

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

BTL INDUSTRIES, INC.,

Plaintiff,

v.

**REJUVA FRESH LLC and
POLLY JACOBS,**

Defendants.

Case No. _____

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff BTL Industries, Inc. (“BTL”), by its attorneys, for its Complaint against Rejuva Fresh LLC (“Rejuva Fresh”) and Polly Jacobs (“Jacobs”) (collectively, “Defendants”), alleges as follows:

NATURE OF THIS ACTION

1. This is a civil action by BTL arising out of Defendants’ patent infringement in violation of the patent laws of the United States, 35 U.S.C. § 1 *et seq.*; Defendants’ trademark infringement, unfair competition, false designation of origin, and false advertising under the Lanham Act, 15 U.S.C. §§ 1114, 1125(a); Defendants’ deceptive trade practices under the Maine Deceptive Trade Practices Act, 10 M.R.S.A. § 1200, *et seq.*; and Defendants’ trademark infringement and unfair trade practices under the common law of Maine.

2. BTL and its affiliates pioneered the application of high-intensity, focused electromagnetic technology in non-invasive aesthetic body-contouring devices. In June 2018, BTL launched the ground-breaking EMSCULPT aesthetic body-contouring device that uses this technology in the United States, after the device was cleared by the U.S. Food and Drug Administration (FDA). BTL and its affiliates protected the EMSCULPT device—and the

technology used in the device—with numerous patents and federally registered trademarks and copyrights.

3. BTL and its affiliates continue to pioneer the application of high-intensity, focused electromagnetic technology in non-invasive aesthetic body-contouring devices. In September 2022, BTL launched the EMFACE aesthetic facial-contouring device. Like the EMSCULPT device, BTL protects the EMFACE device—and the technology used in the device—with numerous patents and federally registered trademarks.

4. Defendants promote and sell certain non-invasive body contouring devices in the United States. On information and belief, Defendants have and continue to infringe BTL’s patents directed to body-contouring methods and devices by importing, offering for sale, or selling these devices. On information and belief, Defendants advertise these devices by improperly using BTL’s trademarks, and confusingly similar variations of these trademarks, in their promotional and informational materials for these devices.

PARTIES

5. BTL is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 362 Elm Street, Marlborough, Massachusetts 01752.

6. On information and belief, Rejuva Fresh is a limited liability company organized and existing under the laws of the State of Wyoming. Rejuva Fresh identifies its principal place of business as located at 551 Red Bridge Road, Ellsworth, Maine 04605.

7. On information and belief, Jacobs is an individual—as well as the sole founder, owner, and corporate officer of Rejuva Fresh—and formerly resided at 551 Red Bridge Road, Ellsworth, Maine 04605. On information and belief, continues to use the residence at 551 Red Bridge Road in Ellsworth, Maine as a mailing address.

JURISDICTION AND VENUE

8. This Court has 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, 1121, pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a)-(b).

9. This Court has supplemental jurisdiction over BTL's claims arising under the laws of Maine, pursuant to 28 U.S.C. § 1367(a), because BTL's state-law claims are so related to BTL's federal law claims that they form part of the same case or controversy and derive from a common nucleus of operative fact.

10. On information and belief, this Court has personal jurisdiction over Rejuva Fresh because Rejuva Fresh is a limited liability company whose principal place of business is located in this District and Rejuva Fresh has committed in this District acts of patent infringement under 35 U.S.C. § 271(a), (b), and/or (c) and intends a future course of conduct that includes acts of patent infringement. On information and belief, Rejuva Fresh has purposefully directed the offers for sale, sale, importation, and distribution of certain infringing non-invasive body contouring devices, knowing that they will be sold and used in the State of Maine, and has made the products available for sale in the State of Maine. Further, Rejuva Fresh has advertised and promoted these devices using BTL's trademarks, and confusingly similar variations of these trademarks, in the State of Maine. Rejuva Fresh has committed acts of trademark infringement, and false, misleading, and deceptive advertising under federal and state law, and intends a future course of such conduct in this District. BTL's causes of action arise out of these activities. These acts have led and will lead to foreseeable harm and injury to BTL in the State of Maine. On information and belief, Rejuva Fresh has derived, and will derive, substantial revenue from the sale of these infringing devices in the State of Maine. In addition, this Court has personal jurisdiction over Rejuva Fresh

because this Court has exercised personal jurisdiction over Rejuva Fresh in a different case brought by BTL in this Court—Case No. 1:23-cv-00032-LEW.

11. On information and belief, this Court has personal jurisdiction over Defendant Jacobs because Jacobs has committed in this District acts of trademark infringement and unfair competition under 15 U.S.C. §§ 1114, 1125(a) and intends a future course of such conduct. On information and belief, Jacobs purposefully directed the offers for sale, sale, importation, and distribution of certain infringing non-invasive body contouring devices, knowing that they will be sold and used in the State of Maine, and has made the product available for sale in the State of Maine. Further, Jacobs has advertised and promoted these devices using BTL's trademarks, and confusingly similar variations of these trademarks, in the State of Maine. Jacobs has committed acts of trademark infringement, and false, misleading, and deceptive advertising under federal and state law, and intends a future course of such conduct in this District. BTL's causes of action arise out of these activities. These acts have led and will lead to foreseeable harm and injury to BTL in the State of Maine. On information and belief, Jacobs has derived, and will derive, substantial revenue from the sale of these infringing devices in the State of Maine. In addition, this Court has personal jurisdiction over Jacobs because this Court has exercised personal jurisdiction over Jacobs in a different case brought by BTL in this Court—Case No. 1:23-cv-00032-LEW.

12. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400 because at least one Defendant is a resident of this District and both Defendants are subject to personal jurisdiction in this District.

BACKGROUND

13. BTL specializes in the innovation, development, and sale of equipment and treatments for the aesthetics industry in the United States. BTL and its affiliates developed proprietary technology that uses high-intensity electromagnetic stimulation to tone and strengthen

muscles in targeted areas. BTL applied its technology to develop a series of new and innovative FDA-cleared devices and developed protocols for using the technology for aesthetic therapies. As described above, BTL denotes its products and services that feature this technology with its HIFEM brand and other trademarks.

14. In September 2022, BTL released the EMFACE device (shown below), a standalone, non-invasive, aesthetic facial-contouring device. *See*, Ex. A (BTL Press Release). BTL's patent-protected EMFACE device applies a combination of synchronized radiofrequency and high-intensity facial electromagnetic stimulation (HIFES™). Synchronized radiofrequency heats the dermis to stimulate collagen and elastin production, while HIFES™ selectively contracts facial muscles. BTL has developed specifically configured EMFACE flexible applicators, tailoring each type of applicator to a specific target area.



15. The EMFACE device uses innovative and patent-protected protocols for aesthetic therapies. BTL's proprietary protocols create heat and repetitive muscle contractions that result in a non-invasive method of toning muscle and face sculpting. <https://bodybybtl.com/solutions/emface/>.

16. In March 2022, BTL received clearance from the FDA for its EMFACE device and began to sell the device in the United States for the improvement of facial toning and the reduction of wrinkles. See <https://bodybybtl.com/solutions/emface/>.

17. BTL markets and distributes its non-invasive aesthetic facial-contouring EMFACE device to healthcare professionals, and BTL licenses these healthcare professionals to provide the associated treatment services administered via authentic EMFACE devices that incorporate its proprietary technology, muscle toning protocols, and flexible applicators in the United States.

18. BTL's market success and superior performance are by-products of its technological innovations over the past several decades. BTL continues to implement these innovations today. BTL has protected its investment into its innovations and its brand with patents and trademarks. BTL lists the patents that cover its products, including EMFACE, on its website at www.btlnet.com/patents.

19. There is another, ongoing lawsuit in this Court—Case No. 1:23-cv-00032-LEW—in which BTL is asserting various allegations against Defendants relating to other body-contouring devices. The other, ongoing case involves different patents, trademarks, and accused devices. On information and belief, Defendants recently began offering for sale the devices at issue in this complaint. Given the previously filed lawsuit's current schedule and the distinct intellectual property and accused devices (detailed below) at issue here, BTL believes that it is more reasonable to file this new complaint rather than amend the complaint in the ongoing lawsuit.

A. The Asserted Patent

20. On June 20, 2023, the USPTO duly and lawfully issued U.S. Patent No. 11,679,255 (the “’255 patent”), entitled “Device and Method for Unattended Treatment of a Patient.” A true and correct copy of the ’255 patent is attached hereto as Exhibit B. The ’255 patent was exclusively licensed to BTL, and BTL possesses the exclusive right of recovery for any past, present, or future infringements of the ’255 patent, including equitable relief and damages.

B. BTL’s Trademarks

21. BTL uses and licenses registered and unregistered trademarks and trade dress to market its aesthetic equipment and treatments in the United States including the following federally registered marks (the “BTL Trademarks”):

Reg. No.	Mark	Reg. Date	First Use in Commerce or Priority Date	Goods / Services
5,915,636	EM	Nov. 19, 2019	Jan. 8, 2019	<p>Class 10: Physical therapy devices for treating muscle spasms and pain management; medical apparatus and instruments, in particular apparatus and instruments for the treatment of cellulite, apparatus and instruments for body toning and body shaping, and apparatus and instruments for the removal of fat, circumference reduction; medical devices for use in treating gynecological disorders, pelvic area disorders, bladder disorders and incontinence.</p> <p>Class 44: Health assessment services; medical services, namely, providing treatment for patients with gynecological disorders, pelvic area</p>

Reg. No.	Mark	Reg. Date	First Use in Commerce or Priority Date	Goods / Services
				disorders, bladder disorders and incontinence; gynecological services; urology medical care services; rental of medical apparatus and equipment; cosmetic and plastic surgery; beauty salon services; liposuction and surgical body shaping services; medical services, namely, removal of body cellulite; physical therapy services.
6,206,098	EM	Nov. 24, 2020	July 2018	<p>Class 10: Physical therapy devices for treating muscle spasms and pain management; medical apparatus and instruments, in particular apparatus and instruments for the treatment of cellulite, apparatus and instruments for body toning and body shaping, and apparatus and instruments for the removal of fat, circumference reduction; medical devices for use in treating gynecological disorders, pelvic area disorders, bladder disorders and incontinence.</p> <p>Class 44: Health assessment services; medical services, namely, providing treatment for patients with gynecological disorders, pelvic area disorders, bladder disorders and incontinence; gynecological services; urology medical care services; rental of medical apparatus and equipment; cosmetic and plastic surgery; beauty salon</p>

Reg. No.	Mark	Reg. Date	First Use in Commerce or Priority Date	Goods / Services
				services; liposuction and surgical body shaping services; medical services, namely, removal of body cellulite; physical therapy services.
6,891,006	EMFACE	Nov. 1, 2022	Apr. 4, 2022	Class 10: Medical apparatus generating electromagnetic, magnetic, electrical, radiofrequency or thermal energy for use in skin treatment procedures; medical apparatus and instruments for body toning and body shaping; medical apparatus and instruments for the removal of fat, tightening of skin, reduction of wrinkles, reduction of scars, rejuvenation of skin, increase in muscle volume, increase in number of muscle fibres [sic] and increase in muscle tonus; therapeutic facial masks; facial toning machines for cosmetic use; medical apparatus particularly apparatus for pain management, elimination of muscle spasms.
7,063,232	EMFACE	May 23, 2023	Sept. 27, 2022	Class 44: Medical services; medical services, namely, medical spa services featuring minimally and non-invasive cosmetic therapies.

22. 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 BTL Trademark registrations, obtained from the Trademark Status Document Retrieval database of the United States Patent and Trademark Office,

are attached to this Complaint as Exhibit C. These registrations constitute prima facie evidence of validity of the BTL Trademarks and of BTL's exclusive right to use the BTL Trademarks under 15 U.S.C. § 1057(b).

23. The BTL Trademarks therefore perform an important source-identifying function for BTL's aesthetic body-contouring devices like the EMFACE 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 BTL Trademarks are inherently distinctive and are associated with BTL's innovative aesthetic body-contouring devices that have acquired considerable brand loyalty through BTL's sales and promotion, and direct word-of-mouth promotion by consumers. In addition, BTL has expended significant time, money, and resources in developing, marketing, advertising, promotion, and selling its products and services under its trademarks, including the BTL Trademarks, in the United States. The market reputation and consumer goodwill associated with the BTL Trademarks are of significant value to BTL.

C. Defendants' Unlawful Conduct

24. On information and belief, Defendants recently began competing with BTL in the non-invasive body-contouring industry by manufacturing and selling non-invasive body-contouring devices, which utilize electromagnetic waves to generate muscle contractions. Specifically, Defendants market and sell the EMVisage Facial Therapy Machine Portable and the EMVisage Facial Rejuvenation Machine (the "Accused Devices").

25. On information and belief, the Accused Devices all implement the same or substantially the same technology as the Asserted Patent. The landing pages on Defendants' website for each of the Accused Devices describe the underlying technology for each of the Accused Devices. The landing pages also indicate that the Accused Devices are substantially

identical. *See, e.g.*, Landing Page for the EMVisage Facial Rejuvenation Machine (https://rejuvafresh.com/products/emvisage-facial-therapy-machine?_pos=2&_sid=781a6da4c&_ss=r) (“The technology is simple yet powerful – a synchronized blend of focused high intensity electromagnetic stimulation (FHIES) and radio frequency (RF) energies work in harmony to reduce wrinkles and improve facial contour in just 20 minutes.”); and Landing Page for the EMVisage Facial Therapy Machine Portable (https://rejuvafresh.com/products/emvisage-facial-therapy-machine-portable?_pos=1&_sid=781a6da4c&_ss=r) (“Same innovative skin rejuvenating facial treatment as EMVisage vertical machine.”). On information and belief, the “EMVisage vertical machine” is the EMVisage Facial Rejuvenation Machine.

26. On information and belief, the Accused Devices include or perform each and every limitation of at least one claim of the Asserted Patent, either literally or under the doctrine of equivalents. By making, offering to sell, selling, and/or importing into the United States the Accused Devices, Defendants have directly infringed, and continue to directly infringe, literally or under the doctrine of equivalents, one or more claims of the Asserted Patent under 35 U.S.C. § 271(a).

27. On information and belief, Defendants actively encourage, promote, distribute, provide instruction for, and support the use of the Accused Devices by its customers in a manner that directly infringes, either literally or under the doctrine of equivalents, one or more claims of the Asserted Patent under 35 U.S.C. § 271(b), knowing and intending that Defendants’ customers will commit acts in such a manner as to directly infringe the Asserted Patent.

28. On information and belief, Defendants have been aware of the Asserted Patent and the BTL Trademarks since at least February 23, 2024, when BTL informed Defendants via email of their infringement of the BTL Trademarks and Asserted Patent.

29. On information and belief, Defendants' use of EMVisage is confusingly similar to BTL's EMFACE trademarks. Indeed, on information and belief, "visage" and "face" are synonyms. *See* <https://www.merriam-webster.com/thesaurus/visage>.

30. On information and belief, Jacobs is the moving, conscious, and active force behind Rejuva Fresh's infringing conduct. For example, on information and belief, Jacobs is the sole owner of Rejuva Fresh. Further, on information and belief, Jacobs is the sole founder and sole corporate officer of Rejuva Fresh. Rejuva Fresh's Articles of Incorporation, for instance, represent that Jacobs is the sole "organizer" of Rejuva Fresh and identify her as the "Managing Member" of Rejuva Fresh. *See* Ex. D (Rejuva Fresh Incorporation Documents).

31. On information and belief, Jacobs has also maintained and continues to maintain her former personal residence, still occupied by members of her family, as the base of operations for Rejuva Fresh's infringing activities. According to Rejuva Fresh's corporate filings, Jacobs utilizes 551 Red Bridge Road, Ellsworth, Maine 04605, which, on information and belief, is a private residential address at which family members of Ms. Jacobs reside. *See* Ex. D (Rejuva Fresh Incorporation Documents). Rejuva Fresh's corporate filings, as well as Rejuva Fresh's own website, also represent that Rejuva Fresh's address is the same private residential address in Ellsworth, Maine. *See id.*; *see also* <https://rejuvafresh.com/pages/about-us>. Thus, on information and belief, Jacobs's former personal residence has been and continues to serve as the location where Defendants receive the Accused Devices from wholesalers, warehouses those devices, and ships those devices to purchasing customers. On information and belief, Jacobs's former personal

residence also has and continues to serve as, (1) the location where Defendants receive, process, and execute purchase orders for the Accused Devices submitted by customers and (2) the location where Defendants receive, process, and respond to customer inquiries, complaints, and requests regarding the Accused Devices. By permitting her former personal address to serve as the base of operations for Defendants' sales of the Accused Devices and its customer service-related activities, Jacobs has and continues to actively facilitate Defendants' infringing conduct.

32. On information and belief, Jacobs, as the sole founder, owner, and corporate officer of Rejuva Fresh, is and has been the individual possessing sole decision-making authority to enter into wholesale purchase agreements on behalf of Rejuva Fresh. Thus, on information and belief, Jacobs has and continues to, on Rejuva Fresh's behalf, enter into wholesale purchase agreements with third-parties for the importation of the Accused Devices into the United States.

33. On information and belief, Jacobs, as the sole founder, owner, and corporate officer of Rejuva Fresh, is and has been the individual possessing sole decision-making authority over the content of Rejuva Fresh's technical, information, and promotional materials for the Accused Devices—including the content of the individual landing pages for the Accused Devices on Rejuva Fresh's website and the content of the user manuals and brochures for the Accused Devices, the latter of which are, on information and belief, distributed to customers who purchase the Accused Devices. As alleged in this Complaint, many of these materials use BTL's Trademarks, and confusingly similar variations of BTL's Trademarks, to advertise and promote the Accused Devices. Thus, on information and belief, Jacobs, as the individual with sole decision-making authority over the content of these materials, and in her capacity as the sole founder, owner, and corporate officer of Rejuva Fresh, has and continues to personally approve or direct Rejuva Fresh to use BTL's Trademarks, and confusingly similar variations of BTL's Trademarks, in Rejuva


Fresh's technical, informational, and promotional materials for the Accused Devices to advertise and promote the Accused Devices.

34. On information and belief, Jacobs, as the sole founder, owner, and corporate officer of Rejuva Fresh, is and has been the individual possessing sole decision-making authority over the content of Rejuva Fresh's technical, information, and promotional materials for the Accused Devices.

35. On information and belief, Jacobs has and continues to willfully and maliciously serve as the moving, conscious, and active force behind Rejuva Fresh's infringing conduct—not least because Jacobs has had constructive knowledge of BTL's Trademarks since at least the dates the registrations for these trademarks issued and at least since February 23, 2024, when counsel for BTL informed Defendants via email of their potential infringement of the BTL Trademarks and Asserted Patent. Despite this knowledge, Jacobs has and continues to personally approve or direct Rejuva Fresh to use, without BTL's permission, BTL's Trademarks, and confusingly similar variations of BTL's Trademarks, in connection with the advertising and promotion of the Accused Devices.

36. The images below are representative of Defendants' infringing conduct:

EMVisage Facial Rejuvenation Machine



REJUVA FRESH
EMVisage Facial Rejuvenation Machine
★★★★★ (8)
~~\$8,900.00 USD~~ **\$4,799.95 USD** Sale
Free Shipping for All USA Orders
From \$433.24/mo with [shop](#) [Check your purchasing power](#)

Handles
 3 6

Quantity
- 1 +


[Add to cart](#)

Shipped from USA within 24 Hours

DESCRIPTION

TRAINING & CERTIFICATION

EMVisage Facial Therapy Machine Portable



REJUVA FRESH
EMVisage Facial Therapy Machine Portable
★★★★★ (3)
~~\$7,900.00 USD~~ **\$3,999.95 USD** Sale
Free Shipping for All USA Orders
From \$361.03/mo with [shop](#) [Check your purchasing power](#)

Quantity
- 1 +

[Add to cart](#)

Free Personalized Training Included

DESCRIPTION

TRAINING & CERTIFICATION

SPECIFICATIONS

DELIVERY

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 11,679,255

- 37. BTL repeats and re-alleges paragraphs 1-36 as if fully set forth herein.
- 38. The '255 patent is directed towards a device for treating a patient using radiofrequency energy and pulsed electric current. Exemplary Claim 16 of the '255 patent recites:

A device for treating a patient by radiofrequency energy and a pulsed electric current, the device comprising:

a flexible pad configured to be attached to a body part of a patient, the flexible pad comprising:

a flexible substrate comprising an underside configured to face the body part during a treatment;

an electrode coupled to the underside of the flexible substrate; and

an adhesive coupled to the underside of the flexible substrate and to the electrode, wherein the electrode is configured to be in contact with the body part via the adhesive; wherein the electrode is configured to apply radiofrequency energy to the body part to cause heating of the body part, and

wherein the electrode is configured to apply pulsed electric current to the body part to cause a muscle contraction of a muscle within the body part; and

a control unit configured to control the radiofrequency energy and the pulsed electric current to provide the heating and the muscle contraction of the body part during the treatment,

wherein the body part comprises one of a face, a neck, or a submentum.

39. The Accused Devices include or perform each and every limitation of at least claim 16 of the '255 patent, either literally or under the doctrine of equivalents.

40. Defendants have and continue to directly infringe, literally or under the doctrine of equivalents, at least claim 16 of the '255 patent by making, using, offering to sell, selling, or importing the Accused Devices in the United States.

41. Defendants have induced infringement and continue to induce direct infringement, literally or under the doctrine of equivalents, of at least claim 16 of the '255 patent, by encouraging, promoting, and instructing customers to use the Accused Devices in a manner that directly infringes at least claim 16 of the '255 patent.

42. The Accused Devices include the preamble of claim 16 of the '255 patent, which recites “[a] device for treating a patient by radiofrequency energy and a pulsed electric current.” The landing pages for the Accused Devices represent that the devices treat patients by radiofrequency energy and pulsed electric current. Landing Page for the EMVisage Facial Rejuvenation Machine (https://rejuvafresh.com/products/emvisage-facial-therapy-machine?_pos=2&_sid=781a6da4c&_ss=r); Landing Page for the EMVisage Facial Therapy Machine Portable (https://rejuvafresh.com/products/emvisage-facial-therapy-machine-portable?_pos=1&_sid=781a6da4c&_ss=r).

43. The Accused Devices include the claimed element “a flexible pad configured to be attached to a body part of a patient.” The YouTube video for the EMVisage Facial Therapy Machine Portable (<https://www.youtube.com/watch?v=j2URczNKuXs&t=181s>) shows flexible pads being attached to a body part of a patient, namely a face. The landing page of the EMVisage Facial Rejuvenation Machine (https://rejuvafresh.com/products/emvisage-facial-therapy-machine?_pos=2&_sid=781a6da4c&_ss=r) shows flexible pads attached to a body part of a patient, namely a face.

44. The Accused Devices include the claimed element “a flexible substrate comprising an underside configured to face the body part during a treatment” for the same reasons stated in paragraph 43.

45. The Accused Devices include the claimed element “an electrode coupled to the underside of the flexible substrate.” As stated in paragraphs 42 and 43, the Accused Devices use pulsed electric current and flexible substrates.¹

46. The Accused Devices include the claimed element “an adhesive coupled to the underside of the flexible substrate and to the electrode.” The YouTube video identified in paragraph 43 shows an operator removing a protective coating from the adhesive on the underside of the flexible substrate and adhering the flexible substrate to the patient’s face.²

47. The Accused Devices include the claimed element “wherein the electrode is configured to be in contact with the body part via the adhesive” for the same reasons stated in paragraph 43.

48. The Accused Devices include the claimed element “wherein the electrode is configured to apply radiofrequency energy to the body part to cause heating of the body part” for the same reasons stated in paragraph 42.

49. The Accused Devices include the claimed element wherein the electrode is configured to apply pulsed electric current to the body part to cause a muscle contraction of a muscle within the body part” for the same reasons stated in paragraph 42 and 43 (YouTube video showing muscle contractions), and as stated on the landing page of the EMVisage Facial Rejuvenation Machine (https://rejuvafresh.com/products/emvisage-facial-therapy-machine?_pos=2&_sid=781a6da4c&_ss=r) (“...the machine delivers tens of thousands of electrical pulses, which stimulate the involuntary muscular movements.”).

¹ On information and belief, a reasonable opportunity for further investigation and discovery will show that the Accused Devices include an electrode coupled to the underside of the flexible substrate.

² On information and belief, a reasonable opportunity for further investigation and discovery will show that the Accused Devices include an adhesive coupled to the underside of the flexible substrate and to the electrode.

50. The Accused Devices include the claimed element “a control unit configured to control the radiofrequency energy and the pulsed electric current to provide the heating and the muscle contraction of the body part during the treatment.” The YouTube video in paragraph 43 shows an operator using a control unit to control the radiofrequency and the electric current. The landing pages for the Accused Devices show, on information and belief, the control units for the Accused Devices. See (<https://www.merriam-webster.com/thesaurus/visage>) and (https://rejuvafresh.com/products/emvisage-facial-therapy-machine-portable?_pos=2&_sid=050abd8fd&_ss=r). A reasonable opportunity for further investigation and discovery will show that the EMVisage Facial Rejuvenation Machine includes a control unit configured to control the radiofrequency energy and the pulsed electric current to provide the heating and the muscle contraction of the body part during the treatment.

51. The Accused Devices include the claimed element “wherein the body part comprises one of a face, a neck, or a submentum.” The YouTube video in paragraph 43 shows the machine being used on a patient’s face. The landing page of the EMVisage Facial Rejuvenation Machine (https://rejuvafresh.com/products/emvisage-facial-therapy-machine?_pos=2&_sid=781a6da4c&_ss=r) shows the flexible pads attached to a patient’s face.

52. Defendants’ direct infringement of the ’255 patent has been and continues to be willful. On information and belief, Defendants have been aware of the ’255 patent since before the filing of this Complaint and has infringed the ’255 patent willfully and deliberately and with knowledge that such conduct violates 35 U.S.C. § 271.

53. Defendants’ infringement of the ’255 patent has damaged, and continues to damage, BTL in an amount yet to be determined, of at least a reasonable royalty and/or lost profits that BTL would have made but for Defendants’ infringing acts as provided by 35 U.S.C. § 284.

54. BTL will suffer irreparable harm unless Defendants are enjoined from infringing the '255 patent.

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

55. BTL repeats and re-alleges paragraphs 1-36 as if fully set forth herein.

56. BTL owns exclusive rights to the BTL Trademarks in the United States. The United States trademark registrations for the BTL Trademarks are in full force and effect.

57. Defendants, without BTL's permission or consent, have used and continue to use the BTL Trademarks in connection with the advertising, promotion, sale, and offer for sale of the Accused Devices.

58. On information and belief, Defendants' unauthorized use of the EM trademarks to advertise and promote the Accused Devices, has caused and is likely to cause confusion, mistake, and deception among the public as to the origin and quality of these devices; their affiliation, connection, or association with BTL, and the sponsorship or approval by BTL of these devices.

59. On information and belief, Defendants' unauthorized use of the EMVisage marks—which are confusingly similar variations of BTL's EM and EMFACE trademarks—to advertise and promote at least the EMVisage Facial Rejuvenation Machine and the EMVisage Facial Therapy Machine Portable has caused and is likely to cause confusion, mistake, and deception among the public as to the origin and quality of these devices; their affiliation, connection, or association with BTL; and the sponsorship or approval by BTL of these devices.

60. On information and belief, Defendants have had knowledge of BTL's rights in the BTL Trademarks since before the filing of this Complaint. Under 15 U.S.C. § 1072, Defendants have had constructive knowledge of the BTL's rights in the EM trademark since at least November 19, 2019—the date the registration for the EM trademark first issued to BTL. Under 15 U.S.C. § 1072, Defendants have had constructive knowledge of the BTL's rights in the EMFACE

trademarks since at least the dates the registration for each of these trademarks first issued to BTL. *See supra* ¶ 21. Moreover, a straightforward Google search for “BTL” and “trademarks” lists the BTL Trademarks as associated with BTL. <https://www.trademarkia.com/company-btl-industries-inc-3618568-page-2-2/>. Finally, prior to the filing of this Complaint, Defendants have known that BTL is the owner of the BTL Trademarks and the Asserted Patent because in an email dated February 23, 2024, counsel for BTL notified counsel for Defendants of its intent to assert the BTL Trademarks and the Asserted Patent against Defendants.

61. The knowing and intentional nature of the acts set forth herein renders this an exceptional case under 15 U.S.C. § 1117(a).

62. Defendants’ trademark infringement has damaged, and continues to damage, BTL in an amount yet to be determined, but of at least the profits that Defendants have made as a result of their infringement, plus the cost of this action. Defendants’ trademark infringement is the direct and proximate cause of BTL’s damages.

63. BTL is entitled to an injunction restraining Defendants, its officers, agents, and employees, and all persons acting in concert with Defendants, from engaging in any further such acts in violation of federal trademark law.

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

64. BTL repeats and re-alleges paragraphs 1-36 as if fully set forth herein.

65. Defendants’ unauthorized, intentional, and willful use of the BTL Trademarks to promote, market, offer for sale, and sell the Accused Devices has and is likely to confuse, mislead, or deceive as to the origin and quality of these devices, their association with BTL and BTL’s EMFACE device, and the sponsorship or approval by BTL of this device.

66. Defendants' unauthorized, intentional, and willful use of the BTL Trademarks to promote, market, offer for sale, and sell the Accused Devices misrepresents the nature, characteristics, qualities, and geographic origin of these devices.

67. Defendants' actions constitute a willful violation of 15 U.S.C. § 1125.

68. Defendants' actions described above have injured and, if permitted to continue, will continue to harm BTL's business and the goodwill associated with its brand, as well as BTL's reputation for providing high-quality and safe body-contouring aesthetic devices and procedures subject to strict quality control standards that have been cleared by the FDA.

69. BTL has no adequate remedy at law, and if Defendants' actions are not enjoined, BTL will continue to suffer irreparable harm to its reputation and the goodwill of the BTL brand.

**COUNT IV: VIOLATION OF THE MAINE UNIFORM DECEPTIVE TRADE
PRACTICES ACT UNDER 10 M.R.S.A. § 1211 *ET SEQ.***

70. BTL repeats and re-alleges paragraphs 1-36 as if fully set forth herein.

71. Defendants have, without BTL's permission or consent, intentionally and willfully used the BTL Trademarks, confusingly similar variations of the BTL Trademarks to promote, market, offer for sale, and sell the Accused Devices for the same reasons stated in Counts II and III of this Complaint.

72. Defendants' unauthorized, intentional, and willful use of the BTL Trademarks, confusingly similar variations of the BTL Trademarks to promote, market, offer for sale, and sell the Accused Devices has caused and is likely to cause consumer confusion for the same reasons stated in Counts II and III of this Complaint.

73. Defendants' unauthorized, intentional, and willful use of the BTL Trademarks, confusingly similar variations of the BTL Trademarks to promote, market, offer for sale, and sell

the Accused Devices therefore constitutes an unfair trade practice in violation of the Maine Uniform Deceptive Trade Practices Act, 10 M.R.S.A. §1211, *et seq.*

74. Defendants' actions are deliberate and willful and have been done with the intention of trading upon the valuable goodwill created by BTL.

75. BTL has sustained injury, damage, and loss in Maine based on Defendants' actions.

76. Pursuant to 10 M.R.S.A. §1213, BTL is entitled to recover its actual damages, plus reasonable attorneys' fees and costs.

**COUNT V: COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR
COMPETITION**

77. BTL repeats and re-alleges paragraphs 1-36 as if fully set forth herein.

78. BTL owns exclusive rights to the BTL Trademarks in the United States. The United States trademark registration for the BTL Trademarks are in full force and effect.

79. For reasons stated in Counts II and III of this Complaint, Defendants have, without BTL's permission or consent, intentionally and willfully used the BTL Trademarks, confusingly similar variations of the BTL Trademarks to promote, market, offer for sale, and sell the Accused Devices.

80. For reasons stated in Counts II and III of this Complaint, Defendants' actions have caused and are likely to cause consumer confusion.

81. As a proximate result of Defendants' actions, BTL has suffered and will continue to suffer damages.

82. BTL has no adequate remedy at law and will continue to suffer irreparable harm unless Defendants are enjoined.

83. By reason of Defendants' unlawful conduct as alleged above, BTL has been substantially injured and is entitled to damages and Defendants' profits attributable to its unlawful conduct, which are presently indeterminate, and the costs of this action.

PRAYER FOR RELIEF

WHEREFORE BTL requests entry of judgment against Defendants as follows:

A. A judgment that Defendants have infringed one or more claims of the Asserted Patent in violation of 35 U.S.C. § 271(a)-(c);

B. An award of damages not less than \$125,000 for infringement of the Asserted Patent, with said damages to be trebled because of the intentional and willful nature of Defendants' infringement, as provided by 35 U.S.C. § 284;

C. A judgment that Defendants have willfully infringed one or more claims of the Asserted 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 Defendants, their officers, directors, employees, agents, and all persons acting in concert with them, from infringing the Asserted Patent;

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

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

H. An award of damages for Defendants' infringement of the BTL Trademarks, including Defendants' 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 and willful nature of Defendants' infringement, as provided by 15 U.S.C. § 1117(b);

I. A judgment that this case is “exceptional” under 15 U.S.C. § 1117(a) and an award of reasonable attorneys’ fees;

J. A judgment that Defendants have violated Maine’s Deceptive Trade Practices Act, 10 M.R.S.A. § 1200, *et seq.*;

K. A judgment that Defendants have infringed the BTL Trademarks and committed unfair trade practices in violation of Maine common law;

L. A judgment that Defendant Polly Jacobs’ conduct in violating the BTL Trademarks was willful and malicious;

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

N. An award of any and all of Defendants’ profits arising from the foregoing acts;

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

P. Permanent injunctive relief enjoining Defendants from:

- i. using the BTL Trademarks or any reproductions, copies, or colorable imitations thereof, 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 Defendants' 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 the BTL Trademarks and damaging BTL's goodwill.
- Q. An award of BTL's costs and expenses in this action; and
- R. For such other relief as the Court may deem just and proper.

JURY DEMAND

Under Rule 38 of the Federal Rules of Civil Procedure, Plaintiff BTL Industries, Inc. respectfully demands a trial by jury of any issues triable of right by a jury.

Dated: April 23, 2024

Respectfully submitted,

/s/ Kyle M. Noonan

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- and -

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