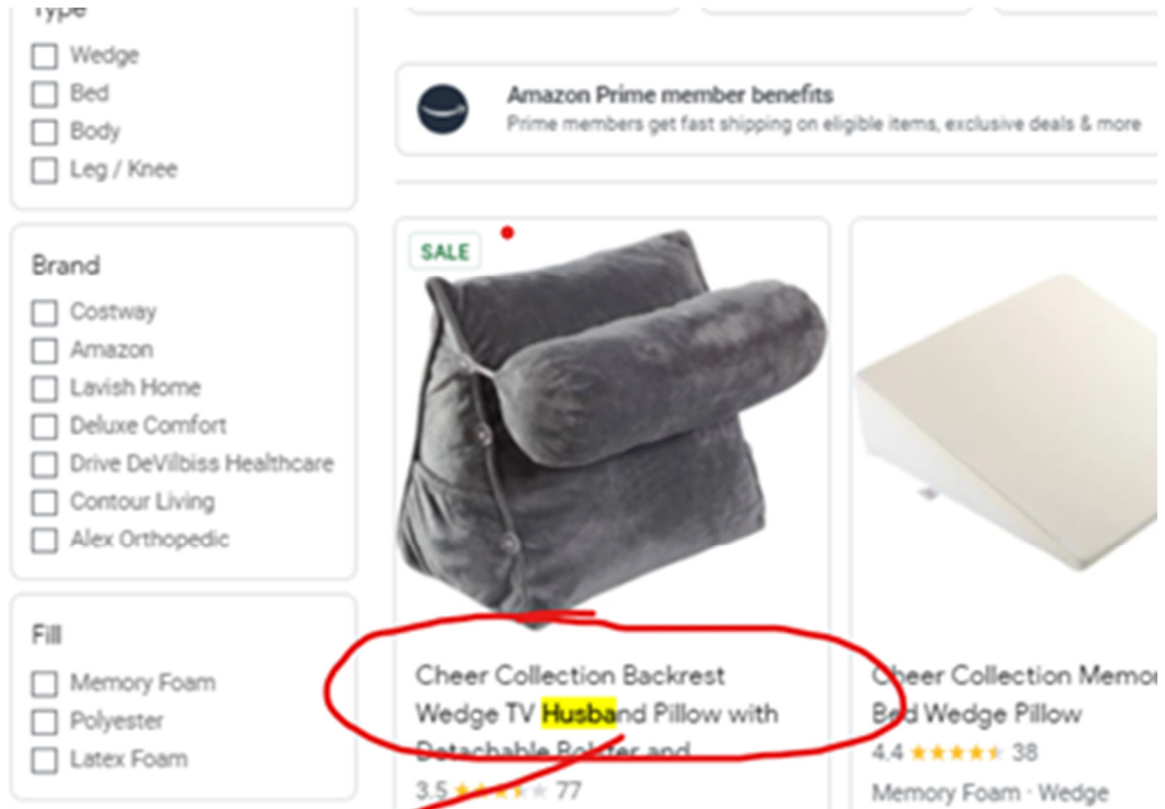
XXL Husband Pillow Oversized Bed
Backrest Pillow With Arms

\$79.95 ~~\$119.95~~
★★★★☆ 1458 Reviews



28. Hit Notion registered the brand with the U.S. Patent and Trademark Office, and it now owns U.S. Registration 5,457,970 for the name HUSBAND PILLOW as used in connection with novelty pillows.

29. Cheer Collection is infringing on Hit Notion's trademark rights by using the same name in connection with similar novelty pillows, including in Michigan and this district, thereby causing confusion as to the source or origin of its products. Here is an example Cheer Collection ad appearing in Michigan:



COUNT I
Patent Infringement of the D875,432 Patent

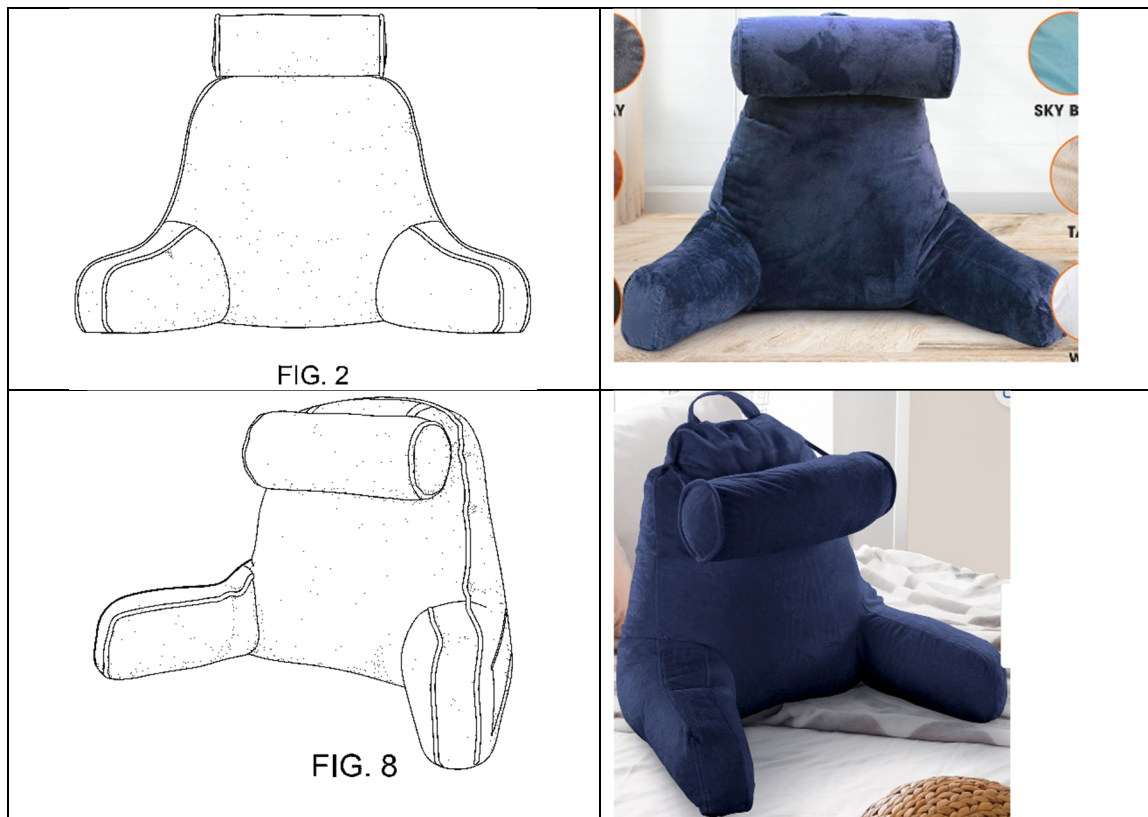
30. The above paragraphs are adopted and incorporated herein by reference as is fully set out in this paragraph.

31. Hit Notion is the owner of the '432 patent.

32. Defendant has willfully infringed and continue to infringe the '432 Design Patent by, *inter alia*, making, using, importing, offering to sell, or selling in

the United States, including in the state of Michigan and within this district, products infringing the ornamental design covered by the '432 Patent in violation of 35 U.S.C § 271.

33. The following chart demonstrates the infringement:



34. Defendant's infringement has damaged and continues to damage and injure Hit Notion. The injury to Hit Notion is irreparable and will continue unless and until defendants are enjoined from further infringement. Plaintiff is entitled to a permanent injunction preventing Defendant from further infringing the '432 patent.

35. Hit Notion is entitled to complete accounting of all revenue and profits derived by Defendant, from the unlawful conduct alleged herein, including without

limitation damages pursuant to 35 U.S.C. § 284 and/or Defendant's total profit pursuant to 35 U.S.C. 289.

36. Defendant has engaged and is engaged in willful and deliberate infringement of the '432 Patent. Such willful and deliberate infringement justifies an increase of three times the damages to be assessed pursuant to 35 U.S.C. 284 and further qualifies this action as an exceptional case supporting an award of reasonable attorney fees pursuant to 35 U.S.C. 285.

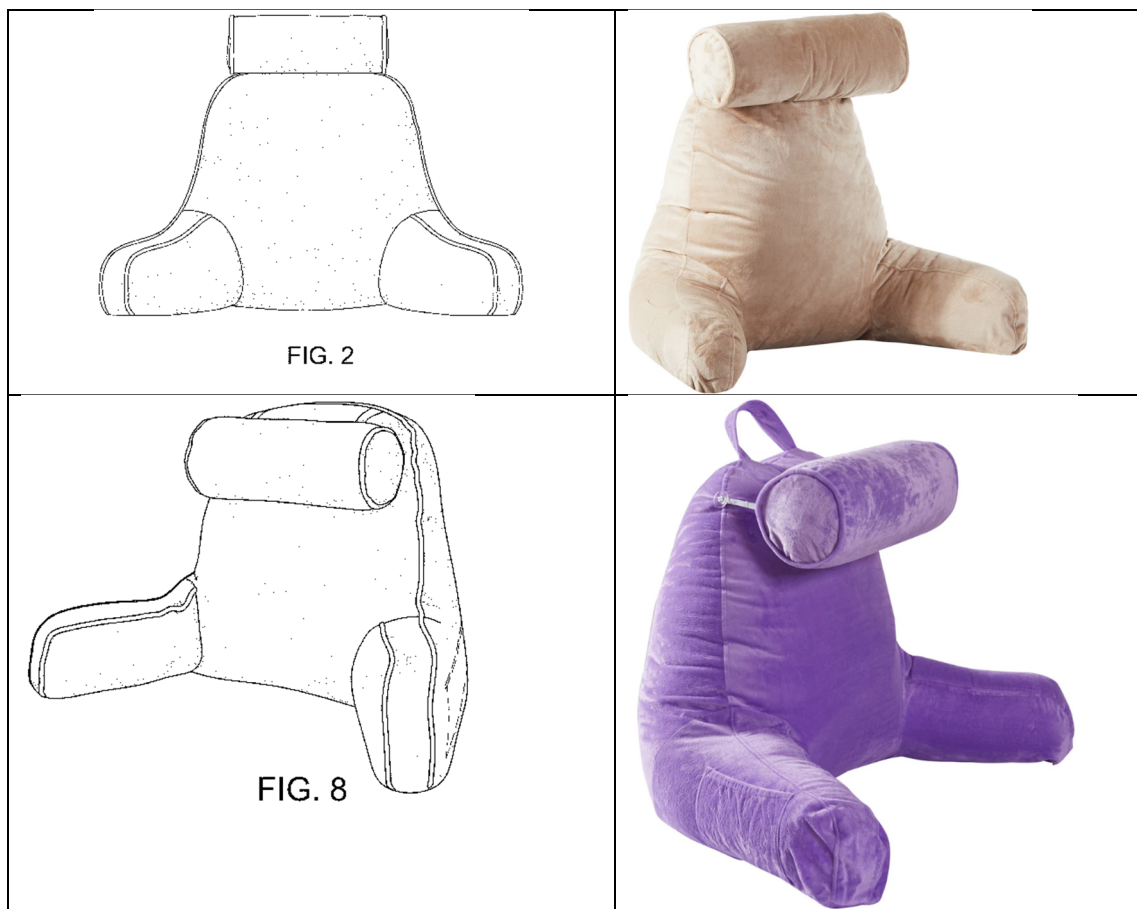
COUNT II
Patent Infringement of the D949,600 Patent

37. The above paragraphs are adopted and incorporated herein by reference as is fully set out in this paragraph.

38. Hit Notion is the owner of the '600 patent.

39. Defendant has willfully infringed and continue to infringe the '600 Design Patent by, *inter alia*, making, using, importing, offering to sale, or selling in the United States, including in the state of New Jersey and within this district, products infringing the ornamental design covered by D949600 Patent in violation of 35 U.S.C § 271.

40. The following chart demonstrates the infringement:



41. Defendant's infringement has damaged and continues to damage and injure Hit Notion. The injury to Hit Notion is irreparable and will continue unless and until Defendant is enjoined from further infringement. Plaintiff is entitled to a permanent injunction preventing Defendant from further infringing the '600 patent.

42. Hit Notion is entitled to complete accounting of all revenue and profits derived by Defendant, from the unlawful conduct alleged herein, including without limitation damages pursuant to 35 U.S.C. § 284 and/or Defendant's total profit pursuant to 35 U.S.C. 289.

43. Defendant has engaged and is engaged in willful and deliberate infringement of the '600 Patent. Such willful and deliberate infringement justifies an increase of three times the damages to be assessed pursuant to 35 U.S.C. 284 and further qualifies this action as an exceptional case supporting an award of reasonable attorney's fees pursuant to 35 U.S.C. 285.

COUNT III
Infringement of a Registered Trademark Under 15 U.S.C. § 1114

44. The above paragraphs are adopted and incorporated herein by reference as is fully set out in this paragraph.

45. Hit Notion owns U.S. Trademark Registration 5,457,970 for the mark HUSBAND PILLOW for use in connection with novelty pillows. (**EXHIBIT C**).

46. Hit Notion has been using the mark in connection with novelty pillows since around August of 2017.

47. Cheer Collection is infringing the mark HUSBAND PILLOW by using it in connection with similar novelty pillows as shown above, for example.

48. Cheer Collection uses the mark at least on the internet, including on its own internet advertising, to refer to novelty pillows to drive sales of its own novelty pillows trading on the HUSBAND PILLOW name owned by Hit Notion and the goodwill of Hit Notion.

49. Cheer Collection's infringement is willful and intentional because Cheer Collection is well aware of Hit Notion's HUSBAND PILLOW brand novelty pillow as a competitor to Hit Notion.

50. Hit Notion is being damaged by Cheer Collection's infringement.

51. Hit Notion is being irreparably harmed by Cheer Collection's infringement.

COUNT IV
Unfair Competition Under 15 U.S.C. § 1125(a)

52. Hit Notion repeats and realleges the foregoing allegations above.

53. Independent from and regardless of the aforementioned registration, Hit Notion owns rights in the mark HUSBAND PILLOW for novelty pillows because Hit Notion has been using the mark in connection with the sale of novelty pillows throughout the United States since around 2017.

54. Cheer Collection is infringing the mark HUSBAND PILLOW by using it in connection with similar novelty pillows, and this amounts to unfair competition under Section 43(a) of the Lanham Act – 15 U.S.C. §1125(a).

55. Cheer Collection uses the mark at least on the internet, including on its own internet advertising, to refer to novelty pillows to drive sales of its own novelty pillows trading on the HUSBAND PILLOW name owned by Hit Notion and the goodwill of Hit Notion.

56. Cheer Collection's infringement is willful and intentional because Cheer Collection is well aware of Hit Notion's HUSBAND PILLOW brand novelty pillow as a competitor to Hit Notion.

57. Hit Notion is being damaged by Cheer Collection's infringement.

58. Hit Notion is being irreparably harmed by Cheer Collection's infringement.

DEMAND FOR RELIEF

Plaintiff respectfully demands that this Court enter judgment:

- a. That Defendant infringed Hit Notion's '432 and '600 Patents;
- b. That the Defendant infringed Hit Notion's trademark rights, including those registered in its U.S. registration;
- c. Preliminarily and permanently enjoining and restraining Defendants, their officers, directors, employees, agents, associates, partners, affiliates, intermediaries, servants, successors and assignees, and any and all persons acting in privity or in concert with the Defendant, from further infringement of the '432 and '600 patents;
- d. Preliminarily and permanently enjoining and restraining Defendants, their officers, directors, employees, agents, associates, partners, affiliates, intermediaries, servants, successors and assignees, and any and all persons acting in

privity or in concert with the Defendant, from further infringement of Hit Notion's trademark rights in HUSBAND PILLOW.

e. Awarding Hit Notion its remedy including Defendant's profits, together with prejudgment interest and costs, and increasing those damages to three times the amount found or assessed as provided by 35 U.S.C. § 284 and/or 35 U.S.C. § 289;

f. Awarding Hit Notion its remedy including Defendant's profits, together with prejudgment interest and costs, and increasing those damages to three times the amount found or assessed as provided by the Lanham Act.

g. Declaring this an exceptional case within the meaning of 35 U.S.C. § 285, and awarding Plaintiff its reasonable attorney's fees and costs and disbursements in this action; and

h. Granting to Plaintiffs such other and further relief as this Court deems reasonable.

JURY TRIAL DEMAND

Plaintiff hereby demands a jury trial of all issues so triable.

Respectfully submitted,

/s/Andrew M. Grove

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Attorney for Plaintiff

Date: April 11, 2024