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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 LION CREDIT CARD, INC., a
14 California Corporation

15 Plaintiff,

16 v.

17 UPGRAVING, LLC, a Florida Limited
18 Liability Company; Rachel Zilbert, an
19 individual, Maria Isabel Calderon
20 Suarez, an individual, and Matan
21 Siordia, an individual

22 Defendants.

23 **Case No.**

24 **COMPLAINT FOR INJUNCTION
25 AND DAMAGES FOR:**

- 1. PATENT INFRINGEMENT
- 2. FEDERAL UNFAIR COMPETITION [LANHAM ACT]
- 3. VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200 ET. SEQ. AND 17500

DEMAND FOR JURY TRIAL

1 Plaintiff LION CREDIT CARD (hereinafter “LION”) hereby complains
2 against Defendant UPGRAVING, LLC (hereinafter “UPGRAVING”), Defendant
3 Rachel Zilbert (“ZILBERT”), Defendant Maria Isabel Calderon (“CALDERON”),
4 and Matan Siordia (“SIORDIA”), hereby collectively as “DEFENDANTS,” as
5 follows:

6 **THE PARTIES**

7 1. LION is a California corporation with its principal place of business
8 located in 1630 Oakland Rd., San Jose CA 95131.

9 2. Upon information and belief, UPGRAVING is a Florida limited
10 liability company with its principal place of business address of 1060 Brickell
11 Ave., Suite M, Miami FL 33131. UPGRAVING makes, imports, advertises, offers
12 to sell, and/or sells within the United States, including in the State of California
13 and this judicial district, infringing products & processes incorporating LION’s
14 patented product, method, and/or process.

15 3. Upon information and belief ZILBERT is a managing member of
16 UPGRAVING, with the title of President as listed in the Secretary of State of
17 Florida.

18 4. Upon information and belief CALDERON is a managing member of
19 UPGRAVING, with the title of President as listed in the Secretary of State of
20 Florida.

21 5. Upon information and belief SIORDIA is a managing member of
22 UPGRAVING, with the title of President as listed in the Secretary of State of
23 Florida.

1 **JURISDICTION AND VENUE**

2 6. This action is for patent infringement, under Title 35, United States
3 Code, unfair competition under the Lanham Act, 15 U.S.C. §§ 1051 et seq., and
4 claims for unfair competition under California statutory law. This Court has
5 jurisdiction over LION’S federal claims pursuant to 28 U.S.C. §§1331 and 1338(a)
6 and (b). This Court has jurisdiction over LION’S related claims based on state law
7 pursuant to 28 U.S.C. § 1367.

8 7. LION seeks declaratory relief under 28 U.S.C. §§ 2201 and 2202.

9 8. This Court has jurisdiction over LION’S related claims based on state
10 law pursuant to 28 U.S.C. § 1367.

11 9. This Court has personal jurisdiction over DEFENDANTS because,
12 among other things, DEFENDANTS are doing business in the State of California
13 and in this judicial district, the acts of infringement complained of herein occurred
14 in the State of California and in this judicial district, and DEFENDANTS have
15 caused injury to LION and their intellectual property within the State of California
16 and in this judicial district.

17 10. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)
18 and (c) and/or 1400 (a) and 1400(b) because it is the judicial district in which
19 LION resides and maintains a principal place of business and where
20 DEFENDANTS have committed acts of infringement and substantial part of the
21 events giving rise to the claims at issue arise in this district.

22 **GENERAL ALLEGATIONS**

23 11. LION operates a very successful business in the metal credit card
24 customization industry and has pioneered a product, method and process that
25 allows the transfer of an EMV chip from a traditional plastic credit card to a metal
credit card, while still maintaining the same credit card functionality and

1 processing abilities. LION’s metal credit cards can then be customized in a variety
2 of different types of metals, and designs. Due to its inventive advancements and
3 improvements, LION has been awarded several patents on its EMV chip transfer
4 onto a metal credit card customization product/process.

5 12. In particular, LION is the assignee and owner of all rights, title and
6 interest in U.S. Utility Patent Registration No. 11,562,194 (the “‘194 patent”),
7 entitled “Methods for Placing an EMV Chip Onto a Metal Card.” The ‘194 patent
8 was duly and legally issued on January 24, 2023, by the United States Patent and
9 Trademark Office. A true and correct copy of ‘194 patent is attached as **Exhibit**
10 **“A.”** LION has retained all rights to enforce the ‘194 patent. LION marks its
11 products & processes covered by the ‘194 patent.

12 13. DEFENDANTS do not have a license, permission or authority to use
13 the invention disclosed in the ‘194 patent and has never have had a license,
14 permission, or authority to use invention disclosed in the ‘194 patent.
15 DEFENDANTS unfairly competes with LION by improperly using LION’S
16 patented technology without just compensation.

17 14. DEFENDANTS make, use, advertise, sell, and/or distribute a product
18 & process that infringes at least claims 1, 17 & 18 of the ‘194 patent.

19 15. DEFENDANTS have had actual notice of the subject matter invention
20 disclosed in the ‘194 patent since at least as early as January 26, 2024, resulting
21 from a cease and desist letter LION sent to UPGRAVING. A true and correct
22 copy of the January 26, 2024 cease and desist letter is attached as **Exhibit “B.”**

23 **PIERCING CORPORATE VEIL & ALTER-EGO ALLEGATIONS**

24 16. Upon information and belief, UPGRAVING has not adhered to proper
25 corporate and/or limited liability company formalities including but not limited to:
failing to hold annual meetings, failing to keep accurate and detailed minutes of

1 meetings, failing to adopt company bylaws; commingling of funds, and failing to
2 ensure officers or members adhered to the bylaws. In view of this,
3 UPGRAVING’S limited liability/corporate protection veil should be pierced.

4 17. Upon information and belief, ZILBERT, CALDERON, and SIORDIA
5 are the owners and managing members of UPGRAVING, and is in complete
6 control of UPGRAVING. LION is informed and believes that under ZILBERT,
7 CALDERON, and SIORDIA’S guidance and direction, UPGRAVING makes,
8 imports, advertises, offers to sell, and/or sells within the United States, including in
9 the State of California and this judicial district, infringing products, methods, and
10 processes that incorporate LION’S patented technology disclosed in the ‘194
11 patent and thus unfairly competes with LION. In particular, ZILBERT,
12 CALDERON, and SIORDIA personally oversee the intentional infringement of
13 LION’S ‘194 patent, with the manufacture, sale, use and/or distribution of its
14 infringing products, processes and methods. ZILBERT, CALDERON, and
15 SIORDIA did so with wanton and reckless behavior to willfully infringe LION’S
16 ‘194 patent. In view of this, ZILBERT, CALDERON, and SIORDIA is also
17 personally liable for their participation and is merely an alter ego of
18 UPGRAVING.

19 **FIRST CAUSE OF ACTION**
20 **AGAINST ALL DEFENDANTS**
21 **(PATENT INFRINGEMENT)**

22 18. LION incorporates by reference the paragraphs above as if set forth
23 herein.

24 19. The ‘194 patent is valid and enforceable.
25

1 20. LION is the owner, by assignment from the inventor, of all right, title
2 and interest in and to the ‘194 patent.

3 21. DEFENDANTS manufacture, use, advertise, offer for sale, and/or
4 distribute of an infringing product, method, process on its website which
5 incorporates the patented technology in the ‘194 patent without permission,
6 authority or consent by LION.

7 22. Below is a representative screenshot taken from DEFENDANTS’
8 website at [CUSTOMIZE YOUR OWN METAL CREDIT CARD - Upgrading](#)

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UPGRAVING HOME SALES C.C COLLECTION CUSTOMIZE YOUR METAL C.C DIGITAL BUSINESS CARDS AFFILIATE BLOG ABOUT US SUPPORT \$0.00

Home / Custom Metal Credit Card / CUSTOMIZE YOUR OWN METAL CREDIT CARD

CUSTOMIZE YOUR OWN METAL CREDIT CARD

Color: Choose an option

Name on Card: Choose an option

Card Number: Choose an option

EMV Chip Size: Choose an option

Additional Comments

Upload an image: Choose File No file chosen

- 1 + ADD TO CART BUY NOW

♥ Add to wishlist | ✕ Compare

👁️ 26 People watching this product now!

- 🌐 FREE and very fast shipment (US)
- 📦 FREE returns 30 days (US)
- 🛡️ 100% Safe and Easy Payment
- 📞 TOP Customer care. Reach us out!

Share: f t p in

DESCRIPTION ADDITIONAL INFORMATION REVIEWS (0) RETURNS & REFUNDS POLICY

Our advanced customization options let you create a credit card that's truly one-of-a-kind, with a sleek and modern metal design that's sure to impress. It is fully functional with both a chip and magnetic stripe, ensuring that you can use it to make payments wherever credit cards are accepted.

Measurements:

- 3.375 inches (85.6mm) wide
- 2.125 inches (53.98mm) high.

It also has a thickness of 0.03 inches (0.76mm), making it a slim and sleek addition to your wallet

1 23. DEFENDANTS’ infringing activities provide for a product, method,
2 and process that transfers an EMV chip from a plastic credit card onto a metal
3 credit card that can be customized in a variety of styles and designs.

4 DEFENDANTS’ infringing product, method, and process infringes at least claim
5 1, 17 and 18 of LION’s ‘194 patent.

6 24. DEFENDANTS had actual or constructive knowledge of LION’s ‘194
7 patent rights, at least as of January 26, 2024, knew or should have known that their
8 manufacture, use, and sale of its infringing product, method and process would
9 result in actual infringement, and/or acted with deliberate indifference to LION’S
10 patented rights because, inter alia, LION informed DEFENDANTS of the
11 infringement.

12 25. DEFENDANTS have infringed and continue to infringe on the ‘194
13 patent by direct infringement, contributory infringement, and/or inducing others to
14 infringe in violation of 35 U.S.C. §§ 271 and 289, through the manufacture, use,
15 and sale of its infringing products, method and processes.

16 26. As a direct result of DEFENDANTS’ infringement, LION has
17 suffered, and will continue to suffer, damages, irreparable harm, and impairment of
18 the value of its rights in the ‘194 patent.

19 27. LION is entitled to enjoin DEFENDANTS’ infringing acts and to
20 recover from it the damages sustained by LION as a result of DEFENDANTS’
21 infringement and/or DEFENDANTS’ total profits as a result of its infringement, in
22 an amount to be proven at trial.

23 **SECOND CAUSE OF ACTION**

24 **AGAINST ALL DEFENDANTS**

25 **(FEDERAL UNFAIR COMPETITION- 15 U.S.C. § 1125)**

1 28. LION incorporates by reference the paragraphs above as if set forth
2 herein.

3 29. DEFENDANTS have manufactured, used, and sold its above
4 referenced infringing products & services to unfairly compete with LION.

5 30. DEFENDANTS' metal credit card customization products & services
6 are directly infringing LION'S '194 patent and the infringement was intentional in
7 an effort to profit & palm off from LION'S commercial success, good will, and
8 business reputation.

9 31. These actions violate section 43(a) of the Lanham Act, 15 U.S.C.
10 section 1125(a).

11 32. These actions are also likely to deceive customers regarding the
12 origins of the DEFENDANTS' infringing metal credit card customization products
13 and/or services and the connection, affiliation and/or sponsorship of
14 DEFENDANTS' infringing products/services with LION.

15 33. As a direct and proximate result of the willful acts and conduct of
16 DEFENDANTS, LION has been harmed and has suffered financial losses.
17 Because DEFENDANTS' infringing products/services compete directly with
18 LION'S products/services protected and covered by the '194 patent, it has resulted
19 in LION'S loss of sales of its metal credit card customization product/services line,
20 price erosion in the marketplace for metal credit card customization
21 products/services, and/or damages to LION'S business reputation from false
22 customer belief that LION is associated with DEFENDANTS' infringing
23 products/services.

24 34. As a direct and proximate result of the willful acts and conduct of
25 DEFENDANTS, LION has therefore been injured and will continue to suffer
irreparable injury to its business and reputation unless DEFENDANTS are

1 restrained by the Court from continuing such unlawful and unfair business
2 practices and acts of unfair competition.

3 35. DEFENDANTS' acts have caused damage to LION, including
4 incidental and general damages, lost profits, and out-of-pocket expenses.
5 DEFENDANTS should therefore be required to disgorge its profits and pay
6 LION's lost profits as a result of DEFENDANTS' sales of infringing goods and
7 other expenses as may be incurred by LION.

8 36. Pursuant to 15 U.S.C. § 1125, LION is entitled to enjoin these
9 practices.

10 **THIRD CAUSE OF ACTION**
11 **AGAINST ALL DEFENDANTS**
12 **(CALIFORNIA BUSINESS AND PROFESSIONS CODE**
13 **§§ 17200 et seq. and 17500)**

14 37. LION incorporates by reference the paragraphs above as if set forth
15 herein.

16 38. DEFENDANTS have sold, advertised, offered for sale, and/or
17 facilitated the sale of its infringing metal credit card customization products &
18 services in the State of California through its website and social media accounts.

19 39. DEFENDANTS' metal credit card customization products & services
20 are directly infringing LION'S '194 patent and the infringement was intentional in
21 an effort to profit from LION'S commercial success, good will, and business
22 reputation.

23 40. These actions violate section 43(a) of the Lanham Act, 15 U.S.C.
24 section 1125(a), and therefore constitute unlawful conduct within the meaning of
25 California Business & Professions Code § 17200.

1 41. These actions are also likely to deceive customers regarding the
2 origins of the DEFENDANTS' infringing metal credit card customization products
3 and/or services and the connection, affiliation and/or sponsorship of
4 DEFENDANTS' infringing products/services with LION, and therefore constitute
5 fraudulent business practices within the meaning of California Business &
6 Professions Code § 17200.

7 42. As a direct and proximate result of the willful acts and conduct of
8 DEFENDANTS, LION has therefore been injured and will continue to suffer
9 irreparable injury to its business and reputation unless DEFENDANTS are
10 restrained by the Court from continuing such unlawful and unfair business
11 practices and acts of unfair competition.

12 43. DEFENDANTS' acts have caused damage to LION, including
13 incidental and general damages, lost profits, and out-of-pocket expenses.
14 DEFENDANTS should therefore be required to disgorge and restore to LION all
15 profits and other expenses as may be incurred by LION.

16 44. Pursuant to California Business & Professions Code § 17203, LION is
17 entitled to enjoin these practices.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, LION prays for the following relief:

20 1. That judgment be entered in favor of LION that the '194 patent is
21 valid and enforceable, and that DEFENDANTS have and are infringing the '194
22 patent.

23 2. An award of damages for infringement of the '194 patent, together
24 with prejudgment interest and costs, said damages to be trebled by reason of the
25 intentional and willful nature of DEFENDANTS' infringement, as provided by 35
U.S.C. § 284; and/or 35 U.S.C. § 289. - 10 -

1 3. That preliminary and permanent injunctions be issued pursuant to 35
2 U.S.C. § 283 enjoining DEFENDANTS, its officers, agents, servants, employees,
3 and all other persons acting in concert or participation with it from further
4 infringement of the ‘194 patent;

5 4. That preliminary and permanent injunctions be issued prohibiting
6 DEFENDANTS, its officers, agents, servants, employees, and all other persons
7 acting in concert or participation with it from further infringement of the ‘194
8 patent;

9 5. That a preliminary and permanent injunction be issued pursuant to
10 California Business & Professions Code § 17203 enjoining DEFENDANTS, its
11 officers, agents, servants, and employees, and all other persons acting in concert or
12 participation with it, from engaging in the identified (and any other) acts of unfair
13 competition underlying California Business & Professions Code § 17200;

14 6. That LION be awarded all compensatory, enhanced, special, and other
15 damages, with prejudgment interest, that it is entitled to under the patent statutes,
16 copyright statutes, and Lanham Act according to proof at trial;

17 7. For an accounting of, and the imposition of constructive trust with
18 respect to, DEFENDANTS’ profits attributable to their infringement of LION’S
19 ‘194 patent;

20 8. That the Court grant LION restitution from DEFENDANTS by
21 disgorgement of all profits earned through DEFENDANTS’ conduct;

22 9. For restitution of any money or property DEFENDANTS wrongfully
23 obtained, pursuant Business and Professions Code section 17203;

24 10. An award of LION’S attorneys’ fees pursuant to 35 U.S.C. § 285 in
25 that this is an exceptional case.

1 11. That LION recover from DEFENDANTS attorneys’ fees, costs and
2 disbursements relating to this action because this is an “exceptional” case pursuant
3 to the Lanham Act;

4 12. That LION be awarded attorneys’ fees and costs against
5 DEFENDANTS under California Business & Professions Code § 17200; and

6 13. That any monetary award include pre- and post-judgment interest at
7 the highest rate allowed by law;

8 14. That LION be awarded such further relief as the Court deems just and
9 proper.

10 DATED: July 29, 2024

RHEMA LAW GROUP P.C.

11
12 By:



13
14 JOHN D. TRAN
15 Attorneys for Plaintiff
16 LION CREDIT CARD, INC.
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