

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Global Trademarks, Inc.,

Plaintiff,

v.

Xilin Zhao; Liming Zhao; Jun Zhang;
Cupshe, LLC; Sparky Worldwide Inc.;
Nanjing Kapeixi Network Technology
Co., Ltd.; Nanjing Niuli Garment
Trading Co., Ltd; DOES 1-10

Defendants.

Civil Action No.

JURY TRIAL DEMANDED

COMPLAINT AND JURY DEMAND

Plaintiff Global Trademarks, Inc. (“Global Trademarks” or “Plaintiff”) for its Complaint against Defendants Xilin Zhao; Liming Zhao; Jun Zhang; Cupshe, LLC; Sparky Worldwide Inc.; Nanjing Kapeixi Network Technology Co., Ltd; Nanjing Niuli Garment Trading Co., Ltd; and DOES 1-10 (collectively, “Defendants”), alleges as follows, upon actual knowledge with respect to itself and its own acts, and upon knowledge, information, and belief as to all other matters:

NATURE OF THE ACTION

1. This is a civil action for patent infringement under the Patent Act, 35 U.S.C. § 271, *et seq.*, based on Defendants' unauthorized commercial manufacture, distribution, use, offer for sale, and/or sale of swimwear in violation of Global Trademarks' rights. Specifically, Defendants copied Global Trademarks':

- “Jena”-style patented swimsuit design; and
- “Criss-Cross Escape”-style patented swimsuit design.

Defendants' conduct shows a pattern of willful bad-faith copying to deceive consumers and unfairly profit from Global Trademarks' innovative designs and from the goodwill, trust, and recognition that Global Trademarks has long labored to build. Plaintiff seeks equitable and monetary relief from Defendants' multiple and flagrant violations of its valuable intellectual property rights.

PARTIES

Plaintiff

2. Plaintiff Global Trademarks is a Nevada corporation with its principal place of business located at 610 Uhler Rd., Easton, PA 18040.

Defendants

3. On information and belief, Defendant Xilin Zhao is an individual residing in the United States of America with a business address at 5 Stoney Hill Place, Livingston, NJ 07039-3719. On information and belief, Mr. Xilin Zhao is a

principal of at least one of the entity Defendants, namely, Cupshe, LLC; Nanjing Kapeixi Network Technology Co., Ltd.; Sparky Worldwide Inc.; Nanjing Niuli Garment Trading Co., Ltd; and DOES 1-10 (the “Entity Defendants”).

4. On information and belief, Defendant Liming Zhao is an individual residing in the United States of America with a business address at 5 Stoney Hill Place, Livingston, NJ 07039-3719. On information and belief, Mr. Liming Zhao is the founder and Chief Executive Officer of at least one of the Entity Defendants.

5. On information and belief, Defendant Jun Zhang is an individual residing in the United States of America with a business address at 5 Stoney Hill Place, Livingston, NJ 07039-3719. On information and belief, Mr. Zhang is a principal of at least one of the Entity Defendants.

6. On information and belief, Defendant Cupshe, LLC (“Cupshe”) is a New Jersey limited liability company with its principal place of business located at 5 Stoney Hill Pl., Livingston, NJ 07039-3719. On information and belief, Defendant Cupshe is responsible in part or in whole for the swimsuits available for sale on the www.cupshe.com website and on Cupshe stores located on online marketplaces and e-commerce websites. On information and belief, Liming Zhao is the founder and Chief Executive Officer of Cupshe.

7. On information and belief, Nanjing Kapeixi Network Technology Co., Ltd (“Kapeixi”) is a company organized and existing under the laws of the country

of China, with its principal place of business located at Room 7315, Bldg 7, 23 Huashen Ave., Yuhuatai District, Nanjing City, Jiangsu Province, China 210012.

On information and belief, Defendant Kapeixi is responsible in part or in whole for the swimsuits available for sale on the www.cupshe.com website and on the Cupshe stores located on online marketplaces and e-commerce websites. On information and belief, Liming Zhao is also an officer of Kapeixi.

8. Defendant Kapeixi is the owner of record of various “CUPSHE” trademarks registered with the United States Patent and Trademark Office (“USPTO”).

9. Defendant Kapeixi has also represented in *Nanjing Kapeixi Network Technology Co., Ltd v. Shein Fashion Group, Inc. et al.*, U.S.D.C. Central District of California, Case no. 2:18-cv-08942-DSF-SK, that it does business as “Cupshe.”

10. On information and belief, Defendant Sparky Worldwide Inc. (“Sparky”) is a California corporation with its principal place of business located at 757 S. Alameda Street, Suite 270, Los Angeles, CA 90021. Defendant Sparky is the listed seller of “Cupshe”-branded swimsuits on the Walmart marketplace. On information and belief, Defendant Sparky uses a Bordentown, New Jersey warehouse to ship “Cupshe”-branded swimsuits ordered from the Walmart marketplace. Liming Zhao is listed as the Chief Executive Officer, Secretary, and Chief Financial Officer of Sparky.

11. On information and belief, Nanjing Niuli Garment Trading Co., Ltd (“Niuli”) is a company organized and existing under the laws of the country of China, with its principal place of business located at Room 805, Floor 8, Building B, China Merchants High Speed Rail Plaza, No. 9, Jiangnan Rd., Dongshan Street, Jianging District, Nanjing City, Jiangsu Province, China 210000. Defendant Niuli is the listed seller of “Cupshe”-branded swimsuits on the Amazon marketplace. On information and belief, Defendant Niuli ships “Cupshe”-branded swimsuits to Amazon warehouses and/or fulfillment centers located in this District. On information and belief, Liming Zhao is also an officer of Niuli.

12. Plaintiff does not currently know the true names and capacities of DOES 1 through 10, inclusive, and therefore sues them by such fictitious names. Plaintiff will amend these claims and allege their true names and capacities when ascertained. On information and belief, each of the DOES is responsible, in some manner, for the injuries and damages to Plaintiff as alleged herein, and Plaintiff’s damages were proximately caused by said DOES.

13. On information and belief, the Entity Defendants are affiliated or related entities that jointly run the “Cupshe”-branded swimwear and apparel business.

JURISDICTION AND VENUE

14. This Court has original subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 (federal question) and 1338 (patent infringement).

15. This Court has personal jurisdiction over Defendants Xilin Zhao, Liming Zhao, and Jun Zhang (the “Individual Defendants”) because, on information and belief, the Individual Defendants reside and do business in this judicial District. In the alternative, this Court has specific jurisdiction over the Individual Defendants because, on information and belief, the Individual Defendants have purposefully availed themselves of this Court’s jurisdiction by conducting business activities in this state and by selling the accused products from and to this state.

16. This Court has personal jurisdiction over Defendant Cupshe because it is incorporated and resides in the State of New Jersey with its principal places of business in this judicial District.

17. This Court has personal jurisdiction over Defendant Kapeixi either through the principles of general jurisdiction or specific jurisdiction. On information and belief, general jurisdiction exists because Defendant Kapeixi maintains continuous and systematic contacts with New Jersey through its close relationship with Cupshe, LLC, which is headquartered in New Jersey, and also because Defendant Kapeixi ships out products ordered from www.cupshe.com

from Bordentown, New Jersey. Defendant Kapeixi has also represented under penalty of perjury that it uses the “CUPSHE” trademarks in United States commerce as evident in documentation filed with the USPTO for U.S. Reg. Nos. 5,888,458 and 5,025,329.

18. On information and belief, specific jurisdiction also exists because Defendant Kapeixi purposefully availed itself to the privilege of conducting activities within this state, as it has a close relationship with Cupshe, LLC and/or a distributor shipping Cupshe-branded products from Bordentown, New Jersey. On information and belief, Defendant Kapeixi also sells its products to New Jersey residents. On information and belief, Defendant Kapeixi specifically ships the accused products in this case from Bordentown, New Jersey. Given the importance of Defendant Kapeixi’s operations and sales in the United States, it is further reasonable and fair for it to be subject to jurisdiction in this District.

19. This Court has personal jurisdiction over Defendant Sparky either through the principles of general jurisdiction or specific jurisdiction. On information and belief, general jurisdiction exists because Defendant Sparky maintains continuous and systematic contacts with New Jersey through its close relationship with Cupshe, LLC, which is headquartered in New Jersey, and also because Defendant Sparky ships out “Cupshe”-branded products from Bordentown, New Jersey.

20. On information and belief, specific jurisdiction also exists because Defendant Sparky purposefully availed itself to the privilege of conducting activities within this state, as it has a close relationship with Cupshe, LLC and/or a distributor shipping Cupshe-branded products from Bordentown, New Jersey. On information and belief, Defendant Sparky also sells its products to New Jersey residents. On information and belief, Defendant Sparky specifically ships the accused products in this case from Bordentown, New Jersey. Given the importance of Defendant Sparky's operations and sales in New Jersey, it is further reasonable and fair for it to be subject to jurisdiction in this District.

21. This Court has personal jurisdiction over Defendant Niuli either through the principles of general jurisdiction or specific jurisdiction. On information and belief, general jurisdiction exists because Defendant Niuli maintains continuous and systematic contacts with New Jersey through its close relationship with Cupshe, LLC, which is headquartered in New Jersey, and also because Defendant Niuli ships "Cupshe"-branded products to Bordentown, New Jersey and Amazon warehouses and/or fulfillment centers in this District.

22. On information and belief, specific jurisdiction also exists because Defendant Niuli purposefully availed itself to the privilege of conducting activities within this state, as it has a close relationship with Cupshe, LLC and/or a distributor shipping Cupshe-branded products from Bordentown, New Jersey. On

information and belief, Defendant Niuli also sells its products to New Jersey residents. On information and belief, Defendant Niuli specifically ships the accused products in this case to Bordentown, New Jersey, or other warehouses and/or fulfillment centers in this District. Given the importance of Defendant Niuli's operations and sales in New Jersey, it is further reasonable and fair for it to be subject to jurisdiction in this District.

23. Venue is proper in this judicial District under 28 U.S.C. § 1400(b) as to the Individual Defendants. On information and belief, the Individual Defendants have committed acts of infringement of the patents at issue in this District by offering for sale infringing swimwear and have a regular and established place of business in this District.

24. Venue is proper in this judicial District under 28 U.S.C. § 1400(b) as to Defendant Cupshe. On information and belief, Defendant Cupshe has committed acts of infringement of the patents at issue in this District by offering for sale infringing swimwear and has a regular and established place of business in this District and/or is incorporated in this District.

25. Venue is proper in this judicial District under 28 U.S.C. § 1400(b) as to Defendant Sparky. On information and belief, Defendant Sparky has committed acts of infringement of the patents at issue in this District by offering for sale

infringing swimwear and has a regular and established place of business in this District.

26. Venue is proper in this judicial District under 28 U.S.C. § 1391(c)(3) as to Defendants Kapeixi and Niuli, as defendants that are not residents of the United States may be sued in any judicial district.

27. Venue is further proper under 28 U.S.C. § 1391 as the Defendants may be found or transact business in this District and a substantial part of the events giving rise to the Plaintiff's claims occurred and are continuing to occur in this District.

**GLOBAL TRADEMARKS AND ITS POPULAR, SUCCESSFUL,
AND WELL-KNOWN SWIMWEAR DESIGNS**

28. With its roots tracing back to the 1930's, Global Trademarks and its related companies—doing business under the “Swim USA” umbrella, including but not limited to A&H Sportswear, Co. and Mainstream Swimsuits, Inc. (collectively, “Swim USA”)—combine to form one of the most successful and admired makers of swimwear. Swim USA's innovative figure-flattering swimsuit designs have enjoyed tremendous commercial success, widespread recognition, and a loyal customer following.

29. Swim USA executes its cutting-edge design efforts from its own studios in Los Angeles, New York City, and Pennsylvania. These studios house a

team of designers and technical designers, specializing in all categories of swimwear.

30. Swim USA also executes all its own product development, with in-house pattern-makers, and in-house sample making using state-of-the-art product development centers in the United States.

31. Swim USA executes all its own color and print development at its in-house textile design group in New York City, with an extensive library of print art. This team is made up of expert trend stylists, colorists, print/CAD designers, hand painters, and technical engineers.

32. Swim USA's proprietary swimwear and apparel brands include but are not limited to MIRACLESUIT® and MAGICSUIT®.

33. Swim USA offers its fashion swimwear for a diverse customer base of all ages, in a broad range of price points. Its products are offered, promoted, and sold through a network of dynamic national retailers across the United States, including Nordstrom, Saks Fifth Avenue, Macy's, Dillard's, Belk, J.C. Penney, Kohl's, Target, and Walmart; well-known specialty stores, like Everything But Water and Soma; and online retailers, like Amazon.com, Zappos.com, and LandsEnd.com.

34. Swim USA has a major market share of the traditional women's swimwear market in the United States and is one of the top 5 swimwear

manufacturers in the United States. Its customers recognize it as the industry leader in swimwear fit technology and innovation.

35. Swim USA’s swimwear line has included the “Jena”-style swimsuits since at least 2011, and the “Criss Cross Escape”-style swimsuits since at least 2016. Each has a unique, recognizable, and elegant design, as shown below:



Jena Swimsuit



Criss Cross Escape Swimsuit

36. Swim USA’s intellectual property is owned by Global Trademarks, who has a long tradition of protecting its cutting-edge designs and brands by obtaining and enforcing its design patent and trademark rights throughout the

United States. Global Trademarks has exclusively licensed the design patents at issue here to Swim USA.

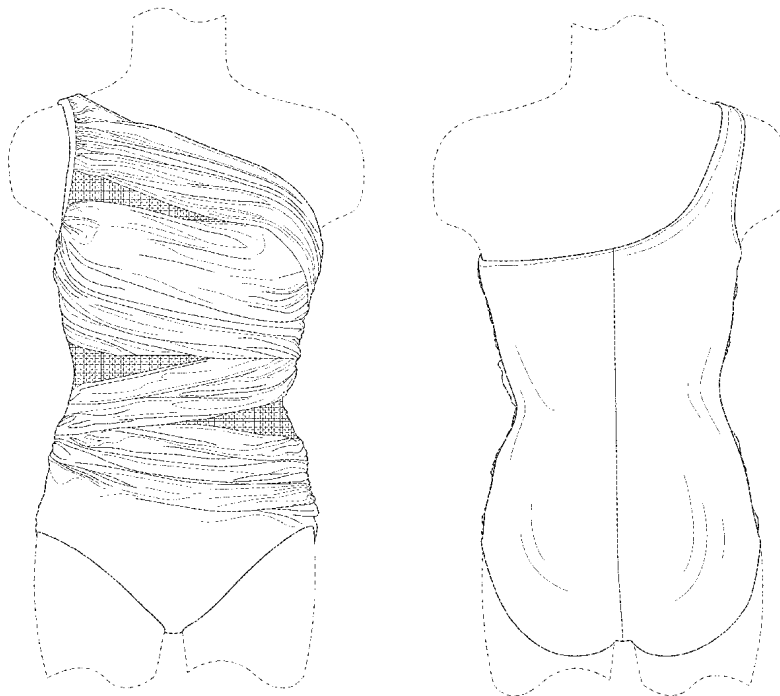
THE ASSERTED DESIGN PATENTS

37. For the design patents at issue, the Swim USA designers filed design patent applications to protect their innovative swimsuit designs and eventually assigned their rights in those patents to Global Trademarks.

38. U.S. Design Patent No. D730,620 S for “Swimsuit” (the “’620 Patent”) was duly and lawfully issued by the USPTO on August 6, 2013 to Global Trademarks. The ’620 Patent is titled “Swimsuit.” Edward James Tucker is listed as the inventor. The patent issued from U.S. Design Patent Application No. 29/428,667 (the “’667 Application”), which was filed on August 2, 2012. On July 13, 2012, Mr. Tucker assigned his rights in the design claimed in the ’620 Patent to Global Trademarks. The assignment was recorded with the USPTO and is located at reel/frame number 028705/0806.

39. The ’620 Patent carries a presumption of validity under 35 U.S.C. § 282(a) and is enforceable.

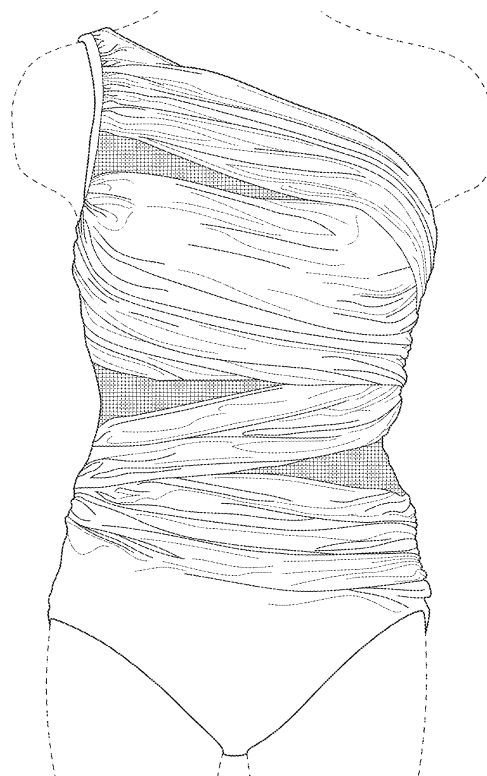
40. The ’620 Patent claims a new, original, and ornamental design for a swimsuit, as shown in the figure of the ’620 Patent, reproduced in part below and shown in **Exhibit 1a**, with the broken lines of equal length forming no part of the claimed design:



41. Swim USA, under license from Global Trademarks, manufactures multiple products, including the MIRACLESUIT® “Jena”-style swimsuits, which embody the claimed design of the '620 Patent:



Jena Swimsuit



The '620 Patent

42. Global Trademarks complies with the marking and notice requirements of 35 U.S.C. § 287. Below is an example notice placed on the sewn-in labels of the MIRACLESUIT® “Jena”-style swimsuits:

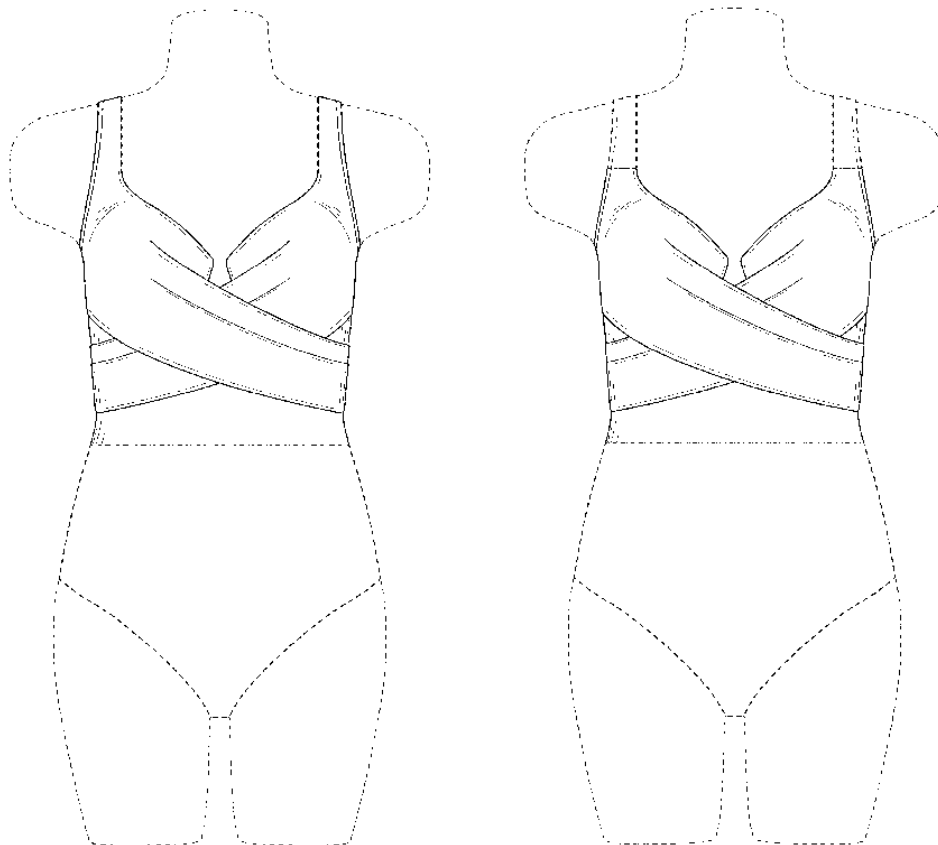


43. U.S. Design Patent No. D866,123 S for “Swimsuit” (the “’123 Patent”) was duly and lawfully issued by the USPTO on November 12, 2019 to Global Trademarks. The ’123 Patent is titled “Swimsuit.” Mark Waldman is listed as the sole inventor. The patent issued from U.S. Design Patent Application No. 29/624,447 (the “’447 Application”), which was filed on November 1, 2017. On October 31, 2017, Mr. Waldman assigned his rights in the design claimed in the ’447 Patent to Global Trademarks. The assignment was recorded with the USPTO and is located at reel/frame number 044002/0197.

44. The ’123 Patent carries a presumption of validity under 35 U.S.C. § 282(a) and is enforceable.

45. The ’123 Patent claims a new, original, and ornamental design for a swimsuit, as shown in the figure of the ’123 Patent, reproduced in part below and

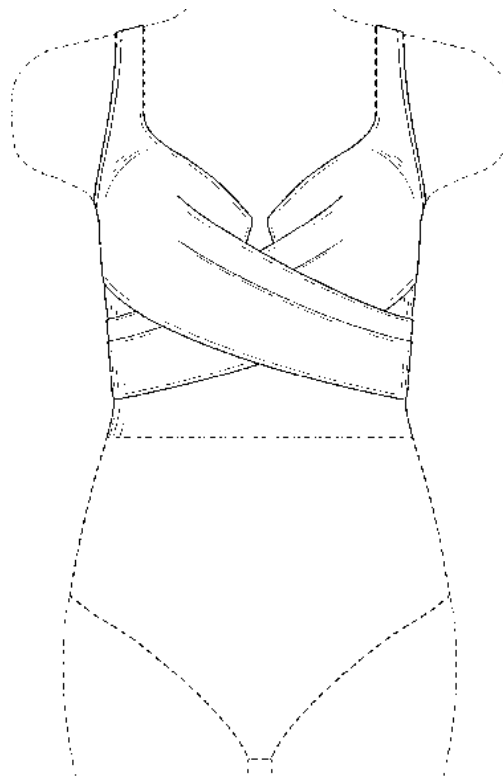
shown in **Exhibit 2a**, with the broken lines of equal length forming no part of the claimed design:



46. Swim USA, under license from Global Trademarks, manufactures multiple products, including the MIRACLESUIT® “Criss-Cross Escape”-style swimsuit, which embodies the claimed design of the '123 Patent:

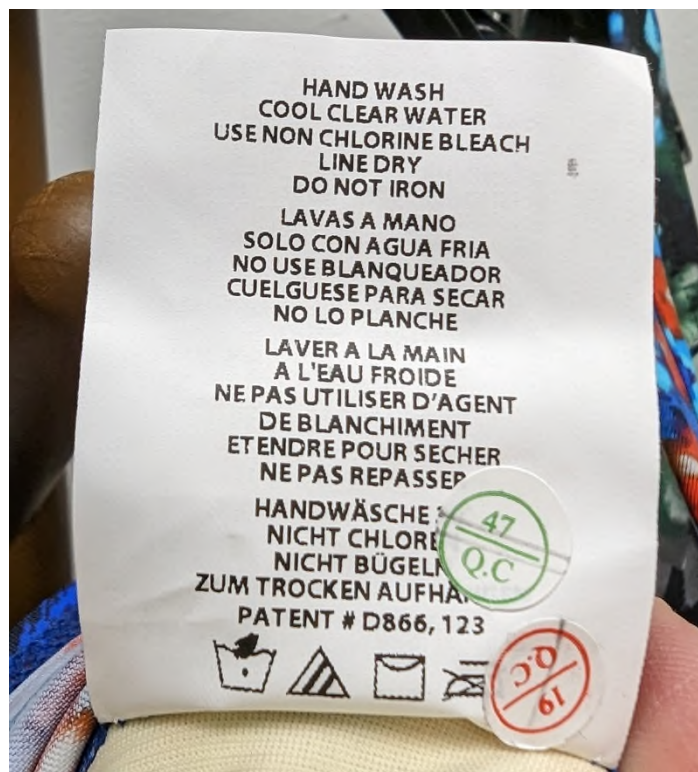


Criss-Cross Escape Swimsuit



The '123 Patent

47. Global Trademarks complies with the marking and notice requirements of 35 U.S.C. § 287. Below is an example notice placed on the sewn-in labels of the MIRACLESUIT® “Criss-Cross Escape”-style swimsuits:

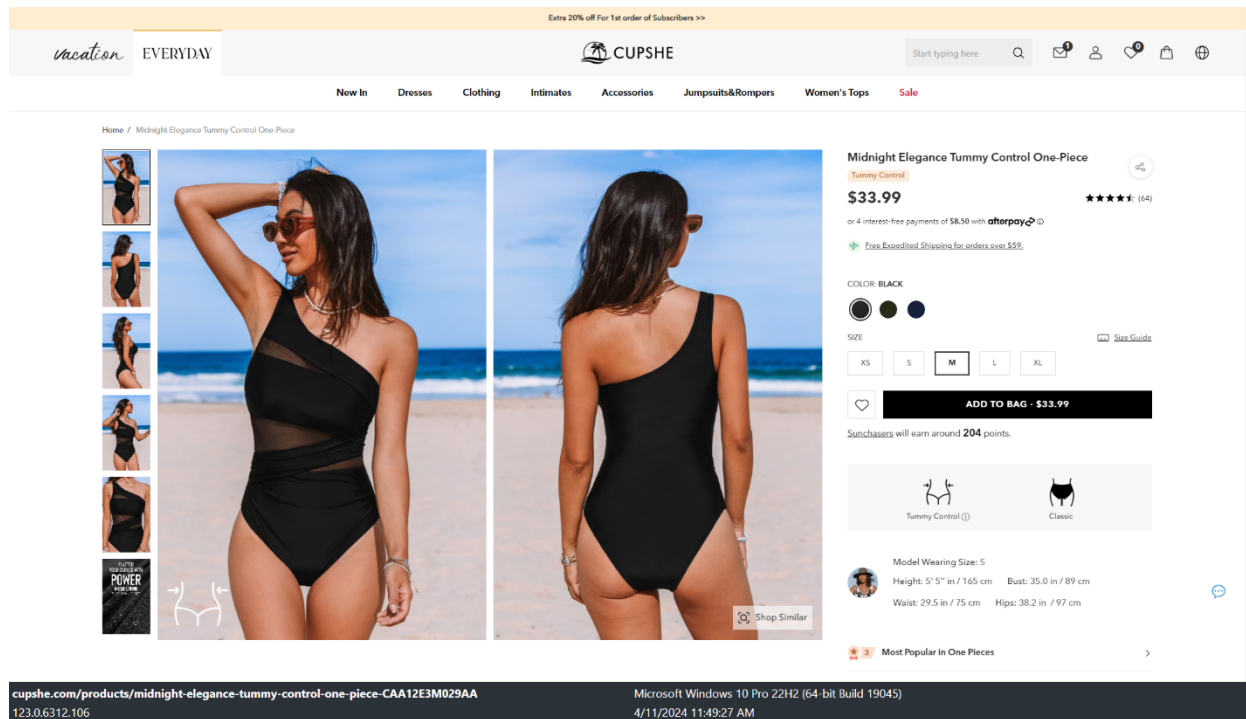


DEFENDANTS' WRONGFUL ACTS

48. Without Plaintiff's authorization or approval, Defendants have been offering, promoting, and selling knock-off swimsuits that infringe Plaintiff's design patents.

49. As shown in the photographs below, Defendants have been making, offering, promoting, and selling knock-off swimsuits using the "Jena"-style swimsuit top design, as claimed in the '620 Patent, through their "Midnight Elegance Tummy Control One-Piece" product at

<https://www.cupshe.com/products/midnight-elegance-tummy-control-one-piece-CAA12E3M029AA>:



50. Additional variations of Defendants' products include but may not be limited to the "Olive One-Shoulder Tummy Control Cut-Out One-Piece," located at <https://www.cupshe.com/products/olive-one-shoulder-tummy-control-cut-out-one-piece-CAA12E4B051RR>; and the "Navy One-Shoulder Tummy Control Cut-Out One-Piece," located at <https://www.cupshe.com/products/navy-one-shoulder-tummy-control-cut-out-one-piece-CAA12E4B052UU>, as shown below:

vacation EVERYDAY CUPSHE

Home / Olive One-Shoulder Tummy Control Cut-Out One-Piece

Olive One-Shoulder Tummy Control Cut-Out One-Piece **\$33.99** (64)

Free Expedited Shipping for orders over \$59.

COLOR: OLIVE

SIZE: XS S **M** L XL

Pre-order. Estimated to ship by 2024/04/13

ADD TO BAG - \$33.99

Sunchasers will earn around 204 points.

Model Wearing Size: S
Height: 5'5" in / 165 cm Bust: 35.0 in / 89 cm
Waist: 29.5 in / 75 cm Hips: 38.2 in / 97 cm

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vacation EVERYDAY CUPSHE

Home / Navy One-Shoulder Tummy Control Cut-Out One-Piece

Navy One-Shoulder Tummy Control Cut-Out One-Piece **\$33.99** (64)

Free Expedited Shipping for orders over \$59.

COLOR: NAVY

SIZE: XS S **M** L XL

Pre-order. Estimated to ship by 2024/04/20

ADD TO BAG - \$33.99

Sunchasers will earn around 204 points.

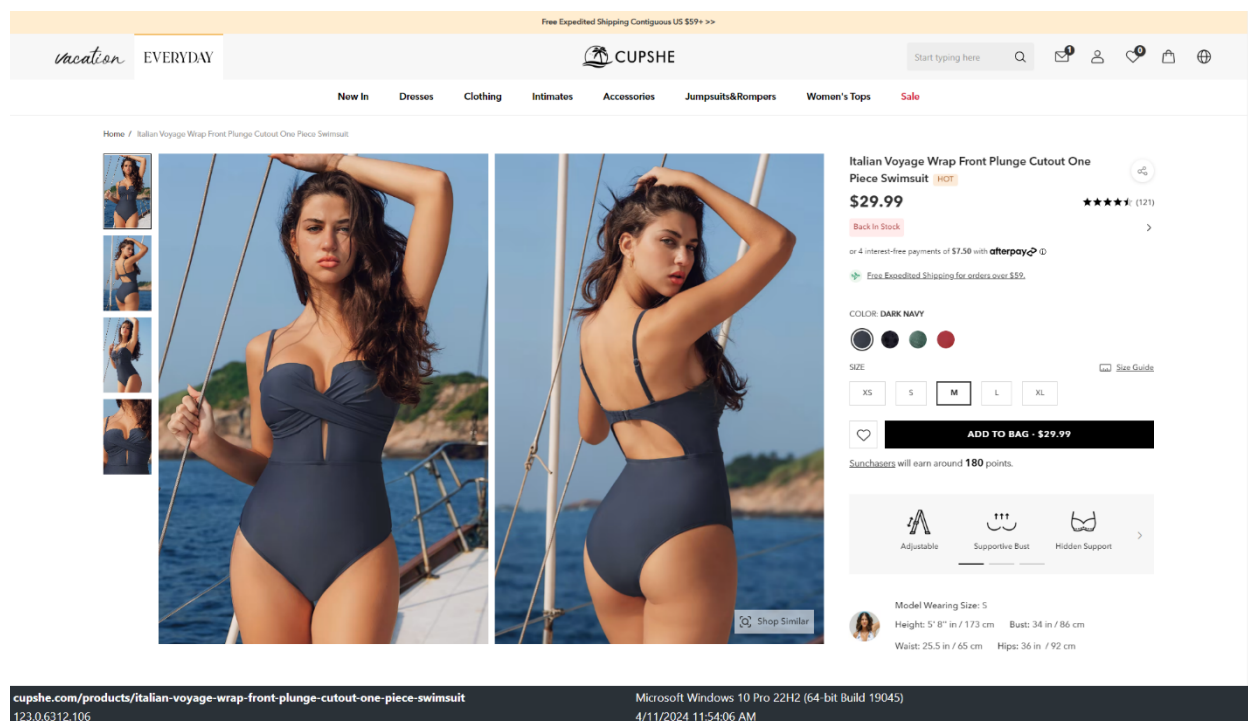
Model Wearing Size: XS
Height: in / 171 cm Bust: 33.1 in / 84 cm
Waist: 25.6 in / 65 cm Hips: 37.0 in / 94 cm

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51. Defendants’ “Midnight Elegance Tummy Control One-Piece” and variations are available for sale at least on the www.cupshe.com website as well as

Amazon (for example, <https://www.amazon.com/CUPSHE-Swimsuit-Control-Asymmetric-Shoulder/dp/B0CTMQF42R/>).

52. Defendants have also been making, offering, promoting, and selling knock-off swimsuits using the “Criss-Cross Escape”-style swimsuit design, as claimed in the ’123 Patent, through their “Italian Voyage Wrap Front Plunge Cutout One Piece Swimsuit” product at <https://www.cupshe.com/products/italian-voyage-wrap-front-plunge-cutout-one-piece-swimsuit:>



53. Additional variations of Defendants’ products include but may not be limited to the “Alegria Solids Back Tie Wrapped One Piece,” located at <https://www.cupshe.com/products/alegr-a-solids-back-tie-wrapped-one-piece-swimsuit-CAA12E3M014RR>; the “Alegria Wrap Front Plunge Cutout One Piece

Swimsuit,” located at <https://www.cupshe.com/products/alegr-a-wrap-front-plunge-cutout-one-piece-swimsuit-CAA12E3M011AA>; and the “Red Sweetheart Wrap Cut-Out One-Piece,” located at <https://www.cupshe.com/products/red-sweetheart-wrap-cut-out-one-piece--CAA12E4B032DD>, as shown below:

The screenshot shows the product page for the 'Alegria Solids Back Tie Wrapped One Piece Swimsuit' on the CUPSHE website. The page features a main image of a model wearing the dark green swimsuit, a smaller image of the swimsuit laid flat with the text 'Flocking Fabrics', and a detailed product information panel. The price is listed as \$36.99, with options for interest-free payments and expedited shipping. The color is 'DARK GREEN' and the size is 'M'. The page also includes a 'Shop Similar' button and a 'Most Popular in One Pieces' section.

vacation EVERYDAY CUPSHE

Home / Alegria Solids Back Tie Wrapped One Piece Swimsuit

Alegria Solids Back Tie Wrapped One Piece Swimsuit
\$36.99
or 4 interest-free payments of \$9.25 with afterpay® ID
Free Expedited Shipping for orders over \$29

COLOR: DARK GREEN

SIZE: XS S M L XL

ADD TO BAG - \$36.99

Surchasers will earn around 222 points.

Model Wearing Size: XS
Height: 5' 4.5" in / 164 cm Bust: 31 in / 79 cm
Waist: 24 in / 61 cm Hips: 35 in / 89 cm

Most Popular in One Pieces

cupshe.com/products/alegr-a-solids-back-tie-wrapped-one-piece-swimsuit-CAA12E3M014RR
123.0.6312.106

Microsoft Windows 10 Pro 22H2 (64-bit Build 19045)
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vacation EVERYDAY CUPSHE

Home / Alegría Wrap Front Plunge Cutout One Piece Swimsuit

Alegría Wrap Front Plunge Cutout One Piece Swimsuit \$36.99

Free Expedited Shipping for orders over \$59.

COLOR: NAVY

SIZE: XS S M L XL

ADD TO BAG - \$36.99

Sunchasers will earn around 222 points.

Adjustable Supportive Bust Hidden Support

Model Wearing Size: Height: 5'6,5" in / cm Bust: 32 in / cm Waist: 24 in / cm Hips: 34 in / cm

Most Popular in One Pieces

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vacation EVERYDAY CUPSHE

Home / Red Sweetheart Wrap Cut-Out One-Piece

Now Red Sweetheart Wrap Cut-Out One-Piece \$33.99

Free Expedited Shipping for orders over \$59.

COLOR: RED

SIZE: XS S M L XL

ADD TO BAG - \$33.99

Sunchasers will earn around 204 points.

Adjustable Hidden Support Elongated

Most Popular in One Pieces

Description

Introducing the Red Sweetheart Wrap Cut-Out One-Piece. This stunning swimsuit exudes confidence and allure with its flattering sweetheart neckline and chic wrap detailing. The cut-out accents add a touch of flirtatious charm, while the vibrant red color ensures you stand

123.0.6312.106 Microsoft Windows 10 Pro 22H2 (64-bit Build 19045) 4/11/2024 12:01:55 PM

54. Defendants' "Italian Voyage Wrap Front Plunge Cutout One Piece Swimsuit" and variations are available for sale at least on the www.cupshe.com

website as well as Amazon (for example, <https://www.amazon.com/CUPSHE-Swimsuit-Bathing-Wrapped-Swimwear/dp/B0CNXPBBGR/>).

55. In general, Defendants' target customer would be a consumer who is interested in buying a women's swimsuit. This typical customer would at least find Defendants' products online through Defendants' own website (as described below) and through Amazon.com. Defendants' products at issue originally retailed for between \$25.00 to \$40.00.

INJURY TO GLOBAL TRADEMARKS AND THE PUBLIC

56. By copying Plaintiff's patented designs, Defendants have unfairly benefited from Plaintiff's and Swim USA's hard-earned innovations. As a result of the undeniable similarities between the Swim USA's "Jena" and "Criss Cross Escape"-style swimsuit products, the public is likely to mistake and/or confuse Defendants' products with Swim USA's licensed products and Plaintiff's patented designs.

57. As a direct and proximate result of Defendants' infringements, Plaintiff has suffered and will continue to suffer irreparable loss of income, profits, and goodwill and Defendants have and will continue to unfairly acquire income, profits, and goodwill.

58. Defendants' acts, as described above, have damaged and irreparably injured and, if permitted to continue, will further damage and irreparably injure Plaintiff and its federally registered design patents.

59. Plaintiff has no adequate remedy at law.

60. On information and belief, Defendants have acted knowingly, willfully, in reckless disregard of Plaintiff's rights, and in bad faith.

COUNT I
DESIGN PATENT INFRINGEMENT OF THE '212 PATENT
UNDER 35 U.S.C. §§ 271, 289

61. Global Trademarks repeats and incorporates by reference all prior allegations above.

62. In the eye of the ordinary observer, familiar with the relevant prior art, giving such attention as a purchaser of Defendants' "Midnight Elegance Tummy Control One-Piece" and variations would usually give, the design of the '620 Patent and the design of Defendants' "Midnight Elegance Tummy Control One-Piece" and variations are substantially the same, such that the ordinary observer would be deceived into believing that the design of Defendants' "Midnight Elegance Tummy Control One-Piece" and variations are same as the design of the '620 Patent.

<i>The '620 Patent</i>	<i>Defendants' Design (See Exhibit 1b)</i>
 <p data-bbox="446 997 552 1039">FIG. 1</p>	
 <p data-bbox="446 1806 552 1848">FIG. 2</p>	

<i>The '620 Patent</i>	<i>Defendants' Design (See Exhibit 1b)</i>
 <p data-bbox="451 1003 548 1037">FIG. 3</p>	
 <p data-bbox="451 1812 548 1845">FIG. 4</p>	

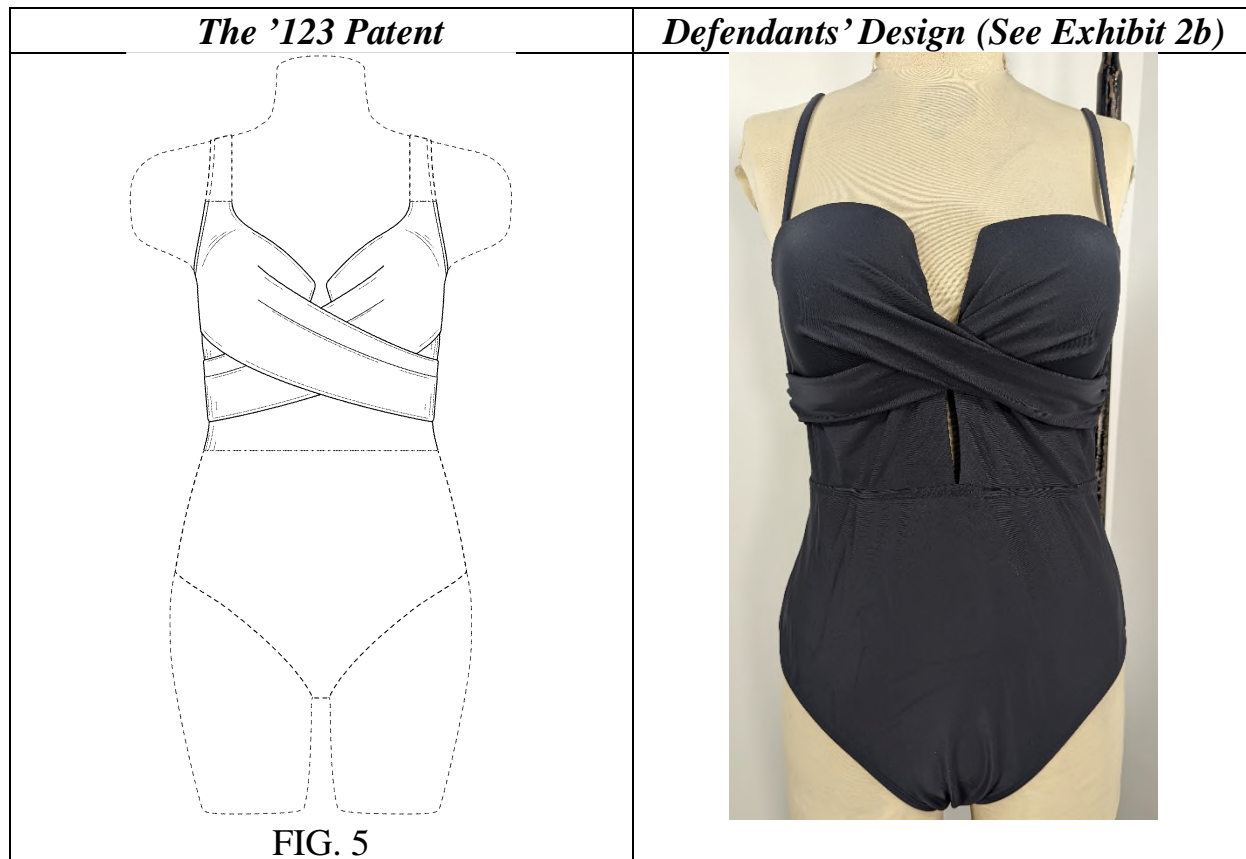
63. Defendants have directly infringed and continue to infringe the '620 Patent by making, using, selling, and offering for sale in the United States, and/or importing into the United States the "Midnight Elegance Tummy Control One-Piece" and variations embodying the design of the '620 Patent, without authority or license from Global Trademarks. Additionally, Defendants have infringed and continue to infringe the '620 Patent by applying the patented design, or a colorable imitation thereof, to an article of manufacture, such as the "Midnight Elegance Tummy Control One-Piece," for the purpose of sale and/or by selling, offering, or exposing for sale an article of manufacture, such as the "Midnight Elegance Tummy Control One-Piece," to which the design of the '620 Patent or a colorable imitation thereof has been applied. Defendants' actions violate 35 U.S.C. §§ 271(a) and 289.

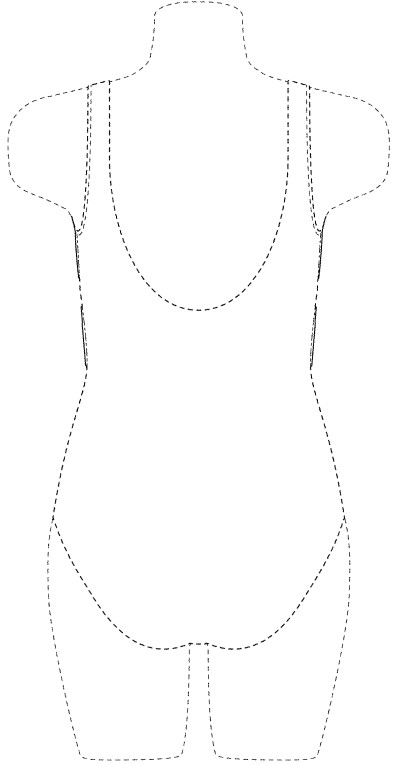

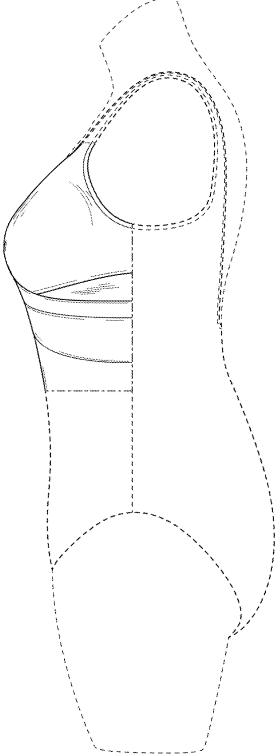

COUNT II
DESIGN PATENT INFRINGEMENT OF THE '123 PATENT
UNDER 35 U.S.C. §§ 271, 289

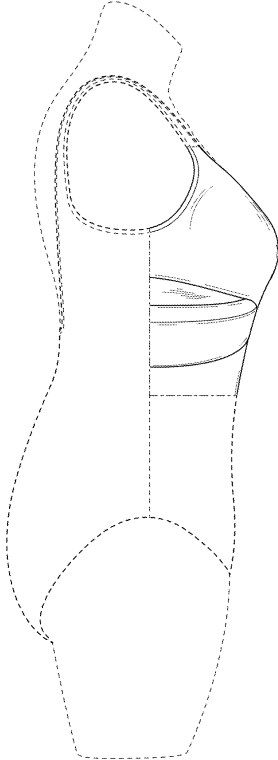

64. Global Trademarks repeats and incorporates by reference all prior allegations above.

65. In the eye of the ordinary observer, familiar with the prior art, giving such attention as a purchaser of Defendants' "Italian Voyage Wrap Front Plunge Cutout One Piece Swimsuit" and variations would usually give, the design of the '123 Patent (second embodiment) and the design of Defendants' "Italian Voyage

Wrap Front Plunge Cutout One Piece Swimsuit” and variations are substantially the same, such that the ordinary observer would be deceived into believing that the design of Defendants’ “Italian Voyage Wrap Front Plunge Cutout One Piece Swimsuit” is same as the design of the ’123 Patent (second embodiment).



<i>The '123 Patent</i>	<i>Defendants' Design (See Exhibit 2b)</i>
 <p data-bbox="451 1003 548 1037">FIG. 6</p>	
 <p data-bbox="451 1806 548 1839">FIG. 7</p>	

<i>The '123 Patent</i>	<i>Defendants' Design (See Exhibit 2b)</i>
 <p data-bbox="446 1003 544 1033">FIG. 8</p>	

66. Defendants have directly infringed and continue to infringe the '123 Patent by making, using, selling, and offering for sale in the United States, and/or importing into the United States the “Italian Voyage Wrap Front Plunge Cutout One Piece Swimsuit” and variations embodying the design of the '123 Patent (second embodiment), without authority or license from Global Trademarks. Additionally, Defendants have infringed and continue to infringe the '123 Patent (second embodiment) by applying the patented design, or a colorable imitation thereof, to an article of manufacture, such as the “Italian Voyage Wrap Front Plunge Cutout One Piece Swimsuit,” for the purpose of sale and/or by selling,

offering, or exposing for sale an article of manufacture, such as the “Italian Voyage Wrap Front Plunge Cutout One Piece Swimsuit,” to which the design of the ’123 Patent (second embodiment) or a colorable imitation thereof has been applied. Defendants’ actions violate 35 U.S.C. §§ 271(a) and 289.

REQUEST FOR RELIEF

WHEREFORE, in consideration of the foregoing, Plaintiff respectfully requests that this Court enter judgment in its favor on each and every claim for relief set forth above and award it the following relief, including, but not limited to:

- A. A judgment that Defendants’ use the Jena and Criss-Cross Escape designs infringes and has infringed the claimed design of each of the Patents-in-Suit;
- B. An order permanently:
 - i. restraining and enjoining Defendants; their officers, agents, servants, attorneys, and employees; and any other persons who are in active concert or participation with any of them, from further acts of infringing the Patents-in-Suit including, but not limited to, making, importing, promoting, offering, or exposing for sale, or selling products with designs substantially the same as the

claimed design of the Patents-in-Suit, as explained above,
until after the expiration date of the Patents-in-Suit;

- ii. requiring each and all Defendants to recall any and all articles of manufacture to which the design of the Patents-in-Suit has been applied and thereafter destroy or turn over to Plaintiff all such recalled products; and
- iii. requiring each and all Defendants to deliver to Plaintiff for impoundment and destruction all photographs, documents, patterns, and technical specifications for any and all articles of manufacture to which the design of the Patents-in-Suit has been applied for destruction.

C. A judgment against Defendants for Defendants' total profits for any article of manufacture to which the design of the Patents-in-Suit has been applied in an amount to be determined at trial as provided under 35 U.S.C. § 289 and in light of Plaintiff's marking under 35 U.S.C. § 287 and for money damages sustained as a result of Defendants' infringement of the Patents-in-Suit in an amount to be determined at trial as provided under 35 U.S.C. § 284 and in light of Plaintiff's marking under 35 U.S.C. § 287, whichever is elected by Plaintiff at trial;

- D. An accounting of Defendants' profits pursuant to 35 U.S.C. § 289;
- E. Costs and reasonable attorneys' fees relating to this action pursuant to 35 U.S.C. § 285;
- F. Any other and further relief as the Court may deem just.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, Plaintiff respectfully demands trial by jury on all issues so triable by jury in this action.

Dated: June 26, 2024

Respectfully submitted,

/s/ Jennifer A. Guidea
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