

1 Tammy J. Terry SB# 230283  
2 Email: terry@obwb.com  
3 OSHA BERGMAN WATANABE & BURTON LLP  
4 1100 Louisiana Street, Suite 4900  
5 Houston, TX 77002  
6 Telephone: (713) 228-8600  
7 E-mail: OBWB-TA3-Cupshe@obwb.com

8 *Attorney for Plaintiff*

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11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 TA3, Inc. d/b/a TA3 Swim,  
14 Plaintiff,

15 vs.

16 Cupshe, LLC and Nanjing Kapeixi  
17 Network Technology Co., Ltd. d/b/a  
18 www.cupshe.com  
19 Defendants.

Case No. 2:24-cv-6649

**COMPLAINT FOR PATENT  
INFRINGEMENT**

Jury Trial Demanded

20 Plaintiff TA3, Inc. d/b/a TA3 Swim (“TA3” or “Plaintiff”), for its Complaint  
21 against Defendants Nanjing Kapeixi Network Technology Co., Ltd. d/b/a  
22 www.cupshe.com d/b/a Cupshe and Cupshe, LLC (collectively, “Defendants”),  
23 alleges as follows, upon actual knowledge with respect to itself and its own acts,  
24 and upon knowledge, information, and belief as to all other matters:

**THE PARTIES**

25 1. TA3 is a Delaware entity with a principal address at 3013 Gilroy  
26 Street, Los Angeles, CA 90039.  
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1 including patent infringement, false advertising and unfair competition, unjust  
2 enrichment, and violations of the Illinois Deceptive Trade Practices Act.

3 5. Jurisdiction exists at least under 28 U.S.C. §§ 1331 and 1338(a)  
4 because this is an action for patent infringement.

5 6. Defendants are subject to personal jurisdiction in California and in  
6 this judicial district and division because they have transacted business in the  
7 district by selling, offering to sell, or distributing their swimwear products that  
8 infringe TA3's intellectual property rights. Defendants are reaching out to do  
9 business with California residents by operating one or more commercial,  
10 interactive internet stores through which California residents can purchase  
11 infringing products. Defendants have targeted California residents by operating an  
12 online store that offers shipping to California and has sold infringing products to  
13 California residents.

14 7. Venue is proper in this District pursuant to the general federal venue  
15 statute, 28 U.S.C. § 1391(c) and under the specific venue provision relating to  
16 patent infringement cases, 28 U.S.C. § 1400(b). For example, Kapeixi is a Chinese  
17 entity organized under the laws of China, with its principal place of business in  
18 China and thus, venue is proper in any judicial district. Meanwhile, Cupshe  
19 advertises itself as being located in, transacting business in, and most of its core  
20 employees are located in this District, making venue proper specifically in this  
21 District.

### 22 **THE '606 DESIGN PATENT**

23 8. TA3 owns all rights and title to design patent U.S. Patent No.  
24 D1,037,606 ("the '606 Patent"), including the right to enforce the '606 Patent  
25 against infringers. *See* Exhibit 1 (true and correct copy of '606 Patent) and Exhibit  
26 2 (true and correct copy of assignment record).

27 9. The United States Patent and Trademark Office issued the '606  
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1 Patent, entitled “Body Sculpting Garment,” on August 6, 2024.

2 10. The ’606 Patent covers a one-piece swimsuit design.

3 11. The ’606 Patent carries a presumption of validity under 35 U.S. C. §  
4 282(a) and is enforceable.

5 **THE TA3<sup>®</sup> TRADEMARK**

6 12. TA3 owns the federally registered trademark “TA3” (U.S.  
7 Registration No. 5,852,697) which is used in connection with the sale of swimwear  
8 in the United States. *See* Exhibit 3 (True and correct copy of the trademark  
9 certificate for TA3).

10 13. The TA3<sup>®</sup> trademark was registered with the United States Patent and  
11 Trademark Office on September 3, 2019, as a class 25 trademark for “Bodysuits;  
12 Bottoms as clothing for women; Jumpsuits; Lingerie; Shapewear; Swimwear;  
13 Women's clothing, namely, shirts, dresses, skirts, blouses; Tops as clothing for  
14 women.”

15 **THE SQUAREY<sup>®</sup> TRADEMARK**

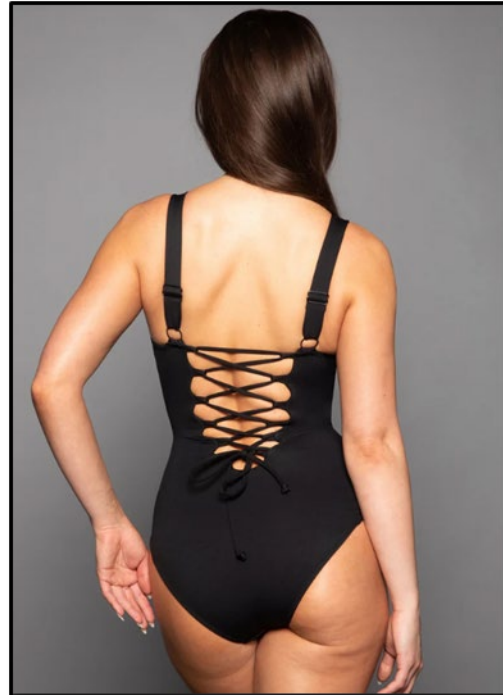
16 14. TA3 owns the federally registered trademark “SQUAREY” (U.S.  
17 Registration No. 7,421,872) which is used in connection with the sale of swimwear  
18 in the United States. *See* Exhibit 4 (True and correct copy of the trademark  
19 certificate for SQUAREY).

20 15. SQUAREY<sup>®</sup> was registered with the United States Patent and  
21 Trademark Office on June 18, 2024, a class 25 trademark for “Bodysuits; Dresses;  
22 Shapewear; Swimwear; Tops as clothing.”

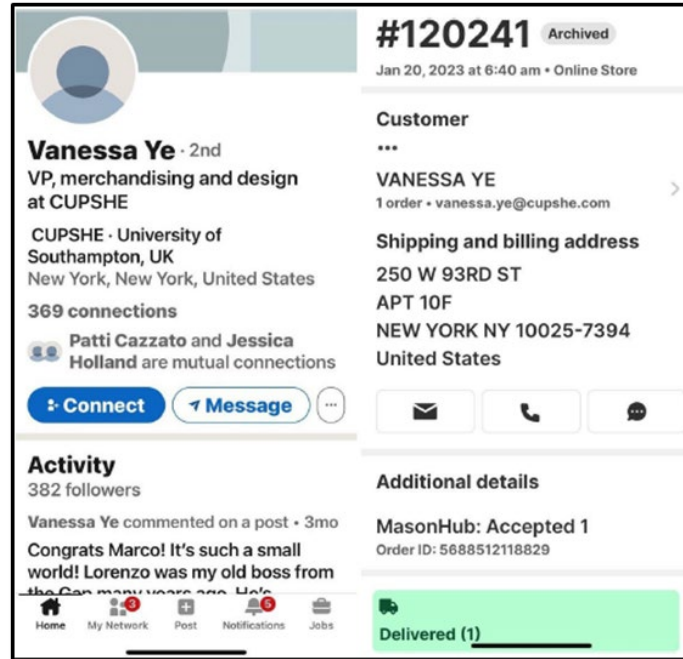
23 **FACTUAL BACKGROUND**

24 16. Leila Shams founded TA3 with the goal of creating a perfect swimsuit  
25 for any body type. In that endeavor Ms. Shams has invented and designed a  
26 variety of such swimsuits, including one named “The Squarey,” which is a  
27 commercial embodiment of the ’606 Patent.

1 17. The Squarey<sup>®</sup> is an award-winning one-piece swimsuit with a design  
2 that includes a square neckline, lines running generally vertically along the front of  
3 the swimsuit contributing to a generally hour-glass appearance, over the shoulder  
4 adjustable straps, and criss-cross adjustable lace up back closure, and looks like  
5 this:



18  
19 18. On January 20, 2023, Cupshe's VP of Merchandising and Design,  
20 Vanessa Ye, ordered a product from TA3 illustrating Cupshe's awareness of TA3's  
21 designs before releasing their Accused Designs. See image below:  
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19. Not long thereafter, Cupshe released a copy of the Squarey<sup>®</sup> swimsuit, which Cupshe called “The Reverie Land Square Neck Slim & Sculpt One Piece” (“Reverie” or “Accused Design”).

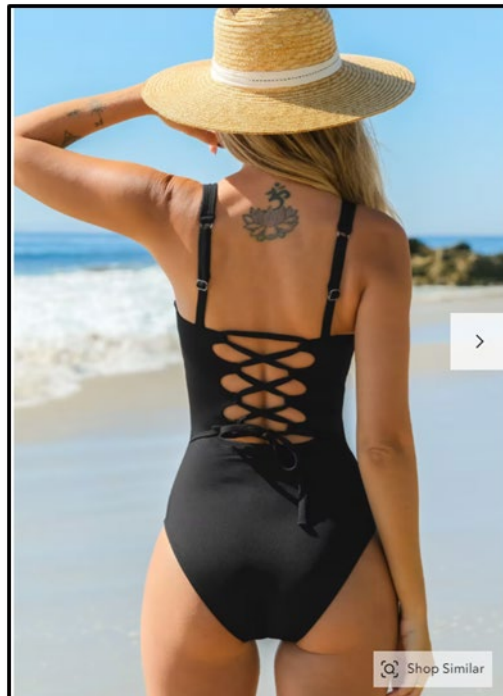
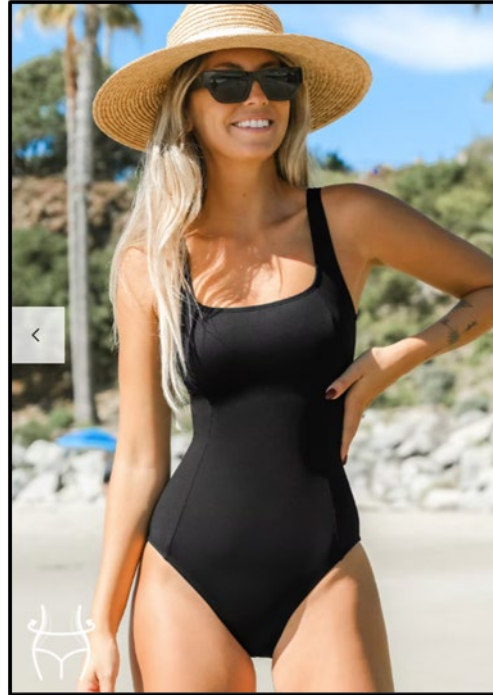
20. Just like Squarey<sup>®</sup>, Reverie is a one-piece swimsuit with a design that includes a square neckline, lines running generally vertically along the front of the swimsuit contributing to a generally hour-glass appearance, over the shoulder adjustable straps, and criss-cross adjustable lace up back closure. The below table shows images of TA3’s Squarey<sup>®</sup> on the left and, on the right, Reverie as sold on Cupshe’s website at <https://www.cupshe.com/products/reverie-land-square-neck-slim-sculpt-one-piece-CAA12E3L009AA>:

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**TA3's SQUAREY®**

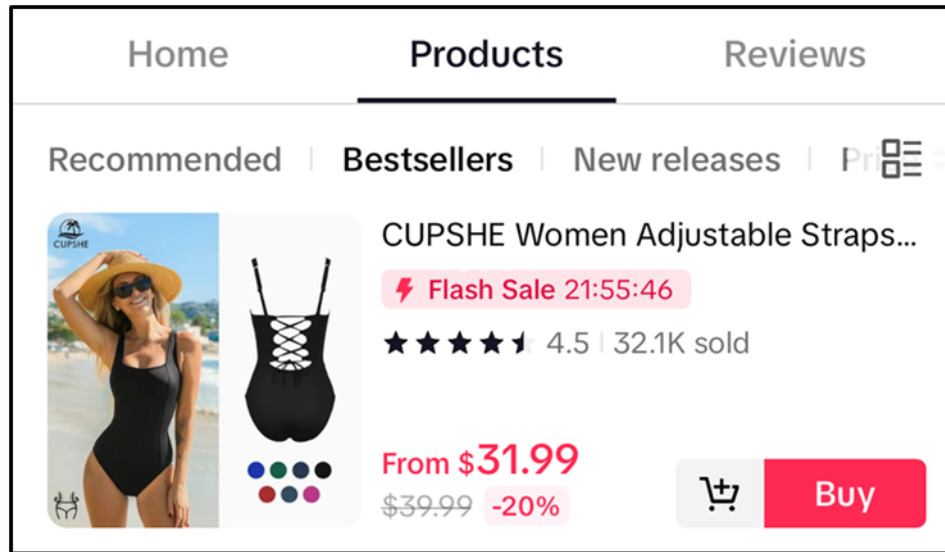


**CUPSHE'S "REVERIE"**



21. TA3 subsequently became aware of the Reverie as Cupshe increased its online advertising and marketing of the Reverie in late 2023 and early 2024.

1           22. By the summer of 2024, the Reverie had been sold over 32,000 times  
2 on the Tik Tok shop alone and is shown as being Cupshe's best seller on Tik Tok.  
3 See image below.



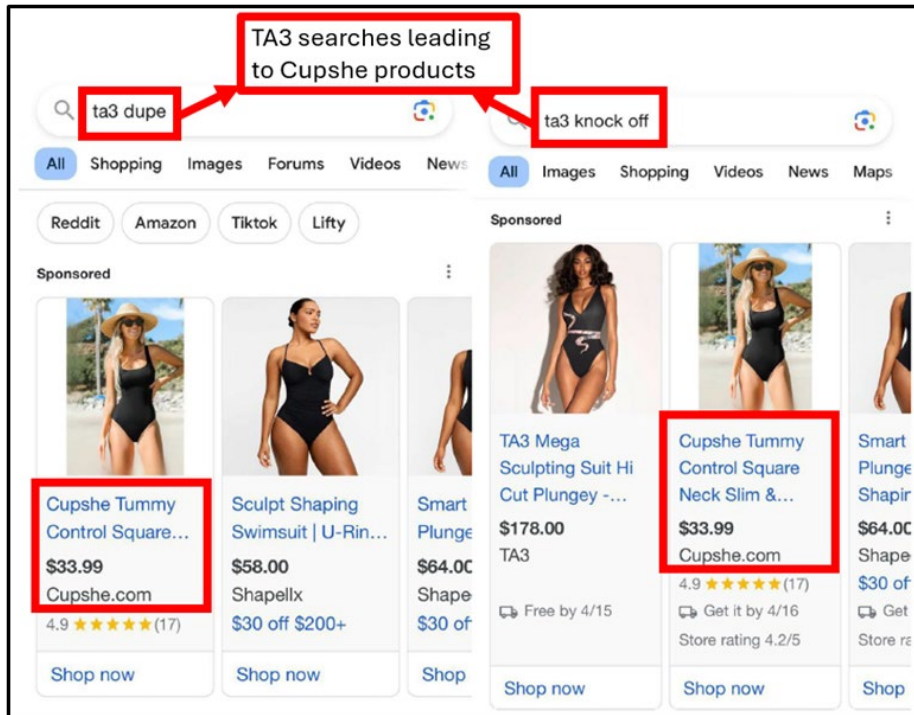
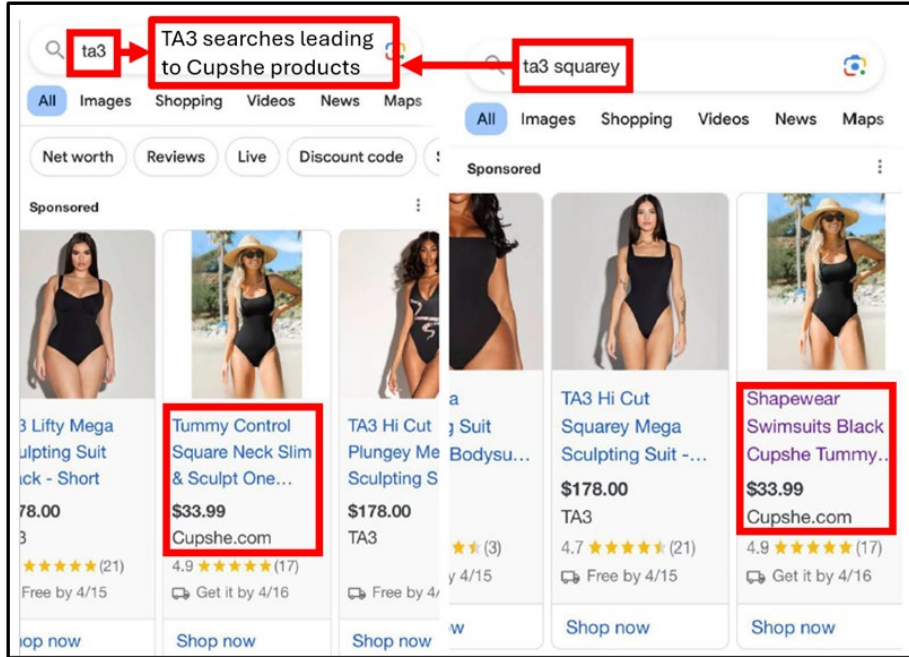
15           23. In addition to Tik Tok, Cupshe markets and sells the Reverie product  
16 on Amazon, as well as its own website, [www.cupshe.com](http://www.cupshe.com).

17           24. The Reverie copies the ornamental design of the award-winning  
18 Squarey® and infringes the '606 Patent as discussed in more detail below in Count  
19 I.

20           25. On information and belief, Cupshe also aggressively copied content  
21 from TA3's social media marketing and advertising materials in a manner to  
22 intentionally confuse consumers and persuade them to purchase Cupshe's dupe  
23 versions of TA3's patented products. In such efforts, and on information and  
24 belief, Cupshe even bid on TA3® search terms, including specifically using TA3's  
25 federally registered trademarks TA3® and SQUAREY®, to intentionally sway  
26 consumers seeking to buy TA3's products to instead be led to Cupshe's dupe  
27 versions of TA3's patented product.  
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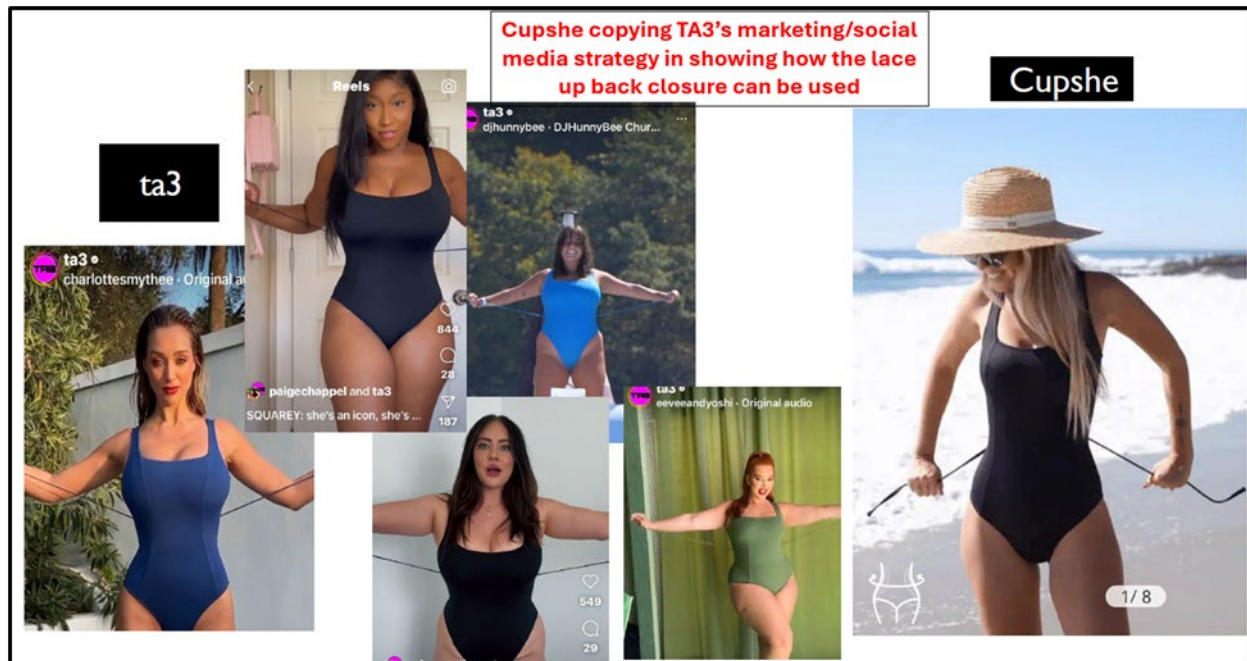


1 26. Cupshe has engaged in a pattern of copying TA3's content as shown  
2 in the below images. These first images show the results of Cupshe bidding on  
3 TA3 search terms that include the trademarks TA3<sup>®</sup> and SQUAREY<sup>®</sup>:



1 27. Specifically, the above images are annotated excerpts of screenshots  
 2 that show Google search results based on searches using TA3<sup>®</sup>. As can be seen,  
 3 searches for “ta3,” “ta3 squarey,” “ta3 dupe,” and “ta3 knockoff” return Cupshe’s  
 4 infringing products within the top three search results. This is a result of Cupshe  
 5 having bid on TA3 search terms that include TA3’s federally registered trademarks  
 6 TA3<sup>®</sup> and SQUAREY<sup>®</sup>.


7 28. These next images show examples of Cupshe copying TA3’s social  
 8 media content, specifically mimicking how models/consumers pose as they tie the  
 9 lace up back closure strings:






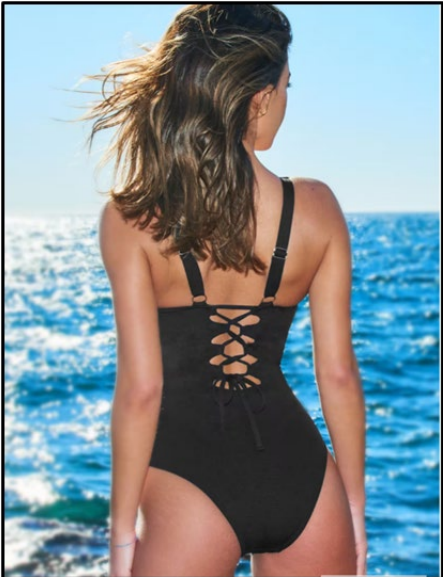
21 29. Cupshe has been on actual notice of TA3’s belief that The Reverie  
 22 was a copy of The Squarey since at least February 22, 2024, when TA3, through its  
 23 legal representatives, sent a letter to Cupshe notifying Cupshe of TA3’s then-  
 24 pending patent rights. Correspondence between the parties continued through  
 25 March and April 2024. Exhibit 5 (true and correct copies of correspondence  
 26 between TA3 and Defendants).

1 30. Despite TA3’s warnings regarding willful infringement, Cupshe  
 2 continued to aggressively market The Reverie following this correspondence  
 3 throughout the summer of 2024. Exhibit 6 (true and correct copies of examples of  
 4 Cupshe marketing after receiving TA3 notice letter).

5 31. Cupshe also released additional color variations, in addition to black,  
 6 of the same infringing design even after being put on notice of TA3’s then-pending  
 7 patent rights. These color variations mimic the same types of colors offered by  
 8 TA3 for the Squarey®. Some of the copied color variations are shown below:

TA3’s SQUAREY®	CUPSHE’S “THE SQUARE NECK”
	
	

1 32. Additionally, Cupshe released a new one-piece swimsuit called  
2 “Square Neck Back Tie Tummy Control One-Piece” (“The Square Neck”), which,  
3 just like The Squarey and The Reverie, also has a design that includes a square  
4 neckline, lines running generally vertically along the front of the swimsuit  
5 contributing to a generally hour-glass appearance, over the shoulder adjustable  
6 straps, and criss-cross adjustable lace up back closure, as shown below:

7 <b>TA3’s SQUAREY®</b>	8 <b>CUPSHE’S “THE SQUARE NECK”</b>
	
	

1           33. Cupshe appeared to acknowledge that it was copying TA3's design but  
2 took the position that such copying was acceptable because TA3's patent rights  
3 had not yet issued. *See* Exhibit 5 at p. 4 (stating “we noticed that your claim is  
4 based on pending patent rights, which means you have not achieved the full patent  
5 right currently...”).

6           34. The '606 Patent issued on August 6, 2024.

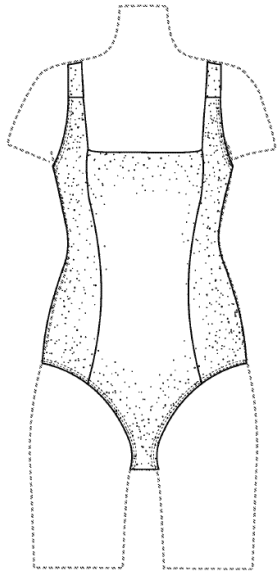
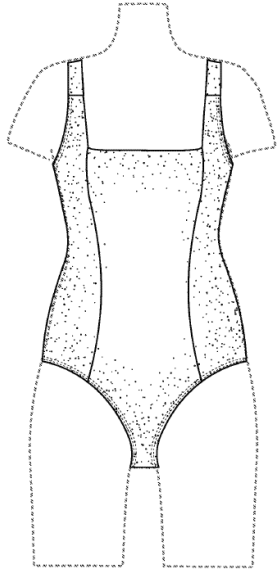
7           **COUNT I: INFRINGEMENT OF THE '606 DESIGN PATENT**

8           35. TA3 re-alleges the foregoing paragraphs as if fully set forth here.

9           36. In the eye of the ordinary observer, giving such attention as a  
10 purchaser usually gives to the purchase of swimsuits, the design of Defendants'  
11 products “The Reverie Land Square Neck Slim & Sculpt One Piece” and “Square  
12 Neck Back Tie Tummy Control One-Piece” and its variations (“the Accused  
13 Designs”) are substantially the same as the design of the '606 Patent, as shown in  
14 the following claim chart that compares the '606 Patent's claimed design with the  
15 Accused Designs. *See* Exhibit 7 (copy of a claim chart comparing '606 Design  
16 Patent to the Accused Designs).

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**THE '606 PATENT DESIGN**



**THE ACCUSED DESIGNS**



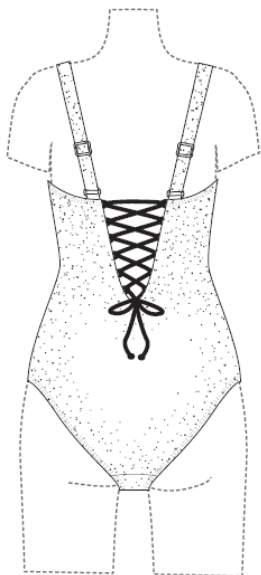
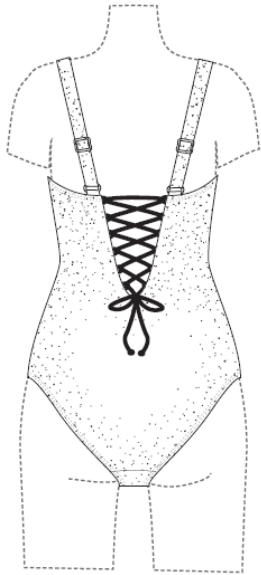
*Reverie Land Square Neck  
Slim & Sculpt One Piece*



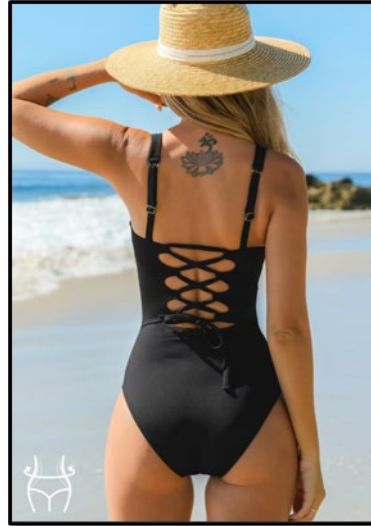
*Square Neck Back Tie  
Tummy Control One-Piece*

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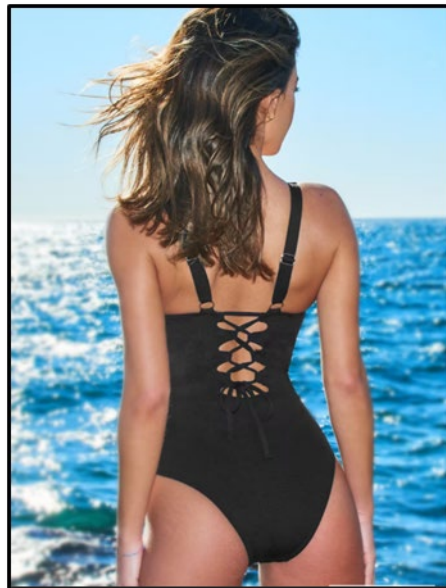
**THE '606 PATENT DESIGN**



**THE ACCUSED DESIGNS**



*Reverie Land Square Neck  
Slim & Sculpt One Piece*



*Square Neck Back Tie  
Tummy Control One-Piece*

1 37. Because the Accused Designs' resemblance to the '606 Patent's  
2 claimed design is such as to deceive the ordinary observer and induce the purchase  
3 of the Accused Designs supposing them to be the same as the '606 Patent's  
4 claimed design, the Accused Designs infringe the '606 Patent.

5 38. Defendants have directly infringed and continue to infringe the '606  
6 Patent by making, using, selling, and offering for sale in the United States, and/or  
7 importing into the United States the Accused Designs without authority or license  
8 from TA3 and, therefore, in violation of TA3's rights.

9 39. Additionally, Defendants have infringed and continue to infringe the  
10 '606 Patent by applying the patented design, or a colorable imitation thereof, to an  
11 article of manufacture, such as "The Reverie Land Square Neck Slim & Sculpt  
12 One Piece" and "Square Neck Back Tie Tummy Control One-Piece" for the  
13 purpose of sale and/or by selling, offering, or exposing for sale an article of  
14 manufacture, such as "The Reverie Land Square Neck Slim & Sculpt One Piece"  
15 and "Square Neck Back Tie Tummy Control One-Piece" to which the design of the  
16 '606 Patent or a colorable imitation thereof has been applied.

17 40. Defendants' actions, therefore, violate 35 U.S.C. §§ 271(a) and 289.

18 41. Additionally, Defendants have acted in a manner that constitutes  
19 willful infringement. This is illustrated by Defendants' actions in copying content  
20 from TA3's social media marketing and advertising materials in a manner to  
21 intentionally confuse consumers and persuade them to purchase Cupshe's dupe  
22 versions of TA3's patented products and continuously copying TA3's patented  
23 products after being put on notice of their infringement. Defendants actions in  
24 bidding on TA3 search terms in a manner to intentionally sway consumers who are  
25 seeking to buy TA3's products to instead be led to look at Cupshe dupe versions of  
26 TA3's patented product also constitute willful infringement.



1 42. This is an exceptional case in view of Defendants’ unlawful activities,  
2 including Defendants’ deliberate, intentional, and willful infringement.

3 43. TA3 has been, is being, and will continue to be injured and has  
4 suffered, is suffering, and will continue to suffer injury and damages for which it is  
5 entitled to relief under at least 35 U.S.C. §§ 281, 284, 285, and 289.

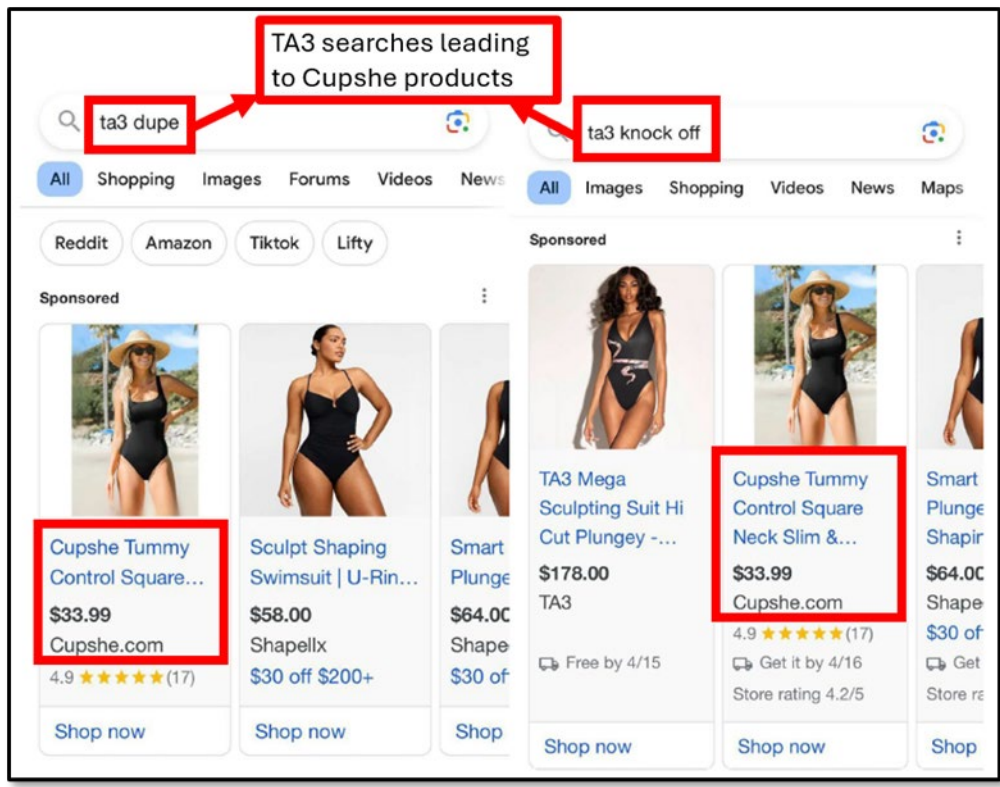
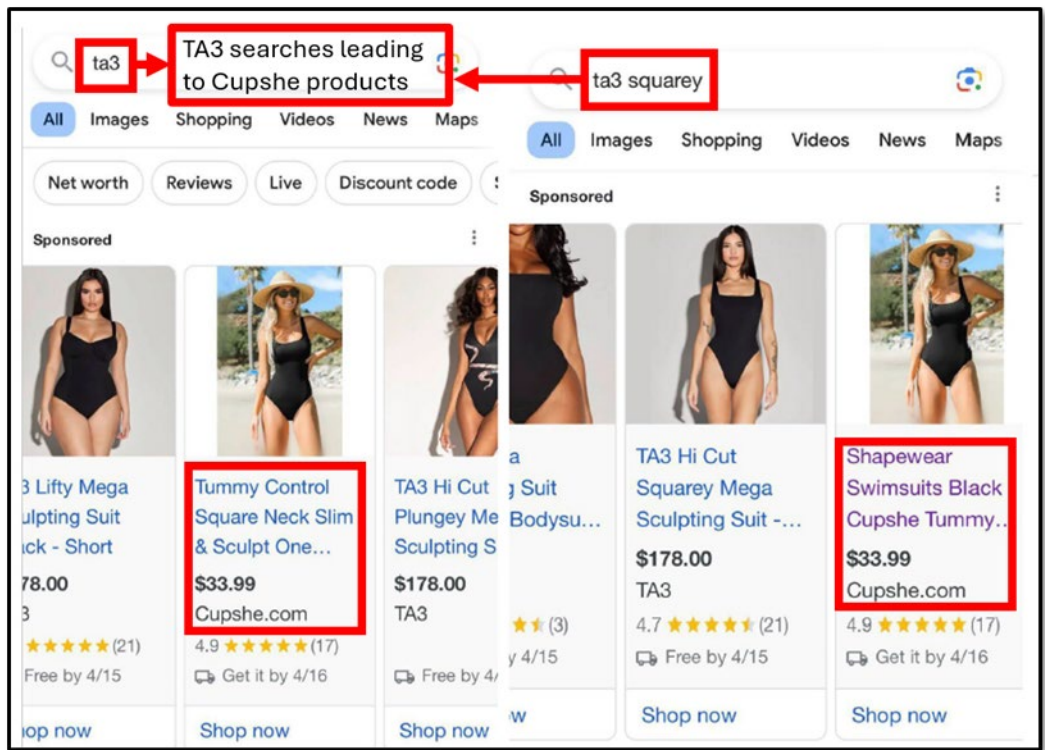
6 44. Defendants also have caused, are causing, and will continue to cause  
7 irreparable harm to TA3 for which there is no adequate remedy at law and for  
8 which TA3 is entitled to injunctive relief under at least 35 U.S.C. § 283.

9 **COUNT II: TRADEMARK INFRINGEMENT**

10 45. TA3 re-alleges the foregoing paragraphs as if fully set forth here.

11 46. TA3 is the owner of the federally registered trademarks TA3<sup>®</sup> (U.S.  
12 Registration No. 5,852,697) and SQUAREY<sup>®</sup> (U.S. Registration No. 7,421,872)  
13 which are used in connection with the sale of swimwear in the United States. *See*  
14 Exhibits 3 and 4.

15 47. On information and belief, Cupshe bid on TA3 search terms that  
16 specifically included TA3’s federally registered trademarks, TA3<sup>®</sup> and  
17 SQUAREY<sup>®</sup>, to intentionally sway consumers seeking to buy TA3’s products  
18 away from TA3’s products and instead lead them to Cupshe’s dupe versions of  
19 TA3’s patented product. The following annotated screenshots show Google search  
20 results based on searches using TA3<sup>®</sup>—searches for “ta3,” “ta3 squarey,” “ta3  
21 dupe,” and “ta3 knockoff” return Cupshe’s infringing products as results, which is  
22 a result of Cupshe having bid on TA3 search terms that include TA3’s federally  
23 registered trademarks TA3<sup>®</sup> and SQUAREY<sup>®</sup>:



1 48. Defendants' actions in bidding on search terms that involve TA3's  
2 federally registered trademarks to deceive customers into buying a knockoff  
3 product constitutes trademark infringement.

4 49. Accordingly, TA3 alleges trademark infringement against the  
5 Defendants based on 15 U.S.C. §§ 1114 and 1125.

6 **COUNT III: FALSE ADVERTISING/UNFAIR COMPETITION**

7 50. TA3 re-alleges the foregoing paragraphs as if fully set forth here.

8 51. Defendants' activities complained of above constitute false  
9 advertising and unfair competition in violation of 15 U.S.C. § 1125(a) to the injury  
10 and detriment of TA3.

11 52. As a direct and proximate result of Defendants' false advertising and  
12 unfair competition, TA3 has suffered and will continue to suffer loss of income,  
13 profits, and good will, and Defendants will continue to unfairly acquire income,  
14 profits, and good will.

15 **COUNT IV: UNJUST ENRICHMENT**

16 53. TA3 re-alleges the foregoing paragraphs as if fully set forth here.

17 54. Defendants' activities complained of above constitute unjust  
18 enrichment, as Defendants have unjustly retained a benefit to TA3's detriment  
19 (moneys from sales of The Reverie and other Accused Designs), and Defendants'  
20 retention of the benefit violates the fundamental principles of justice, equity and  
21 good conscience.

22 55. Defendants obtained and retained such benefits through unethical,  
23 egregious and bad faith marketplace activities including (1) launching a product in  
24 competition with TA3 that uses TA3's design, while touting a much lower price  
25 point than TA3's; (2) copying TA3's design for such new product; (3) following  
26 TA3's lead in its selection of retail channels, to ensure that the copied product  
27 would sell side-by-side with the original TA3 product at the same channels; (4)  
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1 advertising the copied product as based on “our slimming and sculpting design”  
2 when that was not true because it was instead copied from TA3’s patented design;  
3 (5) copying content from TA3’s social media marketing and advertising materials  
4 to intentionally confuse consumers and persuade them to purchase Cupshe’s dupe  
5 versions of TA3’s patented products; (6) bidding on TA3 online search terms  
6 (including Google ad words) in a manner to intentionally sway consumers seeking  
7 to buy TA3’s products to instead be led to look at Cupshe dupe versions of TA3’s  
8 patented product; (7) doing all of the above targeting TA3 to obtain immediate  
9 market share diversion through undercutting of TA3’s price while selling a cheap  
10 knockoff of TA3’s product; and (8) acting in a manner calculated to force TA3 out  
11 of business and reduce competition by copying TA3’s design and forcing TA3 to  
12 compete against its own innovations.

13 56. As a direct and proximate result of Defendants’ unjust enrichment,  
14 TA3 has suffered and will continue to suffer loss of income, profits, and good will,  
15 and Defendants will continue to unfairly acquire income, profits, and good will.

16 **COUNT V: THE CALIFORNIA UNFAIR PRACTICES ACT**

17 57. TA3 re-alleges the foregoing paragraphs as if fully set forth here.

18 58. Defendants’ activities complained of above constitute deceptive trade  
19 practices in violation of the California Business and Professions Code §17500 to  
20 the injury and detriment of TA3.

21 59. As a direct and proximate result of Defendants’ deceptive trade  
22 practices, TA3 has suffered and will continue to suffer loss of income, profits, and  
23 good will, and Defendants will continue to unfairly acquire income, profits, and  
24 good will.

25 **JURY DEMAND**

26 Pursuant to Fed. R. Civ. P. 38, TA3 respectfully demands trial by jury on all  
27 issues so triable by jury in this action.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in its favor and grant the following relief:

- A. Entry of judgment in favor of TA3 and against Defendants on all counts;
- B. A judgment and order that Defendants infringe the '606 Patent;
- C. A judgment and order that the '606 Patent is valid and enforceable;
- D. Award TA3 damages in an amount adequate to compensate TA3 for Defendants' infringement of the '606 Patent, but in no event less than a reasonable royalty under 35 U.S.C. § 284;
- E. Award TA3 pre-judgment and post-judgment interest to the full extent allowed under the law, as well as their costs;
- F. Enter an order finding that this is an exceptional case and awarding TA3 its reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- G. Additional remedy for infringement of a design patent pursuant to 35 U.S.C. § 289;
- H. Enter a permanent injunction against all of Defendants' products found to infringe the '606 Patent;
- I. Award, in lieu of an injunction, a compulsory forward royalty for infringement of the '606 Patent;
- J. Order an accounting of damages;
- K. A judgment and order requiring Defendant to pay Plaintiff pre-judgment and post judgment interest on the damages awarded; and
- L. Award such other relief, including equitable relief, as the Court may deem appropriate and just under the circumstances.

1 Date: August 6, 2024

Respectfully submitted,

2 /s/ Tammy J. Terry

3 Tammy J. Terry

4 State Bar No. 230283

**OSHA BERGMAN WATANABE & BURTON  
LLP**

5 1100 Louisiana Street, Suite 4900

6 Houston, TX 77002

7 Telephone: (713) 228-8600

8 E-mail: OBWB-TA3-Cupshe@obwb.com

*Attorney for Plaintiff*

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