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6 Attorney for Plaintiff
7 Omnisec Solutions LLC

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF NEW YORK**

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11 Omnisec Solutions LLC
12 Plaintiff,
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14 v.
15 Simply Mossy Art Inc. d/b/a Mossify
16 Defendant.

Case No. 1:24-cv-05450

COMPLAINT

JURY TRIAL DEMANDED
(PLAINTIFF DEMANDS A JURY TRIAL FOR ALL CLAIMS SO TRIABLE)

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20 Plaintiff, Omnisec Solutions LLC, by and through its undersigned attorney, as and for its
21 Complaint against Defendant, Simply Mossy Art Inc d/b/a Mossify, alleges as follows:

22 **PARTIES**

- 23 1. Plaintiff Omnisec Solutions LLC (“Plaintiff”) is a limited liability company existing under
24 the laws of the State of Wyoming and having an address of 7548 Preston Road, #160, Suite 141,
25 Frisco, Texas 75034.
26 2. Upon information and belief, Defendant Simply Mossy Art Inc. is a corporation existing
27 under the federal laws of Canada and having an address of Unit 21 – 90 Nolan Court, Markham,
28 Ontario, Canada L3R 4L9.

1 3. Upon information and belief, Defendant Simply Mossy Art Inc. was founded by Lucas
2 Antonio Picciolo.

3 4. Defendant Simply Mossy Art Inc. does business as “Mossify” and is hereinafter referred to
4 as “Mossify”.

5 5. Defendant Mossify filed an intellectual property complaint with Amazon.com and against
6 Plaintiff, which caused the deactivation of Plaintiff’s Amazon.com product pages and necessitated
7 the filing of this action.

8 **JURISDICTION AND VENUE**

9 6. This Court has subject matter jurisdiction pursuant to at least 28 U.S.C. §§ 1331 and 1338.

10 7. This action seeks in part declaratory relief under 28 U.S.C. §§ 2201 and 2202.

11 8. This court has personal jurisdiction over Mossify at least because Mossify has voluntarily
12 consented to this Court’s personal jurisdiction by filing a prior action in this district regarding alleged
13 infringement of the same Asserted Design Patent (U.S. Design Patent No. D989,355). See Simply
14 Mossy Art Inc. vs. The Individuals, Partnerships, and Unincorporated Associations Identified on
15 Schedule “A”, Case No. 1:23-cv-06434 (S.D.N.Y. Filed July 25, 2023).

16 9. Venue is proper in this judicial district pursuant to at least 28 U.S.C. § 1391(b)(c) & (c)(3).

17 **BACKGROUND**

18 10. In their natural rainforest environment, exotic “epiphyte” plants (e.g. monstera, pothos,
19 philodendron, and orchids) grow on the surfaces of other plants (most often including trees) and
20 use “aerial roots” to collect water and nutrients.

21 11. While epiphytes can make great house plants, steps must be taken to mimic their natural
22 environments, specifically to support the plants and to accommodate their aerial roots.

23 12. Approximately 100 years ago, homeowners learned that plant supports can be used with
24 house plants to mimic the epiphyte’s natural environment and allow a surface for the aerial roots to
25 attach to for water collection.

1 13. One of the earliest epiphyte plant supports was the MOSSER LEE Totem Pole Plant
2 Support, which dates back to as early as 1932:



18 <https://www.amazon.com/dp/B00OBZ28QE>

19 <https://www.mosserlee.com/product/totem-pole-plant-supports/>

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1 14. Since at least as early as 2008, the SUPERMOSS brand has offered bendable and flexible
2 moss vines that can support plants. See, e.g.:



22 <https://www.amazon.com/gp/customer-reviews/R24LOS45229H83/>

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1 15. Dating back to at least 2018, numerous individuals have created “do it yourself” (“DIY”)
2 epiphyte plant supports and published videos on YouTube describing the same. See, e.g.:



23 <https://www.youtube.com/watch?v=w5CRIUjSBLA>

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1 16. Since at least as early as May 19, 2020, the DIY epiphyte plant supports have included
2 flexible and bendable iterations. See, e.g.:



23 [https://www.reddit.com/r/houseplants/comments/gmt3t0/diy_flexible_moss_pole_couldnt_find_on](https://www.reddit.com/r/houseplants/comments/gmt3t0/diy_flexible_moss_pole_couldnt_find_on_e_so_i_made/)
24 [e_so_i_made/](https://www.reddit.com/r/houseplants/comments/gmt3t0/diy_flexible_moss_pole_couldnt_find_on_e_so_i_made/)

1 **Mossify**

2 17. Upon information and belief, Defendant Mossify sold plant support products containing
3 moss as early as May 18, 2020.

4 18. The plant support products sold by Mossify appear substantially identical to the following
5 image:



16 19. As of the filing of this action, Mossify sells several varieties of plant supports containing
17 moss or coir.

18 **Patent**

19 20. On or about May 26, 2021, patent agent Matthew Graff filed a design patent application on
20 behalf of Mossify, bearing Application Serial No. 29/785,592 and identifying Lucas Antonio
21 Picciolo as the sole inventor.

22 21. To illustrate the allegedly patentable design in the above referenced design patent
23 application, Mr. Graff submitted what he classified as “black and white line drawings”.

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1 22. In actuality, the drawings submitted with the above referenced design patent application were
2 black and white photographs with broken lines added to disclaim the base and stem. See, e.g.:



FIG. 8

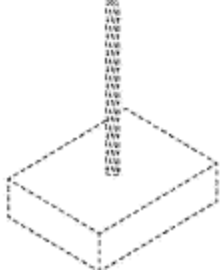


FIG. 1

1 23. On or about August 20, 2021, Mossify alleged that it was the assignee of all right, title, and
2 interest in the above referenced design patent application, and thereafter pursued prosecution and
3 issuance of the Asserted Design Patent.

4 24. As of the filing of this action, Mossify purports to be the current sole owner of U.S. Design
5 Patent No. D989,355 (“Asserted Design Patent”).

6 25. During prosecution of the Asserted Design Patent, Mossify self-identified the PISTILS
7 NURSEY Moss Pole as prior art:



20 <https://pistilsnursery.com/products/moss-pole>

21 26. The PISTILS NURSEY Moss Pole is identified as prior art in the “References Cited” section
22 of the Asserted Design Patent.

23 27. Mossify, Mr. Graff, and Lucas Antonio Piccolo were and are aware that the PISTILS
24 NURSEY Moss Pole was offered for sale and publicly known before the effective filing date of the
25 Asserted Design Patent. See, e.g., [https://pistilsnursery.com/blogs/journal/looking-for-larger-
26 leaves-try-a-moss-pole](https://pistilsnursery.com/blogs/journal/looking-for-larger-leaves-try-a-moss-pole)

27 28. The Asserted Design Patent issued as novel, non-obvious, and patentable over the PISTILS
28 NURSEY Moss Pole.

1 29. During prosecution of the Asserted Design Patent, Mossify self-identified the TROFOLIA
2 Moss Poles as prior art.

3 30. The TROFOLIO Moss Poles were available in various sizes, with green bands positioned
4 around them. See, e.g.,



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14 <https://trofolia.com/products/trofolia-straight-up-robust-moss-pole>

15 31. The TROFOLIA Moss Poles are identified as prior art in the “References Cited” section of
16 the Asserted Design Patent.

17 32. Mossify, Mr. Graff, and Lucas Antonio Piccolo were and are aware that the TROFOLIA
18 Moss Poles were offered for sale and publicly known before the effective filing date of the Asserted
19 Design Patent.

20 33. The Asserted Design Patent issued as novel, non-obvious, and patentable over the
21 TROFOLIA Moss Pole.

1 34. During prosecution of the Asserted Design Patent, Mossify self-identified the SUPERMOSS
2 Moss Poles as prior art.

3 35. The SUPERMOSS Moss Poles were available in various configurations. See, e.g.:



20 <https://trofolia.com/products/trofolia-straight-up-robust-moss-pole>

21 36. The SUPERMOSS Moss Poles are identified as prior art in the “References Cited” section
22 of the Asserted Design Patent.

23 37. Mossify, Mr. Graff, and Lucas Antonio Piccolo were and are aware that the SUPERMOSS
24 Moss Poles were offered for sale and publicly known before the effective filing date of the Asserted
25 Design Patent.

26 38. The Asserted Design Patent issued as novel, non-obvious, and patentable over the
27 SUPERMOSS Moss Poles.

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1 39. Since at least as early as 2008, the SUPERMOSS brand has also offered bendable and
2 flexible moss vines that can support plants. See, e.g.:



22 <https://www.amazon.com/gp/customer-reviews/R24LOS45229H83/>

23 40. The Asserted Design Patent issued as purportedly novel, non-obvious, and patentable over
24 the SUPERMOSS moss vines.

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1 41. During prosecution of the Asserted Design Patent, the USPTO cited to the AIGEL plant
2 support:



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18 <https://www.amazon.com/dp/B0BBRCBMFJ>

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20 42. Mossify did not object to the AIGEL plant support as prior art.

21 43. The AIGEL plant support is identified as prior art in the “References Cited” section of the
22 Asserted Design Patent.

23 44. The application issued as novel, non-obvious, and patentable over the AIGEL plant support.
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1 45. During prosecution, the USPTO cited to the COMOSSIR coir poles as prior art:



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13 <https://www.amazon.com/dp/B0B288YY32>

14 46. Mossify did not object to the COMOSSIR coir poles as prior art.

15 47. The COMOSSIR coir poles are identified as prior art in the “References Cited” section of
16 the Asserted Design Patent.

17 48. The Asserted Design Patent issued as novel, non-obvious, and patentable over the
18 COMOSSIR coir poles.

1 **Accused Products**

2 49. Over the past 100 years, numerous iterations of plant supports have been created. The plant
3 supports typically comprise (1) a central stem/support (e.g. plastic, wood, bamboo, aluminum,
4 steel, PVC, etc.); (2) an exterior medium (e.g. coconut coir/fiber, sphagnum moss, forest moss,
5 etc.); and (3) a securing means (e.g. mesh, netting, bands, twine, string, jute, etc.).

6 50. Plaintiff sells K-BRAND plant supports with coir fiber secured to a flexible and bendable
7 central support by neatly and equally spaced cordage, said plant supports bearing ASINs
8 B0BTT1N8XK and B0C8TZSD82 (collectively “Accused Products”). See, e.g.:



1 51. Since at least as early as June 2020, non-bendable products that are materially identical to
2 Plaintiff's Accused Products have been offered for sale on Amazon.com. See, e.g.,



15 <https://www.amazon.com/dp/B087T2Y3BH>

16 52. On or about June 26, 2024, Mossify filed Complaint ID 15419323491 with Amazon.com and
17 against Plaintiff's Accused Products, alleging that the Accused Products infringe upon the Asserted
18 Design Patent.

19 53. As a result of Mossify's complaint to Amazon, Amazon deactivated the product pages for
20 Plaintiff's Accused Products and necessitated the filing of this action.

21 **Mossify's Prior Attempted Enforcement of the Asserted Design Patent**

22 54. On or about July 25, 2023, Defendant Mossify filed a "Complaint for Damages and
23 Injunctive Relief" against over 100 defendants. See Simply Mossy Art Inc. vs. The Individuals,
24 Partnerships, and Unincorporated Associations Identified on Schedule "A", Case No. 1:23-cv-06434
25 (S.D.N.Y.) (hereinafter "Prior Litigation").

26 55. The Prior Litigation included allegations of patent infringement against plant support
27 products that do not have moss (and are instead comprised of coir). Mossify included allegations of
28 infringement by the COMOSSIR coir poles, which were cited as prior art during prosecution of the

1 Asserted Design Patent and are identified as References Cited on the face of the Asserted Design
2 Patent.

3 56. On September 21, 2023, approximately two months after filing the Prior Litigation, Mossify
4 sought permission from the Court to serve the defendants by e-mail. See Prior Litigation at ECF
5 No. 7. The Court granted Mossify's request to serve the defendants by e-mail. See Id. at ECF No. 8.

6 57. On November 27, 2023, Mossify identified a voluntary dismissal with one of the 104
7 defendants. See Id. at ECF No. 12. Mossify did not identify settlement or dismissal with any of the
8 other 103 defendants.

9 58. Mossify did not otherwise prosecute its allegations in the Prior Litigation. On April 17, 2024,
10 the Court issued an order to show cause, explaining why the Prior Litigation should not be dismissed
11 for lack of service. See Id. at ECF No. 13. Mossify refused to respond. On May 13, 2024, the Court
12 dismissed the case against all defendants. See Id. at ECF No. 14.

13 59. Upon information and belief, Defendant Mossify does not sell and has never sold any plant
14 support products on Amazon.com.

15 60. Upon information and belief, Defendant Mossify solely sells its plant mister product on
16 Amazon.com.

17 61. Upon information and belief, Defendant Mossify offers its plant mister product on
18 Amazon.com, solely as a means to become an Amazon seller able to access Amazon.com's Seller
19 Central to report competitors of other different products, including plant supports.

20 62. Subsequent to dismissal of the Prior Litigation, on or about June 26, 2024, Mossify filed an
21 intellectual property complaint with Amazon and against Plaintiff.

22 63. As a result of Mossify's June 2024 complaint to Amazon, Amazon deactivated the product
23 pages for Plaintiff's Accused Products and necessitated the filing of this action.

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**COUNT I
DECLARATORY JUDGMENT
INVALIDITY OF U.S. DESIGN PATENT NO. D989,355**

64. Plaintiff incorporates by reference in their entirety each of the allegations set forth in paragraphs 1-63 of this Complaint.

65. The Asserted Design Patent is entitled “Bendable Moss Pole Assembly”.

66. Mossify has sought to enforce the Asserted Design Patent based solely on the design patent’s title (i.e. “bendable moss pole”) and with complete disregard to the design patent’s actual drawings.

67. Mossify purports that the Asserted Design Patent covers any moss pole that is “bendable”, i.e. “adjustable and flexible to form into shapes other than straight”. See *Simply Mossy Art Inc. vs. The Individuals, Partnerships, and Unincorporated Associations Identified on Schedule “A”, Case No. 1:23-cv-06434 (S.D.N.Y. Filed July 25, 2023), ECF No. 1, Complaint at ¶ 13.*

68. Mossify believes that the Asserted Design Patent covers plant supports with any proportions, content, and any cordage, so long as the plant supports are bendable.

69. Mossify further asserts that Mossify’s “original” and “thin” moss poles are both protected by the Asserted Design Patent.

70. Design patents do not and cannot include claims to the structural or functional aspects of an article. See 35 U.S.C. § 171. A design patent which attempts to do so is primarily functional and invalid.

71. Mossify’s allegation that the Asserted Design Patent primarily or solely claims the structural and functional aspect of a “bendable” moss pole necessitates that the Asserted Design Patent is invalid.

72. The Asserted Design Patent is indefinite, non-enabling, and invalid under 35 U.S.C. § 112 because it attempts to claim an ornamental design without precisely defining the allegedly patentable scope.

73. By way of a first example, the drawings of the Asserted Design Patent utilize solid black surface shading, in violation of 37 C.F.R. § 1.152 (unless it is being used to represent the color black as well as color contrast).

1 74. By way of a second example, the Asserted Design Patent attempts to assert an ornamental
2 design based on photographs. By default, photographs are also not permitted in design patent
3 applications. Per 37 C.F.R. § 1.84(b)(1), photographs may only be used in a design patent application
4 when they “are the only practice medium for illustrating the claimed invention.” If the Asserted
5 Design Patent was solely seeking protection for a “bendable” moss pole and the same was lawful,
6 photographs would not have been needed, because photographs would not have been needed to
7 illustrate said sought protection.

8 75. The Asserted Design Patent is anticipated under 35 U.S.C. § 102 and/or rendered obvious
9 under 35 U.S.C. § 103 by prior plant support products, including but not necessarily limited to those
10 shown and/or discussed herein. The concept and appearance of a bendable moss plant support was
11 publicly known more than one year before the effective filing date of the Asserted Design Patent.

12 76. Based on at least the above, Plaintiff is entitled to a declaratory judgment that U.S. Design
13 Patent No. D989,355 is invalid under at least 35 U.S.C. §§ 102, 103, 112, and 171.

14 77. Given the exceptional circumstances, Plaintiff should be awarded attorney fees.

15 **COUNT II**
16 **DECLARATORY JUDGMENT**
17 **NON-INFRINGEMENT OF U.S. DESIGN PATENT NO. D989,355**

18 78. Plaintiff incorporates by reference in their entirety each of the allegations set forth in
19 paragraphs 1-77 of this Complaint.

20 79. Based on Mossify’s proposed construction of the Asserted Design Patent and for the
21 exemplary reasons set forth herein, the Asserted Design Patent is invalid. As a result, the Accused
22 Products cannot infringe upon the Asserted Design Patent. See Commil USA, LLC v. Cisco Sys.,
23 Inc., 575 U.S. 632, 644 (2015) (“[I]f . . . an act that would have been an infringement . . . pertains to
24 a patent that is shown to be invalid, there is no patent to be infringed.”).

25 80. Even if the Asserted Design Patent was somehow valid, the Accused Products cannot
26 infringe upon it.

27 81. As exemplarily explained above, it is well known that Lucas Antonio Picciolo and Mossify
28 did not invent and did not patent (1) moss poles with a (2) bendable stem and (3) cordage.

1 82. Upon information and belief, Mossify alleges infringement solely because Plaintiff's
2 Accused Products are bendable.

3 83. Contrary to Mossify's contentions, a competitor such as Plaintiff is not infringing the
4 Asserted Design Patent simply by selling a bendable plant support.

5 84. While the true full scope of the Asserted Design Patent is not properly defined and cannot be
6 understood, three things are clear.

7 85. First, Mossify disclaimed the stem and base during prosecution of the Asserted Design
8 Patent. As a result, the characteristics of the stem and base are irrelevant to the scope of the Asserted
9 Design Patent.

10 86. Second, the Asserted Design Patent claims a "moss" pole assembly.

11 87. Third, as best understood, the only *potentially* noticeable and patentable difference between
12 the Asserted Design Patent and the prior art is observed in the specific chaotic, overlapping, and
13 seemingly random way in which the cordage is applied to the exterior of the product shown in the
14 Asserted Design Patent. See, e.g., Asserted Design Patent at Fig. 8:



27 **FIG. 8**

1 88. The use of photographs further supports that the specific way in which cordage is applied
2 was part of the scope sought during prosecution of the Asserted Design Patent, as the same could
3 not be illustrated in line drawings.

4 89. In sum, for infringement, the Asserted Design Patent requires that the accused product at
5 least: (1) be made of moss and (2) utilize specific chaotic, overlapping, and seemingly random
6 cordage.

7 90. The Accused Products do not infringe upon the Asserted Design Patent.

8 91. The Accused Products are made of coconut coir, not moss.

9 92. The Accused Products do not use the chaotic, overlapping, and seemingly random cordage
10 shown in the Asserted Design Patent.

11 93. The Accused Products utilize neat, orderly, and non-overlapping cordage, as similarly used
12 in the prior art products disclosed herein.

13 94. Based on at least the above, Plaintiff is entitled to a declaratory judgment that Plaintiff's
14 Accused Products do not infringe any claim of U.S. Design Patent No. D989,355.

15 95. Given the exceptional circumstances, Plaintiff should be awarded attorney fees.

16 **COUNT III**
17 **DECLARATORY JUDGMENT**
18 **UNENFORCEABILITY OF U.S. DESIGN PATENT NO. D989,355**

19 96. Plaintiff incorporates by reference in their entirety each of the allegations set forth in
20 paragraphs 1-95 of this Complaint.

21 97. Upon information and belief, Mossify and its principals, patent agents, and attorneys,
22 including Lucas Antonio Picciolo and Matthew Graff, had actual and constructive knowledge of all
23 of the prior products referenced and/or discussed herein.

24 98. Lucas Antonio Picciolo and Matthew Graff withheld the existence of most of the prior
25 products from the United States Patent and Trademark Office ("USPTO"), with the intent to deceive
26 the USPTO into issuing a design patent that would have otherwise been rejected.

27 99. The Asserted Design Patent would not have issued if Mossify would have identified the prior
28 art products during prosecution of the Asserted Design Patent.

1 100. With knowledge that the Asserted Design Patent was either invalid and could only potentially
2 provide a very narrow protection if somehow valid, Mossify intentionally and willfully sought to
3 enforce the Asserted Design Patent pursuant to a scope that was broader than Mossify knew was the
4 (possible) narrow scope.

5 101. Mossify knows that the Asserted Design Patent is invalid, unenforceable and/or not
6 infringed.

7 102. Mossify initiated legal action against competitors with actual knowledge that (1) the Asserted
8 Design Patent did not merely cover a “bendable” plant support; (2) the Asserted Design Patent was
9 invalid as broadly construed; and (3) the competitors were not infringing upon any protectable design
10 covered by the Asserted Design Patent.

11 103. Based on at least the above, Plaintiff is entitled to a declaratory judgment that U.S. Design
12 Patent No. D989,355 is unenforceable due to inequitable conduct and patent misuse.

13 104. Given the exceptional circumstances, Plaintiff should be awarded attorney fees.

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15 **COUNT IV**
16 **FALSE PATENT MARKING**
17 **35 U.S.C. § 292**

18 105. Plaintiff incorporates by reference in their entirety each of the allegations set forth in
19 paragraphs 1-104 of this Complaint.

20 106. Mossify claims to have a “patent pending” on its coir plant support products. See, e.g.:



21 **42" Original Bendable Coir Pole™:**

- 22 • 3 feet of reusable plant tape;
- 23 • Galvanized steel frame (no harm to plants);
- 24 • Premium Manila coir outer layer;
- 25 • 1 solid granite stone anti-lean base - 4" long x 2.25" wide x .9" thick.

26 **54" Original Bendable Coir Pole™:**

- 27 • 3 feet of reusable plant tape;
- 28 • Galvanized steel frame (no harm to plants);
- Premium Manila coir outer layer;
- 1 solid granite stone anti-lean base - 4" long x 2.25" wide x .9" thick.

Patent Pending*

<https://www.mossify.ca/products/the-bendable-coir-pole>

1 107. Upon information and belief, no patent application has been filed for Mossify’s coir plant
2 support products.

3 108. Upon information and belief, no application is pending regarding Mossify’s coir plant
4 support products.

5 109. Mossify claims that its “thin” moss plant support products are protected by the Asserted
6 Design Patent. See, e.g.:



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8 These thinner poles embody all the qualities of our Original
Bendable Moss Poles™, encouraging organic growth and
offering creative freedom. **Their slim design, however, allows
9 them to fit tighter spaces and cater to smaller plants.**

10 Choose from three different sizes to accommodate a variety of
plant sizes and types. Regardless of your selection, each pack
comes with three poles that bring the beauty of sustainably
11 harvested forest moss to your indoor garden. They offer the
flexibility of our Bendable Coir Poles with an added aesthetic
charm.

12 *This product is protected under Patent No. D989 355 S

13 **How to install your Bendable Moss
Pole™ THIN**

14 <https://www.mossify.ca/products/3-pack-bendable-moss-pole%E2%84%A2-thin>

15 110. Mossify’s “thin” moss plant supports lack the proportions and features shown on the
16 drawings of the Asserted Design Patent.

17 111. Mossify’s “thin” moss plant supports are not protected by the Asserted Design Patent.

18 112. Mossify has falsely marked its coir and “thin” moss plant supports.

19 113. Mossify knew and knows that no patent was filed or is pending regarding its coir plant
20 support products.

21 114. Mossify knew and knows that its “thin” moss plant supports are not protected by the Asserted
22 Design Patent.

23 115. Mossify intended to deceive and did deceive the public with the above false patent markings.

24 116. As a result of Mossify’s false marking, consumers believe that Mossify’s products are better,
25 superior, and/or proprietary.

26 117. Mossify’s false marking has given Mossify an unfair advantage in the marketplace.

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1 118. Because Plaintiff is a direct competitor of Mossify, Mossify’s false marking has caused
2 Plaintiff to suffer harm and competitive injury, including but not limited to lost market share, sales,
3 business, and goodwill.

4 119. Plaintiff is entitled to an injunction preventing false marking, along with all damages
5 resulting from Mossify’s false patent marking.

6 **COUNT V**
7 **FALSE ADVERTISING**
8 **15 U.S.C. § 1125**

9 120. Plaintiff incorporates by reference in their entirety each of the allegations set forth in
10 paragraphs 1-119 of this Complaint.

11 121. Mossify has committed numerous instances of false advertising and unfair competition
12 through false and misleading statements and actions, including but not limited to those set forth
13 herein.

14 122. Mossify has acted in bad faith to falsely market its products as “patented” or “patent pending”
15 to make other competitor’s products, like Plaintiff’s, look like unlawful “knockoffs” or “copycats”.

16 123. Mossify’s false patent marking was in bad faith and violates 15 U.S.C. § 1125.

17 124. Mossify’s false patent marking has caused confusion in the marketplace and harm to
18 Plaintiff.

19 125. Mossify markets itself as the originator of the “first” bendable moss pole.

20 126. As set forth herein, Mossify’s plant supports products are not the “first” bendable plant
21 support products.

22 127. Mossify’s claim that it created the “first” bendable moss pole is false and misleading.

23 128. Mossify claims that it uses “organic” moss in its moss poles.

24 129. An agricultural product is organic if and only if it has been produced in accordance with
25 federally approved standards for what organic is to mean.

26 130. Mossify’s moss was not produced in accordance with the federally approved organic
27 standards.
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1 131. Mossify's moss has not received a certification of compliance with the federally approved
2 organic standards.

3 132. Mossify's moss is not organic.

4 133. Mossify's claim that its moss is "organic" is false and misleading.

5 134. Mossify has willfully continued to make the false, misleading, and confusing advertising
6 claims, all of which amount to false advertising under Section 43 of the Lanham Act.

7 135. Mossify's marketing statements have caused confusion in the marketplace and harm to
8 Plaintiff.

9 136. Mossify's actions have caused irreparable harm to Plaintiff, including but not limited to
10 reputational harm with Amazon.com and customers.

11 137. Plaintiff has no fully adequate remedy at law.

12 138. Mossify should be enjoined from making any of the above statements or other unsupported,
13 false, and misleading statements of source or superiority.

14 139. Plaintiff is entitled to an injunction and damages as a result of Mossify's false advertising
15 and unfair competition.

16 140. Mossify's false and misleading statements rise to the level of "exceptional" under 15 U.S.C.
17 § 1117(a) and justify that Plaintiff be awarded its attorney's fees and treble damages.

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19 **COUNT VI**
ANTITRUST VIOLATIONS

20 141. Plaintiff incorporates by reference in their entirety each of the allegations set forth in
21 paragraphs 1-140 of this Complaint.

22 142. The Asserted Design Patent was unlawfully procured through fraud and misrepresentations
23 to the USPTO.

24 143. Mossify was and is aware of the full circumstances surrounding the prosecution and issuance
25 of the Asserted Design Patent.

26 144. Mossify knows that the Asserted Design Patent is invalid, unenforceable and/or not
27 infringed.

1 145. Despite its knowledge, Mossify has represented to the marketplace, including Amazon.com,
2 that Plaintiff and other competitors are infringing upon the Asserted Design Patent.

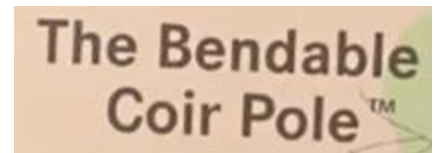
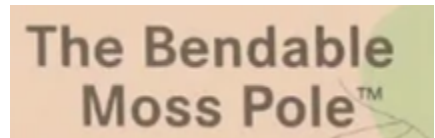
3 146. Mossify’s enforcement efforts, including the Prior Litigation and Amazon complaints, are a
4 sham and have been initiated solely to interfere with the business relationships of lawful competitors,
5 including Plaintiff.

6 147. Mossify has unlawfully acted and sought to enforce the Asserted Design Patent in bad faith.

7 148. Mossify’s bad faith is exemplified by wrongful assertion of the Asserted Design Patent
8 against prior art products, along with the Court’s dismissal of the Prior Litigation for lack of routine
9 e-mail service. If Mossify had a bona fide intention to pursue legal remedies, it could have and would
10 have provided e-mail notice of the lawsuit to the named defendants.

11 149. Mossify also alleges that it has exclusive and enforceable trademark rights in at least the
12 following four phrases:

- 13 a. “THE FIRST BENDABLE MOSS POLE”
- 14 b. “THE FIRST BENDABLE COIR POLE”
- 15 c. “THE BENDABLE MOSS POLE”
- 16 d. “THE BENDABLE COIR POLE”. See, e.g.:



20 150. Mossify had actual knowledge and continues to know that the above four phrases are, at best,
21 merely generic or descriptive, and cannot be afforded trademark protection.

22 151. Mossify’s false claim to trademark protection in at least the above terms has limited
23 Plaintiff’s ability to properly describe, advertise, and sell its products.

24 152. Mossify’s actions and allegations are objectively baseless and subjectively motivated by a
25 desire to impose anticompetitive injury, rather than to seek a justifiable legal remedy.

26 153. Plaintiff has been irreparably harmed and lacks a full remedy at law.
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1 154. Plaintiff is entitled to at least injunctive relief and treble damages to address Mossify’s
2 unlawful actions and antitrust violations.

3
4 **DEMAND FOR RELIEF SOUGHT**

5 WHEREFORE, PLAINTIFF respectfully requests the following relief:

- 6 A. That the Court declare that U.S. Design Patent No. D989,355 is invalid;
- 7 B. That the Court declare that Plaintiff has not infringed U.S. Design Patent No. D989,355;
- 8 C. That the Court declare that U.S. Design Patent No. D989,355 is unenforceable due to
9 inequitable conduct and patent misuse;
- 10 D. That the Court find that Mossify has committed false advertising and unfair competition;
- 11 E. That the Court enjoin Mossify from committing unfair competition and from making false
12 or misleading representations of source or superiority;
- 13 F. That the Court find that this case is “exceptional” within the meaning of at least 15 U.S.C. §
14 1117(a) and 35 U.S.C. § 285, and award Plaintiff treble damages, reasonable attorney’s fees,
15 and expenses;
- 16 G. That the Court find that Mossify has violated antitrust law;
- 17 H. That the Court enjoin Mossify from violating antitrust law;
- 18 I. That the Court award damages to Plaintiff, in an amount to be determined at trial, to the
19 fullest extent permitted by applicable law, including treble damages where applicable; and
- 20 J. That the Court award to the Plaintiff such further relief, in law or in equity, as this Court
21 deems just and proper.
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JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, Plaintiff Omnisec Solutions LLC demands a trial by jury on all issues properly so triable.

Respectfully submitted,

DATED: July 18, 2024

By: /s/ Daniel S. Bretzius
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